

PROJET DE LOI

ENTITLED

The Child Protection (Sark) Law, 2020 *

[CONSOLIDATED TEXT]

NOTE

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* No. XIII of 2020; as amended by the Child Protection (Transfer of Functions) (Sark) Ordinance, 2022 (Sark Ordinance No. IV of 2022).

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ARRANGEMENT OF SECTIONS

PART I PRELIMINARY

1. Purpose and objects.
2. Welfare of the child and the child welfare principles.
3. The child welfare checklist.

PART II SERVICES AND SUPPORT FOR CHILDREN AND FAMILIES

4. Meaning of "children in need" and "children at risk".
5. Ordinance may require Chief Pleas to provide services.
6. Duty to provide accommodation for children.
7. Duty to children and others in the care of MASH.
8. Duty to share information and work together.
9. Establishment and functions of the Multi-Agency Safeguarding Hub.

PART III CHILDREN REQUIRING CARE, PROTECTION, GUIDANCE OR CONTROL

Compulsory intervention

10. Compulsory intervention.

Notification and referral to and investigations by MASH

11. Notification and referral of matters to MASH.
12. Investigation by MASH.
13. Disclosure of information.
14. Disclosure orders.
15. Meaning of "information" for purposes of sections 13 and 14.
16. Offences of making false statement etc. and failure to comply with requirement.

Referral to the Court

17. Action after investigation by MASH.

Care requirement

18. Meaning and purpose of a care requirement.
19. Further provisions in respect of a care requirement.
20. Obligations of MASH under a care requirement.
21. Duration of a care requirement.
22. Review, continuation, variation and revocation of a care requirement.

Community parenting order

23. Meaning and purpose of a community parenting order.
24. Circumstances in which a community parenting order may be made.
25. Contact with a child subject to a community parenting order and special contact orders.
26. Effect of community parenting order on parental responsibility.
27. Duration and discharge of community parenting order.
28. Power to make an interim community parenting order.
29. Power to discharge care requirement upon disposal of application for community parenting order.

Protection of children in an emergency

30. Making of an emergency child protection order.
31. Effect of emergency child protection order.
32. Duration of emergency child protection order.
33. Application for discharge or variation of emergency child protection order.
34. Exclusion order.
35. Effect of exclusion order.
36. Power to make orders ancillary to an exclusion order.
37. Power of arrest for breach of an exclusion order or ancillary order.
38. Duration and other provisions in respect of exclusion and ancillary orders.

Powers of police officers

39. Powers of police officers where child is suffering harm or at risk.
40. Powers of police officers to recover children for whom MASH is responsible.
41. Offence of impeding or obstructing police officer exercising powers under this Law.
42. Duration of police protection and power to make regulations concerning children taken into police protection.

PART IV

SECURE ACCOMMODATION

- 43. Meaning of "secure accommodation".
- 44. Prohibition on use of secure accommodation otherwise than under court order.
- 45. Legal representation.
- 46. Power of MASH to detain a child in secure accommodation.
- 47. Effect of secure accommodation order.
- 48. Reviews.

PART V REMOVAL OF CHILDREN OUT OF JURISDICTION

- 49. Offence of abduction of a child out of the jurisdiction.
- 50. Circumstances in which consent not necessary.
- 51. Construction of references to taking, sending and jurisdiction of Sark for purposes of sections 49 and 50.
- 52. Application of Part V.

PART VI PLACEMENT OF CHILDREN OUT OF THE JURISDICTION

- 53. Definitions and interpretation for the purposes of Part VI.
- 54. Placement out of the jurisdiction of a child who is not subject to a care requirement or order of relevant court.
- 55. Referrals to the Court under section 54(2).
- 56. Placement out of the jurisdiction of a child who is subject to a care requirement or order of relevant court.
- 57. Power to make Ordinances for the purpose of Part VI.

PART VII ENFORCEMENT

- 58. Powers of enforcement to be in addition to any other powers.
- 59. Penal notice.
- 60. Direction to disclose whereabouts.
- 61. Penalty for contempt of court and power of court to make compensation orders.
- 62. Sureties and bonds.
- 63. Orders relating to passports.
- 64. Recovery of children by MASH.
- 65. Power to order recovery of child.
- 66. Offences.

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

- 67. Powers of Royal Court to exercise powers of Court of the Seneschal.
- 68. Power to vary trusts.
- 69. Appeals from decisions of Court of the Seneschal.
- 70. Powers of Royal Court when sitting in appellate capacity.
- 71. Appeals from decisions of the Royal Court on point of law.
- 72. Power to extend time within which appeal lies.
- 73. Powers to transfer.

PART IX
GENERAL AND MISCELLANEOUS

- 74. Duty of confidentiality.
- 75. Exceptions to confidentiality.
- 76. Reporting of proceedings under this Law.
- 77. Persons permitted to be present in court when dealing with a child.
- 78. Additional power of court upon disposal of an application for an order.
- 79. Restriction on exercise of court's customary law jurisdiction.
- 80. Power to amend Law by Ordinance.
- 81. Power to make Ordinances relating to child minders and day care providers.
- 82. Power to make Ordinances generally.
- 83. Regulations to be laid before Chief Pleas.
- 84. Publication of written guidance.
- 85. Power to make rules of court.
- 86. General provisions as to Ordinances.
- 87. Interpretation.
- 88. Amendments to the Children Law.
- 89. Citation.
- 90. Commencement.

SCHEDULE 1 Constitution of MASH.

SCHEDULE 2 Amendments to the Children (Sark) Law, 2016.

The Child Protection (Sark) Law, 2020

THE CHIEF PLEAS OF SARK, in pursuance of their Resolution of the 3rd October, 2018, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in Sark.

PART I PRELIMINARY

Purpose and objects.

1. (1) The principal purpose of this Law is to make suitable provision to protect children from harm.

(2) Without limiting the generality of the principal purpose under subsection (1), this Law has the following objects –

- (a) the creation of obligations, powers and functions in relation to children in need and children who require care, protection, guidance or control, and
- (b) the constitution of the Multi-Agency Safeguarding Hub ("MASH") for the purposes of this Law.

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 must –

- (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 the child's own family and community,
- (b) that, where it is not possible for a child to be brought up within the child's own family or community, the child's welfare is normally best served by maintenance of regular contact with the child's family and community,
- (c) that no compulsory intervention is to 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 the child's wishes, feelings and views in all matters affecting the child,

- (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 is 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 cooperate 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 is to 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, must 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, or
 - (b) 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 must, 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 the child's 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 the child's 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

SERVICES AND SUPPORT FOR CHILDREN AND FAMILIES

Meaning of "children in need" and "children at risk".

- 4. (1) For the purposes of this Part –
 - (a) a child is in need if –

- (i) the child or the child's family requires the provision of additional services to enable that child to achieve or maintain a reasonable standard of health or development,
 - (ii) the child's health or development is likely to be significantly impaired, or further impaired, without the provision of additional services,
 - (iii) the child is disabled, or
 - (iv) the child is, or is likely to be, adversely affected by the disability or illness of a parent or another member of the child's family without the provision of additional services, and
- (b) a child is at risk if there is reasonable cause to believe that grounds exist in respect of that child for compulsory intervention under Part III.

(2) For the purposes of subsection (1), "**additional services**" means services which are additional to any health, social, child care and educational services normally provided by the Chief Pleas to, or in respect of, any family or child.

Ordinance may require Chief Pleas to provide services.

5. (1) The Chief Pleas may make an Ordinance to impose a duty on itself, acting through any committee of the Chief Pleas, MASH, or any other person funded by the Chief Pleas, to provide services to any children of Sark who are in need, so as to—

- (a) promote the upbringing of the child by the child's family, and
 - (b) prevent the child becoming a child at risk.
- (2) An Ordinance under subsection (1) may prescribe –
 - (a) the extent of the duty,
 - (b) the person who is to be responsible for discharging the duty on behalf of the Chief Pleas, and
 - (c) the nature and extent of the services to be provided in relation to the duty, including without limitation –
 - (i) conditions to which the discharge of the duty may be subject,
 - (ii) limitations upon the duty, and
 - (iii) the types of services including, without limitation, services involving the provision of financial assistance.
- (3) Where a duty imposed by an Ordinance under subsection (1) conflicts with another duty imposed under any other enactment, the duty imposed by the Ordinance is subject to the requirements and obligations imposed by that other duty.

NOTE

The following Ordinance has been made under section 5:

Child Protection (Sark) Ordinance, 2021.

Duty to provide accommodation for children.

6. (1) MASH must arrange for and monitor the provision of accommodation for any child for whom accommodation is required under or for the purposes of this Law.

(2) The Committee may make regulations to prescribe how the duty under subsection (1) is to be discharged.

(3) Without prejudice to the generality of the power under subsection (2), regulations under that subsection may make provision for, or concerning –

- (a) the circumstances in which, and the children in relation to whom, the duty under subsection (1) arises,
- (b) conditions to which the discharge of the duty may be subject,
- (c) limitations upon the duty,
- (d) the type and standard of accommodation to be provided, and
- (e) any arrangements for the provision of accommodation which may be made, including, without limitation, arrangements involving accommodation –

- (i) with foster carers,
- (ii) in any residential establishment, and
- (iii) by way of placement of any child with the child's parent or any other person.

Duty to children and others in the care of MASH.

7. (1) The Committee may make regulations to require MASH to arrange for and monitor the provision of services for –

- (a) any child who is in the care of MASH, or
- (b) any person who has been in the care of MASH.

(2) MASH must arrange for and monitor the provision of those services in accordance with any regulations made under subsection (1).

(3) Without prejudice to the generality of the power under subsection (1), regulations under that subsection may make provision for or concerning –

- (a) the circumstances in which, and the individuals in relation to whom, the duty under subsection (2) arises,
- (b) conditions to which the discharge of that duty may be subject,
- (c) limitations upon that duty,
- (d) the types of services to be provided including, without

limitation, services involving the provision of financial assistance and other benefits or support, and

- (e) the duties of MASH –
 - (i) to consult with a relevant individual who is being, or has been, in the care of MASH, and that individual's family,
 - (ii) to promote the educational achievement of a relevant individual,
 - (iii) to place a relevant individual with members of that individual's family, and
 - (iv) to review arrangements it has made in respect of any relevant individual in the performance of its duties.

- (4) For the purposes of this section –

"relevant individual" means, subject to the provisions of any regulations under subsection (1), a person mentioned in that subsection, and

a child is **"in the care of MASH"** where –

- (a) the child is provided with accommodation by or on behalf of MASH for a continuous period of more than 24 hours,
- (b) the child is subject to –

- (i) a care requirement,
 - (ii) a community parenting order,
 - (iii) a secure accommodation order, or
 - (iv) an emergency child protection order, or
- (c) the child falls within such other class or description of children as regulations under subsection (1) may specify.

Duty to share information and work together.

8. (1) This section applies where –

- (a) a designated official or any other person ("A") reasonably believes that a child is in need or at risk, and A is required to take an action specified in subsection (2) to discharge a duty under this Law in relation to the child, or
- (b) a child is the subject of an investigation by MASH or any decision to be made by MASH, and a designated official ("A") –
 - (i) believes that it would be relevant and helpful to the investigation or the making of the decision to take an action specified in subsection (2), or
 - (ii) is aware of facts that would lead a reasonable

person to form the opinion that taking an action specified in subsection (2) would be relevant and helpful to the investigation or the making of the decision.

(2) The action is –

- (a) disclosing to MASH information relating to the child or any other person (collectively "**B**"), or
- (b) retaining or otherwise dealing with information relating to the child or any other person (collectively "**B**").

(3) Where this section applies and A takes the action referred to in subsection (1)(a) or (b), that action is lawful and does not infringe any enactment, rule of law or rule of professional conduct relating to the disclosure or retention of, or other dealing with, information relating to B if –

- (a) A took that action in good faith, and
- (b) that action was taken in accordance with any applicable provisions of this Law and any regulations made, or guidance issued, by the Committee for the purposes of this section.

(4) Without limiting any other provision of this Law, where subsection (1)(b) applies, the designated official must take the action referred to in that subsection.

Establishment and functions of the Multi-Agency Safeguarding Hub.

9. (1) Schedule 1 has effect –

- (a) to constitute MASH, and
 - (b) otherwise in relation to MASH and its members.
- (2) The functions of MASH are –
- (a) on request by the Committee or the Chief Pleas, to provide any advice, recommendation or report requested by the Committee or (as the case may be) the Chief Pleas,
 - (b) to carry out any prescribed function, and
 - (c) to carry out any other function conferred on it by this Law or any other enactment.
- (3) In carrying out its functions, MASH must have regard to any policy direction of a general nature that is both –
- (a) given to it by Resolution of the Chief Pleas, and
 - (b) published.
- (4) The Chief Pleas must allocate sufficient monies from its general revenue account to enable MASH to discharge its functions properly and effectually.

NOTE

The following Regulations have been made under section 9:

PART III
CHILDREN REQUIRING CARE, PROTECTION, GUIDANCE OR CONTROL

Compulsory intervention

Compulsory intervention.

10. (1) The question of whether compulsory intervention may be needed in respect of a child arises only if –

- (a) there is, or appears to be, no person able and willing to exercise parental responsibility in such a manner as to provide the child with adequate care, protection, guidance or control, and
- (b) at least one of the conditions set out in subsection (2) is satisfied, in respect of that child.

(2) The conditions referred to in subsection (1)(b) are, that on a balance of probabilities –

- (a) the child has suffered, or is likely to suffer, significant impairment to the child's health or development,
- (b) the child has suffered, or is likely to suffer, sexual or physical abuse,
- (c) the child has –

- (i) misused drugs or alcohol, or
- (ii) deliberately inhaled a volatile substance,
- (d) the child –
 - (i) has displayed violent or destructive behaviour and is likely to become a danger, to the child, or others, or
 - (ii) is otherwise beyond parental control,
- (e) the child, being 12 years of age or older, has committed –
 - (i) a criminal offence, or
 - (ii) what would be a criminal offence if the child had the necessary capacity, or
- (f) the child (being under the upper limit of the compulsory school age) is failing to attend school without good reason.

Notification and referral to and investigations by MASH

Notification and referral of matters to MASH.

- 11. (1) Any person who believes –
 - (a) that the question of compulsory intervention arises under section 10, and

- (b) that compulsory intervention may be necessary to ensure the provision of adequate care, protection, guidance or control for a child,

may refer the matter to MASH.

(2) Without prejudice to subsection (1), an Ordinance may require any person specified in the Ordinance to notify the matters in subsection (3) to MASH in the manner and form specified in the Ordinance.

(3) The matters for the purpose of subsection (2) are –

- (a) the detention of a child by –
 - (i) a police officer, or
 - (ii) a customs officer,
- (b) a proposal to place a child out of the jurisdiction under Part VI,
- (c) the detention of a child under the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990^a,
- (d) an application for an adoption order, and

^a Ordres en Conseil Vol. XXXII, p. 106; amended by Order in Council No. III of 2012; Ordinance No. XXXIII of 2003; No. XXIX of 2013; No. IX of 2016.

(e) any other matter specified in the Ordinance.

(4) A notification, or referral, made in good faith under this section to MASH is not to be taken to breach any information restriction.

NOTE

The following Ordinance has been made under section 11:

Child Protection (Sark) Ordinance, 2021.

Investigation by MASH.

12. Where a matter is notified or referred to MASH under section 11(1) or (2), MASH must –

- (a) make any prescribed investigation, and
- (b) take any prescribed action.

NOTE

The following Regulations have been made under section 12:

Child Protection (Sark) Regulations, 2021.

Disclosure of information.

13. (1) Where MASH reasonably believes that a person holds information that is relevant to an investigation MASH is carrying out under this Law, MASH may, by written notice served upon that person identifying the matter in respect of which MASH requires the information, request the person to disclose to MASH that information within a reasonable period specified in the notice.

(2) Subject to section 14, a person who receives a notice under subsection (1) is under a duty to disclose to MASH, within the period specified, all information which the person holds relating to the matter identified in the notice.

(3) The duty under subsection (2) overrides any information restriction to which a person, who receives a notice under subsection (1), may be subject.

Disclosure orders.

14. (1) Where a person fails to comply with a notice served under section 13(1), MASH may apply to the relevant court for a disclosure order, being an order requiring the person to comply, within such period as the court may determine, with –

- (a) the terms of the notice, or
- (b) any other requirement to disclose information that the court thinks fit in the circumstances.

(2) A relevant court must make a disclosure order where it is satisfied that it is appropriate to do so, unless there are special circumstances which, in the opinion of the court, override the duty arising under section 13(2).

Meaning of "information" for purposes of sections 13 and 14.

15. (1) For the purposes of sections 13 and 14, "**information**" includes documents.

(2) For the purposes of subsection (1) "**documents**" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its disclosure include references to producing a copy of the information in legible form.

Offences of making false statement etc. and failure to comply with requirement.

16. (1) A person who, in purported discharge of or compliance with a duty or requirement to disclose information under section 13(2) or 14 –

- (a) makes a statement which the person knows to be false or misleading in a material particular, or
- (b) recklessly makes a statement which is false or misleading in a material particular,

is guilty of an offence.

(2) A person who, without reasonable excuse, fails to comply with a requirement imposed on the person by a disclosure order is guilty of an offence.

(3) A person guilty of an offence under subsection (1) or (2) is liable–

- (a) on summary conviction, to imprisonment for a term not exceeding one month, or to a fine not exceeding level 4 on the uniform scale, or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

Referral to the Court

Action after investigation by MASH.

17. (1) Where it appears to MASH that compulsory intervention may be necessary to ensure the provision of adequate care, protection, guidance or control

for a child, MASH must refer the matter to the Court for consideration and determination.

(2) If MASH refers a matter to the Court under subsection (1), MASH must cause a meeting to be convened prior to the first occasion on which the Court proposes to sit to consider the matter, between prescribed persons, and for the purpose of determining prescribed issues, except where –

- (a) it is impracticable, or
- (b) the matter is so urgent that it is not possible,

to cause such a meeting to be convened prior to that first occasion.

(3) Where any person of a class or description prescribed under subsection (2) ("**a prescribed person**") does not accept any –

- (a) condition for referral (under section 10(2)) stated by MASH, or
- (b) statement of fact made by MASH in support of a condition referred to in paragraph (a),

MASH must, unless MASH withdraws the relevant condition or statement, refer the matter for determination by the Court.

(4) Where the Court has begun to consider a case referred to it under subsection (1) and is satisfied that a prescribed person does not accept any –

- (a) condition for referral (under section 10(2)) stated by MASH, or

- (b) statement of fact made by MASH in support of a condition referred to in paragraph (a),

the Court must, unless MASH withdraws the relevant condition or statement, determine the matter.

(5) Where MASH has conducted an investigation under this Part and decides that compulsory intervention is not necessary, MASH –

- (a) must give prescribed notice of the decision to the prescribed persons, and
- (b) may refer the matter to the Committee, or any other person, if MASH determines that the child is, or may be, a child in need as defined in section 4(1)(a).

(6) Where MASH has referred a matter under subsection (5)(b), MASH may make any investigation it thinks fit in order to establish what measures have been taken further to the referral.

NOTE

The following Regulations have been made under section 17:

Child Protection (Sark) Regulations, 2021.

Care requirement

Meaning and purpose of a care requirement.

18. (1) A care requirement is an order made by the Court placing a child under the supervisory care of the Chief Pleas.

- (2) The purpose of a care requirement is –
- (a) to protect the child from harm and promote the child's proper and adequate health, welfare and development, and
 - (b) to assist the parent, or any other person who is for the time being caring for the child, to provide adequate care, protection, guidance and control for the child.

Further provisions in respect of a care requirement.

19. (1) A care requirement may only be made in respect of a child where –

- (a) after consideration of the child's case, the Court is satisfied that –
 - (i) the question of whether compulsory intervention may be needed arises under section 10,
 - (ii) compulsory intervention is necessary to ensure the provision of adequate care, protection, guidance or control for the child,
 - (iii) the provisions of subsection (4) are met, and
- (b) the Court has approved a plan for the child ("**a child's plan**") which includes any arrangements for the child specified by rules of the Court.

(2) A care requirement may be made on an interim basis, for a period of not more than 28 days at any one time where the Court –

(a) is not in a position to make a final care requirement,
and

(b) either –

(i) the condition for referral –

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

(B) has been determined by the Court under
section 17(3) or (4), or

(ii) the condition has not been accepted or
determined under subparagraph (i), but the
Court is satisfied that the welfare of the child
requires immediate compulsory intervention to
ensure the provision of adequate care,
protection, guidance or control.

(3) A care requirement may be made subject to any conditions that the Court considers to be necessary including, without limitation, conditions concerning or relating to –

(a) where the child is or is not to live,

(b) the persons with whom the child is or is not to live,

- (c) the persons with whom the child is or is not to have contact,
- (d) the circumstances in which a person may have contact with the child, and
- (e) placement of the child out of the jurisdiction.

(4) Except in an emergency (and then only on an interim basis under subsection (2)), a care requirement may only be made where the Court is satisfied that MASH and any other person who, or which, the Court believes may have an interest, have taken all reasonable steps to assess the needs of the child and provide services on a voluntary basis, and either –

- (a) voluntary provision has not been sufficient, or
- (b) there is no reasonable prospect that voluntary provision will be sufficient,

to provide adequate care, protection, guidance or control for the child.

Obligations of MASH under a care requirement.

20. Where a child is subject to a care requirement, MASH and any other person referred to in the child's plan must give effect to the requirement by –

- (a) the provision of such supervision, support and services as the child requires for that child's adequate care, protection, guidance and control, and
- (b) the taking of any steps necessary to ensure that any conditions to which a care requirement is subject are

observed.

Duration of a care requirement.

21. (1) No child may be subject to a care requirement for longer than is necessary to provide the child with adequate care, protection, guidance or control.

(2) Subject to any variation, continuation or revocation, no care requirement is to remain in force for a period in excess of one year from the date of the final determination.

(3) Where an application is made for a community parenting order or an interim community parenting order in respect of a child who is subject to a care requirement, the duration of the care requirement must, unless the care requirement is discharged under section 29, be extended for a period equivalent to the period commencing on the date of the application for the order and expiring on the date upon which the application is finally determined or withdrawn.

(4) A care requirement ceases to have effect –

- (a) upon the making of an adoption order (unless the relevant court orders otherwise),
- (b) when the child attains the age of 18 years,
- (c) if discharged under section 29, or
- (d) in the case of an interim care requirement, if the Court discharges the child's case.

Review, continuation, variation and revocation of a care requirement.

22. (1) A care requirement must be reviewed by the Court in

accordance with any Ordinance upon the application of –

- (a) MASH,
- (b) the child, or
- (c) any other prescribed person.

(2) Upon a review the Court may continue, vary, or revoke a care requirement.

NOTE

The following Ordinance has been made under section 22:

Child Protection (Sark) Ordinance, 2021.

Community parenting order

Meaning and purpose of a community parenting order.

23. (1) A community parenting order is an order made by a relevant court granting MASH parental responsibility for a child.

- (2) The purpose of a community parenting order is –
- (a) to protect the child from harm and promote the child's proper and adequate health, welfare and development, and
 - (b) to enable MASH to make plans for the care of the child until –

- (i) the child attains the age of 18,
- (ii) where appropriate and in accordance with regulations made under section 7(1), the child has completed any course of study or training upon which that child is engaged after that child has attained the age of 18, or
- (iii) in the case of an interim community parenting order, the order expires.

(2) An application for a community parenting order may be made only by MASH.

Circumstances in which a community parenting order may be made.

24. (1) A relevant court must not make a community parenting order in respect of a child, unless –

- (a) it has first approved the contents of a child's plan for the child, and
- (b) the circumstances specified in subsection (2)(a) or (b) apply.

(2) The circumstances referred to in subsection (1)(b) are –

- (a) where –
 - (i) at least one of the conditions set out in section 10(2) is satisfied, and

- (ii) there is no reasonable prospect of –
 - (A) the child' s parents, or
 - (B) any other member of the child' s family,being able and willing to provide adequate care, protection, guidance and control for the child, or
- (b) where, in respect of every person who has parental responsibility for the child –
 - (i) that person consents to the making of the order, or
 - (ii) that person is not known, cannot be found or is incapable of giving consent.

Contact with a child subject to a community parenting order and special contact orders.

25. (1) Subject to subsections (4) and (5), MASH must arrange for a child who is subject to a community parenting order to have reasonable contact with any person who, immediately prior to the making of the order –

- (a) had parental responsibility for the child,
- (b) was a person in whose favour a contact order, in respect of the child, was in force,
- (c) was a person entitled to have the child residing with the person under an order of a relevant court, or

(d) as a condition of a care requirement, was a person with whom the child –

(i) had contact, or

(ii) lived.

(2) A relevant court may, upon the application of any person of a class or description specified by rules of court, make a special contact order in respect of a child who is subject to a community parenting order.

(3) A special contact order is an order –

(a) requiring MASH to allow a child to visit, or stay with, the person named in the order, or

(b) requiring the child named in the order and that person otherwise to have contact with one another.

(4) A relevant court may make an order authorising MASH to refuse to allow contact between the child and any person –

(a) who is –

(i) mentioned in subsection (1)(a) to (c), or

(ii) named in a special contact order, and

(b) who is named in the order under this subsection.

(5) MASH may, for a period not exceeding 7 days, refuse to allow the contact that would otherwise be required under subsection (1) or (2) if –

- (a) MASH is satisfied that it is urgently necessary to ensure that contact is denied in order to safeguard or promote the child's welfare, and
- (b) it gives notice to the person who is denied contact as soon as reasonably practicable.

(6) An order made under this section –

- (a) may be made subject to such conditions as the relevant court thinks fit, and
- (b) may be varied or discharged upon the application of –
 - (i) MASH,
 - (ii) the child, or
 - (iii) the person named in the order.

NOTE

The following Rules have been made under section 25:

Family Proceedings (Sark) Rules, 2021.

Effect of community parenting order on parental responsibility.

26. (1) Subject to subsection (2), where a child is subject to a community parenting order, MASH may determine to what extent, if any –

- (a) a parent, or
- (b) any other person,

having parental responsibility in respect of the child, must perform the duties and may exercise the right under section 4 of the Children Law in respect of that child.

- (2) Unless it has obtained –
 - (a) the consent of all persons having parental responsibility in respect of the child, or
 - (b) leave from a relevant court,

a determination of MASH under subsection (1) has no effect in relation to the issues specified in subsection (3).

- (3) The issues referred to in subsection (2) are –
 - (a) naming, or changing the name of, the child,
 - (b) subject to Part V, removing the child out of the jurisdiction of Sark,
 - (c) placing the child out of the jurisdiction of Sark,
 - (d) placing the child for adoption,
 - (e) choosing the religion in which the child is to be brought up,

- (f) giving consent to the marriage of the child, and
 - (g) any other issue specified in an Ordinance.
- (4) A community parenting order does not give MASH the power–
- (a) to give valid consent or refuse to consent to adoption,
 - (b) to appoint a guardian for the child under Part III of the Children Law.

Duration and discharge of community parenting order.

27. (1) Subject to any enactment or order of a relevant court to the contrary, a community parenting order has effect until –

- (a) the child who is subject to the order –
 - (i) attains the age of 18 years, or
 - (ii) marries prior to attaining that age, or
- (b) in the case of an interim community parenting order, the order expires.

(2) A community parenting order may be discharged upon the application of –

- (a) MASH,
- (b) the child, or

- (c) any other class or description of persons specified in rules of court.

NOTE

The following Rules have been made under section 27:

Family Proceedings (Sark) Rules, 2021.

Power to make an interim community parenting order.

28. (1) Where the conditions in section 24(1) are satisfied, a relevant court may, upon application made by MASH, make an interim community parenting order.

(2) An interim community parenting order has the same effect as a community parenting order for any period (not exceeding 3 months) ordered by the relevant court.

(3) When making an interim community parenting order, a relevant court may exercise all the powers that are exercisable upon the making of a community parenting order.

(4) An interim community parenting order may be made subject to any conditions that the relevant court thinks fit.

(5) Any conditions attached to an interim community parenting order may be varied or discharged upon the application of any person specified in section 27(2).

Power to discharge care requirement upon disposal of application for community parenting order.

29. Upon disposal of an application for a community parenting order a relevant court may discharge a care requirement if it is satisfied that, in all the circumstances of the matter, the care requirement would no longer serve any useful purpose.

Protection of children in an emergency

Making of an emergency child protection order.

30. (1) Where a relevant court is satisfied, on the application of MASH, that a child is –

- (a) suffering, or
- (b) at imminent risk of suffering,

serious harm, it may make an emergency child protection order.

(2) For the avoidance of doubt, an application under subsection (1) may be made *ex parte*.

Effect of emergency child protection order.

31. (1) Except where its terms otherwise provide, an emergency child protection order operates as –

- (a) a direction –
 - (i) to any person, who is in a position to do so, to comply with a request to produce the child to MASH, and
 - (ii) to a police officer to take such steps as are

necessary, including entry onto private premises, to assist in giving effect to the order, and

(b) lawful authority –

(i) subject to subsection (2), for any person approved by MASH –

(A) to take the child to accommodation approved by MASH, and

(B) to keep the child there, and

(ii) for a police officer to discharge any duty to which the officer is subject under paragraph (a)(ii).

(2) An emergency child protection order may prohibit the removal of the child from any place in which the child was being accommodated immediately prior to the making of the order.

Duration of emergency child protection order.

32. (1) An emergency child protection order remains in force for a maximum period of 8 days unless it is terminated before the expiration of that period under subsection (2).

(2) An emergency child protection order ceases to have effect upon the occurrence of any of the following events –

(a) the expiration of a period of 24 hours from the making

of the order, in circumstances where MASH has not, within that period, taken any steps to implement the order,

- (b) a relevant court discharges the order, or
- (c) the Court first sits to consider the case of the child.

Application for discharge or variation of emergency child protection order.

33. (1) Any of the following may apply to a relevant court for the discharge or variation of an emergency child protection order –

- (a) the child,
- (b) a parent of the child,
- (c) a person, other than a parent, who has parental responsibility for the child,
- (d) any person with whom the child was living immediately before the making of the order,
- (e) MASH, or
- (f) any other person authorised to do so by rules of court.

(2) An application for the discharge, or variation, of an emergency child protection order must be heard by the court within 48 hours of service of notice of the application upon all parties who must be served with such notice in accordance with rules of court.

Exclusion order.

34. (1) Where a relevant court is satisfied, on the application of MASH, that—

- (a) a child is —
 - (i) suffering, or
 - (ii) at imminent risk of suffering,

serious harm, and
- (b) the child will be safeguarded from that harm, if —
 - (i) the person named as respondent in the application is excluded from the child's family home,
 - (ii) there is a person specified in the order who is —
 - (A) residing in the family home, and
 - (B) capable of taking responsibility for the care and protection of the child, and
 - (iii) an exclusion order would better safeguard the welfare of the child than removing the child from the family home,

it may make an exclusion order in relation to the person named in the order.

(2) No application for an exclusion order may be finally determined unless the person named as respondent in the application has been afforded an opportunity of being heard by the court.

(3) For the avoidance of doubt, an application under subsection (1) for an exclusion order may be made *ex parte*.

(4) On any adjournment of the hearing of an application under subsection (1), the relevant court may make an interim exclusion order.

Effect of exclusion order.

35. An exclusion order, or an interim exclusion order –

- (a) suspends the right of the person against whom the order is made from occupying or visiting the family home to which it relates, or
- (b) where the order is made against a person who does not have a right to occupy or visit the family home, prohibits that person from occupying or visiting that home,

except in accordance with the terms and conditions of any written permission granted by –

- (i) the court which made the order, or
- (ii) the Committee.

Power to make orders ancillary to an exclusion order.

36. (1) Upon the making of an exclusion order or an interim exclusion

order, and at any time whilst the order remains in force, a relevant court may, upon application of MASH or of its own motion, make an ancillary order.

(2) For the purposes of subsection (1), an ancillary order is an order –

- (a) requiring the person against whom the order is made to leave the family home by a specific time and date,
- (b) prohibiting the person against whom the order is made from returning to the family home,
- (c) excluding the person against whom the order is made from a defined area within which the family home is situated,
- (d) prohibiting the person against whom the order is made from removing from the family home any item specified in the order,
- (e) prohibiting the person against whom the order is made from taking any specified step in relation to any child specified in the order,
- (f) regulating (including by way of prohibition) contact between the person against whom the order is made and any child specified in the order,
- (g) requiring the person against whom the order is made to make payments in respect of outgoings incurred in respect of the family home, or

- (h) preserving possessions of the person against whom the order is made which are located within, or upon, the family home.

Power of arrest for breach of an exclusion order or ancillary order.

37. (1) Where a relevant court makes an exclusion order or an interim exclusion order (with or without also making an ancillary order), it may attach a power of arrest to that order and any ancillary order which it has made.

(2) A police officer may arrest without warrant a person against whom an exclusion order, an interim exclusion order or an ancillary order has been made, if –

- (a) a power of arrest is attached to the order, and
- (b) the police officer has reasonable cause to suspect that that person –
 - (i) has had notice of the making of the order, and
 - (ii) is in breach of the order.

(3) A person arrested under subsection (2) –

- (a) must be brought before the relevant court within 24 hours of the person's arrest, and
- (b) must not be released within that period except by direction of the court;

but nothing in this subsection authorises the person's detention beyond that period.

(4) In reckoning a period of 24 hours for the purposes of subsection (3), no account is to be taken of –

- (a) a Saturday, Sunday, Good Friday or Christmas Day, or
- (b) any public holiday (within the meaning of section 1 of the Public Holidays (Sark) Ordinance, 2017^b).

Duration and other provisions in respect of exclusion and ancillary orders.

38. (1) Subject to subsections (2) and (3), an exclusion order, an interim exclusion order and any order ancillary to it, has effect for any period that the relevant court thinks fit.

(2) An exclusion order, an interim exclusion order and any order ancillary to it which suspends the right of any person against whom the order is made from occupying or visiting the family home to which it relates must not have effect for a period in excess of 12 months.

(3) An exclusion order made upon an application made ex parte has effect for any period not exceeding 5 days that the relevant court thinks fit.

Powers of police officers

Powers of police officers where child is suffering harm or at risk.

39. (1) Where a police officer has reasonable cause to believe that a child is suffering, or is imminently likely to suffer, serious harm the officer may –

^b Sark Ordinance No. XIII of 2017.

- (a) without warrant –
 - (i) enter any premises, upon which the officer reasonably suspects the child to be, for the purposes of searching for that child,
 - (ii) remove the child to a place of safety, or
 - (iii) both, or
- (b) take any reasonable steps to prevent the child's removal from any hospital or other place in which the child is for the time being accommodated, or
- (c) otherwise remove the child from the control or supervision of–
 - (i) a parent,
 - (ii) a person with parental responsibility, or
 - (iii) any other person with whom the child may be.

(2) For the purposes of this Law, a child with respect to whom a police officer has exercised the officer's powers under this section is referred to as having been taken into police protection.

Powers of police officers to recover children for whom MASH is responsible.

40. (1) Subsection (2) applies –

- (a) in relation to a child in respect of whom –

- (i) a care requirement,
- (ii) a community parenting order,
- (iii) an emergency child protection order, or
- (iv) a secure accommodation order,

has been made, and

- (b) where the child –

- (i) has been unlawfully taken away or is being unlawfully kept away from a placement or place of accommodation required or ordered for that child under any requirement or order of a kind mentioned in paragraph (a),
- (ii) has run away or is staying away from a placement or place of accommodation required or ordered for that child under any requirement or order of a kind mentioned in paragraph (a), or
- (iii) is missing, and

- (c) where MASH has requested a police officer to assist in the recovery of the child.

- (2) A police officer may recover the child –

- (a) by requiring any person who has information as to the child's whereabouts to disclose that information,
- (b) by directing any person who is in a position to do so to produce the child,
- (c) by entering without warrant any premises upon which the officer reasonably suspects the child to be for the purposes of searching for the child,
- (d) by removing the child to any place requested by MASH,
- (e) by requiring any person to deliver the child to MASH.

(3) No person is excused from complying with any requirement made under subsection (2)(a) on the ground that complying with it might incriminate the person or the person's spouse of an offence but a statement or admission made in complying with the requirement is not admissible in evidence against either of them in proceedings for an offence other than perjury.

Offence of impeding or obstructing police officer exercising powers under this Law.

41. (1) A person who wilfully impedes or obstructs a police officer, whilst that officer is exercising any power or performing any duty under section 31(1), 39 or 40 is guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable –

- (a) on summary conviction, to imprisonment for a term not exceeding one month, or to a fine not exceeding level 4

on the uniform scale, or to both, or

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

(3) For the purposes of this section, a "**person**" does not include the child in respect of whom the police officer is exercising any power or performing any duty under section 31(1), 39 or 40.

Duration of police protection and power to make regulations concerning children taken into police protection.

42. (1) A child who has been taken into police protection under section 39 may be kept in police protection for a continuous period not in excess of 72 hours.

(2) The Committee may by regulations make any provision it thinks fit concerning children who are taken into police protection.

(3) Without prejudice to the generality of the power under subsection (2), regulations made under this section may make provision for, or concerning –

- (a) the measures and procedures which must be taken and observed in respect of a child in police protection, and
- (b) the persons who must take and observe such measures and procedures.

PART IV
SECURE ACCOMMODATION

Meaning of "secure accommodation".

43. For the purposes of this Part **"secure accommodation"** means accommodation, provided for the purpose of restricting the liberty of a child, which

—

- (a) in the case of accommodation in Sark —
 - (i) has been designated by MASH in accordance with, and
 - (ii) meets standards and conditions specified by,

any Ordinance, and
- (b) in the case of accommodation in Guernsey —
 - (i) has been designated by the States of Guernsey Committee for Health & Social Care in accordance with, and
 - (ii) meets standards and conditions prescribed by,

regulations made under section 68 of the Children (Guernsey and Alderney) Law, 2008^c, and
- (c) in the case of accommodation in any other country or territory—

^c Order in Council No. XIV of 2009; No. IV of 2018; Ordinance Nos. XI and XLVIII of 2009; No. XX of 2016; No. IX of 2016; No. VI of 2017.

- (i) has been designated in accordance with, and
 - (ii) meets standards and conditions prescribed by,
- any statutory provisions having effect in the country or territory concerned.

NOTE

The following Ordinance has been made under section 43:

Child Protection (Sark) Ordinance, 2021.

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

44. (1) Subject to section 46, a child may not be placed, and, if placed, may not be kept, in secure accommodation otherwise than pursuant to an order authorising the use of secure accommodation (a "**secure accommodation order**") made by the Court under this section, upon application made by MASH.

(2) The Court must make a secure accommodation order in respect of a child if it is satisfied that –

- (a) the child –
 - (i) has a history of absconding and is likely to abscond from accommodation which is not secure accommodation, and
 - (ii) if the child absconds, is likely to suffer significant harm, or
- (b) if the child is kept in any accommodation which is not

secure accommodation, the child is likely to injure himself or herself or other persons.

(3) A secure accommodation order for MASH to place and keep a child in secure accommodation may authorise or require the child to be detained and kept in custody for any period and in any premises (including vehicle, vessel or aircraft) reasonably necessary in order to escort the child to the secure accommodation.

(4) When making a secure accommodation order the Court must specify the period for which the order is to have effect and that period must not be longer than the period specified by any Ordinance.

(5) On any adjournment of the hearing of an application under this section, the Court may make an interim secure accommodation order permitting a child to be kept in secure accommodation during the period of the adjournment but the period for which this interim order is to have effect must not exceed the shorter of

—

(a) any period determined by the Court, or

(b) any period specified by an Ordinance.

(6) The Chief Pleas must by Ordinance made under this section –

(a) specify periods for the purposes of subsections (4) and (5), and

(b) provide for circumstances in which any periods specified under paragraph (a) may be extended by order of the Court.

NOTE

The following Ordinance has been made under section 44:

Child Protection (Sark) Ordinance, 2021.

Legal representation.

45. The Court must not exercise its powers under section 44 in respect of a child who is not represented by an Advocate, unless the child has –

- (a) been informed of the child's right to representation,
- (b) been given the opportunity to request such representation, and
- (c) refused to be represented or failed to make any request to be represented.

Power of MASH to detain a child in secure accommodation.

46. (1) Subject to subsection (2), MASH may detain a child in secure accommodation for a period not exceeding 72 hours.

(2) The power to detain under subsection (1) must be exercised in accordance with any Ordinance which specifies –

- (a) the circumstances and manner in which the power may be exercised, and
 - (b) the limitations upon the exercise of that power.
-

NOTE

The following Ordinance has been made under section 46:

Child Protection (Sark) Ordinance, 2021.

Effect of secure accommodation order.

- 47.** (1) A secure accommodation order, whilst it has effect –
- (a) authorises (but, for the avoidance of doubt, does not require) MASH to place and keep a child to whom the order relates in secure accommodation,
 - (b) may authorise or require the child to be detained and kept in custody, in accordance with section 44(3), and
 - (c) gives MASH parental responsibility in respect of the child to which the order relates in accordance with section 7(aa) of the Children Law.

(2) For the purposes of subsection (1), a secure accommodation order includes an interim secure accommodation order made under section 44(5).

Reviews.

48. (1) MASH must review the need to keep a child in secure accommodation in accordance with requirements specified by any Ordinance.

(2) An Ordinance under this section may make all such provision concerning the review requirement under subsection (1) as the Chief Pleas thinks reasonably necessary, including (without limitation) the action to be taken by MASH to implement the results of a review of that kind.

NOTE

The following Ordinance has been made under section 48:

Child Protection (Sark) Ordinance, 2021.

PART V
REMOVAL OF CHILDREN OUT OF JURISDICTION

Offence of abduction of a child out of the jurisdiction.

- 49.** (1) Subject to –
- (a) subsection (3),
 - (b) section 50, and
 - (c) any other enactment,

any person who takes or sends a child under the age of 16 out of the jurisdiction of Sark, without the appropriate consent, commits an offence.

(2) In subsection (1) "**the appropriate consent**" in relation to a child means –

- (a) the consent of –
 - (i) every person with parental responsibility in respect of the child, and
 - (ii) where the child is subject to a care requirement, MASH, or

- (b) the leave of a relevant court granted under this paragraph.

(3) A person does not commit an offence under this section if the person can show on the balance of probabilities that –

- (a) the person reasonably believed that any other person required to consent had so consented,
- (b) the person reasonably believed that any other person required to consent would have so consented if that other person had been aware of all the relevant circumstances, or
- (c) the person had taken all reasonable steps to communicate with any other person required to consent but was unable to communicate with that other person.

(4) A person guilty of an offence under subsection (1) is liable –

- (a) on summary conviction, to imprisonment for a term not exceeding one month, or to a fine not exceeding level 4 on the uniform scale, or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years, or to a fine, or to both.

(5) A police officer or a customs officer may arrest without warrant any person, who the officer has reasonable cause to suspect is committing or is about to commit an offence under subsection (1).

Circumstances in which consent not necessary.

- 50.** (1) For the purposes of this Part, "**consent**" means the consent in –
- (a) section 8(1)(b) of the Children Law (section 8 relates to shared parental responsibility),
 - (b) section 26(2)(a) of this Law but only in respect of the issue in section 26(3)(b) (section 26 relates to the effect of a community parenting order on parental responsibility), and
 - (c) section 49(1) of this Law (section 49 relates to the offence of abduction of a child out of the jurisdiction).
- (2) Subject to subsection (3), consent need not be obtained where –
- (a) it is proposed that the child would be out of the jurisdiction for a period not exceeding 28 days, and
 - (b) one of the conditions specified in subsection (3) applies.
- (3) The conditions referred to in subsection (2)(b) are –
- (a) the person sending or taking the child out of the jurisdiction of Sark has a residence order (within the meaning of section 16(1)(a) of the Children Law) relating to the child in that person's favour,
 - (b) a community parenting order has been made in respect of the child and MASH has arranged, or consents, to

the sending or taking,

- (c) the child is subject to a care requirement and MASH has arranged, or consents, to the sending or taking, or
- (d) the child is being removed from, or kept out of, the jurisdiction for the purposes of receiving medical treatment.

Construction of references to taking, sending and jurisdiction of Sark for purposes of sections 49 and 50.

51. For the purposes of sections 49 and 50 –

- (a) a person must be regarded as taking a child if the person causes or induces the child to accompany that person or any other person or causes the child to be taken,
- (b) a person must be regarded as sending a child if the person causes the child to be sent, and
- (c) for the avoidance of doubt, "**the jurisdiction of Sark**" includes the territorial waters adjacent to Sark.

Application of Part V.

52. This Part does not apply in respect of the placement of a child out of the jurisdiction under Part VI.

PART VI

PLACEMENT OF CHILDREN OUT OF THE JURISDICTION

Definitions and interpretation for the purposes of Part VI.

53. (1) For the purposes of this Law, unless the context requires otherwise –

a child is "**placed out of the jurisdiction**" where (otherwise than for short-term medical treatment or solely recreational purposes) a placement agency makes arrangements (whether alone or in conjunction with any other person) for the child to live (whether for a fixed or indeterminate period of time) otherwise than within Sark, and

"a placement agency" means –

- (a) the Chief Pleas or any committee of the Chief Pleas,
- (b) MASH, or
- (c) any other person prescribed by regulations made by the Committee.

(2) A child –

- (a) who has been placed out of the jurisdiction under this Part, and
- (b) who, immediately prior to being so placed, was ordinarily resident in Sark,

must, for the purposes of the Housing (Control of Occupation) (Sark) Law, 2011^d, be

^d Order in Council No. IV of 2013; as amended by No. II of 2014 and No. IV of 2015.

treated as being ordinarily resident in Sark for the period of any placement.

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

54. (1) A child, other than a child to whom section 56 relates, must not be placed out of the jurisdiction unless –

- (a) a relevant court has granted permission, or
- (b) the following conditions are satisfied –
 - (i) the child's parents consent to the placement,
 - (ii) where a person other than, or in addition to, the child's parents has parental responsibility in respect of the child, that person consents to the placement, and
 - (iii) the child has been given an opportunity to express the child's wishes, feelings and views about the placement.

(2) Where it appears to MASH –

- (a) that one or more of the conditions referred to in subsection (1)(b)(i), (ii) and (iii) may not be met, or
- (b) that the proposed placement may not in the best interests of the child,

MASH must refer the case of the child to the Court for consideration and

determination under section 55.

Referrals to the Court under section 54(2).

55. (1) The Court must consider the case of a child which has been referred to it under section 54(2) and determine whether or not the proposal to place the child out of the jurisdiction is in the best interests of the child concerned.

(2) Where the Court is satisfied that the proposal is in the best interests of the child, it may grant permission for the placement to take place, subject to any terms and conditions (including terms and conditions concerning contact with the child) it thinks fit.

(3) A permission under subsection (2) –

- (a) has effect for a period (not exceeding 12 months) determined by the Court,
- (b) may be renewed by the Court for a period, or periods (in each and every case not exceeding 12 months), determined by the Court, and
- (c) constitutes lawful authority for the placement agency to take all steps that are reasonably necessary (subject to any terms and conditions upon which the permission is granted) to give effect to the proposed placement.

(4) Where the Court is not satisfied that the proposal is in the best interests of the child it must not grant permission for the placement to take place, and it may–

- (a) request the placement agency to revise any proposals

for the placement and reconsider the matter in the light of the revised proposals,

- (b) refuse to consider the matter further,
- (c) adjourn the matter,
- (d) grant interim permission for the placement to take place subject to any terms and conditions that the Court thinks fit, or
- (e) take any other steps it thinks fit.

Placement out of the jurisdiction of a child who is subject to a care requirement or order of relevant court.

56. (1) A child who is subject to a care requirement must not be placed out of the jurisdiction contrary to any condition made under section 19(3)(e).

(2) A child who is subject to –

- (a) a community parenting order,
- (b) a secure accommodation order, or
- (c) any other order prescribed by regulations made by the Committee,

must not be placed out of the jurisdiction except in accordance with leave granted by the relevant court.

(3) Leave granted under subsection (2) may be granted subject to

any terms and conditions (including terms and conditions concerning contact with the child) the relevant court thinks fit.

Power to make Ordinances for the purpose of Part VI.

57. (1) The Chief Pleas may by Ordinance make any provision it thinks fit for the purpose of giving effect to this Part and such other Parts of this Law as relate to or concern this Part.

(2) Without prejudice to the generality of the power under subsection (1), but subject to subsection (3), an Ordinance made under subsection (1) may make provision for, or concerning –

- (a) the authorisation or establishment of a panel, committee or other body to approve, monitor or regulate the placement of children out of the jurisdiction,
- (b) assessment (including full multi-agency assessment) of the needs of any child who is being considered for placement out of the jurisdiction,
- (c) review (including the frequency of any review) by MASH or any other prescribed person of a decision or proposal to place a child out of the jurisdiction,
- (d) preparation of a child's plan prior to placement of any child out of the jurisdiction,
- (e) the obligation to agree the contents of a child's plan with the person responsible for the care of the child in the jurisdiction in which the child is to be placed,

- (f) notification of the placement to the prescribed persons in the area where the child is to live, and
- (g) the referral to the Court under section 54(2) of a proposal to place a child out of the jurisdiction.

(3) No Ordinance may be made under subsection (1) providing for the authorisation or establishment of a panel, committee or other body (other than MASH) to approve, monitor or regulate the placement of children out of the jurisdiction, except on the recommendation of MASH.

NOTE

The following Ordinance has been made under section 57:

Child Protection (Sark) Ordinance, 2021.

PART VII
ENFORCEMENT

Powers of enforcement to be in addition to any other powers.

58. For the avoidance of doubt, the powers of enforcement created under this Part are in addition to, and not in substitution for, any other powers available to a court enabling that court –

- (a) to enforce compliance with any order or judgment, or
- (b) to punish any person for contempt of court.

Penal notice.

59. (1) A relevant court may, where it thinks fit, attach a penal notice to any order which it has power to make under this Law.

(2) A person who, without reasonable excuse, fails to comply with the requirements of a penal notice is guilty of contempt of court.

(3) In this section, a "**penal notice**" means a notice addressed to a person –

- (a) requiring that person to comply with the provisions of the order insofar as they relate to that person, and
- (b) warning that person as to the consequences of any failure to comply.

Direction to disclose whereabouts.

60. (1) In any family proceedings, a relevant court may direct any person –

- (a) to disclose to the court –
 - (i) the whereabouts, and
 - (ii) any information that could lead to the discovery of the whereabouts,of any child to whom the proceedings relate, and
- (b) to attend before the court if so required.

(2) Where a relevant court is satisfied that a person, who has been given notice of a direction under subsection (1), has failed to disclose the whereabouts of the child, to attend before the court, or both, it may order a police

officer –

- (a) to arrest the person, and
- (b) subject to subsection (3), to detain the person in custody until that person can be produced to the court.

(3) The relevant court may, at any time –

- (a) revoke an order made under subsection (2), and
- (b) order the discharge from custody of any person who has been detained.

(4) A person who, without reasonable excuse, fails to comply with a direction given to the person under subsection (1) is guilty of contempt of court.

(5) No person is excused from complying with a direction given to the person under subsection (1) on the ground that complying might incriminate that person or that person's spouse of an offence but a statement or admission made in complying is not admissible in evidence against either of them in proceedings for any offence other than perjury.

Penalty for contempt of court and power of court to make compensation orders.

61. (1) A person guilty of contempt of court under section 59(2) or 60(4) is liable –

- (a) to be committed to custody for such period, not exceeding 3 months, as the court thinks fit, or
- (b) to have imposed upon the person a penalty (which for

the purposes of enforcement is to be treated as if it were a fine imposed upon a conviction) not exceeding level 4 on the uniform scale,

or both.

(2) Where a person is guilty of contempt of court under section 59(2) or 60(4), a relevant court may in addition, or as an alternative, to imposing a penalty upon the person under subsection (1), make a compensation order, in an amount that the court thinks fit, in favour of any person who has suffered financial loss as a consequence of the contempt.

(3) A person ("A") in whose favour a compensation order is made under subsection (2) may recover the amount of compensation payable as a civil debt due to A from the person against whom the order is made.

Sureties and bonds.

62. (1) A relevant court may, when making any order in family proceedings, make it a condition of the order that –

- (a) a surety, who is acceptable to the court, is provided, or
- (b) a party to the proceedings enters into a bond, in a form that is acceptable to the court,

for the purpose of ensuring that a person performs any obligation to which the person is subject under the order.

(2) The court may –

- (a) fix –

(i) the amount in which a surety is to be bound, and

(ii) the amount of any bond,

at such sum that it thinks fit, and

(b) determine all matters that are necessary for the purpose of giving effect to the obligations of any surety, or party to a bond, under this section.

(3) Where any sum is paid in satisfaction of any obligation of a surety, or party to a bond, under this section the court may order that the whole of that sum, or such part as it may determine, must be paid to any person who has suffered financial loss as a result of the failure of any person to perform any obligation to which the person is subject under an order to which subsection (1) relates.

Orders relating to passports.

63. In any family proceedings a relevant court may make an order requiring any person to lodge one or both of the following –

(a) the person's passport, and

(b) the passport of any child to whom the proceedings relate,

with the court, or any other person that the court directs, upon any terms and subject to any conditions that the court thinks fit.

Recovery of children by MASH.

64. (1) This section applies to a child in respect of whom –

- (a) a care requirement,
- (b) a community parenting order,
- (c) an emergency child protection order, or
- (d) a secure accommodation order,

has been made.

(2) Where it appears to a relevant court that there is reason to believe that a child to whom this section applies –

- (a) has been unlawfully taken away or is being unlawfully kept away from a placement or place of accommodation required or ordered for that child under any requirement or order of a kind mentioned in subsection (1),
- (b) has run away or is staying away from a placement or place of accommodation required or ordered for that child under any requirement or order of a kind mentioned in subsection (1), or
- (c) is missing,

the court may make an order under this section ("**a recovery order**").

(3) A recovery order –

- (a) operates as a direction to any person who is in a

position to do so to produce the child on request to any relevant person,

(b) authorises the removal of the child by any relevant person,

(c) requires any person who has information as to the child's whereabouts to disclose that information, if asked to do so, to a relevant person,

(d) authorises –

(i) a relevant person to enter any premises specified in the order for the purposes of searching for the child, and

(ii) a police officer to use reasonable force to enter any premises specified in the order for the purposes of searching for the child, and

(e) requires a relevant person to deliver the child to MASH.

(4) Unless the context requires otherwise, for the purposes of this section and section 66(3) a "**relevant person**" means –

(a) any person specified by the relevant court,

(b) any police officer, and

(c) any person who is authorised, after the recovery order

is made, by MASH.

(5) No person is excused from complying with any request made under subsection (3)(c) on the ground that complying with it might incriminate the person or the person's spouse of an offence but a statement or admission made in complying is not admissible in evidence against either of them in proceedings for an offence other than perjury.

Power to order recovery of child.

65. (1) Where, in any family proceedings –

- (a) a person is required by the order of a relevant court to give up a child to another person ("**the person concerned**"), and
- (b) the court which made the order imposing the requirement is satisfied that the child has not been given up in accordance with the order,

the court may make an order authorising any person specified by the court, or a police officer, to take charge of the child and deliver that child to the person concerned.

(2) The authority conferred by subsection (1) includes authority –

- (a) to enter and search any premises where the person acting in pursuance of the order has reason to believe the child may be found, and
- (b) to use any force that may be reasonably necessary to give effect to the purpose of the order.

(3) The power created under this section is without prejudice to any other power conferred on a court by or under any other enactment or rule of law.

Offences.

66. (1) A person who, in purported compliance with a direction given to the person under section 60(1)(a), intentionally or recklessly misleads the court as to the whereabouts of a child, commits an offence and is liable –

- (a) on summary conviction, to imprisonment for a term not exceeding one month, or to a fine not exceeding level 4 on the uniform scale, or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years, or to a fine, or to both.

(2) A person who, knowingly and without lawful authority or reasonable excuse –

- (a) takes a child to whom section 64 applies away from a placement or place of accommodation required or ordered for that child under any requirement or order of a kind mentioned in section 64(1),
- (b) keeps such a child away from a placement or place of accommodation required or ordered for that child under any requirement or order of a kind mentioned in section 64(1), or
- (c) induces, assists or incites such a child to run away or stay away from a placement or place of accommodation required or ordered for that child under any requirement

or order of a kind mentioned in section 64(1),

commits an offence and is liable –

- (i) on summary conviction, to imprisonment for a term not exceeding one month, or to a fine not exceeding level 4 on the uniform scale, or to both, or
- (ii) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both.

(3) A person who intentionally obstructs –

- (a) a relevant person (within the meaning of section 64(4)) exercising any power under section 64(3) to remove a child, or
- (b) any person exercising any authority or power under section 65,

commits an offence and is liable on summary conviction to imprisonment for a term not exceeding one month, or to a fine not exceeding level 4 on the uniform scale, or to both.

PART VIII

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

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

67. 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.

68. (1) Where –

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

the relevant 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 relevant court may decide.

Appeals from decisions of Court of the Seneschal.

69. (1) An appeal from any decision of the Court of the Seneschal under this Law lies to the Royal Court.

(2) An appeal under this section must 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 any manner and upon any grounds provided by rules of court.

NOTE

The following Rules have been made under section 69:

Family Proceedings (Sark) Rules, 2021.

Powers of Royal Court when sitting in appellate capacity.

70. (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 are in the discretion of the Royal Court.

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

71. (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), with leave of the Royal Court or Court of Appeal, lies to the Court of Appeal.

- (2) An appeal under this section must be instituted –
 - (a) within a period of 14 days immediately following the date of the decision of the Royal Court, and
 - (b) in any manner provided by rules of court.

(3) Section 21 of the Court of Appeal (Guernsey) Law, 1961^e ("Powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under subsection (1) 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.

72. (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,

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 must be

^e Ordres en Conseil Vol. XVIII, p. 315. There are amendments not relevant to this provision.

instituted.

Powers to transfer.

73. (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 IX
GENERAL AND MISCELLANEOUS

Duty of confidentiality.

74. (1) This section applies where a designated official acquires any

information from which a living individual ("**the identifiable person**") is identified or identifiable –

- (a) in the exercise or performance of any function under this Law, or otherwise under or for the purposes of this Law, or
- (b) directly or indirectly from any person who acquired the information –
 - (i) in the exercise or performance of any function under this Law, or
 - (ii) otherwise under or for the purposes of this Law.

(2) Except as authorised by section 75, the designated official must not, without the consent of the identifiable person –

- (a) use the information, or
- (b) disclose the information to any other person.

(3) The duty of a designated official in subsection (2) survives the expiry or termination of that official's office, employment, appointment or designation as a designated official.

(4) A person who fails to comply with or contravenes subsection (2) is guilty of an offence and liable –

- (a) on summary conviction, to imprisonment for a term not exceeding one month, or to a fine not exceeding level 4

on the uniform scale, or to both, or

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

(5) Nothing in this section limits or otherwise affects any other duty of confidentiality imposed by any other provision of this Law.

Exceptions to confidentiality.

75. A designated official may use, or disclose to another person, the information mentioned in section 74(1) where –

- (a) at the time of use or disclosure, the information is or has already been made public (other than through an act or omission of the official),
- (b) the information used or disclosed is in the form of a summary or collection so framed as not to enable information relating to any identifiable person to be ascertained from it,
- (c) the use or disclosure is necessary for the purpose of –
 - (i) exercising or performing any function conferred or imposed on the official by this Law,
 - (ii) enabling or assisting any other person to exercise or perform functions conferred or imposed by this Law,
 - (iii) complying with this Law or any other

enactment, or

- (iv) seeking advice from a qualified person on any matter requiring the exercise of professional skills in relation to a purpose mentioned in subparagraph (i), (ii) or (iii),
 - (d) the use or disclosure is necessary for the purposes of any proceedings arising out of this Law,
 - (e) the use or disclosure is necessary for the purposes of enabling or assisting the instigation, defence, or conduct of disciplinary proceedings against any person in relation to –
 - (i) a breach of a provision of this Law, or
 - (ii) compliance with this Law resulting in a breach of the person's professional or other duties,
 - (f) the use or disclosure is necessary for the prevention, investigation, detection or prosecution of a criminal offence within or outside Sark,
 - (g) the use or disclosure is necessary for the purposes of complying with an order of a court or tribunal, or
 - (h) the use or disclosure is required or authorised by rules of court or practice directions of the relevant court.
-

NOTE

The following Rules have been made under section 75:

Family Proceedings (Sark) Rules, 2021.

Reporting of proceedings under this Law.

76. (1) In respect of any proceedings under this Law –

(a) no report may 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 may be published which is or includes a picture of any child referred to in paragraph (a).

(2) However, a court may, if satisfied that it is in the interests of justice so to do, dispense with the requirements of subsection (1) to the extent, and subject to the terms and conditions, specified in the order.

(3) Without prejudice to the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008^f, subsection (1) also applies in respect of any proceedings in any court, other than proceedings mentioned

^f Order in Council No. VI of 2009; amended by Ordinance No. IX of 2016.

in subsection (1), to the extent (if any) and subject to the terms or conditions directed by the court concerned.

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

- (a) summary conviction to imprisonment for a term not exceeding one month, or to a fine not exceeding level 4 on the uniform scale, or both, or
- (b) conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or both.

(5) Where a body corporate is guilty of an offence under this 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, the director, manager, secretary, other officer or person concerned as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

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

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

77. (1) For the avoidance of doubt, no person may be present during the hearing by a court of any proceedings under this Law 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 under this Law**" 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.

78. On disposing of any application for an order under this Law, a relevant 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 relevant court.

Restriction on exercise of court's customary law jurisdiction.

79. 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 must exercise the power created under this Law, unless the effect would be unfair or unjust.

Power to amend Law by Ordinance.

80. (1) The Chief Pleas may by Ordinance amend or repeal any

provision of Part III, Part VI or this Part (Part IX), where it appears to the Chief Pleas to be necessary or expedient to do so for the purposes of –

- (a) protecting children from harm,
- (b) promoting proper and adequate health, welfare and development for children,
- (c) ensuring the provision of adequate care, protection, guidance or control for children,
- (d) ensuring the most beneficial and effective use, or application, of the child welfare principles,
- (e) facilitating the fair and efficient carrying out of the functions of–
 - (i) MASH,
 - (ii) the Committee, or
 - (iii) the Court or a relevant court, or
- (f) discharging any international obligation to which Sark is subject,

(2) In addition, the Chief Pleas may by Ordinance amend, repeal or substitute any provision of section 9 or Schedule 1.

(3) Subsections (1) and (2) are without prejudice to any other provision of this Law conferring on the Chief Pleas a power to make Ordinances.

Power to make Ordinances relating to child minders and day care providers.

81. (1) The Chief Pleas may by Ordinance make any provision it thinks fit for for the purpose of regulating –

- (a) child minders, and
- (b) day care providers.

(2) Without prejudice to the generality of the power under subsection (1), an Ordinance made under that subsection may make provision for, or concerning –

- (a) the prohibition of the provision of child minding, or day care services, except by persons who are registered child minders, or registered day care providers,
- (b) the registration of persons as child minders, or day care providers, including, without limitation, registration subject to conditions,
- (c) the establishment and maintenance of a register of persons who are registered under such an Ordinance,
- (d) the suspension, variation and revocation of any registration or condition,
- (e) appeals from decisions relating to –
 - (i) the registration of persons as child minders, or day care providers,

- (ii) the suspension, variation or revocation of any registration or condition,
- (f) powers for any person –
 - (i) to enter and inspect premises which are used for the purpose of the provision of child minding or day care services,
 - (ii) to require the provision of information concerning children who are minded or cared for,
 - (iii) to issue written guidance in connection with –
 - (A) child minders,
 - (B) day care providers, and
 - (C) the provision of child minding or day care services,
- (g) the duties and obligations of child minders and day care providers, and
- (h) the creation of criminal offences for breaches of –
 - (i) any duties or obligations towards, or in connection with, children who are minded or cared for,

- (ii) any prohibition of the provision of child minding, or day care services, or
- (iii) any obligations concerning the registration of persons as child minders, or day care providers.

(3) In this section –

a **"child minder"** means a person who looks after one or more children under the age of 16 years, for longer than 2 hours a day, on domestic premises for reward,

"child minding services" means services which consist of any form of care (whether or not provided to any extent in the form of an educational activity) provided for a child by a person who is acting as a child minder in respect of that child,

"day care provider" means a person who provides day care services at any time of the day for one or more children under the age of 16 years, for longer than 2 hours a day, on premises other than domestic premises,

"day care services" means services which consist of any form of care (whether or not provided to any extent in the form of an educational activity) provided for a child by a person who is acting as a day care provider for that child, and

"domestic premises" means any premises which are wholly or mainly used as a private dwelling.

Power to make Ordinances generally.

82. (1) The Chief Pleas may by Ordinance make any provision it thinks fit for the purpose of giving effect to this Law.

(2) Without prejudice to the generality of subsection (1) or any other provision of this Law conferring power to make Ordinances and vice versa, an Ordinance under subsection (1) may –

- (a) impose fees and charges on persons specified in the Ordinance, which are payable to the Chief Pleas in the amounts and at the rates specified by the Ordinance, in respect of the services provided by MASH in the discharge of the functions of MASH under this Law, or
- (b) make provision for or concerning the functions that may or must be carried out by any person under this Law.

(3) The Chief Pleas may recover any fees and charges prescribed under subsection (1) as a civil debt due to the Chief Pleas from the person who is liable to pay them.

NOTE

The following Ordinance has been made under section 82:

Child Protection (Sark) Ordinance, 2021.

Regulations to be laid before Chief Pleas.

83. (1) Regulations made under this Law must be laid before a meeting of the Chief Pleas as soon as possible.

(2) If at that meeting or the next the Chief Pleas resolve to annul

the Regulations, they cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

Publication of written guidance.

84. The Committee must publish any written guidance issued under this Law in such manner as appears to the Committee to be appropriate for the purpose of bringing the contents of the guidance to the attention of those persons who need to be made aware of those contents.

Power to make rules of court.

85. (1) Subject to subsection (4), the Court of the Seneschal has power to make rules of court under this Law.

(2) In addition to rules of court made under powers created under any other provision of this Law, rules of court made by the Court of the Seneschal 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 do not come into force unless and until approved by the Royal Court sitting as the Full Court.

(4) For the avoidance of doubt, the Royal Court sitting as the Full Court has power to make rules of court under Part VIII in relation to proceedings in the Royal Court.

(5) Without prejudice to subsection (4), the Royal Court may apply any rules made by the Court of the Seneschal under this section, subject to any

modifications that the Royal Court thinks fit, in relation to proceedings in the Royal Court under this Law.

NOTE

The following Rules have been made under section 85:

Family Proceedings (Sark) Rules, 2021.

General provisions as to Ordinances.

86. (1) Without prejudice to the generality of any other provision of this Law or the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016^g, an Ordinance under this Law may –

- (a) subject to subsection (2), make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences,
- (b) empower MASH, any committee of the Chief Pleas or any other body or authority (including, without limitation, any court), or any other person to –
 - (i) make subordinate legislation, or
 - (ii) issue codes or guidance,

in relation to any matter for which an Ordinance may be made under this Law,

^g Order in Council No. V of 2018; as amended by Ordinance No. XXII of 2018 and Sark Ordinance No. VIII of 2018.

- (c) provide that no liability shall be incurred by any person in respect of anything done or omitted to be done in the discharge or purported discharge of any of the person's functions unless the thing is done or omitted to be done in bad faith,
 - (d) make provision under the powers conferred by this Law despite the provisions of any enactment for the time being in force,
 - (e) repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law, and
 - (f) without prejudice to the generality of the foregoing, make any such provision of any such extent as might be made by *Projet de Loi*, but may not provide that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.
- (2) An Ordinance must not –
- (a) provide for offences to be triable only on indictment, or
 - (b) authorise the imposition –
 - (i) on summary conviction, of imprisonment for a term exceeding one month, or a fine exceeding level 4 on the uniform scale, or
 - (ii) on conviction on indictment, of imprisonment for a term exceeding 2 years.

(3) Despite any other provision of this Law, the Chief Pleas must not enact an Ordinance under this Law except –

- (a) on the recommendation of the Committee, or
- (b) by a Resolution stating the exceptional circumstances in which the Chief Pleas considers it necessary to enact an Ordinance without a recommendation of the Committee.

NOTE

The following Ordinance has been made under section 86:

Child Protection (Sark) Ordinance, 2021.

Interpretation.

87. (1) In this Law –

"adoption order" includes –

- (a) an adoption order made in any part of the British Islands or the Republic of Ireland, 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,

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

"care requirement": see section 18(1),

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

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

"the Children Law" means the Children (Sark) Law, 2016^h,

"children of Sark" means children who are ordinarily resident in Sark,

"child's plan": see section 19(1)(b),

[**"the Committee"** means the Medical & Emergency Services Committee of the Chief Pleas,]

"committee of the Chief Pleas" means any authority, board, committee or council of the Chief Pleas, however named, constituted by a Resolution or enactment approved by the Chief Pleas,

"community parenting order": see section 23,

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

(a) the child,

^h Order in Council No. VIII of 2016; amended by Guernsey Ordinance No. IX of 2016; Sark Ordinance No. I of 2017.

(b) the child's parents, or

(c) any person having an interest in the child that amounts to family life,

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

"compulsory school age" has the meaning given by section 9(2) and (2A) of the Education (Sark) Ordinance, 2003^j,

"contact order" has the meaning given by section 16(1)(b) of the Children Law,

"the Court" means the Court of the Seneschal,

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

"customary law" includes the common law,

"customs officer" means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^l and includes an immigration officer,

^j As amended by Sark Ordinance No. IX of 2018.

^k Ordres en Conseil Vol. XVIII, p. 315; there are amendments not relevant to this provision.

^l Ordres en Conseil Vol. XXIII, p. 573; amended by Orders in Council No. XIII of 1991 and No. X of 2004. There are other amendments not relevant to this provision.

"designated official" means –

- (a) any member of MASH,
- (b) any person to whom MASH has delegated any of its functions under this Law,
- (c) any member of a committee to which MASH has delegated any of its functions under this Law,
- (d) any employee of the Chief Pleas acting on behalf of MASH with authorisation from MASH, or
- (e) any agent of MASH,

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

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

"disclosure order": see section 14,

"emergency child protection order": see section 30,

"family home" means any house, or any other place, or building, which is used as a family residence and in which a child ordinarily resides with a person –

- (a) who has parental responsibility in relation to that child,

or

- (b) who ordinarily (and other than by reason only of his employment) has charge of, or control over, that child,

and includes the curtilage of any such house, place or building,

"family proceedings" means any proceedings –

- (a) under the inherent jurisdiction of any court in relation to children, or
- (b) under –
 - (i) this Law,
 - (ii) the Children Law,
 - (iii) the Adoption (Guernsey) Law, 1960^m,
 - (iv) the Matrimonial Causes Law, 1939ⁿ, or
 - (v) any other enactment specified for the purpose in rules of court made by the Court of the Seneschal,

"father", in relation to a child, has the meaning given by section 1(3)(a) of the Children Law,

^m Ordres en Conseil Vol. XVIII, p. 92.

ⁿ Ordres en Conseil Vol. XI, p. 318.

"function" includes power or duty,

"health" means physical, emotional or mental health,

"immigration officer" means a person appointed as such under the Immigration Act 1971⁰,

"information restriction" means any restriction on the disclosure of information, or any duty of confidentiality, imposed on or arising in relation to a person –

- (a) by any provision of a contract or an enactment or otherwise by any rule of law, or
- (b) in any other manner,

"interim community parenting order": see section 28,

"this Law" includes any Ordinance or subordinate legislation made under this Law, and for the avoidance of doubt, includes rules of court,

"MASH" means the Multi-Agency Safeguarding Hub established by section 9 and Schedule 1,

"medical treatment" –

- (a) includes any examination or investigation to ascertain if

⁰ An Act of Parliament (1971 c. 77); extended to the Bailiwick by the Immigration (Guernsey) Order 1993 (No. 1796).

treatment or further treatment is required, and

- (b) must have been recommended by a medical practitioner duly registered under the law in force in the jurisdiction in which the medical practitioner is practising,

"member", in relation to MASH, means any voting or non-voting member of MASH,

"mother", in relation to a child, has the meaning given by section 1(3)(b) of the Children Law,

"parent", in relation to a child, means a father or mother who has parental responsibility in respect of the child,

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

"penal notice": see section 59,

"person" includes any body or authority,

"prescribed", in relation to any provision of this Law, means prescribed by –

- (a) regulations made by the Committee, or
- (b) written guidance published by the Committee in accordance with section 84,

for the purposes of the provision,

"prescribed person": see section 17(3),

"public authority" has the meaning given under section 6 of the Human Rights (Bailiwick of Guernsey) Law, 2000, and, for the avoidance of doubt, includes any person authorised to act on behalf of a public authority,

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

"Ordinance", in relation to any provision of this Law, means an Ordinance made by the Chief Pleas for the purposes of the provision,

"relevant court", in relation to any matter, means the Court of the Seneschal or any other court exercising jurisdiction in respect of the matter,

"the Royal Court" means the Royal Court of Guernsey sitting as an Ordinary Court,

"Sark" includes the territorial waters adjacent to Sark,

"secure accommodation": see section 43,

"secure accommodation order": see section 44(1), and

"uniform scale" means the scale of fines from time to time in force under the Uniform Scale of Fines (Sark) Law, 1989^P.

^P Ordres en Conseil Vol. XXXI, p. 320; as amended by the Uniform Scale of Fines (Sark) (Amendment) Ordinance, 2006.

NOTE

In section 87, the definition of the expression "the Committee" in subsection (1) was substituted by the Child Protection (Transfer of Functions) (Sark) Ordinance, 2022, section 2(1), with effect from 20th January, 2022.

The functions, rights and liabilities of the Education 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 Child Protection (Transfer of Functions) (Sark) Ordinance, 2022, section 1(a), with effect from 20th January, 2022, subject to the savings and transitional provisions in section 3 of the 2022 Ordinance.

Amendments to the Children Law.

88. The Children Law is amended as set out in Schedule 2.

Citation.

89. This Law may be cited as the Child Protection (Sark) Law, 2020.

Commencement.

90. This Law shall come into force on the day appointed by Ordinance; and different dates may be appointed for different provisions and for different purposes.

NOTE

The Law, save for Part IV (which is not yet in force), was brought into force on 1st May, 2021 by the Child Protection (Sark) Ordinance, 2021, section 32(1).

SCHEDULE 1
CONSTITUTION OF MASH

Section 9(1)

1. Constitution and membership.

- (1) This subparagraph establishes the Multi-Agency Safeguarding Hub ("MASH").
- (2) MASH comprises –
 - (a) the following voting members –
 - (i) the Island Safeguarding Officer,
 - (ii) the Constable,
 - (iii) the Procureur des Pauvres,
 - (iv) the Sark Doctor (within the meaning of section 47(1) of the Regulation of Health Professions (Medical Practitioners) (Sark) Ordinance, 2017^q),
 - (v) the person appointed as the Safeguarding lead for the Sark School by its Board of Education (or board of governors, however named),
 - (vi) the Director of Education appointed by Resolution of the Chief Pleas,
 - (vii) the person appointed as the Safeguarding lead for the Methodist Church by its Church Council, and
 - (viii) the person approved to be the Safeguarding lead for St Peter's Anglican Church by an annual or extraordinary general meeting of that Church, and
 - (b) one, two or three non-voting members (the exact number to be determined by the Committee) with suitable qualifications, experience, knowledge and skills appointed by the Chief Pleas at the recommendation of the Committee.
- (3) Before recommending an individual for appointment as a non-voting member

^q Sark Ordinance No. VI of 2017.

under subparagraph (2)(b), the Committee may require the individual to provide, and to authorise the Committee to obtain, any information and references that the Committee reasonably requires to ascertain that individual's suitability for the appointment.

- (4) Each non-voting member is to be appointed for a term of five years or any shorter period that the Committee thinks fit and recommends to the Chief Pleas at the time of appointment.
- (5) Each non-voting member may be reappointed in accordance with this paragraph.
- (6) A voting member may in writing appoint any person other than another member as an alternate.
- (7) In the absence of the voting member who appointed the alternate, the alternate may, in the place of the voting member –
 - (a) attend meetings and take part in any other proceedings, and
 - (b) vote, approve any matter or take any other action.
- (8) A voting member may hold office as a member by virtue of two or more positions listed in subparagraph (2)(a)(i) to (viii) but, in respect of all those positions in aggregate, must not –
 - (a) appoint more than one alternate, or
 - (b) exercise more than one vote.

2. Chairperson etc., of MASH.

- (1) The Island Safeguarding Officer is the Chairperson of MASH.
- (2) MASH may elect one of its voting members as Deputy Chairperson.
- (3) Despite paragraph 1(7), an alternate appointed by the Island Safeguarding Officer or the Deputy Chairperson must not carry out any function as the Chairperson, or preside at any meeting of MASH, unless elected to preside at a meeting by voting members in accordance with paragraph 7(1)(c).

3. Removal or resignation of non-voting members.

- (1) The Chief Pleas may by Resolution remove a non-voting member from office

before the expiration of the member's term of office only if the Chief Pleas is satisfied, based on a report and recommendation submitted by the Committee, that the member –

- (a) is guilty of serious misconduct,
 - (b) has been convicted of a criminal offence,
 - (c) is bankrupt,
 - (d) is incapacitated by physical or mental illness, or
 - (e) is otherwise unable or unfit to perform the duties of a non-voting member.
- (2) Any non-voting member may resign from office at any time by giving written notice to the Committee, and the Committee must notify the Chief Pleas of any such resignation as soon as possible.
- (3) In subparagraph (1)(c), "**bankrupt**", in relation to any individual, means –
- (a) that the individual has been declared by the Royal Court to be insolvent or that a Commissioner or Committee of Creditors has been appointed by the Royal Court to supervise or secure the individual's estate,
 - (b) that the individual's affairs have been declared in a state of "désastre" by the individual's arresting creditors at a meeting held before a Commissioner of the Royal Court,
 - (c) that a preliminary vesting order has been made against the individual in respect of any of the individual's real property in the Bailiwick of Guernsey, or
 - (d) that a composition or arrangement with creditors has been entered into in respect of the individual whereby the individual's creditors will receive less than 100p in the pound or that possession or control has been taken of any of the individual's property or affairs by or on behalf of creditors,
- and includes analogous procedures and declarations in any country or territory other than the Bailiwick of Guernsey.

4. Emoluments and expenses of members.

The Chief Pleas may pay any member a fee, allowance or other emolument, or reimburse expenses incurred by any member, in accordance with any Resolution of the Chief Pleas made at the recommendation of the Committee.

5. Resources and spending.

- (1) MASH may procure any accommodation, equipment, services or facilities it reasonably requires for the proper and effectual discharge of its functions, and may enter into any transactions and arrangements for this purpose.
- (2) Any procurement under subparagraph (1) –
 - (a) is made on behalf of the Chief Pleas,
 - (b) must be made and paid out of monies approved to be expended for these purposes by the Chief Pleas, and
 - (c) must not exceed any limit imposed by Resolution of the Chief Pleas.

6. Delegation of functions by MASH.

- (1) MASH may in writing delegate any of its functions to –
 - (a) a committee comprising any persons specified by MASH (which may include any number of MASH members), or
 - (b) any other person.
- (2) A function delegated under subparagraph (1) –
 - (a) may be exercised or performed by the committee or person concerned in accordance with the delegation, and
 - (b) when so exercised or performed, is deemed to have been exercised or performed by MASH.
- (3) A delegation under subparagraph (1) –
 - (a) does not prevent MASH from exercising or performing the delegated function, and
 - (b) may at any time be varied or revoked in writing by MASH.
- (4) Nothing in this paragraph authorises –
 - (a) MASH to delegate the power of delegation conferred by subparagraph

- (1) to any person, or
- (b) a committee or person to whom a function is delegated under subparagraph (1) to sub-delegate the function to any person.
- (5) For the avoidance of doubt, section 4 of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^r does not apply to MASH and its functions under this Law.

7. Meetings.

- (1) The person who presides at any meeting of MASH is –
 - (a) the Chairperson, if the Chairperson is present,
 - (b) if the Chairperson is not present, the Deputy Chairperson if the Deputy Chairperson is present, or
 - (c) if neither the Chairperson nor the Deputy Chairperson is present, any voting member elected by the voting members present at the meeting.
- (2) At a meeting –
 - (a) a quorum is constituted by the nearest whole number of voting members above one half of the number of voting members for the time being in office,
 - (b) decisions are made by a majority vote,
 - (c) each voting member has one vote,
 - (d) the person presiding has no original vote but has a casting vote, and
 - (e) a non-voting member has no vote but may participate in deliberations.

8. Disclosure of interest.

- (1) A member who has any direct or indirect personal interest in the outcome of any deliberations of MASH in relation to any matter must disclose the nature of the interest at a meeting of MASH and this disclosure must be recorded in the minutes of the meeting.

^r Ordres en Conseil Vol. XXXIII, p. 478; amended by Ordinance No. XXXIII of 2003; No. IX of 2016.

- (2) For the purposes of this paragraph, a general notice given by a member to the effect that the member is a member, director or other office-holder, of any specified entity and is to be regarded as interested in any matter concerning that entity is a sufficient disclosure in relation to any such matter.
- (3) A member need not attend in person at a meeting of MASH in order to make any disclosure required under this paragraph if the member makes disclosure by a notice in writing delivered to the Chairperson or Deputy Chairperson and that notice is brought to the attention of every meeting of MASH at which deliberations of the kind mentioned in subparagraph (1) are to take place and before those deliberations commence.

9. Transaction of business without meeting.

MASH may, if it thinks fit, transact any business by the circulation of papers to all members, and a resolution in writing approved in writing by a majority of its voting members is as valid and effectual as if passed at a meeting by the votes of the members approving the resolution.

10. Records and minutes.

MASH must keep proper minutes of its proceedings, including records of any business transacted as permitted by paragraph 9.

11. Financial and accounting provisions.

- (1) MASH must not borrow any money except where approved by a prior Resolution of the Chief Pleas.
- (2) MASH must maintain proper financial accounts and proper records in relation to those accounts.
- (3) The financial accounts of MASH must be audited or reviewed by the appointed person in accordance with section 63 of the Reform (Sark) Law, 2008^s.

^s Order in Council No. V of 2008; as amended by Order in Council No. V of

- (4) As soon as practicable after the end of each calendar year, MASH must submit to the Committee a report containing –
 - (a) a statement of its financial accounts,
 - (b) an annual report in accordance with paragraph 12.
- (5) The Committee must in turn submit that report to the Chief Pleas.

12. Annual report.

The annual report must include –

- (a) a summary of MASH's activities during the calendar year to which the report relates, and
- (b) MASH's observations on whether the principal purpose of this Law is being attained, and if not, whether any amendment to this Law is required to be made or any other action taken in order to better attain that principal purpose, and
- (c) any other information required by the Committee or by Resolution of the Chief Pleas.

13. Residual power to regulate procedure.

Subject to the provisions of this Schedule, MASH may regulate its own procedure.

14. Validity of proceedings.

The validity of any proceedings of MASH is unaffected by –

- (a) any vacancy in its membership,
- (b) any defect in the appointment or election of any member,
- (c) any ineligibility of an individual to be a member, or
- (d) any lack of qualification of an individual to act as a member.

15. Presumption of authenticity.

Unless the contrary is shown –

2008. There are other amendments not relevant to this provision.

- (a) any document purporting to be issued by MASH must be regarded as issued by MASH, and
- (b) any document purporting to be signed on behalf of MASH must be regarded as signed on behalf of MASH.

16. Exclusion of liability.

- (1) Subject to subparagraph (2), a member of MASH is not liable in damages or personally liable in any civil proceedings in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of the member's functions or the functions of MASH under this Law, unless the thing was done or omitted to be done in bad faith.
- (2) Subparagraph (1) does not apply so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000 .

17. Interpretation.

In this schedule, unless the context requires otherwise –

"the Chairperson" means the Island Safeguarding Officer,

"the Deputy Chairperson" means the person (if any) elected to be Deputy Chairperson of MASH under paragraph 2(2),

"the Island Safeguarding Officer" means the person –

- (a) appointed as Island Safeguarding Officer by Resolution of the Chief Pleas, or
- (b) for the time being acting as Island Safeguarding Officer in accordance with any Resolution of the Chief Pleas, and

"member" means a voting or non-voting member of MASH.

SCHEDULE 2

Section 88

AMENDMENTS TO THE CHILDREN (SARK) LAW, 2016

The Children Law is amended as follows –

1. Immediately before section 7(a) of that Law, insert the following paragraph –

"(aa) MASH (within the meaning given by section 87(1) of the Child Protection (Sark) Law, 2020), on the making in its favour of –

- (i) a community parenting order (within the meaning of section 23 of the Child Protection (Sark) Law, 2020),
- (ii) an emergency child protection order (within the meaning of section 30 of the Child Protection (Sark) Law, 2020), but only to the extent necessary to safeguard the welfare of the child (having regard to the duration of the order),
- (iii) a care requirement (within the meaning of section 18(1) of the Child Protection (Sark) Law, 2020), but only to the extent necessary to give effect to the terms and conditions of the care requirement, or
- (iv) a secure accommodation order (within the meaning of section 44(1) of the Child Protection (Sark) Law, 2020), having regard to the duration of the order,".

2. In section 44 of that Law –

- (a) for subsection (1), substitute the following subsection –

"(1) Subject to subsection (4), the Court of the Seneschal has power to make rules of court under this Law.",

- (b) in subsection (2), for "Royal Court" substitute "Court of the Seneschal", and

- (c) immediately after subsection (3), insert the following subsections –

"(4) For the avoidance of doubt, the Royal Court has power to make rules of court under Part V in relation to proceedings in that court.

(5) Without prejudice to subsection (4), the Royal Court may apply any rules made by the Court of the Seneschal under this section, subject to any modifications that the Royal Court thinks fit, in relation to proceedings in the Royal Court under this Law."

3. In section 45(1) of that Law, in the definition of "family proceedings", immediately after subparagraph (i), insert the following subparagraph –

"(ia) the Child Protection (Sark) Law, 2020,".

4. In paragraph 1 of the Schedule to that Law, for "£5,000, or such other sum as", substitute "any sum that".