

PROJET DE LOI

ENTITLED

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

[CONSOLIDATED TEXT]

NOTE

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

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* No. VI of 2009; as amended by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). See also the Police Force (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207); the Magistrate's Court (Guernsey) Law, 2008 (No. XVIII of 2009).

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THE STATES, in pursuance of their Resolution of the 28th October 2004^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

PART I PRELIMINARY

Key definitions.

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

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

(3) "**Child defendant**" means a child who has been charged with a criminal offence.

(4) "**Child offender**" means a child who has been convicted of a criminal offence.

(5) "**Defendant**" in Part V means a child defendant or child offender who is under the age of 17 years.

NOTE

^a Billet d'État No. XVII of 2004.

The following case has referred to this Law:

X v. Law Officers of the Crown (2013) (Unreported, Royal Court, 9th August) (Guernsey Judgment No. 25/2013).

Considerations in respect of offending by children.

2. (1) When a public authority carries out a relevant function in respect of a child –

- (a) the principal consideration shall be the prevention of offending by the child in the long and the short term, and
- (b) the following considerations shall also be taken into account –
 - (i) the interests of any victim of criminal behaviour by the child,
 - (ii) the welfare of the child,
 - (iii) the alternative means of dealing with the child which could be pursued, except where the public interest requires that criminal proceedings should be instituted against him, and
 - (iv) the desirability of ensuring that the child remains in the community so far as that is practicable and consonant with the need to ensure the safety of the public.

(2) For the purposes of this section, "**relevant function**" means a function under –

- (a) this Law, or

- (b) any provision, statutory or otherwise, relating to offending by children, other than any provision of the Children Law.

PART II
AGE OF CRIMINAL RESPONSIBILITY

Age of criminal responsibility.

3. It shall be conclusively presumed that no child under the age of twelve years can be guilty of an offence.

PART III
REPORTING OF OFFENCES

Reporting of offences and further action.

4. (1) Where there is sufficient evidence to provide a realistic prospect of conviction of a child defendant for an offence, the designated officer shall cause a report of the offence to be transmitted –

- (a) to the Children's Convenor, or
- (b) if he decides that it may be necessary in the public interest to prosecute the child, to Her Majesty's Procureur and the Children's Convenor.

(2) In making a decision under subsection (1), the designated officer shall have regard to –

- (a) the nature and gravity of the offence charged,
- (b) whether the child defendant is considered to be a persistent offender,
- (c) the age of the child defendant,

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- (d) any previous sentence or order of a criminal court or the Tribunal, and the response of the child defendant to that sentence or order, and
- (e) all information available to him in respect of –
 - (i) the offence, and
 - (ii) the child defendant.

(3) Notwithstanding subsection (2), where a child defendant is charged with a traffic offence, the designated officer shall cause that report to be transmitted under subsection (1)(b).

(4) Where a report has been transmitted under subsection (1)(a) and the Children's Convenor decides that it may be necessary in the public interest to prosecute the child defendant, he shall transmit the report to Her Majesty's Procureur with an endorsement to that effect.

(5) In making a decision under subsection (4), the Children's Convenor shall have regard to –

- (a) the nature and gravity of the offence charged,
- (b) whether the child defendant is considered to be a persistent offender,
- (c) the age of the child defendant,
- (d) any previous sentence or order of a criminal court or the Tribunal, and the response of the child defendant to that sentence or order, and
- (e) all information available to him in respect of –
 - (i) the offence, and

(ii) the child defendant.

(6) Where a report has been transmitted under subsection (1)(b) or (4), Her Majesty's Procureur shall review the report and consider –

(a) all information available to him in respect of –

(i) the offence, and

(ii) the child defendant, and

(b) any representations made by the Children's Convenor.

(7) After a review under subsection (6), Her Majesty's Procureur shall decide whether to –

(a) prosecute the child defendant, or

(b) refer the child defendant to the Children's Convenor to consider exercising his functions under the Children Law.

(8) Her Majesty's Procureur may –

(a) review the report after he has made a decision to prosecute the child defendant under subsection (7)(a), and

(b) refer the child defendant to the Children's Convenor under subsection (7)(b),

at any point until the child defendant has been convicted by a court.

(9) For the purposes of this section –

- (a) a "**designated officer**" means –
 - (i) in respect of the police, a police officer who has received training in dealing with child defendants and has been so designated by a police officer who holds the rank of inspector or above, and
 - (ii) in respect of Customs and Excise, an officer of Customs and Excise who has received training in dealing with child defendants and has been so designated by an officer of Customs and Excise who holds the rank of Senior Officer or above,
- (b) a "**criminal court**" includes a court of criminal jurisdiction sitting outside the Bailiwick, and
- (c) a "**traffic offence**" means an offence related to the circulation of a motor vehicle on a public highway for which a person can be disqualified under the Motor Taxation and Licensing Law (Guernsey) Law, 1987^b.

PART IV

JURISDICTION AND PROCEDURE IN CRIMINAL COURTS IN RELATION TO CHILD OFFENDERS AND CHILD DEFENDANTS

Constitution and functions of the Juvenile Court.

5. (1) When dealing with a child defendant or child offender in respect of a function specified in subsection (2), the Magistrate's Court shall be known as the Juvenile Court and shall be constituted by the Magistrate sitting alone.

(2) The functions of the Juvenile Court under this Law shall be

^b Ordres en Conseil Vol. XXX, p. 341; as amended by Orders in Council No. XI of 1995 and No. IX of 2000.

to –

- (a) where a prima facie case is established –
 - (i) commit for trial to the Royal Court any child defendant charged with an offence which is triable on indictment only,
 - (ii) commit for trial to the Royal Court any child defendant charged with an offence which may be tried on indictment where –
 - (A) the Magistrate declines jurisdiction, or
 - (B) Her Majesty's Procureur, or the child defendant, elects trial on indictment,
- (b) try any other child defendant and sentence, or otherwise deal with, him if he is convicted,
- (c) hear any breach proceedings in respect of any child offender and deal with him if the breach is proved, and
- (d) sentence, or otherwise deal with, any child offender remitted to it for that purpose.

(3) The Royal Court may from time to time make rules governing the practice and procedure in the Juvenile Court.

(4) The provisions of the Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988^c shall apply to and in respect of appeals from the Juvenile Court as those provisions apply to and in respect of appeals from the Magistrate's Court.

^c Ordres en Conseil Vol. XXXI, p. 83.

NOTE

In accordance with the provisions of the Magistrate's Court (Guernsey) Law, 2008, section 47(3), with effect from 1st September, 2009, the references in this section to the "Magistrate" shall be construed as references to a Judge of the Magistrate's Court within the meaning of the 2008 Law.

Children prosecuted jointly with adults.

6. Where in accordance with section 4, a decision has been made to prosecute a child defendant, and notwithstanding the provisions of section 5, the Magistrate's Court (not sitting as the Juvenile Court) or the Royal Court (sitting as a Full Court or as an Ordinary Court as the case may be) may –

- (a) hear any charge made jointly against a child defendant and an adult,
- (b) hear any charge made against a child defendant if an adult is charged at the same time with –
 - (i) aiding, abetting, counselling or procuring the offence alleged to have been committed by the child defendant, or
 - (ii) an offence arising out of circumstances the same as, or connected with those giving rise to, the offence alleged to have been committed by the child defendant,
- (c) hear any committal proceedings involving both a child defendant and an adult, and
- (d) continue to hear and determine any proceedings in the course of which it appears for the first time that a person to whom they relate is a child defendant or child offender.

Powers of a relevant court upon conviction.

7. (1) Where a relevant court has convicted a child offender, the court may –

- (a) sentence him, or
- (b) remit the matter to the Tribunal for consideration and determination, or
- (c) remit him to the Juvenile Court for sentence.

(2) For the purposes of this section, a "**relevant court**" means –

- (a) the Magistrate's Court (not sitting as the Juvenile Court),
- (b) the Royal Court (however constituted),
- (c) the Criminal Division of the Court of Appeal,
- (d) except for the purposes of subsection (1)(c) –
 - (i) the Juvenile Court, and
 - (ii) the Court of Alderney, and
- (e) except for the purposes of subsection (1)(b) and (c), the Court of the SÉNÉSCHAL of Sark.

Persons permitted to be present in the Juvenile Court.

8. (1) Subject to subsection (2), no person may be present during the hearing by the Juvenile Court of any proceedings against a child defendant or a child offender except –

- (a) members and officers of the court,

- (b) the prosecutor,
- (c) the child defendant or child offender, his Advocate, his parent and any other person who has parental responsibility for him,
- (d) any witnesses,
- (e) any representative of the Department,
- (f) any person who the court is satisfied is a bona fide representative of a media organisation, and
- (g) such other persons as the court may specifically authorise to be present.

(2) In any proceedings against a child defendant or a child offender, a court may exclude from a hearing a person listed in subsection (1) where his attendance would have a detrimental effect on –

- (a) the conduct of the hearing, or
- (b) the welfare of the child defendant or child offender.

(3) The provisions of this section also apply to the Court of Alderney and the Court of the S n schal of Sark.

NOTE

The following case has referred to section 8:

X v. Law Officers of the Crown (2013) (Unreported, Royal Court, 9th August) (Guernsey Judgment No. 25/2013).

Attendance at court of a child defendant or a child offender.

9. A warrant issued by a court under section 11(2) of the Bail Law for

the arrest of child defendant or child offender may include a direction that he be –

- (a) released on bail, with or without conditions, or
- (b) detained in custody until he can be brought before the court.

Attendance of persons responsible for the welfare of a child defendant or a child offender.

10. (1) Where a child defendant or a child offender is brought before a court charged with an offence –

- (a) a parent of his, or any other person who has parental responsibility for him,
- (b) where the child defendant or child offender is the subject of a community parenting order, a representative of the Department,

shall be required to attend at the court before which the case is heard or determined during all the stages of the proceedings, unless the court is satisfied that –

- (i) it would be unreasonable to require his attendance,
- (ii) his attendance is not essential to the just hearing of the case, or
- (iii) his attendance would have a detrimental effect on –
 - (A) the conduct of the proceedings, or
 - (B) the welfare of the child defendant or child offender.

(2) The following persons may be required to attend court instead of, or in addition to, those persons referred to in subsection (1) –

- (a) where the child defendant or child offender is subject to a care requirement, a representative of the Department,
- (b) any other person who has for the time being assumed responsibility for his welfare, and
- (c) such other person as the court considers appropriate.

(3) Where a person is required to attend at a court under subsection (1)(a) and refuses or fails to do so, a warrant may be issued authorising any police officer to arrest that person and bring him before the court.

Reporting of cases involving a child defendant or child offender.

11. (1) Subsection (2) applies in respect of any proceedings against a child defendant or child offender in –

- (a) the Magistrate's Court, (whether or not constituted as the Juvenile Court),
- (b) the Royal Court, (however constituted),
- (c) the Court of Alderney,
- (d) the Court of the SÉNÉSCHAL of Sark, or
- (e) any court sitting as an appellate court from a decision made by a court listed in paragraphs (a) to (d).

(2) Where this subsection applies –

- (a) no report shall be published which –

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- (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 or complainant therein, and

- (b) in relation to the proceedings, no picture shall be published which is or includes a picture of any such child.

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

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

- (a) summary conviction to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 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 section and it is shown that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he as well as the 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.

PART V
BAIL AND KEEPING DEFENDANTS IN CUSTODY

General provisions.

12. (1) Subject to the provisions of this Part and the modifications in Schedule 1, the Bail Law shall have effect in respect of a defendant.

(2) In this Part, "**defendant**" shall have the meaning given in section 1(5).

Detention by the police.

13. (1) Where a defendant is not released on bail by the police pursuant to the PPACE Law, he may only be detained in custody –

- (a) in the care of the Department,
- (b) in the care of the Department in secure accommodation,
- (c) in police detention, or
- (d) in the Prison.

(2) A defendant may be detained in custody in the care of the Department in secure accommodation where –

- (a) he –
 - (i) is likely to abscond if not so detained, or
 - (ii) is likely to injure himself or others if not so detained, and

- (b) the Chief Officer of the Department has given his consent.
- (3) For the purposes of this section –
 - (a) **"police"** includes Customs and Excise, and
 - (b) **"police detention"** includes customs detention.

Remand in custody by a court.

14. (1) Where a defendant is not released on bail by a court pursuant to the Bail Law, without prejudice to the terms of the PPACE Law he may only be remanded in custody –

- (a) in the care of the Department,
- (b) in the care of the Department in secure accommodation, or
- (b) in the Prison.

(2) A court may only remand a defendant in custody in the Prison or in the care of the Department in secure accommodation if it appears –

- (a) that any accommodation other than that provided for the purpose of restricting liberty is inappropriate because –
 - (i) the defendant is likely to abscond from such other accommodation, or
 - (ii) the defendant is likely to injure himself or other people if he is kept in any such accommodation, and

- (b) either –
 - (i) the defendant is charged with or has been convicted of a violent or sexual offence, or of an offence punishable in the case of an adult with imprisonment for a term of 10 years or more, or
 - (ii) the defendant has a recent history of absconding while remanded in the care of the Department, and is charged with or has been convicted of an imprisonable offence alleged or found to have been committed while he was so remanded.

(3) Where a defendant is remanded in custody under the provisions of this section, he shall be deemed to be in lawful custody.

- (4) Where a defendant has been –
 - (a) remanded in custody in the Prison, or
 - (b) remanded in custody in the care of the Department in secure accommodation,

the period of the remand shall not exceed 28 days on any one occasion without further authorisation by the court.

(5) Where a defendant is remanded into the care of the Department in accordance with this section, the Department shall take such steps as it considers necessary or expedient to keep him in its care and shall produce him before the court when ordered to do so.

PART VI SENTENCING PROVISIONS

Supervision Orders.

15. (1) Without prejudice to any other sentence which may be passed on a child offender by a court, the court may make a supervision order in respect of him.

(2) Under a supervision order –

(a) the child offender will be supervised by a person appointed by the court ("**the supervisor**"), and

(b) the supervisor shall advise and assist the child offender, with particular reference to the considerations set out in section 2.

(3) A supervision order may contain such provisions as the court, having regard to the particular circumstances of the case, considers necessary for the effective management and performance of the order.

(4) A supervision order may be made for a period not exceeding two years but in any event a supervision order shall cease to have effect when the child offender attains the age of eighteen years.

(5) The States may by Ordinance make such provision as they think fit relating to the making and performance of supervision orders.

Breach of supervision order.

16. (1) If at any time while a supervision order is in force, it appears to the supervisor that the child offender has failed to comply with any of the provisions made under section 15(3) or has committed an offence during the currency of the order, he may inform the court which made the supervision order ("**the sentencing court**") that a breach of the order has occurred.

(2) On receipt of information under subsection (1) the sentencing court may either –

(a) require the police to warn the child offender to appear

before it on a date and at a time specified, or

(b) issue a warrant for his arrest.

(3) Prior to the appearance of the child offender before the sentencing court, the supervisor shall, if possible, inform the child offender of the facts of the alleged breach of the order.

(4) If the child offender admits that he is in breach of the order, the facts concerning the breach may be presented to the sentencing court by the supervisor who may also make written or oral representations concerning the disposal of the matter.

(5) If the child offender does not admit that he is in breach of the order, the sentencing court shall hear evidence to determine whether any breach has occurred.

(6) If –

(a) the child offender admits that he has breached the order, or

(b) it is proved to the satisfaction of the sentencing court that the child offender has breached the order,

the sentencing court shall proceed in one of the ways described in subsection (7).

(7) The sentencing court may –

(a) order that the order continue (with or without variation) without any fine,

(b) order that –

(i) the order continue (with or without variation),
and

- (ii) the child offender pay a fine not exceeding level 2 on the uniform scale,
- (c) revoke the order and deal with the offence in respect of which the order was made in any manner in which the child offender could have been dealt with for that offence, or
- (d) revoke the order.

(8) Where a court convicts a child offender of an offence committed during the currency of a supervision order, it shall deal with him for that offence and shall notify his supervisor of the fact of that offence.

Variation or revocation of supervision order due to change in circumstances.

17. (1) Where a supervision order is in force in respect of any child offender and, on the application of the child offender or the supervisor, it appears to the sentencing court that it would be in the interests of justice to do so having regard to the circumstances which have arisen since the order was made, the court may –

- (a) vary the order,
 - (b) revoke the order, or
 - (c) revoke the order and deal with the child offender for the offence in respect of which the order was made in any manner in which the child offender could have been dealt with for that offence.
- (2) The court may vary the supervision order –
- (a) by substituting a new supervisor for the supervisor at the time of the application, or

- (b) by –
 - (i) inserting (either in addition to or in substitution for any provision), or
 - (ii) removing,

any provision made under section 17(3) as the court, having regard to the particular circumstances of the case, considers necessary for the effective management and performance of the order.

(3) Where the sentencing court proposes to consider exercising its powers under subsection (1) otherwise than on the application of the child offender, the court may either direct the child offender to appear before it on a date and at a time specified or issue a warrant for his arrest.

PART VII MISCELLANEOUS PROVISIONS

Effect of remittal to the Tribunal.

18. (1) Where a child offender has pleaded guilty to or been found guilty of an offence by a court and the matter is remitted to the Tribunal in accordance with section 7(1)(b), that matter shall not constitute a conviction.

(2) Notwithstanding subsection (1), such guilty plea or finding of guilt may be taken into account when a designated officer makes a decision under section 4.

Presumption and determination of age.

- 19.** (1) Where –
- (a) a person charged with an offence or alleged to be in breach of a sentence is brought before a court in proceedings for that offence or breach, and
 - (b) it appears to the court that he has not attained the age

of 18,

the court shall make due inquiry as to his age.

(2) A court making due inquiry under subsection (1) may receive such evidence as it sees fit.

(3) After making due inquiry, the court shall make a finding as to the age of that person and, for the purposes of this Law and the 1917 Law, that age shall be deemed to be the true age of that person.

(4) Where it appears to the court that the person so brought before it has not attained the age of 18, that person shall be deemed to be a child for the purposes of this Law and the 1917 Law.

(5) An order or judgment of a court made or given in those proceedings before any finding was made under subsection (3) shall not be invalidated by any finding that the age of that person was not correctly stated to the court.

(6) Notwithstanding subsection (5), where any order made was a sentence which could not have lawfully been passed if the true age of the person had been known, the court shall set aside that order and proceed to sentence or otherwise deal with him in accordance with his true age.

(7) Where –

(a) a person charged with an offence or alleged to be in breach of a sentence is brought before a court in proceedings for that offence or breach, and

(b) it appears to the court that he had not attained the age of 12 at the time of –

(i) the alleged offence, or

- (ii) the original offence for which he was convicted,

(as the case may be), the court shall make due inquiry as to his age.

(8) A court making due inquiry under subsection (7) may receive such evidence as it sees fit.

(9) After making due inquiry, the court shall make a finding as to the age of that person at the time of the alleged offence and that age shall be deemed to be the true age of that person.

(10) Where it appears to the court that the person so brought before it had not attained the age of 12 at the time of the alleged offence, any order or judgment of the court in those proceedings shall be null and void.

Attainment of a relevant age before the conclusion of proceedings.

20. (1) For the purposes of this Law (except Part V), where a child attains the age of 18 before the conclusion of proceedings, he shall no longer be deemed to be a child if he attained that age before the hearing at which –

- (a) the mode of trial was determined, or
- (b) he first entered a plea to the charge.

(2) Where a child attains the age of 18 before the conclusion of proceedings and he does not fall within subsection (1), he shall be deemed to be a child for the purposes of those proceedings and may be dealt with by a court in any way in which he could have been dealt with had he not attained that age.

(3) For the purposes of Part V, where a child attains the age of 17 before the conclusion of proceedings, he shall not be deemed to be a "defendant" under that Part at the next or any subsequent hearing of those proceedings after he attained that age.

(4) Notwithstanding subsection (3), where a defendant has been

released on bail subject to a condition, any such condition will remain in force until it is revoked by the court.

General provisions as to ordinances and subordinate legislation.

21. (1) Any ordinance or subordinate legislation under this Law –
- (a) may, for the avoidance of doubt, repeal, replace, amend, extend, adapt, modify or disapply any rule of customary or common law,
 - (b) may be amended or repealed by a subsequent ordinance or subordinate legislation made hereunder, and
 - (c) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient.
- (2) Any power conferred by this Law to make any ordinance or subordinate legislation may be exercised –
- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
 - (b) so as to make, as respects the cases in relation to which it is exercised –
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case

or class of case for different purposes,

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

Rules of Court.

22. (1) The appropriate court may make rules of Court dealing with all procedural matters arising under this Law and which –

- (a) may contain such supplementary, incidental, transitional and consequential provision as may appear to be necessary or expedient,
- (b) may be amended or repealed by subsequent rules of Court, and
- (c) may make different provision in relation to proceedings before different courts of the Bailiwick.

(2) For the purposes of subsection (1), the appropriate court is –

- (a) in relation to Guernsey, the Royal Court,
- (b) in relation to Alderney, the Royal Court or the Court of Alderney, and
- (c) in relation to Sark, the Court of the Sénéchal of Sark.

Amendments, repeals and transitional provisions.

23. (1) The amendments in Part I of Schedule 2 shall have effect.

(2) The repeals in Part II of Schedule 2 shall have effect.

(3) The transitional provisions in Part III of Schedule 2 shall have effect.

Interpretation.

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

"the 1917 Law" means the Loi ayant rapport à la Protection des Enfants et des Jeunes Personnes^d,

"adult" means a person who is aged 18 years or over,

"the Bail Law" means the Bail (Bailiwick of Guernsey) Law, 2003^e,

"Bailiwick" means the Bailiwick of Guernsey,

"Bailiff" means the Bailiff, Deputy Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué,

"breach proceedings" means any proceedings taken against a child offender where he is alleged or has been found to have breached any provision of an order made by a court when sentencing him,

"care requirement" has the meaning given in section 43 of the Children Law,

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

"child" has the meaning given in section 1(2),

"child defendant" has the meaning given in section 1(3),

"child offender" has the meaning given in section 1(4),

"the Children Law" means the Children (Guernsey and Alderney)

^d Ordres en Conseil Vol. V, pg. 342.

^e Order in Council No. XVII of 2003.

Law, 2008^f,

"Children's Convenor" means the holder of the office established by section 30 of the Children Law,

"community parenting order" means an order made under section 48 of the Children Law,

"conviction" includes –

- (a) an entering of a guilty plea,
- (b) a finding of guilt (unless made upon a reference under section 42 of the Children Law),
- (c) a finding that a person is not guilty by reason of insanity,
- (d) any finding that the person in question did the act or made the omission charged, and
- (e) a finding under section 1 of the Loi relative à la probation de Délinquants of 1929^g, in respect of which an order is made placing the person convicted on probation, dismissing the charge or discharging him conditionally,

and **"convicted"** shall be construed accordingly,

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

^f Order in Council No. XIV of 2009.

^g Ordres en Conseil Vol. VIII, p. 365.

^h Ordres en Conseil Vol. XVIII, p. 315.

"criminal court" has the meaning given in section 4(9)(b),

"Customs and Excise" means the service which is comprised of the Chief Officer of Customs and Excise and any officer of Customs and Excise acting by or under his authority,

"customs detention" has the same meaning as in the PPACE Law,

"defendant" has the meaning given in section 1(5),

"the Department" means the States [Committee for Health & Social Care],

"designated officer" has the meaning given in section 4(9)(a),

"enactment" includes a Law, an Ordinance and any subordinate legislation,

"Guernsey" includes the Islands of Herm and Jethou,

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

"Island legislature" means –

- (a) in Guernsey, the States of Deliberation,
- (b) in Alderney, the States of Alderney,
- (c) in Sark, the Chief Pleas of Sark,

"Juvenile Court" means the court constituted in accordance with section 5,

"Magistrate" includes an Assistant Magistrate and an Acting Magistrate,

"Magistrate's Court" means the court established by the Magistrate's Court (Guernsey) Law, 1954ⁱ,

"media organisation" means an organisation whose principal activity is the publication of information,

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

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

"picture" includes a photograph and a representation,

"police detention" has the same meaning as in the PPACE Law,

"police officer" means –

- (a) in relation to Guernsey –
 - (i) a member of the salaried police force of the Island of Guernsey, and
 - (ii) within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey, and
- (b) in relation to Alderney –
 - (i) a member of the salaried police force of the Island of Guernsey,
 - (ii) a member of any police force which may be

ⁱ Ordres en Conseil Vol. XVI, p. 103.

established by the States of Alderney, and

- (iii) within the limits of his jurisdiction, a member of the Alderney Special Constabulary appointed pursuant to section 47 of the Government of Alderney Law, 2004^j,
- (c) in relation to Sark –
 - (i) the Constable, the Vingtenier and a member of the salaried police force of the Island of Guernsey, and
 - (ii) within the limits of his jurisdiction, a special constable,

and related expressions shall be construed accordingly,

"the PPACE Law" means the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003^k,

"prosecutor" means any person who is authorised by Her Majesty's Procureur to prosecute in a court of criminal jurisdiction in the Bailiwick,

"public authority" includes –

- (a) a court or tribunal, and
- (b) any person certain of whose functions are of a public nature,

but does not include an Island legislature or a person exercising functions in connection with proceedings in an Island legislature,

^j Order in Council No. III of 2004.

^k Order in Council No. XXIII of 2003.

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

"relevant court" has the meaning given in section 7(2),

"relevant function" has the meaning given in section 2(2),

"Royal Court" means the Royal Court, sitting as a Full Court,

"secure accommodation" means accommodation, provided for the purpose of restricting the liberty of a child, which –

- (a) has been designated by the Department in accordance with, and
- (b) meets standards and conditions prescribed by,

regulations made under section 68 of the Children Law.

"sentencing court" has the meaning given in section 16,

"States" means the States of Guernsey,

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

"supervisor" has the meaning given in section 15(2)(a),

"traffic offence" has the meaning given in section 4(9)(c), and

"Tribunal" means the Child, Youth and Community Tribunal established by section 33 of the Children Law.

(2) The Interpretation (Guernsey) Law, 1948¹ applies to the interpretation of this Law throughout the Bailiwick.

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

NOTES

In section 24, the words in square brackets in the definition of the expression "the Department" were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 5, with effect from 1st May, 2016.

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

In accordance with the provisions of the Magistrate's Court (Guernsey) Law, 2008, section 47(3), with effect from 1st September, 2009, the references in this section to, first, the "Magistrate" and, second, the "Assistant Magistrate" and the "Acting Magistrate" shall be construed as references to, respectively, a Judge and a Deputy Judge of the Magistrate's Court within the meaning of the 2008 Law.

In accordance with the provisions of the Police Force (Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.

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

Extent.

25. This Law shall have effect throughout the Bailiwick, with the exception that –

¹ Ordres en Conseil Vol. XIII, p. 355.

- (a) sections 5 and 6, and Part V shall not have effect in Alderney, and
- (b) sections 4, 5 and 6, and Parts V and VI shall not have effect in Sark.

Citation and Commencement.

26. (1) This Law may be cited as the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008.

(2) This Law shall come into force on such day as the States may by Ordinance appoint and such an Ordinance may appoint different days for different provisions and different purposes.

NOTE

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

SCHEDULE 1

MODIFICATION OF THE BAIL LAW FOR THE PURPOSES OF
DEFENDANTS UNDER THIS LAW

1. For section 2(4)(c), substitute "section 17 of the Juvenile Court Reform Law,".
2. In section 3(7), substitute "parent of, or other person who has parental responsibility for," for "parent or guardian of".
3. In section 3(7), substitute "that other person" for "guardian".
4. In section 3(7)(a), substitute "parent of, or other person who has parental responsibility for," for "parent or the guardian of".
5. In sections 3(7), 11(6) and 15(9), substitute "defendant" for "child or young person".
6. In section 3(7)(a), substitute "defendant" for "young person".
7. In section 4(3), omit "or, if he is a child or young person, for his own welfare.".
8. In section 5(3), omit "or, if he is a child or young person, for his own welfare.".
9. For section 10(9)(c), substitute –

"(c) **"the appropriate officer"** of the court is –

- (i) in the case of the Juvenile Court, Her Majesty's Greffier or any of his deputies, or
- (ii) in the case of the Court of Appeal, the

Registrar thereof or such other officer as may be authorised by him to act for that purpose."

10. In sections 11(6) and 15(9), substitute "Part V of the Juvenile Court Reform Law" for "section 9 of the Juvenile Court (Guernsey) Law, 1989".
11. In section 12(3), immediately after "the amount in which the surety is to be bound", insert "(but which may not exceed £500)".
12. For section 12(4), substitute –

" (4) Where this subsection applies the recognisance of the surety may be entered into before such person as the court may by order specify or, if it makes no such order, before the Magistrate, Assistant Magistrate or a Jurat, or a police officer of at least the rank of inspector or a person of such other description as may be specified in Rules of Court."
13. In section 15(1)(a), immediately following "or more", insert "in the case of an adult".
14. In section 16(3), substitute "Part V of the Juvenile Court Reform Law" for "sections 6,7 and 8 of the Children and Young Persons (Secure Accommodation) Ordinance, 1997".
15. For section 19(5), substitute –

" (5) References in this Law to a defendant's being kept in custody or being in custody include references to his being detained in the custody of the Department in pursuance of an order made under Part V of the Juvenile Court Reform Law."
16. Immediately after section 19(5), insert –

" (5A) References to a person (other than in section 13) shall be taken to be references to a "defendant" as defined in Part V of the

Juvenile Court Reform Law."

17. In section 19(6), omit the definitions of "child" and "young person".
18. In section 19(6), in the definition of "defendant" substitute "has the meaning given in section 1(5) of the Juvenile Court Reform Law,".
19. In section 19(6), immediately after the definition of "Her Majesty's Procureur", insert the definition ""Juvenile Court" means the court constituted in accordance with section 5 of the Juvenile Court Reform Law,".
20. In section 19(6), immediately after the definition of "Juvenile Court", insert the definition ""the Juvenile Court Reform Law" means the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008,".
21. In section 19(6), for the definition of "Magistrates Court", substitute "includes the Juvenile Court,".

PART I
AMENDMENTS

1. For section 6 of the Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990^m, substitute –

"Child offenders.

6. (1) Subject to subsection (2), where a court makes a compensation order against a child offender, it –

- (a) shall, if he has not attained the age of 14 years, and
- (b) may, in any other case,

order that the amount due shall be paid by his parent or any other person with parental responsibility for him ("**other person**").

(2) The court shall not make an order under subsection (1) if either –

- (a) his parent or other person cannot be found, or
- (b) his parent or other person satisfies the court that he has not contributed to the commission of the offence in respect of which the compensation order is made by neglecting to exercise appropriate care, protection, guidance and control in respect of the offender.

(3) A parent or other person against whom an order is made under this section may appeal against the order in accordance with the

^m Order in Council No. VI of 1990.

provisions of any enactment relating to appeals in criminal matters as if he had been convicted of the offence in respect of which the order was made and the order was a sentence passed upon his conviction.

(4) Any amount which is ordered to be paid by a parent or other person under this section –

(a) shall be recoverable as a civil debt from the parent or other person, and

(b) shall not be recoverable as a civil debt from the child offender,

and for the purposes of execution shall have effect as a judgment of a civil court for such amount.

(5) In this section –

(a) "**child offender**" means a person under the age of 18 years who has been convicted of an offence, and

(b) "**parental responsibility**" has the meaning given in section 5 of the Children (Guernsey and Alderney) Law, 2008."

2. For paragraph 3(1) of the Schedule to the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002ⁿ, substitute –

"3. (1) This paragraph applies to the following sentences –

(a) Probation Order,

(b) Conditional Discharge,

ⁿ Order in Council No. XIV of 2002.

- (c) Bind Over,
 - (d) Attendance Centre Order, and
 - (e) Supervision Order."
3. For section 2(4)(b) of the Bail (Bailiwick of Guernsey) Law, 2003^o, substitute "section 6" for "section 5".

PART II
REPEALS

- 1. Article 1(3) of the Loi relative à la probation de Délinquants of 1929^p.
- 2. The Juvenile Court (Guernsey) Law, 1989.
- 3. The Children and Young Persons (Secure Accommodation) Ordinance, 1997.

PART III
TRANSITIONAL PROVISIONS

The coming into force of this Law is of no effect in relation to proceedings for an offence which is alleged to have been committed or was committed before the date on which the Law comes into force.

NOTE

The word and figure in square brackets shown, incorrectly, in the printed version of this Schedule as "Section 25" should read "Section 23".

^o Order in Council No. XVII of 2003.
^p Ordres en Conseil Vol. VIII, p. 365.