

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR HEALTH & SOCIAL CARE

REVIEW OF THE CHILDREN LAW AND OUTCOMES

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled, “Review of the Children Law and Outcomes” dated 3rd February 2025 they are of the opinion:-

1. To agree that the orders to be known as Supervision Orders further to proposed amendments to the Children (Guernsey and Alderney) Law, 2008, as approved by Resolution 12b on item III of Billet d’État No. XX of 2022 dated 23rd October, 2022, should be known as Community Support Orders.
2. To agree that a Regulation making power should be given to the Committee *for* Health & Social Care within the Children (Guernsey and Alderney) Law, 2008 to enable the Committee to change the names of entities referred to in or under the legislation more efficiently.
3. To agree to the inclusion of a provision to discharge an existing Community Parenting Order if a court makes a Residence Order as set out in section 4 in the attached Policy Letter.
4. To rescind Resolution 19 on item III of Billet d’État No. XX of 2022 dated 23rd October, 2022, further to enactment of the Domestic Abuse and Related Provisions (Bailiwick of Guernsey) Law, 2024 as agreed by the States at its 23rd October 2024 meeting (item I on Billet d’État No. XVIII of 2024 dated 27th September, 2024).

The above Propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

EXPLANATORY MEMORANDUM

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR HEALTH & SOCIAL CARE

REVIEW OF THE CHILDREN LAW AND OUTCOMES

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

3rd February, 2025

Dear Sir

1 Executive summary

- 1.1 In 2022, the States of Deliberation agreed the directions provided by the Committee *for* Health & Social Care to amend the Children (Guernsey and Alderney) Law, 2008 (“the Law”), in the main to reduce delays in decision making for children and their families in public family law proceedings. A second objective of this phase of work was to address any unintended consequences of the original drafting of the Law.
- 1.2 During the course of drafting the amendments to the Law, some minor changes to the drafting instructions that would be helpful were identified from the 2022 instructions and a further matter of policy became apparent which the Committee sees as a matter that should be addressed prior to presenting the amended Law to the States for approval.

2 Supervision orders – Proposition 1

- 2.1 Resolution 12b, on item III of Billet d’État XX of 2022,¹ directed that the Law be amended to provide a power to the court to make a ‘Supervision Order’ as a form of disposal to a Community Parenting Order application. To distinguish these Supervision Orders made under the Law from an existing order which relates to criminal proceedings also called a Supervision Order, it is recommended that these orders are instead called Community Support Orders.

¹ Article IV of Billet d’État No. XX of 2022 dated 23rd October, 2022 - Resolutions - <https://gov.gg/CHttpHandler.ashx?id=162992&p=0>

3 Regulation making power – entity name changes – Proposition 2

- 3.1 The Committee requests an additional Regulation making power be incorporated into the Law to enable it to change the name of an entity in the Law.
- 3.2 Currently, changing the name an existing entity is referred to by in the Law requires a decision of the States.
- 3.3 This change will avoid circumstances where an entity is known in Law by one name but operationally by another such as was the case with the change in name, operationally, of the Safeguarders to Family Proceedings Advisors. While unlikely to cause any significant issues the ability to amend the names of entities by Regulation of the Committee will enable the names used in the Law to be updated more easily where there is future wish to change the name an entity is known by operationally, which will aid clarity.

4 Additional provision for discharging a Community Parenting Order – Proposition 3

- 4.1 A further amendment to the Law has been identified to address an unintended consequence of the 2008 drafting of the Law whereby a Community Parenting Order (CPO) does not necessarily settle matters as to where and with whom a child shall live. This is contrary to the intention of the Law as agreed in 2004, contradicts other provisions in the Law relating to the priority of public family law orders over private law orders, and the purpose and effect of a CPO granted by the Court.
- 4.2 The specific anomaly is that there is no statutory bar to a Residence Order (RO) being made despite the existence of a CPO and that if such a RO were to be made then this could take precedence in respect of determining where the child should live despite the Committee holding enhanced PR (through the CPO) and thereby having a duty to provide a home for the child or to determine where the child should live.
- 4.3 In England & Wales, the Children Act 1989² provides that the making of Child Arrangements Order (equivalent to a RO under the Law) with respect to the living arrangements of a child who is the subject of a Care Order (equivalent to a CPO under the Law) discharges the Care Order. Further, that the making of a Care Order with respect to a child who is the subject of a Child Arrangements Order discharges that order. In Jersey, there are similar provisions which have the same effect.

² Children Act 1989 section 91(1) and Section 91(2) - <https://www.legislation.gov.uk/ukpga/1989/41/section/91>

- 4.4 Consequently, in England & Wales and in Jersey the making of a Care Order extinguishes a Child Arrangements Order and the making of a Child Arrangements Order discharges a Care Order. The two cannot exist alongside one another.
- 4.5 In Guernsey and Alderney, there is no provision in the Law which discharges a CPO on the making of a RO in the same way as in the Children Act 1989. Nor is there a provision which expressly prohibits the making of a RO when there is a CPO in place. Section 22(2) of the 2008 Law provides, amongst other matters, that a RO ceases upon the making of a CPO. So, here the making of a CPO discharges a RO but there is no equivalent in reverse as there is in England & Wales and Jersey.
- 4.6 It is the Committee's view that it was never intended that the two orders should co-exist here. It is considered that this was an unintended consequence of the drafting of the Law.
- 4.7 Whilst the Law does enable a RO to be made notwithstanding the existence of a CPO, there is no logical explanation for the possibility of the two orders co-existing in Guernsey and Alderney and no scenario which can be envisaged which would suggest that this would be an appropriate legal position to exist. Taken at its extreme, this legal position could force the Committee to arrange for a child to live with someone in whose favour the court makes a RO but who the Committee has serious objection to the child's care being entrusted, when the court has otherwise entrusted the Committee to care for the child during their minority and to bear legal responsibility for the child (upon the granting of a CPO).
- 4.8 By addressing this unintended consequence it will remove an area of uncertainty and risk from the current Law.

5 Resolution 19 - Proposition 4

- 5.1 Resolution 19 on item III of Billet d'État XX of 2023, dated 23rd October 2022, sought the reinstatement of those who have care of a child but do not hold parental responsibility within the child cruelty offence in the Loi ayant rapport à la Protection des Enfants et des Jeunes Personnes 1917, by amending a change to the Children Law brought about by the Children (Consequential Amendments etc) (Guernsey and Alderney) Ordinance, 2009.
- 5.2 This direction has been superseded by the changes to the Domestic Abuse Law

agreed by the States at its 23rd October 2024 meeting³. The changes to this Law include the same offence and changes directed by this Resolution 19. Therefore, it is recommended that this Resolution 19 be rescinded.

6 Compliance with Rule 4

6.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.

6.2 In accordance with Rule 4(1):

- a) The propositions contributes to the States' objectives and policy plans in relation to improving outcomes for children and their families.
- b) In preparing the propositions there has been no consultation with stakeholders.
- c) The propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.
- d) There are no financial implications to the States of carrying the proposal into effect.

6.3 In accordance with Rule 4(2):

- a) The propositions relate to the responsibility of the Committee *for* Health & Social Care as set out in its mandate, under its policy and advisory responsibility relating to 'the welfare and protection of children, young people and their families'.
- b) The propositions have the unanimous support of the Committee.

Yours faithfully

A H Brouard
President

M P Leadbeater
Vice President

³ Domestic Abuse and Related Provisions (Bailiwick of Guernsey) Law, 2024 - States of Guernsey - <https://www.gov.gg/article/202162/Domestic-Abuse-and-Related-Provisions-Bailiwick-of-Guernsey-Law-2024>

A D S Matthews
Alderney Representative A J Snowdon

G St Pier

G Oswald