



MATTERS AFFECTING CHILDREN, YOUNG PEOPLE AND THEIR FAMILIES

XVII
2004

BILLET D'ÉTAT

TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

I have the honour to inform you that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE, on WEDNESDAY, the 27th OCTOBER, 2004,** immediately after the meeting already convened for that day, to consider the item contained in this Billet d'État which has been submitted for debate by the Policy Council.

DE V. G. CAREY
Bailiff and Presiding Officer

The Royal Court House
Guernsey
24th September 2004

HEALTH AND SOCIAL SERVICES DEPARTMENT

MATTERS AFFECTING CHILDREN, YOUNG PEOPLE AND THEIR FAMILIES

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

27th August 2004

Dear Sir

This report contains proposals for new legislation on matters affecting children, young people and their families. The contents are as follows:

- 1. Executive summary** (page 4)
- 2. Introduction** (6)
- 3. Background** (8)
- 4. The proposals for new legislation** (12)

There is a brief overall introduction and then each of the parts listed is subdivided as follows:

- details of the relevant consultation document(s);
- the proposals for new law;
- recommendations for implementation;
- outline of resource implications;
- outline of how the issues considered are dealt with in other jurisdictions;
- responses to consultation.

Part 1: Guiding principles (13)

Part 2: Parental responsibility (17)

Part 3: Orders with respect to children in family proceedings (20)

- Part 4: Duties of the States to children and families, subdivided into:
 - A: General duties (23)
 - B: Duties to children in the care of the States and their families (24)
- Part 5: Children in need of care, protection, guidance and control, sub-divided into:
 - A. Grounds for compulsory intervention in respect of children (27)
 - B. Duties to children at risk (28)
 - C. Emergency Protection (29)
 - D. The Child, Youth and Community Tribunal (29)
 - E. Parental Responsibility Orders (32)
 - F. The age of criminal responsibility; juvenile court procedures for those aged under 18 (33)
- Part 6: Secure accommodation and other restrictions of liberty (39)
- Part 7: Children placed out of the jurisdiction of the Bailiwick. (42)
- Part 8: Registration of childminders, nurseries, private foster carers etc (44)
- Part 9: The Bailiwick Safeguarder Service. (47)
- Part 10: Assisted reproduction (49)
- Part 11: Enforcement of orders (51)
- Part 12: Court procedures (54)
- Part 13: International conventions (58)

5. Consultation process. (61)

This sets out the process of the various consultations but not the outcomes: these are summarised as a sub-heading under the specific proposals and some of the lengthier ones are reproduced as appendices.

6. Estimated resource requirements. (68)

This sets out, in tabular form, some of the more detailed aspects. There is also an outline in each of the sections on specific proposals.

7. Conclusions and Recommendations (79)

8. Appendices.

- A.** Glossary (81)
- B.** Summary of review process and expertise engaged (82)
- C.** List of the consultation documents (83)
- D.** Practice direction on the interim measures (84)
- E.** Scottish children's hearing: a proposed structure for Guernsey (92)
- F.** Responses to the consultation by States' agencies, the Guernsey Bar, NSPCC (94)
- G.** Response of the fathers' rights lobby and the Health and Social Services Department's reply (143)

EXECUTIVE SUMMARY

- Many of the Bailiwick laws relating to children, young people and their families are outdated. In many respects, they no longer accord with the realities of family life today. The introduction of Guernsey's Human Rights Law highlighted the necessity for human rights compliant legislation in this field. As an island community relying on a globally flexible workforce, it is important to comply with internationally agreed standards to ensure world-wide recognition and enforcement, of Bailiwick legislation.
- The Children Board, now the Health and Social Services Department (HSSD), undertook a thorough review of child and family legislation and consulted on a broad range of issues including: juvenile crime; private family law; state assistance and intervention in the care of children; court practice and procedures; children's participation in proceedings; the position of Bailiwick children living away from the Bailiwick.
- The review of the law provided a unique opportunity for the Bailiwick to consider the best and most effective practices world-wide. Rather than simply adopt a "Guernsified" version of the law in England (often misleadingly referred to as "the UK") the Children Board became interested in the Scottish approach to troubled children, particularly how such matters are dealt with in Scotland's island communities. Scots law differs from the rest of the British Isles in that no initial distinction is made between children who have fallen foul of the criminal law, those at risk of or suffering from abuse or neglect and those who are beyond control. Except in the case of serious criminal offences, such children are not dealt with by a court but by a lay tribunal, known as the **children's hearing**. This system has been operating for more than 30 years. It operates on the principles (a) that in order for troubled children to become responsible, law-abiding and happy members of society, it is necessary to look at all aspects of their lives, i.e. their needs as well as their deeds; (b) the local community is in the best position to decide what is best for its children, and (c) children should be helped to play a full part in decisions about their lives. Research and practice all over the world confirms the importance of applying these principles.
- The HSSD believes that a system based on the children's hearing, to be called the **Child, Youth and Community Tribunal (CYCT)** would best serve the needs of the Bailiwick's children and families. It would be tailored to take account of the Bailiwick's unique features as well as improve on some aspects of the Scottish system.
- As well as a tribunal for dealing with the majority of troubled children, the HSSD makes the following proposals for change and updating law and practice:
 - A set of guiding principles will set out the basis on which the new law will be applied.
 - The law will adopt a concept of parental responsibility, and set out clearly who will have this, what it means and in what circumstances it is or may be acquired and lost.

- A number of more modern orders will replace those for custody and access.
 - There will be a general duty on States' agencies to work together to identify and assist families who have children who are in need of help at an early stage, thus preventing problems from developing or escalating.
 - Specific duties to children in the care of the States will be set out, to include young adults leaving States' care.
 - The grounds for compulsory state intervention in the lives of children and families will be updated and clarified, as will a duty of States' agencies to taken action where children are at risk of harm.
 - There will be a thorough revision of emergency provisions for protecting children.
 - The age of criminal responsibility will be increased from 10 to 12. Where children do appear before a criminal court, special procedures will apply to them up to and including the age of 17 (an increase from 16).
 - The law in respect of secure accommodation for children will be up-dated.
 - Children will be placed out of the Bailiwick only after exhaustive enquiry, where there is no alternative and subject to strict safeguards.
 - Regulations will ensure that those looking after other people's children (eg: childminders, private foster carers) are safe to do so, and properly equipped and trained.
 - The current fragmented guardian and court welfare services will be combined and streamlined under the auspices of the Royal Court.
 - The legal position of children born through assisted reproduction will be clarified.
 - There will be a wider menu for enforcement of court orders in family proceedings, aimed primarily at helping parties come to agreement.
 - Court procedures will ensure a speedy, cost effective and non-confrontational resolution of cases wherever possible, including greater use of mediation.
 - The Bailiwick will become party to a number of international conventions dealing with children and family life.
 - Special measures will be introduced for some children appearing in court as witnesses.
1. Inevitably, introduction of such a wide ranging law will have resource implications. Some of these are inescapable if States agencies are to meet their obligations under the new Human Rights Law.
 2. The estimated resource requirements necessary to implement the recommendations, are: a capital requirement of £200,00 to cover the costs of any modification and alteration to a rented property, for offices and equipment for the Bailiwick Reporter and staff; a revenue requirement of £ £479,000 in 2005, £771,500 in 2006, and £589,500 recurring from 2007; and a total additional establishment of 11.5 full time equivalent posts.

Initial set up and capital costs are expected to result in overall savings in the medium and long term.

- The costs of the Child, Youth and Community Tribunal will be off-set by savings in court costs and time.

- Investing in early intervention and a holistic approach is expected to result in long term savings in the cost to the states of social and health problems later in life;
- Investing in help for care leavers should prevent future expenditure on the social, mental health and criminal justice services.
- The Bailiwick Safeguarder Service will result in savings in the current contract with NSPCC and in staff time in the Probation Service as they will no longer be required to prepare court welfare reports.
- New orders allowing foster carers and relatives to obtain parental responsibility will save in social work time in respect of children who are currently in the care of the states.
- Increased use of mediation at an early stage in custody/access disputes should result in saving in court and legal aid costs.

It is thus crucial that the new law has the necessary resources underpinning it to ensure that it operates effectively, for the well-being of all Bailiwick people.

INTRODUCTION

There are many Bailiwick laws affecting children in the fields of public law, private law and juvenile justice (the terms ‘children’, ‘public law’, ‘private law’ and ‘juvenile justice’ are defined in appendix A). Details of some of these laws are set out in the Background (next section). Two of the most important, the Children and Young Persons (Guernsey) Law 1967 and the Matrimonial Causes Law (Guernsey) 1939 were passed 37 and 65 years ago respectively. These laws no longer reflect the realities of family life in the Bailiwick which, in common with world-wide trends, has changed almost beyond recognition in many respects.

All of the other jurisdictions in the British Isles have introduced major new children legislation since 1989. The first of these was the Children Act 1989, covering England & Wales; the latest was Jersey in 2002. These changes to children and family law have been echoed across the world, for example in the other Crown dependencies and overseas territories and in the former soviet satellites in Eastern Europe.

Increasingly, domestic laws are framed to comply with international treaty obligations, not only the European Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”) but also, for example, the United Nations Convention on the Rights of the Child (“UNCRC”) and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“the Beijing Rules”). As well as setting minimum standards, an element of international standardisation also allows for easier formal recognition and enforcement of legal principles and court orders across national boundaries.

There have been efforts to keep Bailiwick legislation and practice abreast of at least some of the changing features of family life as well as legal trends and developments in the UK and internationally.

However, updating provisions and amendments have, of themselves, led to increasingly fragmented law and, perhaps most crucially, have not been sufficient to bring Bailiwick law into line with obligations under the ECHR, which is essential in the light of impending implementation of the Human Rights (Bailiwick of Guernsey) Law 2000. Areas where the current law is deficient include, for example: (i) provision for children to have a voice in proceedings affecting them; (ii) safeguards for children (and their parents) who are placed out of the Bailiwick; (iii) the rights of children (and their parents) who are in the care of the HSSD; (iv) emergency protection provisions; (v) the position of unmarried fathers; (vi) children in custody/ secure accommodation.

The need to ensure compliance with the ECHR, presented a unique opportunity to undertake a thorough review of all the Bailiwick's laws relating to children. The Children Board commenced this review in September 2001, with the employment of a full-time legislative advisor. She has spent the past three years looking at what happens in the Bailiwick, the UK and across the world, with a view to creating a child law for the 21st century, tailored to the unique character of all the Bailiwick islands.

The purpose of this States' Report is to present proposals for new legislation covering a wide range of issues in the field of children law, as well as some basic, guiding principles.

In addition to new legislation, the States' Report also makes recommendations in respect of:

- i) European and international treaty obligations.**
- ii) The treatment of children (and other vulnerable witnesses) who are required to give evidence in criminal court proceedings.**

In the course of the review, a total of 11 consultation documents and three documents providing general background and information were published by the Children Board. These have been widely distributed (see Section 5 below on 'Consultation'), together with two summaries, one for adults and one for children. This report draws on the information in these documents but does not repeat it in detail. The documents are listed in Appendix C.

BACKGROUND

Current law and practice in the Bailiwick

The Children and Young Persons (Guernsey) Law 1967 (referred to in this report as “the 1967 Law”) is the main statutory provision covering child protection matters and children in trouble with the criminal law: it is based to a large extent on the English Children and Young Persons Act 1933.

Children who are the subject of private law disputes are primarily covered by the Matrimonial Causes Law (Guernsey) 1939 (“the 1939 Law”) and the Domestic Proceedings and Magistrates Court (Guernsey) Law 1988.

There have been a considerable number of amendments to these statutes, as well as substantive laws making separate but linked provision for children. Some important examples of the latter are: The Adoption (Guernsey) Law 1960, The Education (Guernsey) Law 1970, The Child Protection (Guernsey) Law 1972, The Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law 1978, The Juvenile Court (Guernsey) Law 1989 and The Secure Accommodation (Guernsey) Law 1997.

Many linked rules and ordinances (also with amendments) regulate procedure under the laws.

Some practices have developed which have no statutory basis but make a significant impact upon how the existing laws are applied. They include the following:

- i The court welfare service (CWS) provides reports on the best interests of children involved in private law disputes in both the Royal Court and Magistrates Court. The CWS is split between the HSSD and the Probation Service, and this can at times compromise its independence.
- ii The youth offending panel (YOP) was set up in 1998 and comprises representatives from health, education, social work, police and probation services. Although the final decision on prosecution rests with the police (or the law officers in serious or complex matters) the YOP makes recommendations on whether juvenile offenders should be prosecuted through the courts. Since September 2003 a pilot project has included 17 year olds in the YOP scheme.
- iii Practice Direction No 5 of 2002 was issued by the Royal Court on 22 December 2002. This is reproduced at Appendix D and seeks to address, on an interim basis, some of the 1967 Law’s shortcomings in public law and some private law cases.

The law and practice in Alderney and Sark

The extent to which the various laws and practice apply across the Bailiwick is complex. To summarise the main points:

- a. The 1967 Law was fully extended to Alderney (subject to appropriate exceptions, adaptations and modifications) in 1998. Previously only those parts relating to juvenile crime applied.
- b. Sark has no child protection legislation, although parts of the 1967 Law relating to juvenile crime do apply.
- c. The HSSD's mandate extends to Alderney but not to Sark.
- d. Divorce in Alderney and associated custody and access issues are dealt with under the 1939 Law, but there is separate law covering private law issues not linked to divorce.
- e. The Guernsey divorce legislation has very recently been extended to Sark; unlike in Alderney and Guernsey, there is no specific legislation to deal with private law disputes in unmarried families.
- f. The court welfare service and youth offending panel do not cover Alderney and Sark.
- g. The interim legal aid scheme operating in Guernsey now applies in both Alderney and Sark.

The law in the British Isles

Every other jurisdiction in the British Isles has updated its children law in recent years. These new laws have all been drafted to comply with the UN Convention on the Rights of the Child, as well as the ECHR.

Following a review of law and practice lasting several years, the Children Act 1989 ("the 1989 Act") was passed, covering England and Wales. More detail of the 1989 Act is given in the relevant sections of this report, but a few examples of the radical changes include: a statutory definition of the term "parental responsibility"; granting of legal status to unmarried fathers in many circumstances; replacing the concepts of custody and access with a broader range of orders. The 1989 Act was also designed to place the child at the centre of proceedings, with a switch from emphasis on the rights of parents to their responsibility for the welfare of the child.

One of the consequences of the 1989 Act has been that existing Bailiwick legislation no longer dovetails, as it used to, with that of England and Wales and this has implications for Bailiwick children placed in the UK.

The 1989 Act has served as the blueprint for subsequent legislation in the British Isles, including the Children (Northern Ireland) Order 1995, the Isle of Man's Children and Young Persons Act 2001 and the Children (Jersey) Law 2002. This is not to say that these jurisdictions have adopted the 1989 Act in its entirety; changes have been made.

The Children (Scotland) Act 1995 (“the Scottish Act”) follows the 1989 Act to a considerable extent but it also differs in some fundamental respects. Most significant of these differences is that children under 16 who offend against the criminal law or who are in need of care and protection are not dealt with by a court but by a panel of lay people. Details of this are given in the consultation document “Children’s Hearings: a way forward for Bailiwick children and young people”.

Scope of the legislative review

Initially, it was intended that the review would encompass the following:

- The care and protection of children, including investigation, emergency protection, care (fit person) orders, supervision orders.
- Children involved in private law proceedings.
- Accommodation of children, including residential homes and foster care.
- Provision of services for children and families, including children in need and the respective duties of the HSSD and other agencies involved in providing services.
- Day care facilities for children.
- Juvenile justice, including the measures available for dealing with young offenders.
- Participation of children/representation of their views in court and other proceedings affecting them.
- Parental responsibility for children, including how it should be defined, who should have it and how it might be acquired.
- Adoption.

This report has proposals in respect of all of the above, with the exception of adoption. Although the law in this respect is also in urgent need of updating (having been passed in 1960), the view of the Children Board, after careful consideration, was that this should be the subject of separate legislation following a substantive Bailiwick children law. In the interim, measures similar to those in Practice Direction No.5 of 2002 (Appendix D) are being employed in the Royal Court to ensure compliance with the ECHR in the increasingly complex area of adoption law.

In the course of the past three years, it has proved difficult to keep the review within containable limits and a number of other issues have come to the fore. Consideration has also been given to the following and proposals in respect of them are set out in this report:

- Assisted reproduction.
- Children placed out of the jurisdiction of the Bailiwick (“off-island placements”).
- International treaties and conventions.
- Secure accommodation.
- Children appearing in court as witnesses in criminal cases.
- The status of the Child Protection Committee.

- The position of children leaving the care of the HSSD.

What the review has NOT considered in any detail is financial provision for children subject of private law proceedings and inheritance laws, although it is acknowledged that new children law will have an impact in both these areas.

The review process

The review of children law in the Bailiwick has been actively on-going since September 2001, involving widespread consultation within States' bodies, as well as with the general public, including young people. Details of this, and the expertise engaged, are set out in Section 5, "Consultation process" and in Appendix B.

THE PROPOSALS FOR NEW LEGISLATION

It is proposed that a single piece of legislation, to be called the Children (Bailiwick of Guernsey) Law, (referred to as “the new Law”) should cover a wide range of issues, as detailed below. While much of the new Law will be consolidation and updating of existing legislation, some aspects will be entirely new to the Bailiwick.

The recommendations for the new Law are based in large part upon what happens in Scotland, as well as drawing on the experience of England and further afield.

Following consultation, it is hoped that most, if not all, of the new Law will extend to Alderney and Sark, but that will depend upon the agreement of the States of Alderney and the Chief Pleas of Sark.

The new Law will be compliant with the principles set out in the United Nations Convention on the Rights of the Child as well as the ECHR. It must also be drawn to facilitate recognition and enforcement in the UK and across national boundaries in appropriate circumstances.

There is a fine balance to be struck between unduly lengthy and complex legislation and overly simplistic law which then fails to address crucial factors.

The new Law will, given its proposed breadth, be of significant length and it is proposed that it should be divided into clearly differentiated parts for two reasons: i) to aid ease of reference; ii) to enable staggered implementation. The second point reflects the fact that some aspects have few if any resource implications, could be introduced almost immediately, and will complement existing legislation where appropriate in the interim. At the other end of the spectrum, some proposals will require considerable preparation, including in some instances secondary legislation.

The proposed parts of the new Law are set out individually, each following the format:

- details of the relevant consultation document(s);
- the proposals for new law;
- recommendations for implementation;
- outline of resource implications;
- outline of how the issues considered are dealt with in other jurisdictions;
- summary of responses to consultation.

Part 1: Guiding Principles

Relevant consultation document(s)

- Children Law: Basic Principles
- Corporate Parenting
- Evaluation of Sentencing Options and Community-Based Initiatives for Young Offenders and Those at Risk of Offending

The proposals for the new Law

The following basic principles would act as a guide to be considered by any person or body exercising any powers or duties set out in the new Law:

1. The welfare of the child is the paramount consideration, except where there is an immediate risk to the safety of another person. Where welfare is not paramount, then it should be a primary consideration.

This is the overriding principle. In the event of a conflict between the welfare principle and any other principle, the welfare principle shall take precedence.

2. Children are best brought up within their own families and/or community wherever possible. Where it is not possible, children should maintain contact with their family and/or community.
3. A court shall not make an order in respect of a child unless it is necessary to do so in order to provide the child with care, protection, guidance or control.
4. Children of all ages must be given an opportunity to express their wishes, feelings and views in all matters affecting them.
5. It is presumed that from the age of 12 children are capable of forming a considered and rational view. This presumption may be challenged in individual cases.
6. Children in the care of the States are entitled to the same levels of care, protection, guidance and control as would be provided by a normal, loving family.
7. Any delay in determining a question about a child's upbringing is likely to be prejudicial to the child.
8. In any case involving criminal activity or the risk of criminal activity by a child, the prevention of such activity in both the short and long term shall be a primary consideration.
9. In all matters affecting children and family relationships, all reasonable effort should be made to resolve matters by agreement, with recourse to formal proceedings (whether court or tribunal) as a last resort. All matters in respect of children, whether formal or otherwise, should be conducted in an atmosphere of openness and non-confrontation.
10. There shall be a presumption 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, the court and any administrative authorities to take reasonable steps to promote such contact.

11. In the event of conflict between parents, there shall be no discrimination on the grounds of such matters as gender, marital status, ethnic or cultural origin, religious affiliation or sexual orientation.

In ascertaining the welfare of the child, a range of matters should be taken into consideration, including, for example:

- the child's wishes and feelings (considered in the context of age and maturity);
- physical, emotional and educational needs;
- the age, gender, ethnicity, cultural background, language, religion and any other relevant characteristics of the child;
- any harm the child has suffered or is at risk of suffering;
- how able the parents (or other relevant people) are of meeting the child's needs;
- the likely effect of a change in circumstances, including any disruption to the continuity of the child's care;
- the importance and likely effect of contact between the child and both parents, any siblings, other relatives and people significant to the child;
- the likely effect on the child of removal from his/her immediate community, including the effect of removal from the jurisdiction of the Bailiwick;

These matters will be known as the 'welfare checklist'.

Recommendations for implementation

It is proposed that this part be implemented immediately the new Law comes into effect.

Outline of resource implications

Save for the training of all those involved in applying the new Law, there are no resource implications.

Outline of how these issues are dealt with in other jurisdictions

All the UK children acts specify that the welfare of the child is to be the paramount consideration in any question relating to the child's upbringing. Exceptions may be made, most notably in the case of secure accommodation, but even then welfare is to be an important consideration.

The other principles proposed are not specifically listed in the UK children acts, although case law and statutory guidance has developed most of them and some are embodied in international conventions, most notably the ECHR and UNCRC. Rather than rely on case law and guidance developed in other jurisdictions, the HSSD takes the view that it would be better for Bailiwick law to include these principles directly.

There is a 'welfare checklist' included in the 1989 Act and this is mirrored in Northern Ireland, the Isle of Man and Jersey. The Bermudan Children Act 1998 also incorporates a welfare checklist, which is a slightly expanded version of the English model. The proposal here is also based on the 1989 Act, adapted for the Bailiwick.

Summary of responses to consultation

The response of all States' agencies involved with children matters has been that, in general, they have always striven to act in accordance with the principles proposed. Those agencies have also indicated that it would nonetheless be helpful to have the principles clearly recited in the interests of transparency and consistency.

Principles 1 – 8 were included in the consultation papers and agreed by all those who commented upon them.

Principles 9 - 11 have been added following the public consultation, to address concerns:

- (i) that fathers are sometimes thought to be discriminated against in custody and access disputes; and
- (ii) that parents with responsibility for day-to-day care may too easily flout orders for contact.

Children themselves have expressed a range of views on the issue of principle 4 (consultation of children on matters affecting them). There is no clear age at which they felt there should be a presumption that children are capable of forming a view, although the following points emerged:

- Children were clear that they should always be consulted, even very young children, as their views are important and they are capable of expressing them, even if non-verbally.
- They did not feel, however, that the child's view should necessarily prevail, as younger children, in particular, may not understand the full implications of what was happening.
- There was a variation in the age at which they thought there should be a presumption of an ability to understand and make a properly informed decision; this varied from 6 to 16 years, with 10 and 12 being the most frequently mentioned ages. Children in the care of the HSSD tended to opt for a significantly lower age.
- There was concern that a specific age may mean that children below that age would not be consulted; on the other hand, there was a worry that, without a specific legal age, children would not be asked at all, which was what many of the children consulted often perceived as happening now.
- The overall view was that children would like a specific age in legislation, which would mean that there would be an obligation on parents and public authorities to consult them formally on important matters. It was thought to be good, for example, that the courts in Scotland write, as a matter of course, to all children aged 12 and over whose parents are involved in divorce proceedings. The children also thought that there should be an

option, for example, for children not to be sent documents, even where they would normally be entitled to receive them, where this would be harmful to them.

The NSPCC expressed concern that a set age would mean, in effect, that children below that age would not be consulted and this concern was shared by others, including, for example, a representative of the Guernsey Bar and a paediatrician.

As well as the more general position outlined above, children were specifically consulted on issues of consent and confidentiality in a medical context. Some of the findings are set out in the report of the Who Cares? Trust, "Having a Say".

- On the issue of giving medical consent independent of parents, there was no clear consensus, ages for this ranged primarily between 14-18.
- Those consulted felt strongly that they should be able to have confidentiality in medical matters at an earlier age; 12 was the most often mentioned. They also appreciated that, in circumstances which were dangerous or life-threatening for the child, this confidentiality would need to be broken but that this should never happen without first discussing this with the child, who would be likely to agree if it was properly canvassed and explained.

Part 2: Parental Responsibility

Relevant consultation document(s)

- Parental Responsibility
- Children and Private Law

The proposals for the new Law

1. Parental responsibility to be defined. There are, in essence, two options: a broad “catch-all” definition, as in the 1989 Act, or a more specific definition, as in the Scottish Act. Both of these are examined in the consultation paper on “Parental Responsibility”. The HSSD’s view is that the more specific definition is to be preferred (perhaps phrased more simply than in Scotland) as it sets out clearly just what the rights and responsibilities are, which include:

Responsibilities:

- to safeguard and promote the child’s health, development and welfare;
- to provide control, direction and guidance;
- (where not living with the child) to maintain regular direct contact;
- to act as legal representative.

Rights:

- to live with the child or participate in decisions about where the child lives;
- to control, direct and guide the child;
- to maintain regular direct contact;
- to act as legal representative.

2. All mothers and married fathers to have parental responsibility in all cases; it will continue after separation and divorce: the only way they will lose it is through adoption.
3. Unmarried fathers to be able to acquire parental responsibility in the various ways set out in the consultation document “Parental Responsibility”. Most significant of these are:
 - formal agreement with the mother;
 - court order;
 - jointly registering the birth;
 - marriage to the mother.

Once a father has acquired parental responsibility, he will only lose it through a court order made in exceptional circumstances.

NB: it is NOT proposed that the provision in respect of joint registration be retrospective.

4. Testamentary guardians to have parental responsibility
5. Step-parents to acquire parental responsibility by court order. This must be in full consultation with the children concerned.
6. Anyone with a residence order or special guardianship order will have parental responsibility during the currency of the order. (See **Part 3: Orders with respect to children in family proceedings** for more details of residence orders and special guardianship.)
7. More than one person may have parental responsibility. Where parental responsibility is shared, there is an expectation that agreement will be reached on issues affecting the child's upbringing but it will not be essential for this to be the case, except in the following circumstances:
 - change of name;
 - adoption;
 - removal from the jurisdiction of the Bailiwick (save for periods of up to a month by the holder of a residence order);
 - marriage;
 - change of school;
 - change of religion.
8. In some exceptional circumstances, where the care of a child is effectively being shared by someone not a parent, it will be possible for that non-parent to be granted some or all of the aspects of parental responsibility without also having a residence order.
9. Anyone temporarily looking after a child to be able to exercise such aspects of parental responsibility as are immediately necessary to safeguard or promote the child's welfare.
10. For the exercise of parental responsibility in circumstances where a child is in the care of the States, please see **Part 5: Children in need of care, protection, guidance and control**.
11. Parental responsibility shall cease to have effect on the child's 18th birthday. Parental rights will cease at age 16.

Recommendations for implementation

It is proposed that this part be implemented immediately the new Law comes into effect.

Outline of resource implications

Save for the training of all those involved in applying the new Law, there are no resource implications.

Outline of how these issues are dealt with in other jurisdictions

The proposals here combine what the HSSD believes to be the best of what happens in the UK. For example, while the HSSD believes that a specific definition of parental responsibility (similar to that in Scotland) is preferable, it also prefers the recent change in the law of England & Wales to give automatic parental responsibility to fathers who jointly register the birth with the mother. Details of the different approaches on the various issues referred to are set out in the consultation paper “Parental Responsibility”.

Summary of responses to consultation

The small number of unmarried fathers who responded were unequivocal that men in their position should automatically have parental responsibility on the same footing as mothers. A more detailed account of the views of the fathers’ rights lobby and the response of the Department is given at Appendix G.

So far as a definition of parental responsibility is concerned, the individual responses to this were that it needs to be flexible, so the English definition was preferred.

On the issue of step-parents acquiring parental responsibility, the young people themselves were in large part clearly and adamantly opposed to this. While they felt it was perhaps reasonable in the case of very young children, they felt that from the age of about eight upwards, parental responsibility should only be granted with the agreement of the child. Similarly, the NSPCC responded that parental responsibility should only go to step-parents following consultation with children (no age limit given).

In general, it was felt that parental responsibility should continue to age 18. The NSPCC requested the States to consider making it 21. Two of the individual responses also thought it should be 21.

Part 3: Orders with respect to children in family proceedings

Relevant consultation document(s)

- Children and Private Law
- Parental Responsibility

The proposals for the new Law

The orders listed would be available to any court in any family proceedings, unless specifically stated to the contrary. Although normally an application for an order would be made, the court could make any order the judge thought to be appropriate in all the circumstances.

“Family proceedings” to be defined by the new Law, to include not only proceedings made under the new Law itself but also, for example, divorce proceedings, domestic violence applications, adoption.

1. Residence orders would set out with whom a child is to live. A person who has a residence order would automatically have parental responsibility, to be shared with anyone else with parental responsibility. Residence orders would replace existing custody orders. Conditions may be attached to it, eg., prohibiting a specific person from removing the child from the care of the person with a residence order. Residence orders will continue until age 18 unless terminated earlier but only in exceptional circumstances will a residence order be made for the first time in respect of a child aged 16 or over.
2. Contact orders would detail with whom a child will have contact. Such orders will replace access and are broader in scope: for example, they can encompass indirect contact, such as by telephone or letter and also be made in respect of a sibling or other person (not necessarily a relative) important to the child. They may also have conditions attached.
3. Specific issue orders would deal with a dispute over a particular aspect of parental responsibility. An example is disagreement between parents about medical treatment. It would also be possible for public authorities to apply for specific issue orders, for example where parents were refusing to consent to medical treatment against the advice of doctors, or to an assessment where there is concern about the welfare of a child.
4. Prohibited steps orders would prevent a specific course of action without court consent. A common example in the UK is removal from the jurisdiction.
5. Special guardianship would be an enhanced form of residence order, normally to be used where a child is expected to live with a carer (other than parent) in the long-term

but adoption is not appropriate. It is particularly likely to be relevant to older children with significant connection to their birth family and/or those living with relatives.

The new Law would set out who may apply for orders; it is proposed this be as follows:

- A. Those who could apply for orders 1-4 as of right (ie: without the need for court permission) would include:
 - any parent (including an unmarried father);
 - anyone with parental responsibility;
 - a step-parent;
 - anyone with whom the child has lived for the preceding year;
 - the child, where aged 12 or over.
- B. Anyone else, including, for example, grandparents, may apply for the orders 1-4 above with the consent of the court, when the court will be required to consider such matters as the applicant's connection with the child, the wishes of the child's parents and any risk of disruption to the child. This category will also include children under 12, where a safeguarder will normally be asked to report on their competence and, if necessary, conduct the case on their behalf.
- C. In exceptional circumstances, even where someone falls into category A above, leave may be required from the court for an application to be made. This will encompass cases, for example, where a large number of court applications have already been made and constant litigation is contrary to the interests of the child.
- D. Those entitled to apply for special guardianship would be those with whom the child already has a significant connection, and would include, for example:
 - a HSSD foster parent with whom the child has lived for the preceding year;
 - anyone with whom the child has lived for three years;
 - anyone with a residence order.

Recommendations for implementation

It is proposed that this part be implemented immediately the new Law comes into effect.

Outline of resource implications

There are a significant number of cases where children are placed in long term foster care or with extended family, but are officially in the care of the HSSD. In many of these cases, it is likely to be in the interests of the child to become, instead, subject to residence or special guardianship orders, so that the day-to-day carers may acquire parental responsibility, rather than that being exercised (as at present) by the HSSD. Where these carers are dependent upon fostering allowances, the HSSD proposes that secondary

legislation should provide for allowances to be paid, in appropriate cases, to holders of residence or special guardianship orders, so that threatened financial hardship does not prevent a change in status that would otherwise be of benefit to child and carer, many of whom find continuing social work involvement unnecessary, embarrassing and intrusive. Such allowances should result in a net saving to the States; not only will they be off-set by a reduction in fostering payments, but HSSD staff will also be freed from the on-going time and bureaucracy involved in monitoring children who are, in practical terms, only nominally in the Department's care.

There may, however, in the short term, be some delay in drafting the necessary secondary legislation.

Outline of how these issues are dealt with in other jurisdictions

What is set out above is modelled on what happens in the UK, or is shortly to happen; some of the proposals (for example special guardianship) are based on very new law which has been passed but is not due to come into effect until 2004/5.

One area in which Scotland differs significantly from England and Wales is the extent to which children themselves can ask for orders. In England and Wales, children can only bring proceedings with the leave of the court and then it must be in the High Court. In Scotland, there are no specific restrictions, although the court would need to be satisfied that the child was competent to give instructions.

Summary of responses to consultation

The NSPCC made a number of observations and suggestions on the issues raised. These included whether orders akin to **family assistant orders** should be incorporated into the new Law. These are in the 1989 Act and enable the court to order that a local authority should assist in the implementation of a court order in private law matters. They are usually used in difficult contact disputes and can only be made with the consent of the adult parties. In practice, they have been decreasingly used in England due to a chronic shortage of social work staff to undertake even the most pressing child protection work. This issue is dealt with in more detail in the Part 11 below (enforcement of private law orders) and in Appendix G (response of the fathers' rights lobby).

The NSPCC welcomed the opportunity for children to play a full role in proceedings affecting them. It was concerned to ensure that appropriate measures are taken to facilitate this, and that such rights should apply equally in private and public law matters. This is a vigorously debated issue in England and Wales, where children are automatically entitled to separate representation in public law matters, whereas this only happens in a small minority of private law cases.

Part 4: Duties of the States to children and families

Relevant consultation document(s)

- Children in Need
- Corporate Parenting

The proposals for the new Law

The many enquiries there have been in Great Britain into the death or serious injury of children at the hands of their carers, have invariably highlighted: (a) the need for early, targeted intervention into the lives of children whose families are experiencing difficulty in caring for them; (b) how crucial it is for those agencies involved with children and families to work in partnership with one another, sharing information and providing services.

While child death and serious injury are fortunately at the extreme (and rare) end of the spectrum, the advantages of early intervention and multi-agency working are clear in virtually all cases of family difficulty. If the appropriate help can be identified and provided at an early stage, problems may be “nipped in the bud” or at least prevented from escalating to a stage where compulsory intervention and removal of children from their families may be the only option.

Where children do need to come into the care of the States, whether on a voluntary basis or through compulsory intervention, the duty to those children and their families will be clearly set out in the new Law and associated regulations.

It is, therefore, proposed:

A. GENERAL DUTIES

1. That there be a duty on States departments to plan, assess and provide services to children in need. A primary aim of this duty is to promote the upbringing of children by their families and prevent them coming into the care of the States.
2. A definition of “need” to be agreed, to include children whose health or development (physical and/or emotional) is likely to be seriously impaired without the provision of services, children who are disabled and children who are adversely affected by the disability or chronic or serious illness of a family member.
3. Meeting the duty set out in 1. above shall include:
 - a duty on States’ departments to co-ordinate, as well as assess and provide services jointly;
 - working with the voluntary sector;

- production of a regular children's services plan for the provision of services;
- the setting up, on a statutory basis, of a child protection committee (CPC).

B. DUTIES TO CHILDREN WHO ARE IN THE CARE OF THE STATES AND THEIR FAMILIES

When children need to be in the care of the States, whether on a voluntary basis or as a result of statutory intervention, whether in the long or short term, the new Law will set out the duties and obligations of those agencies responsible for their care as follows:

1. To provide accommodation to children in need. This covers such issues as the respective rights and duties of the States, parents and children. It will also include (mostly by secondary legislation): (i) provision of foster carers and up-dated regulations governing recruitment etc. of such carers (the current regulations were made in 1968); (ii) regulations governing residential establishments for children; (iii) conditions under which children subject to compulsory care may be placed with parents or close relatives; (iv) provision for parents to make financial contribution towards the cost of children in care.
2. To provide services for children leaving the care of the States, such services to encompass those aged up to 21 or in full-time education up to 24. The services to include, for example, such guidance, financial or material support and assistance with accommodation as may be assessed as necessary. Each child leaving the care of the States to have a plan for their future, to be kept under regular review.
3. Secondary legislation should make provision for such matters as record keeping, review of cases and for a complaints procedure.

Recommendations for implementation

The issue of a general duty to children in need (set out at "A" above) is one that requires further detail and consultation, as it will impact on the work of several States agencies. It will mean an overall strategic approach to children and families, and it also impacts on the Corporate Anti-Poverty Programme (specific recommendations by the Townsend Centre include a statutory duty to oversee the welfare of (i) all pre-school children; and (ii) families with children experiencing relative deprivation as well as greater integration of children's services).

The specific duties, set out at B.1, 2 and 3 above require the detail to be fleshed out by secondary legislation, which will necessarily mean some delay.

Outline of resource implications

The resource implications of a general duty to children in need are hard to quantify. This is, in part, because specific details of services to be provided have yet to be identified and agreed (see preceding section on implementation). However, even when such services are costed, many of the implications are intangible and/or have a long-term benefit that cannot easily be quantified. An example is investment in pre-school provision and education, especially for disadvantaged families. Quite apart from the human benefits of better quality of life, all the research indicates that there are long term benefits to society, as well as the individual, in matters such as enhanced job prospects and earning capacity, lower crime and vandalism (with massive consequential savings to the criminal justice system) and a decreased need for social work intervention in subsequent generations.

In terms of the specific duties set out at B.1, 2 and 3 above, the HSSD is already providing accommodation and, on that issue, the new Law will be primarily for the purpose of clarifying responsibilities, rather than providing additional services. The same is true of management of cases and complaints.

The one aspect that will incur additional resources is a duty to those leaving care. As set out in the paper on “Corporate Parenting”, those who have been in care traditionally have very poor employment and housing prospects and are over-represented in the prison and mental health systems. Research in the UK strongly suggests that providing help and guidance to potentially vulnerable young people on the threshold of adulthood will show a significant diminution in the demands on a range of statutory services in the long term, including the mental health, prison, criminal justice and social services sectors.

Outline of how these issues are dealt with in other jurisdictions

All the UK children acts introduced a general duty to children in need. The philosophy behind this was that services should be made available early and in a spirit of offering help and assistance, rather than waiting until problems arise which may by then require costly and alienating compulsory intervention.

The duty to children in need applies to the full range of local authority and other services, not just to social work; that reflects the acknowledged importance of integrated planning and multi-agency working. The Children Bill currently before the UK parliament will strengthen the Children Act in England and Wales in that it imposes a stronger duty of working together and information-sharing. It paves the way for all children’s services (including social work, police, education, some health, youth justice and careers guidance) to come under the auspices of a Children’s Trust. There is an expectation that budgets will be pooled as one of the advantages of integrated services is that individual agencies do not spend time having to work out which agency’s budget is responsible for a particular service. There is also a section in the bill replacing child protection committees with ‘safeguarding children boards’, a stronger body on a clear statutory footing.

The bill was preceded by a green paper "*Every child matters*" which emphasised the importance of early intervention, some of it right across the board (eg: the provision of universal pre-school education) and some specifically targeted at children and families thought to be at risk of problems developing in the future.

In response to feedback from children themselves on the issues of most importance to them, the bill specifies the improvements aimed for; these include: physical and mental health; protection from harm and neglect; education and training; contribution to society; and social and economic well-being.

In England and Wales, there is a significant body of case law on the complex interaction between the statutory duty to children in need and duties under separate housing legislation to provide housing to those in priority need.

The Isle of Man Children and Young Persons Act 2001 includes a general duty to children in need, but it is limited to the Department of Health and Social Security; the Children (Jersey) Law has no general duty to children in need.

Following research that showed the very poor life chances of care leavers, the 1989 Act was amended in 2000 to strengthen already existing obligations to this group of young people. Scotland is currently looking at following suit. The law in Jersey gives the Health and Social Services Committee the right (but not a duty) to assist care leavers; there is no provision in the Isle of Man.

Summary of responses to consultation

States' agencies that replied in detail to the consultation were broadly supportive of a general duty to children in need, provided this were not to take precedence over their other priorities (eg. in the case of the housing authority, the need to provide housing to different groups of vulnerable people). The agencies particularly recognised the importance of a joint and early approach to problems. The police felt it important to identify specifically those agencies on which a statutory duty would fall.

On the question of support after leaving care, young people themselves felt that this should be available (although not compulsory). They varied in the age at which they thought it should be available, from 18 as the minimum to cessation of full-time education. One care leaver commented that it is often a year or more after leaving care that help and guidance is required, when the novelty of independence has worn off and the realities of coping with life and planning a future have hit home. The NSPCC is of the view that support should be offered to care leavers and, again, had a number of specific observations.

The NSPCC had a number of comments. In general, it strongly supports proposals for a multi-agency duty to children in need.

Part 5: Children in need of care, protection, guidance or control

Relevant consultation document(s)

- Children's hearings: a way forward for Bailiwick Children and young people based on Scottish experience (referred to as "Children's hearings")
- Parental Responsibility
- Private Law
- Youth Justice in the Bailiwick of Guernsey
- An Evaluation of the Sentencing Options and Community-Based Initiatives for Young Offenders and Those at Risk of Offending

The proposals for the new Law

This is a complex topic where the HSSD is proposing major changes to existing law and practice. It will be sub-divided as follows:

- A. Grounds for compulsory intervention in respect of children
- B. Duties to children at risk
- C. Emergency Protection
- D. The Child, Youth and Community Tribunal
- E. Parental Responsibility Orders
- F. The age of criminal responsibility; juvenile court procedure for those aged under 18.

A. GROUNDS FOR COMPULSORY INTERVENTION IN RESPECT OF CHILDREN

The 1967 Law specifies a number of grounds, at least one of which must be established if the States are to intervene compulsorily in the lives of children and their families. It is proposed that these grounds remain essentially the same, with some updating and addition. They will include:

- i Child is suffering, or is likely to suffer, significant impairment of physical or emotional health or development.
- ii Child has suffered, or is likely to suffer, sexual abuse.
- iii Child is beyond the control of parents or other persons responsible for the child's care, protection, guidance and control.
- iv Child is misusing drugs or alcohol or inhaling a volatile substance.
- v Child is at risk of, or exposed to moral danger.
- vi Child is failing to attend school without good reason.
- vii Child aged 12 or over has committed a criminal offence
- viii Child under 12 (and therefore below the age of criminal responsibility) has committed a criminal offence.

It will only be possible for the States to intervene in the life of a child if at least one of these conditions is met. However, even if the conditions are met, a court, tribunal etc. will have to be satisfied (in accordance with guiding principle 3 in Part 1) that voluntary provision will not be sufficient and an order is necessary for the child's welfare.

B. DUTIES TO CHILDREN AT RISK

1. The HSSD will have a statutory duty to investigate any report that a Bailiwick child or any child within the Bailiwick is or may be falling within one of the provisions i) – v) outlined in A above. There will be time limits within which this investigation should be undertaken and conditions, for example, that the child should normally be seen in person and that if access to the child is refused, consideration should be given to whether an emergency application is necessary (see para. 4 below).
2. Secondary legislation and/or regulations will set out the procedure and conditions to be followed where HSSD intervenes in family life, for example, by holding a case conference or placing the child on a formal child protection register.
3. If the HSSD believes that compulsory intervention is necessary, it should refer the matter to the Bailiwick Reporter, who has responsibility for making a formal referral to the Child, Youth and Community Tribunal (dealt with later in this part, as is the detail of the Bailiwick Reporter).
4. If the HSSD believes that a child is imminently at risk of serious harm, it should consider, in addition to 2 above, whether emergency measures to protect the child are necessary (these are set out at C below).
5. There will be a duty on all States departments and all those with responsibility for children, to provide such information and co-operation as may be requested by the HSSD in pursuance of investigations under this part of the new Law. This will need to override any provision in the data protection legislation.
6. Where a court dealing with a matter involving a child (most obviously a private law application) believes that the grounds set out in A above may be satisfied, it may refer the case to the Bailiwick Reporter to investigate.
7. The Guernsey Child Protection Committee will be given a clear statutory mandate which guarantees its operational independence, for example, to promote safe practices among all those working with children and investigate individual cases where practice may have failed to protect children.
8. There will be a duty on all those working with children, whether in a professional capacity or as volunteers within an organisation, to report suspicions of abuse or neglect. Clear guidance will set out how this should be done.

C EMERGENCY PROTECTION OF CHILDREN

These measures, which involve compulsory removal of children, without the parents being able to make formal representation, (and often even without their knowledge) will be used sparingly and for the shortest possible period. In order to comply with ECHR, it is vital that the parents have an opportunity to make representations to a court or tribunal as quickly as possible.

1. Provision will be made for immediate action to be taken where there are reasonable grounds for believing that a child is at risk of imminent danger, to be known as a **child protection order**. The application will be made to a member of the judiciary. The child protection order will either authorise removal of the child (usually from the care of parents) or prevent the child from being moved (typically from a hospital). Parents/carers will be able to make representation to a court within a maximum of 72 hours. Detailed provision will be made for such matters as: precise timescales; who may make the application; the information to be provided on an application; urgent referral to the Bailiwick Reporter and Child, Youth and Community Tribunal; the interface between the Child, Youth and Community Tribunal and court; contact with family and others during the currency of the child protection order; medical treatment or assessment of the child.
2. The police will be empowered to take all necessary steps, including the use of force, to protect a child in immediate danger. Independent authorisation (from law officer or judiciary) to be obtained as soon as possible after the removal, if it is not possible beforehand. Again, detailed provision will be made to cover such matters as: a power to force entry; notification to the HSSD, H.M. Procureur and the Bailiwick Reporter; and the procedure for making the order.
3. As an alternative to a child protection order, a court may make an **exclusion order**. This would have the effect of excluding a named person from premises where the child lives or from having contact with the child. It would be possible to impose conditions: for example, a power of arrest if the order is broken or extending the order to the immediate vicinity of the child's home.
4. There will also be power for the police to assist in the enforcement of a child protection order.

D THE CHILD, YOUTH AND COMMUNITY TRIBUNAL

This is an entirely new concept for Guernsey and is modelled on the Scottish children's hearing. There is considerable detail about the hearing system, including suggestions for how it might be adapted for the Bailiwick, in the consultation paper "Children's Hearings". While it is not proposed to repeat that detail at length here, a brief summary follows below. In addition, a glossary of the main players in the Scottish children's hearing and the

proposed Bailiwick equivalents is attached to this report at Appendix E, “Scottish children’s hearing: a proposed structure for Guernsey.”

Children’s hearings have been in operation since 1971. They are lay tribunals, comprised of three highly trained volunteers from all age groups and backgrounds, drawn from the local community. They deal with virtually all children in need of care, protection, guidance or control, including those who have committed a criminal offence, although the ultimate decision on what should happen to offenders rests with the equivalent of HM Procureur and those accused of very serious offences or persistent offenders may be sent to a traditional criminal court. Some basic principles behind the hearing are:

- the local community is in the best position to decide what should happen to its children;
- children who offend almost always have the same needs and background as children in need of care and protection;
- children’s needs and deeds must be tackled together if they are to be dealt with effectively;
- disputed facts (eg: whether the child is guilty of the offence charged) should be dealt with by a court but, once the facts have been established, a court, with its emphasis on formal procedures, is not the most appropriate place to look in detail at how best to deal with troubled children and their families.

Anyone, including members of the public, may refer a child’s case to the independent official known as the **reporter**, although, in fact, the vast majority of referrals are by the police or social services. The reporter investigates and if one or more of the grounds for referral are satisfied AND compulsory measures may be necessary, the case is referred to the hearing. (Only about a quarter of cases referred to the reporter end up in the hearing; many are dealt with by voluntary measures. As already mentioned, serious criminal offences end up in court.) Where parents, or the child, do not agree that the grounds for referral exist, this is decided by a court. If the grounds are established by the court, the case is sent back for the hearing to decide how best to address the child’s needs and deeds.

The hearing has the power to impose a supervision requirement; details of this are on page 2 of Appendix 1 in the consultation paper “Children’s Hearings”. It is important not to equate this with a Guernsey supervision order, as they are very different. A supervision requirement has considerably more power than the Guernsey order. It is a flexible order that may have a wide range of conditions attached, including where the child should live and who the child should have contact with. It can also, for example, specify that a child must attend a particular project, eg: to address offending behaviour. A supervision requirement will last for a maximum of a year, after which it may be renewed. It can be reviewed during the year and conditions dropped or changed. It is proposed that the equivalent under the new Law be called a **care requirement**. This reflects the fact that the order has many of the features of both a care order under the English legislation and a

Scottish supervision requirement, but is also different and should not be directly compared to either.

1. It is proposed that the Bailiwick adopt a hearing-style system, to be known as the **Child, Youth and Community Tribunal (CYCT)** (or such other title as may be agreed). It would operate in accordance with the principles outlined above and to a large extent be based on the Scottish hearing, but there would be some significant changes in the detail of its operation, as outlined in Appendix 5 of the consultation paper "Children's Hearings". These changes include the power for the CYCT to deal with children up to and including the age of 17 in appropriate cases.
2. A Bailiwick Reporter service would be established, details of which are also set out in the consultation paper, especially Appendices 5 & 6, which are detailed and lengthy.
3. Except in the case of minor traffic matters, the police would no longer directly prosecute but refer all offence cases to the reporter and/or H.M. Procureur, who would normally discuss between them the most appropriate course of action: the final decision on whether children who offend should be prosecuted through the criminal court or referred to the CYCT via the reporter would rest with H.M. Procureur. A draft protocol will be produced in due course.
4. There would be a continued role for the court to deal with the following:
 - establishing grounds for referral to the CYCT where they are disputed;
 - appeals from the CYCT;
 - emergency applications in some instances;
 - private law family matters;
 - serious criminal cases involving children;
 - applications from the HSSD for a parental responsibilities order (see E below);
 - road traffic offences involving disqualification.

In the light of the proposed changes and the new Law generally, the role and workload of the courts will change, particularly the Guernsey Juvenile Court. The extent to which the form and procedures of the courts may alter is a matter to be considered in conjunction with any other proposed changes to the court services. It is proposed that children and families would be actively encouraged to seek legal advice prior to the hearing and legal representation would be encouraged at any pre-hearing meeting to establish whether the grounds of referral are accepted. However, legal representation would not normally be required at the CYCT and where advocates do attend with parents or children, their role would be to assist and facilitate their clients, rather than represent them in a traditionally adversarial way. In order to foster full participation by families, in a spirit of free and frank exchange, advocates undertaking children work may be required to undergo specialist training in the field. The issue of legal

representation is canvassed at some length in Appendix 5 of the consultation document, “Children’s Hearings”.

5. As stated above at paragraph 1., the HSSD is proposing that, rather than “children’s hearing,” the new tribunal be known as the Child, Youth and Community Tribunal. The HSSD would also prefer to find alternatives for the term “reporter” and would welcome suggestions.

E PARENTAL RESPONSIBILITY ORDERS

As noted above, a care requirement will last for a maximum of a year, although it may be renewed. In general, it is intended for those cases where there is a reasonable prospect of positive change, which will enable the child either to continue living within the family or to be reunited within a relatively short period. Conditions attached to a care requirement may involve a substantial interference with parental rights and responsibilities, but these are only temporary, for as long as the care requirement and/or any conditions are in force.

In a minority of cases, there is no foreseeable prospect of the child living safely within the family and alternative provision must be made, for example with adopters or long term foster parents or in a residential establishment. In such circumstances, the HSSD will need to have full parental rights and responsibilities, at least on a medium term basis, for example while an appropriate alternative family is found.

1. It is proposed that where the HSSD’s long-term plan is for placement away from the family, this should be identified as quickly as possible and application made to a court for the HSSD to be granted a parental responsibilities order. This will have the effect of transferring parental responsibility to the HSSD, thus enabling it to make long-term plans for the child, in accordance with a care plan approved by the court.
2. The new Law will provide for parental responsibility to be shared with the parents, but only to a limited extent, eg. the permission of the parents or court will be required for the child to live out of the jurisdiction of the Bailiwick or to marry.
3. Where the plan is for adoption but the parents are not consenting, the court will be required to consider whether the parents’ consent should be dispensed with and permission given for the child to be placed with potential adopters when they have been identified. The grounds for disposing with parental consent in these circumstances will be considered in more detail when HSSD presents a States’ report on updating the adoption legislation.
4. A court making a parental responsibility order will be obliged to consider whether, and if so on what conditions, contact should be maintained between the child and parents / other family members or those important to the child.

5. The interface between the court dealing with a parental responsibility order and the Child, Youth and Community Tribunal will be set out in the new Law or associated secondary legislation. For example; it is likely that a child subject to an application for a parental responsibility order has already been before the Child, Youth and Community Tribunal and in that case the court will request a report from either the reporter or Child, Youth and Community Tribunal to assist it in making a decision.

**F THE AGE OF CRIMINAL RESPONSIBILITY;
JUVENILE COURT PROCEDURES FOR THOSE AGED UNDER 18**

In Guernsey, the age of criminal responsibility is 10. As set out in the consultation document, “Youth Justice in the Bailiwick of Guernsey”, this is at the lower end of the scale internationally, with countries in recent years tending to revise this age upwards.

The HSSD proposes that the age of criminal responsibility be raised to 12. This reflects the proposed statutory age at which the new Law presumes children able to form opinions of their own and by implication have an understanding of the consequences of their actions. (See guiding principle 5, on page 9 above.)

HSSD further recommends that the maximum age at which children accused of a criminal offence appear before the juvenile (as opposed to adult) court be increased from 16 to 17.

Recommendations for implementation

Proposals A and parts of Proposals B, C and F above (grounds for intervention, emergency measures, duties of the HSSD, the age of criminal responsibility and age remit of the juvenile court), could be implemented without delay to replace parts of the existing law.

Proposals D & E (setting up of the Child, Youth and Community Tribunal, and parental responsibility orders) will require considerable preparation and further consultation as to the finer points of detail.

HSSD proposes that, at this stage, the States be invited to accept all the proposals in Part 5 in principle.

Outline of resource implications

Parts A, B, and C have no specific resource implications.

Introduction of a tribunal system will involve considerable set-up costs and these are detailed in the section on “Resources” below, together with an estimate of on-going running costs.

It is only very recently that the Scots have begun seriously to evaluate the children's hearing system, and this applies to cost as well as effectiveness. Such work as has been undertaken shows that it is considerably cheaper to deal with a case through the hearing, as opposed to a court (an example quoted in the consultation paper "Children's Hearings" shows the cost of a criminal court case as £1,400-£12,000, compared to £945 for a fast-track hearing).

It is not possible to set the cost of a hearing against the cost of a court case in Guernsey as there are no figures available but, on the basis of figures available from Scotland, it is likely that there would be a substantial saving in the long term.

Research evidence strongly suggests that a system based on principles of early intervention and engagement with children and families has a better chance of addressing difficulties at an early stage thus saving on costs to the court, social services, criminal justice and mental health services in the long term. The Freagarrach Project in Scotland, for example, estimates savings of £2.4m over a 10-12 year period. This project is detailed on page 8 in the consultation paper on Children's hearings.

In its response to an early draft of the States' report, the police expressed concern that including 17 year olds within the remit of the juvenile court would lead to a very heavy increase in workload, as all interviews would need to be conducted in the presence of a parent or other appropriate adult. However, since this response was made, the code of practice under the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law 2003 has been published, making clear that appropriate adults are not required to be present at the interview of a 17 year old.

Outline of how these issues are dealt with in other jurisdictions

A: Grounds for compulsory intervention.

Under the 1989 Act, there is basically one ground, which is that the child is suffering, or at risk of suffering, significant harm as a result of lack of proper parental care or being beyond control. All the British jurisdictions follow this broad-based definition, except Scotland. When looking at its own children act in the early 1990s, the Scots considered following the English practice but decided against, on the basis that more specific grounds were clearer and thus fairer to families.

B: Duties to children at risk

All the British jurisdictions impose a duty to investigate cases of suspected abuse etc. In England and Wales, Scotland and Northern Ireland, the obligation is on local authorities (not just social work departments) and other bodies, such as health authorities, may be required to give information and assistance. In Jersey and the Isle of Man, the obligation is on the social work department and, while Jersey requires other bodies to assist, the Isle of Man law is silent on this issue. There is also a specific provision in Jersey covering

children living outside the island. The Children Bill will strengthen these duties in England and Wales.

C: Emergency Protection

Different judicial bodies are empowered to make the equivalent of place of safety orders in the different British jurisdictions. In England & Wales, it is normally the family proceedings court (a specialist branch of the magistrate's court); in Scotland, it is the sheriff court; in Jersey, the Bailiff and in the Isle of Man, the summary court (magistrates).

All of the British jurisdictions provide for exclusion orders.

They also all have specific power for the police to remove a child in an emergency, usually for up to 72 hours, except Scotland where it is 24 hours. Regulations and guidance govern how the power is to be exercised.

D: The Child, Youth and Community Tribunal

In Scotland, the children's hearing has come under attack in recent years for not being sufficiently effective in tackling youth crime. A number of measures have been introduced or are under discussion to address this, including fast-track hearings for persistent offenders, enhanced powers for the panel and intensive community programmes to address offending behaviour. These are all showing positive results. Examples of these measures are given in the Children Board consultation papers: "Youth Justice in the Bailiwick of Guernsey" and "An evaluation of the sentencing options and community based initiatives for young offenders and those at risk of offending."

A recent report by NCH Scotland, "Where's Kilbrandon now?" (2004) has endorsed the philosophy underpinning the hearing, as has the Scottish Executive which is undertaking a major review to see where the hearing's effectiveness may be improved.

Although the children's hearing is unique to Scotland, aspects of its practice and philosophy are reflected in practice and law around the world. For example, England and Wales has recently adopted a new sentence, known as a referral order, to be used for the majority of those appearing before the youth court (which deals with all those aged under 18). The order refers the young offender to a panel of lay people to work out with the young person and family the most effective way to address offending behaviour. A recent report by the Audit Commission ("Youth justice 2004") says that there is clear evidence that a holistic, community-based approach is more effective in reducing youth offending than one based on court and custody. In France, concerns about children are referred to the *juge d'enfants*. Although a professional judge and not a lay panel, the approach is in many respects similar to the panel as the procedure is informal, geared at reaching a consensus if possible, with coercive powers available if necessary, up to a limit of two years initially.

E: Parental Responsibility Orders

In all the UK jurisdictions except Scotland, where proceedings are brought because of child protection concerns, the court can make either a supervision order or a care order. A care order automatically gives parental responsibility to the local authority, which then has "...the power to determine the extent to which a parent or guardian of the child may meet his parental responsibility..."

(NB: It is important not to equate a supervision *order* (English etc.) with a supervision *requirement* (Scottish); unlike the Scottish supervision requirement, powers of the local authority under a supervision order are very limited and do not permit any significant interference with parental responsibility, even in the short term.)

In law, therefore, if a care order is made, there is no difference between the power a local authority has in the case of a child where the long term plan is for placement away from the family and, at the other end of the scale, where the plan is that the child be rehabilitated with the family but close monitoring and significant intervention is necessary in the short and perhaps medium term. Concerns that a care order can give a local authority unfettered power, whatever the original intention when the order was made, have led recently to a change in the law in England and Wales to enable judicial intervention in some cases.

F: Age of criminal responsibility; juvenile court procedures for those aged under 18

As mentioned above, across the world there is a wide range in the age of criminal responsibility. The age in England & Wales, Northern Ireland, Isle of Man and Jersey is 10. In Scotland it is 8, although the Law Commission has recently recommended that it be raised to 12. In response to the second report of Great Britain to the Committee of the UN Convention on the Rights of the Child in 2002, the Committee stated it was "... particularly concerned that the age at which children enter the criminal justice system is low..."

In England and Wales, in common with most western European countries, special juvenile justice provisions apply up to and including age 17. Jersey and Northern Ireland have both recently brought 17 year olds within the juvenile justice scheme and although, in Scotland, 16 year olds are treated as adult for the purposes of criminal proceedings, a specialist youth court is now being piloted for 16 and 17 year olds. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") recommend that those under 18 should be subject to a specialised juvenile justice regime.

Summary of responses to consultation

In general, the proposals in respect of A, B, C & E were accepted by those responding.

D: The Child, Youth and Community Tribunal

1. Further to the visit to Guernsey by a delegation from Scotland in March/April 2003, a questionnaire was sent to many of those who had attended the presentations. This asked (i) whether it was felt a hearing-style system might be appropriate for Guernsey, (ii) what were felt to be strengths, weaknesses and possible problems.

Of the 20 responses received, no-one was totally opposed. All supported the idea in principle. The main advantages were seen as being a holistic approach to the child's problems and behaviour, keeping child and family out of the formal and adversarial court forum and not labelling children as criminals. The most commonly expressed reservation was whether it would be possible to recruit suitable panel members. Other concerns included the lack of a victim's perspective, lack of legal advice and representation and staffing implications.

Five further responses, from members of the public, were received following the public consultation documents published in November 2003. They were all supportive of the principle, for the reasons outlined in the preceding paragraph.

States' bodies that responded to the consultation were all supportive in principle of a hearing-style system, although there were some reservations including:

- Home Affairs, following representations from the police, was opposed to the inclusion of 17 year old offenders;
 - The Housing Authority was concerned that the tribunal may not be strong enough to deal with anti-social behaviour on the States' housing estates.
2. The possibility of a hearing style system was discussed with several groups of young people aged 11-17, ranging from those with extensive experience of the care and criminal justice systems to those with no such involvement. Initially, they expressed considerable concern that a lay tribunal would not keep matters confidential (although they also felt that this does not happen with court cases either). If they could be sure it was confidential, they also thought that it would be better to be dealt with by "ordinary people" (especially if at least one was young) as their perception of judges was that "they don't listen to kids, they don't think like ordinary people". Some were also concerned that the adults would talk about and across them rather than to them.

They all felt that it was better to try and find out what was at the bottom of someone's behaviour, as this was the best way of helping them to get themselves straight. In general, they thought it would be easier to speak at a hearing, rather than in a court,

although there was a concern that it would be embarrassing to be the focus of attention. There was also a widespread feeling that the prospect of having to really think about what they had done, and why, would be a harder thing to do than standing in court and “being shouted at, where you don’t really have to say anything that anyone listens to.”

3. A meeting was held with 12 users of one of the former Children Board’s family centres. As with the young people, they were extremely concerned about confidentiality. They too felt that it was better to look at problems as a whole, rather than just isolate the offence, and that with a hearing there was a better chance to “nip it in the bud”. As well as being potential subjects of a hearing, they were also asked how they would feel about being panel members. This was greeted with a degree of incredulity initially, as they had assumed that only “posh people” would be able to do this. After discussion, several did begin to see it as something they would like to do, although one felt she would be too punitive; this was as a result of being a victim of crime and feeling that her needs had been regarded as irrelevant.

F: Age of criminal responsibility; juvenile court procedures for those aged under 18.

All States’ agencies responding supported increasing the age of criminal responsibility to 12. The NSPCC’s view was that the age should be raised to 14.

As noted above (in respect of the CYCT), the police opposed the inclusion of 17 year olds within the juvenile justice system, expressing concern that it would be a pressure on resources.

Part 6: Secure accommodation and other restriction of liberty

Relevant consultation document(s)

- Children's hearings: a way forward for Bailiwick Children and young people based on Scottish experience (referred to as "Children's hearings")

The proposals for the new Law

The Children and Young Person's (Secure Accommodation) (Guernsey) Law 1997 is modelled on the provisions in the 1989 Act and sets out strict conditions which must be satisfied for children's liberty to be restricted. These are: (a) – (welfare grounds) where they are a danger to themselves or others; or (b) – (criminal grounds) in some cases where they are awaiting trial for a serious criminal offence. The maximum period of detention under (a) is 28 days and for (b) it is the period of the remand, which could be up to several months.

There is a small secure accommodation unit on the HSSD premises at Perruque House. Recent English case law strongly suggests that the size and inevitably limited facilities of this unit mean that it should only be used for the shortest possible period or risk breaching human rights. It is also crucial that the detention has an educational purpose.

Although the law is relatively modern, there are a number of concerns, both about the law itself and how it operates in practice, given Guernsey's limited facilities. Additionally, the fact that Guernsey orders are not recognised elsewhere is problematic in the small number of cases where children need to be sent to a secure placement in the UK.

It is proposed, therefore, that the new Law should have a section replacing and updating the existing law on secure accommodation, including provisions:

On welfare grounds:

- Giving the Chief Officer of HSSD (or other appropriate senior manager) authority to detain children for up to a maximum of 72 hours where strict criteria are met, based on the premise that, in the welfare interests of the child, no other course of action is appropriate.
- Any longer detention to be made only on the authority of a court, with child and parents having the right to be fully heard and legally represented.

On criminal grounds:

- The new Law will make clear the basis on which a child may be held in the secure unit pending first appearance in court on a criminal charge. The basis and procedure for detention of a child by the police prior to first appearing in court have very recently

been set out in the code of guidance to the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law 2003. Once the practical operation of these powers and procedures have been evaluated, the HSSD will be in a position to make more precise proposals in this area.

- Any remand in custody should be a last resort, used only where essential for protection of child or public. The court should consider whether any necessary remand should be to prison or the unit. Unless circumstances are exceptional, it should be to the unit.

On either ground:

- Detention to be no longer than 8 days without further court review, up to a maximum of 28 days. The purpose of detention will be to assess the needs of the child and ascertain the facilities/services required and available. The 28 day period may be extended, but only in exceptional circumstances where the criteria for continued restriction of liberty still apply AND an appropriate alternative provision has been identified but a place is not immediately available. In any event, detention in the Guernsey unit cannot be extended beyond a total of 56 days.
- All cases of children detained in the secure unit to be immediately notified to the Bailiwick Reporter.
- As well as review by the court, placement in the secure unit will be subject to ongoing scrutiny to ensure continuing compliance with criteria for detention and ECHR. This scrutiny will be by the Health and Social Services Department with a strong independent element.

Terms of the new Law in this respect will be negotiated with the authorities in the UK, with a view to Bailiwick orders being recognised and enforceable should a child be transferred to a secure unit in the UK. Where a child is so transferred on welfare grounds, it is proposed (subject to agreement with the UK authorities) that the Guernsey court will be able to make an order for placement in secure accommodation in the UK, for a maximum period of 3 months, which may be renewed. Again, such a placement will be subject to rigorous on-going scrutiny.

Recommendations for implementation

It is hoped that the provisions could be implemented without delay.

Outline of resource implications

There are no specific resource implications in respect of the law itself.

To ensure ECHR compatibility, capital work has recently been undertaken to expand the secure unit. There are also implications for the provision of appropriate educational and other training facilities for children, both in the secure unit and in the prison. The possibility of building secure facilities specifically for young people in Guernsey was

considered in principle by the Children Board. The Board was of the view (endorsed by HSSD) that this inevitably very expensive option may not be the most effective use of resources.

Outline of how these issues are dealt with in other jurisdictions

In the main UK jurisdictions, secure accommodation units have a wider role than in the Bailiwick. They house some of the countries' most disturbed and/or dangerous children. They are geared to taking young people in the long, as well as short and medium term and offer a range of programmes, including educational, training, therapeutic and psychological. Sports and recreation facilities are available on site. Children sentenced by the criminal courts may be at such units for a number of years. Those detained on welfare grounds cannot be detained for more than three months initially, and then for up to six months, following which there must be further consideration by a court. In addition to court scrutiny, there must be constant review of whether the conditions for detention on welfare grounds continue to apply. An order for secure accommodation on welfare grounds merely gives permission for the child to be detained, it does not require them to be so.

In England & Wales, a director of social services may authorise detention on welfare grounds for up to 72 hours without court authority. In Scotland, the detention must also be agreed by the head of the secure unit. Scottish guidance also states that children should not be detained in small (defined as 2 bedded) units for more than 72 hours.

The Children (Jersey) Law 2002 has provision for secure accommodation on welfare grounds, based on the 1989 Act, although this has not been implemented. There is a secure unit on the island which has educational facilities but this is now entirely used for remanded young prisoners; there is no secure accommodation available for use on welfare grounds.

The Isle of Man similarly has legal provision based on the 1989 Act. It has recently built a 5 bedded secure unit with a range of facilities, which can be used on criminal or welfare grounds.

Part 7: Children placed out of the jurisdiction (“off-island placements”)

Relevant consultation document(s)

- Children’s hearings: a way forward for Bailiwick Children and young people based on Scottish experience (referred to as “Children’s hearings”)
- Parental Responsibility

The proposals for the new Law

Sending children out of the jurisdiction of the Bailiwick is, on the face of it, likely to be a breach of ECHR Article 8 (right to respect for family life) unless it can be shown to be a proportionate response to the situation of the particular child/family. It is important not only that the new Law provides for independent scrutiny, with full representation of the views and interests of both child and family before such placements are made, but also that the placements are properly monitored throughout the time the child is away, with proper provision for retaining the child’s connection with family and Bailiwick culture.

The new Law will provide that, for example:

- a. Children will only leave the jurisdiction when, on the basis of their best interests, there is no other feasible alternative. They will be subject to a detailed care plan, setting out all aspects of the placement, including who is to be responsible for each and every aspect of their care (health, education, accommodation etc) while they are away, the extent of parental involvement, and how the child is to maintain contact with family and friends. Unless clearly stated to the contrary, there will be a presumption that placement out of the jurisdiction is to be for the shortest possible period, aimed at the child’s early reintegration into the Bailiwick community.
- b. Such placements will initially be subject to scrutiny by a multi-agency panel, comprising senior representatives from health, education and child welfare services. They will further be subject to independent scrutiny, probably by the Bailiwick Reporter.
- c. Children, as well as their parents, should have a full opportunity to be represented on such applications. Where children are too young, their interests will be safeguarded by an independent person.
- d. In the event of any possible dispute, or question on the child’s best interests, the matter will be referred to court for a decision on whether the child should leave the island and if so, on what terms. This referral may be made by the Bailiwick Reporter or any of the parties involved, including parents, child or placing agency.
- e. Children placed out of the jurisdiction will have their cases regularly and independently reviewed to check that the placement continues to be in their best interests and in accordance with the care plan.
- f. UK courts will recognise orders made in the Bailiwick courts, with clear procedures agreed for recognition and enforcement of Guernsey orders.

- g. The residence rights of any child will not be prejudiced by a placement out of the jurisdiction.

Recommendations for implementation

Prior to changes in the machinery of government, the Children Board, in conjunction with the Board of Health and Education Council, was already working towards a multi-agency integrated approach to children who may need to leave the island. The interim measures (shown at appendix D) provide some protection, pending the new Law.

Negotiations with the UK authorities, and setting up appropriate independent scrutiny, is likely to take time. It may be more appropriate for some of the detail to be dealt with by secondary legislation.

Further consultation will be necessary on the method of independent scrutiny.

Outline of how the issue is dealt with in other jurisdictions

The combination of legal differences, distance and limited facilities within the Bailiwick means that only limited comparison can be drawn with what happens in the UK.

Within the UK, there is provision for orders made in, eg. Scotland, to be recognised and enforced in England. Orders may also be transferred to their appropriate equivalent where a child moves permanently from one jurisdiction to another.

There is also some provision for orders made in the Channel Islands and Isle of Man to be recognised in the UK, but this has only been applied to a very limited extent in respect of Guernsey orders.

Summary of responses to consultation

The NSPCC welcomes the proposal for independent scrutiny of such placements. None of the States' agencies made a specific response on this issue.

Part 8: Registration of childminders, nurseries, private foster carers etc.

Relevant consultation document(s)

Nurseries, Pre-Schools, Childminders & Others Looking After Other People's Children

The proposals for the new Law

These matters are currently dealt with by the Child Protection (Guernsey) Law 1972, which gives the HSSD powers and duties to keep records of people caring for children for financial reward and make certain checks on them and the premises where children will be cared for.

It is proposed that the law be updated, to include for example:

A - In the case of day care:

- a. All children under the age of eight (the current limit is under five).
- b. Mandatory training in such issues as child protection and first aid.
- c. Regulation of day care within a school setting.
- d. Bi-annual inspection.
- e. Scope for emergency cancellation of a registration in an emergency.
- f. Mandatory insurance.

B – In the case of private fostering:

- a. All privately fostered children under the age of 16 (18 if disabled or the placement is for children from the smaller Bailiwick islands to receive education in Guernsey.)
- b. Clear definition of private fostering, and the respective roles and duties of parents, foster carers and HSSD.
- c. Enhanced protection by way of checks on carers and regular visiting.
- d. Children who are boarding away from home during the week for the purposes of education. This will not only include children from the smaller Bailiwick islands attending school or college in Guernsey but also children from further afield visiting for educational purposes, for example, to learn English.

C – In the case of children's residential establishments run otherwise than by the HSSD (or equivalent):

Provisions governing the approval, inspection, administration, staffing and conduct of the home.

D – In the case of nannies and au pairs:

Provision for agencies introducing or employing such staff to be registered, with a duty on them to provide, for example, criminal record checks.

E- In all cases:

- a. The law will provide for criminal record, health and other appropriate checks on those who will be caring for children.
- b. Certain people will be prohibited from caring for children, including those with a criminal conviction for offences against children and certain sexual offences.

The HSSD is keen that its powers and duties should not simply be, or be regarded as, prescriptive. The HSSD is very aware of the vital importance of high quality pre-school care and advice and information will also be available as a matter of course to those individuals and organisations falling within the remit of the legislation.

One particular group not covered by legislation at all, is those carers who live with the child's family, such as nannies and au pairs and concern has been raised about lack of safeguards in respect of them. The HSSD proposes that agencies providing such staff should be obliged to ensure that such applicants reach certain minimum standards, for example in respect of first aid and criminal record checks. The HSSD is also of the view that similar obligations should apply to babysitting agencies.

Recommendations for implementation

It is proposed that secondary legislation set out detailed powers and duties for the protection of children being looked after by those outside of their immediate family.

Outline of resource implications

Statutory inspections, covering a wider range of carers and children, inevitably have staffing implications .

Outline of how these issues are dealt with in other jurisdictions

In England and Wales, regulations cover the range of day care provision up to the age of eight: providers of day care must meet 14 national standards of good practice. Registration and inspection are more frequent than is currently the case in Guernsey and there is mandatory training for unqualified staff (the importance of good quality training for child care workers in all sectors was emphasised by the enquiry into the death of Victoria Climbié and the government is currently taking action to improve and enhance training and education). In an emergency, a registration can be cancelled by application to court.

There is no registration of nannies, au pairs etc. although there is a lobby pressing for this, or at the least for there to be an obligation on agencies providing nannies etc to check references thoroughly. Supporters of legislation include the reputable agencies in this field.

Detailed regulations also cover the setting up and running of children's homes by voluntary agencies or private individuals.

The Children Bill, currently before the UK parliament, tightens up aspects of law and practice in these areas.

Similar provisions to those outlined above in the UK were adopted by the Isle of Man in its 2001 act, and detailed regulations in Jersey cover children up to the age of 12.

Both crown dependencies provide for protection for privately fostered children in their recent children's legislation.

Summary of responses to consultation

The summary of consultation papers produced for children and young people specifically asked whether those caring for children up to the age of 18, so they can attend school in Guernsey, should be subject to checks. The unanimous response to this was that they should, "because they could have bad secrets which could harm the child". The respondents thought that there should be clear information for all concerned on what would happen and the purpose of the checks. It was also felt that the child "...needs to know who to talk to if something is wrong."

The proposals on this issue were generally agreed by members of the public, with some reservation about the practicality of regulating some part-time care.

Part 9: The Bailiwick Safeguarder Service

Relevant consultation document(s)

- Children's hearings: a way forward for Bailiwick children and young people based on Scottish experience (referred to as "Children's hearings")
- Children Law: Basic Principles
- Children & Private Law

The proposals for the new Law

As already mentioned above (in the section on the background to this States' report), the court welfare service provides independent reports to the courts on the best interests of children in private law family matters. HSSD and the Probation Service also provide similar reports in adoption matters (where the individuals making the reports are known as guardians ad litem). There is no similar provision for public law cases and in order to comply with ECHR requirements in this respect, temporary arrangements have been made for the NSPCC in England to act as guardians ad litem.

It is proposed that there should be an independent co-ordinated service, under the auspices of the Royal Court, undertaking the following work:

- a. Acting for children & providing court reports in adoption proceedings.
- b. Acting for children & providing court reports in applications by HSSD for parental responsibility.
- c. Reports for the courts in private law cases.
- d. Reports for the Child Youth and Community Tribunal, where required.
- e. Acting for children and providing reports in contentious applications for out of jurisdiction placements.
- f. Providing reports in applications for secure accommodation.
- g. Mediation and conciliation where conflict has arisen, eg. between parents on residence and contact issues.

The HSSD favours the term 'safeguarders' for the personnel carrying out what combines the court welfare and guardian services as well as additional work. This expression gives a clear indication of what the role is (ie. safeguarding the interests of children).

There may be scope for the safeguarder service to encompass incompetent adults, such as those with serious mental illness or suffering from senile dementia. However, this is beyond the remit of this report.

Recommendations for implementation

Those aspects of the safeguarder service already in operation (eg: court welfare service) to be implemented as quickly as possible. Other aspects, such as the introduction of a mediation service, will take longer to set up. It may be appropriate for the detail of the service to be set out in secondary legislation.

Outline of resource implications

It is suggested that, in the first instance, there should be three full-time safeguarders, including a senior who, as well as undertaking casework, will be responsible for developing the service, allocating cases and supervising staff. Office accommodation and administrative support would be required. Sessional staff would be available to take on individual cases as required. This would amount to no more than the staff already being employed by the HSSD, Probation Service and NSPCC and it is to be hoped that a unified service would be more efficient administratively as well as providing a more consistent approach.

Funding of any mediation part of the service requires consideration. The HSSD would favour a low or no contribution system, so that the service was available to all. It is hoped that the costs of providing mediation would be more than compensated for by cases settling at an earlier stage and thus saving judicial, administrative and legal aid costs.

Outline of how these issues are dealt with in other jurisdictions

England and Wales unified their court welfare and guardian services in 2001 under the Children and Family Court Advisory and Support Service (CAFCASS). Although it was (and still is) widely accepted that a single unified service is the most appropriate way forward, inadequate planning and resources have meant a somewhat shaky start. CAFCASS comes under the auspices of the Department of Education and Skills. The mainly salaried staff are experienced professionals from various fields of child care.

In Scotland, safeguarders provide reports to hearings in a minority of cases; they are drawn from a variety of disciplines including social work and law, with no specific training for the work. They are paid on a case-by-case basis and until recently their remuneration was very low: efforts are now being made to provide training. In the sheriff court, reports on children's best interests are usually supplied by *curators ad litem*; these are generally solicitors appointed on a case-by-case basis and although they will be experienced in family law, there is no specialist training, for example in communicating with children.

In Jersey, there is no formal guardian or safeguarder service for children in public law proceedings. The probation service provides guardians in adoption cases. The Isle of Man largely uses guardians ad litem from England.

Part 10: Assisted reproduction; surrogacy; etc

Relevant consultation document(s)

- Assisted Reproduction

The proposals for the new Law

The Children Board did not feel it appropriate to make detailed proposals for law in an area which is highly controversial and where advances in medical technology can fast overtake legislative change. Many of the issues raised fit more appropriately within the broader mandate of the Health and Social Services Department.

The Children Board did raise the topic, as it was concerned that children born as a result of such techniques as gamete donation, surrogacy or conception following the death of a biological parent, should not be left in a legal limbo, with no clear legal parents, inheritance rights or rights to information (for example to protect against marriage to a biological close relative).

The Board proposed that there be further research and consultation on this issue and that the new Law reserve the power for secondary legislation to address issues raised by reproductive technology.

Recommendations for implementation

Further legislation to be introduced following further research and consultation.

Outline of resource implications

Not known until further work undertaken.

Outline of how these issues are dealt with in other jurisdictions

In the UK, the Human Fertilisation and Embryology Act 1990 (HFEA) is the main law regulating assisted reproduction. Other relevant laws are the Surrogacy Arrangements Act 1985 and the Human Fertilisation and Embryology (Deceased Fathers) Act 2003.

The HFEA provides, for example, for the legal father of children conceived by artificial insemination by donor to be the mother's husband or, if they sought treatment together, her unmarried partner. A woman who carries a child is, in law, the mother, even if the egg was donated or it is a surrogacy arrangement.

Surrogacy itself is not illegal, although surrogacy agreements are not enforceable and making commercial surrogacy arrangements is a criminal offence.

The UK government has very recently announced that children conceived as a result of gamete donation, from 2005, will be entitled to details, including the identity of the donor, upon reaching majority.

The Human Fertilisation and Embryology Authority has many responsibilities under the HFEA, including regulation of clinics offering fertility treatment.

The Isle of Man included some of the provisions of the HFEA in its Children and Young Persons Act 2001.

There is wide variation across Europe in assisted reproductive services available and laws regulating them.

Summary of responses to consultation

The general view was that the law should regularise the situation of children conceived by donor assisted means, and that such children had the right to details of their genetic heritage.

Part 11: Enforcement of Orders

Relevant consultation document(s):

- Children & Private Law

Proposals for the new Law

In children and family cases, enforcing court orders is often a delicate and difficult matter, where the usual measures available to the court (fining or imprisonment for contempt, for example), run the risk of causing major distress to the child: at its worst, such measures can result in the child becoming so alienated from the person seeking enforcement, that the original order, initially made in the child's best interests, becomes destructive to the child's welfare. A particularly intractable example, which taxes judicial systems throughout the world, are cases involving persistent failure to comply with orders for contact (access): in such cases, reducing the family income through fines or imprisoning the parent with responsibility for day-to-day care, are as likely as not to turn the child so badly against the parent seeking contact that they refuse to see them, thus rendering the order meaningless.

Another common problem in family cases is locating parents who, to ensure ECHR compliance, need to be informed of proceedings affecting their children. It is also necessary, on occasion, to locate children who may be being hidden, perhaps from one parent by the other, or to avoid HSSD action.

The HSSD believes it is important for the court to have a wide and flexible range of enforcement powers, which impact as little as possible on the child and are geared to encouraging compliance, rather than punishing for non-compliance.

It is proposed that the new Law should include the following measures:

- a. Power to the court to order individuals or bodies (such as the Social Security Department) to disclose the address of those who are actual or potential parties to proceedings (there would be safeguards to preserve confidentiality, for example that any disclosure be limited to the court and not passed on, save as may be necessary in the child's interests). It is also anticipated that protocols will be agreed with the UK for reciprocal disclosure in such cases.
- b. Similar power as above, to order disclosure of the whereabouts of any child who is subject or potentially subject to proceedings. This to be backed up where necessary by a court order enabling the police to search for and remove a child.
- c. Financial sanctions to include not only fines but also sureties and bonds, to be deposited with the court as an incentive to comply with orders. Sums deposited may be forfeited if the order is breached. This will primarily be used to compensate the other party for any

expenses incurred or loss suffered as a result of the order being broken. These orders may be particularly appropriate in cases involving temporary removal from the jurisdiction, as an incentive to return the child.

- d. Unauthorised removal of a child from the jurisdiction of the Bailiwick to become a criminal offence. Measures preventing such removal already include a system whereby air and sea port authorities are empowered to prevent children leaving the Bailiwick at the request of the police or court and this may require a more formalised basis.
- e. Staged enforcement of private law (especially contact) orders, initially targeted at compliance through agreement, as a result of mediation and education, moving to fines and imprisonment in exceptional circumstances and as a last resort. The HSSD believes that, in some cases, professional assistance, backed up where necessary by court order, should be made available at an early, interim, stage, rather than waiting until an order has been made and then breached. Such assistance should be along the lines of the 1989 Act's family assistance orders, but be more specifically targeted. For example, it is proposed that the necessary work identified would be specified in an interim order and normally be undertaken by the court welfare/safeguarder service, with a report back to the court on progress, prior to the making of any final order. It is also proposed that such orders may be made without the consent of the parties, although, in keeping with guiding principle 9, every effort would be made to obtain agreement. This is a controversial area which has prompted some strong responses to the consultation documents and may have major resource implications (see below). Whatever measures are introduced, the HSSD believes it is crucial to keep hold of the principle that the welfare of the child is of paramount importance; there is a danger that the arguments in this area can become polarised around alleged "rights" of parents. See Appendix G for more details of the issues raised by difficult contact disputes.

Recommendations for implementation

a)-d) above to be implemented immediately the new Law comes into effect.

There is a substantial range of possible options in respect of e) (enforcement of private law orders) and further research is required, not least because of the significant resource implications and also the fact that much of the work worldwide in this area is still relatively new and its efficacy unproven.

Outline of resource implications

For a)-d) above, the main resource implication is training all those involved in applying the new Law, including port officials and police.

In respect of e), undertaking research into the various options could of itself be costly, as much of the work in this field is at a relatively pioneering stage and happening in such

places as the USA, Canada and Australia. Setting up a programme is likely to have significant staff implications, perhaps for the proposed safeguarder service and/or the HSSD.

Outline of how these issues are dealt with in other jurisdictions

The UK jurisdictions have a range of enforcement measures, as outlined in a)-d) above. As already emphasised, enforcement of private law orders, especially contact, is difficult and topical, following the incident where flour was thrown at the Prime Minister in the House of Commons earlier this year. Proposals have subsequently been made in a green paper, “Parental Separation: Children’s Needs and Parents’ Responsibilities” (see Appendix G for more details).

Summary of responses to consultation

As in many parts of the world, responses to the consultation papers suggest that at least some Guernsey fathers feel that the current law in private disputes is unfairly tilted towards mothers, and this is particularly keenly felt by fathers who are unmarried. These men were also very concerned about the inability of the courts and other authorities (especially HSSD and safeguarder-type services) to respond effectively to those (mothers) who they felt set out to obstruct contact from the outset. A more detailed account of the response from fathers, and the HSSD’s response, is at Appendix G.

Part 12: Court Procedures

Relevant consultation document(s):

- Children & Private Law
- Children's hearings: a way forward for Bailiwick children and young people based on Scottish experience (referred to as "Children's hearings")
- Children Law: Basic Principles
- Children in Court as Witnesses

Proposals for the new Law

There is only a limit to what the law can achieve if it cannot be applied in practice in an efficient manner that is geared (especially in family proceedings) to dealing with matters in the shortest possible time and minimising the conflict and trauma to all parties concerned, in particular the children.

It is proposed that rules of court should govern a range of matters, including:

A – Which court is to hear cases

B - Judicial management of cases

Judges to be empowered to take an active role in how cases are conducted. This will involve ruling from an early stage on such issues as:

- who should be parties to, or have notice of any matters before the court;
- how notice should be given in the event of difficulty and whether it might be waived;
- the appropriateness of mediation;
- what evidence is to be called and how it is to be heard;
- fixing timetables to ensure cases are not allowed to drift;
- representation of parties (particularly children), including the need for a safeguarder and/or advocate;
- legal aid and other costs issues.

See below for further details of some of these matters.

C – Mediation

Settlement of disputes by agreement should be a key aim in family proceedings, and the court process should actively encourage this at all stages. At the same time, it is important that the court retains an oversight where necessary, and that a mediated settlement is not forced onto parties in those cases where it may not be appropriate, for example where there has been serious domestic abuse.

D - Regulation of evidence

It is proposed that court rules and judicial management ensure that evidence is produced quickly and restricted to what is relevant (which, in family cases, will often mean an emphasis on what should happen in the future, rather than apportioning blame for what has happened in the past). Particular measures proposed include that:

- Statements will be produced only with court leave and in accordance with a strict timetable. They will take the place of giving oral evidence in chief (although the maker of the statement will have to be available for cross examination if the matter proceeds to a full hearing).

- Expert evidence will only be given with the leave of the court, and then by way of a letter of instruction, agreed by all the parties. In most cases, it is anticipated that only one expert will be necessary.

- Permission of the court will have to be given for a child who is the subject of proceedings to be examined by a medical or similar expert for the purposes of the proceedings.

- Hearsay evidence will normally be admissible in children and family civil proceedings. It will be for the judge to decide what weight to give the evidence in all the circumstances of the particular case.

- A range of alternative means will be available for children and other vulnerable witnesses to give evidence. These options are set out in detail in the consultation paper “Children in Court as Witnesses” and include giving evidence by video link. The new Law cannot, however, make provision for special measures for children giving evidence in criminal proceedings, although this was an issue on which considerable concern has been expressed by a range of bodies. HSSD proposes in this respect that secondary legislation under the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law 2003 be pursued as a matter of urgency.

- In child abuse cases, for example, it is likely that only in the most exceptional cases will the direct oral evidence of the child be required.

E - Confidentiality of matters involving children

Cases involving children will be subject to restrictions protecting the privacy and identity of the child. This will not only apply to cases brought under the new Law but may also be applied by the courts in other matters, such as inquests.

F – Disclosure of Documents

Documents obtained for the purpose of court proceedings will be confidential to the court and immediate parties to the case and may not be shown to anyone else, save with specific court consent. Rules and/or a practice direction will set out the circumstances in which the court may consent to disclosure (including, for example, in relevant but unrelated cases, both in the Bailiwick and in UK courts) and any safeguards likely to be imposed.

Rules and/or a practice direction will cover the circumstances where social work records, for example, will be exempt from disclosure (known as ‘public interest immunity’ in the UK).

G – DNA Testing

The court will be empowered to order DNA tests in the event of a dispute about parentage and to draw an appropriate inference if someone refuses to undergo such testing, whether on their own account or in respect of the child.

Recommendations for implementation

It is proposed that detailed rules of court be introduced by way of secondary legislation and that this should come into effect at the same time as the new Law, if practicably possible. The issue of mediation may be delayed beyond this time, due to resource implications (see below).

Outline of resource implications

Special measures for children giving evidence will require a video link to the court. Additional staff will be needed for mediation. Whether this work should be undertaken by the safeguarder service, as set out in Part 9, requires further research and consultation. The main concern of the HSSD is that the cost of mediation should not put it beyond the reach of anyone who may benefit from it, so some level of subsidy by the States is inevitable. The HSSD expects that any such costs will be more than offset by savings in judicial and court time, as well as legal aid expenses.

Outline of how these issues are dealt with in other jurisdictions

In England & Wales, detailed rules govern virtually all aspects of procedure in family proceedings, with variations in local practice around the country. Thus, for example, in a typical contact (access) dispute, statements of evidence may be filed at an early stage or the court may decide that mediation and conciliation should be attempted before any formal evidence is adduced. Courts will often limit evidence to those immediately involved (parents) and need to be convinced of the relevance of any additional evidence, for example from the wider family, before permitting it to be submitted.

The Protocol for Judicial Case Management in Public Law Children Act Cases came into force in November 2003. It is a distillation of best practice and aims to speed up the process by requiring all agencies, including courts, social services, and the Children and Family Court Advisory and Support Service to work together to reduce unnecessary delays. The protocol provides, for example, for an early case management hearing and it makes detailed provision for the appointment and payment of expert witnesses.

Attempts to make mediation compulsory in some cases (by making the grant of legal aid conditional upon attending at least an exploratory mediation appointment) have been criticised for trying to make every case fit the same mould and not taking proper account of individual circumstances.

Summary of responses to consultation

The Guernsey bar and those private individuals who have responded to the consultation papers, as well as States' agencies, are all of the view that mediation is to be actively encouraged, to the extent that one respondent thought it should be compulsory. Reservation was expressed about the appropriateness of lawyers undertaking mediation. On the other hand, the bar pointed out that some of its members have undergone special training as mediators and suggested exploring the possibility that legal aid cover mediation by advocates.

Part 13: International Conventions

Relevant consultation document

- International conventions relating to children

The proposals for new law

As set out in the consultation document, there are a number of international conventions governing children and family life, which will impact upon the principles and practice of the new Law.

This is not an area where it is appropriate for the new Law itself to contain specific provision. However, the following conventions, in particular, are important:

i United Nations Convention on the Rights of the Child (UNCRC)

This is the most widely recognised human rights treaty in the world; the only two countries not to have ratified it are Somalia and the USA, and it has not been extended to the Bailiwicks of Guernsey or Jersey. In 2002, the Advisory and Finance Committee resolved that the UNCRC be extended to Guernsey once “some necessary additional legislation is in place”, primarily the legislation detailed in this report.

It is not necessary to be fully compliant with the UNCRC in order to be a party to it; the obligation is to aim towards compliance. The proposals in this report endeavour to ensure that the new Law is UNCRC compliant in its own terms, as well as encouraging States’ agencies to ensure compliance in their various areas of responsibility towards children.

ii Hague Convention on the Civil Aspects of Child Abduction (1980), and:

iii European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children (1980)

These two conventions set out speedy, economical and now well-established procedures for the return of children to their country of habitual residence, where they have been wrongfully removed without the knowledge or consent of those with custody rights. The Guernsey Royal Court does in effect apply the principles of these conventions, as far as possible. They are widely adopted, over 50 states worldwide having ratified the Hague convention.

iv Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (1996) (known as the Convention for the Protection of Children)

This covers some similar ground to the above conventions but is wider in that it also deals with public law matters, most crucially child protection. It contains, for example, a detailed set of rules for the recognition and enforcement by one contracting state of measures taken in another contracting state.

v Hague Convention on Protection of Children and Co-operation in Respect of Inter-Country Adoption (1993)

This, as detailed in the consultation document, sets out minimum agreed international standards for adoption of children across national boundaries, with the goal of protecting children, birth parents and prospective adopters from abuses such as child trafficking. It also affords international recognition of adoptions made in contracting states. It has been ratified by 37 states.

vi Council of Europe Convention on Contact Concerning Children (2003)

This is a very recent convention, which was thus not included in the consultation paper. The UK is currently consulting on ratification and has asked the Bailiwick for its views. The convention's overall purpose is to determine general principles to be applied to contact orders, to fix appropriate safeguards for children having contact outside of their own country and to establish co-operation between central and judicial authorities to promote and improve contact.

Recommendations for implementation

The HSSD is of the view that the Bailiwick should become party to the above conventions as soon as is practicably possible.

Outline of resource implications

So far as the HSSD is concerned, there will be no resource implications, beyond those already identified in this policy letter.

There will be some resource implications for other agencies; for example, grant of legal aid in applications to the Royal Court in respect of abducted children.

Outline of how these issues are dealt with in other jurisdictions

See above under the individual conventions for details of ratifications worldwide. The UK is party to the first 5, save for the Convention for the Protection of Children, which, together with all the EU states, it signed in 2003 and is expected to ratify soon.

Responses to consultation

All agencies and individuals responding to the consultation papers were of the view that the conventions i)-v) should be extended to the Bailiwick. As already explained, vi) is too recent to have been included in the consultation document.

CONSULTATION PROCESS

Throughout the review of the law, consultation has been on-going and has taken a number of forms. What is listed below is primarily the process of consultation: a summary of the outcome is recorded in the relevant section of this report. Some of the more substantial responses are included at Appendix F.

A THE LEGISLATIVE REVIEW PROJECT TEAM (LRPT)

This comprised senior representatives from the agencies most involved with children. It included the Children Board director and legislative advisor, the assistant director of education, a consultant child and adolescent psychiatrist, a consultant paediatrician, a senior probation officer, a chief inspector of police, an advocate from St James' Chambers, a member of the policy and research unit of the Advisory and Finance Committee and the Board of Health's Administration Director and senior manager of children's nursing services. Papers from the meeting were also sent to a representative of the primary care practitioners.

The LRPT met regularly between October 2001 and January 2004, on average every 4-6 weeks. Its function was to:

- consider reports from the legislative advisor;
- comment and advise on progress of the review;
- seek comments and concerns on draft proposals from the agencies represented.

Thus, for example, it was at the suggestion of the LRPT that investigation of the children's hearing in Shetland was undertaken (see consultation paper "Children's hearing: etc." for details). All the consultation documents were scrutinised by members of the LRPT in draft and amended accordingly, prior to publication.

B SOCIAL POLICY WORKING GROUP (SPWG)

The SPWG met monthly and comprised the chief or senior officers of what were the Children Board, Education Council, Board of Health, Guernsey Social Security Authority, Housing Authority, Guernsey Probation Service, Guernsey Police, the Income Tax Authority and Board of Industry. It also included the Prison Governor, the States Treasurer and a policy advisor from the Advisory and Finance Committee.

The Children Board Director regularly reported to this group on the progress of the review and sought feedback and advice as necessary. All the consultation documents were submitted to SPWG members in draft form. The legislative advisor attended two meetings and prepared a written progress report in May 2002.

C CONSULTATION WITH OTHER AGENCIES INVOLVED WITH CHILDREN

As well as the LRPT and SPWG, the following consultation has taken place with the other States' bodies whose remit includes children and families:

1. On first taking up her post, the legislative advisor met individually with 22 staff from education, probation, police, health, prison, youth justice and children's services, members of the judiciary and the Greffier.
2. The legislative advisor also met jointly at this early stage with social work and probation teams, foster carers and adopters, HM Comptroller and advocates from St James' Chambers, the Family Law Committee of the Guernsey Bar and the NSPCC officer and his regional manager from England.

The purpose of these meetings was to seek views on what were felt to be the problems with existing legislation and practice. A wide range of issues was raised, and commonly raised themes included:

- The need for a defined concept of parental responsibility, especially (but not only) in relation to unmarried fathers.
- Families and children to have clearer rights when children are in care.
- Children to have a clear voice in public and private law proceedings.
- An independent guardian (safeguarder) service to be established to report on children's best interests in civil proceedings.
- Legal representation in children cases to be developed, with specialist training for those advocates and the judiciary involved.
- The range of disposals available in juvenile criminal matters to be expanded, to include early preventative work and provide alternatives to imprisonment, especially for 14/15 year olds.
- The position of children placed out of the jurisdiction, whether subject to a special care order or "voluntarily".
- Practical difficulties in providing services across agency boundaries (a particular concern was that disabled children and their families tended to fall between two or three stools).
- The fact Guernsey is not a party to several international conventions, in particular those relating to child abduction and adoption and the UN Convention on the Rights of the Child.
- The need for a less adversarial and more child/family friendly approach to court proceedings.
- Regulation of court procedure and evidence to ensure speedy and efficient disposal of cases.
- The need for child witnesses to be afforded special treatment to minimise the trauma and increase the effectiveness of giving evidence.
- Lack of formal on-going provision for children leaving care.

- The issue of consent and confidentiality for children, in particular whether there is a specific age at which children should be deemed competent.

These matters have continued to be a significant focus of the work of the legislative advisor and all are addressed in this report.

3. In July and August 2002, the Housing Authority, Education Council, Police, Board of Health and Probation Service were sent information detailing where the review of children legislation was likely to impact upon their fields of operation and requesting observations. The responses to this were noted in making proposals in the future.
4. There was direct consultation with the Housing Authority on a number of matters, including anti-social behaviour, the need for a multi-agency approach to a range of issues and whether there should be a statutory duty to children in need and children leaving care.
5. There has been extensive consultation with States' staff on whether an alternative to the court, based on the Scottish children's hearing, might be appropriate for the Bailiwick. Details of how this has been undertaken is given in Appendix 2 of consultation document 11, "Children's hearings ..". In addition to the meetings listed in that document, a meeting for public servants, attended by approximately 60, was held on 11th November 2003, when a panel of experts from Scotland spoke to current issues in respect of the hearing and addressed questions.

D CONSULTATION WITH CHILDREN AND YOUNG PEOPLE

The Children Board was particularly anxious not to fall into the trap of recommending legislation without obtaining the views and experience of those most directly affected by it. The Board was also mindful of the obligation under Article 12 of the UNCRC:

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

The following consultation has been undertaken:

1. Early in her employment, the legislative advisor had the opportunity to meet with a number of young prisoners.
2. In April 2002, the Who Cares? Trust was contracted to undertake a survey of young people's views on a range of topics. The Who Cares? Trust is a voluntary organisation, based in the UK, with extensive experience of working with children (particularly those in public care) and obtaining their views. The Who Cares? Trust has undertaken work

for the (UK) Department of Health, the Department of Education and Skills, the Office of Public Management, the Youth Justice Board and the NSPCC, as well as numerous local authorities.

A total of 58 children were seen, some in groups and others individually, and a report of this consultation, "Having a Say" was published in February 2003. The outcome of this consultation informed subsequent work of the review.

3. Following on from the work by the Who Cares? Trust, a group of the children who had originally been interviewed has continued to meet with the legislative advisor and the Children Board training officer to discuss various topics, including the possible introduction of a hearing-style system based on the Scottish model.
4. A summary of the consultation papers was produced specifically for children and young people. This was widely distributed, for example to all schools, as well as those individuals in the care of what was then the Children Board. 25 individual responses were received.
5. As part of the citizenship curriculum, classes from four of Guernsey's secondary schools (age range 12-16) were asked for their views, based on the questions in the children's summary of the consultation papers. A similar exercise was undertaken with students aged 11 – 15 attending Granville House.
6. A similar exercise to that in the last paragraph was undertaken by the legislative advisor with users of Dee Caf and also with a group of young probation clients.

It is perhaps important to note that responses to many of the issues raised closely resemble the responses of children to similar exercises in the UK. Examples of such work include: "Remember my Messages" (Who Cares? Trust), "Your Shout!" (NSPCC) and "Families in Conflict" (Nuffield Foundation).

E CONSULTATION WITH ADULT USERS OF CHILDREN BOARD AND CHILD-RELATED SERVICES

1. Shortly after her appointment, the legislative advisor met with a group of parents who regularly used one of the former Children Board's family centres to discuss where they felt law and practice might be changed and improved.
2. In June 2003, the legislative advisor and a former authority reporter from Scotland discussed with a group of family centre users whether a hearing-style system might be appropriate for Guernsey, and whether those users might, in principle, be interested in becoming panel members.

3. In September 2003, 11 parents were interviewed individually about their experience of the legal system; they had been involved in a wide range of proceedings including care, private law, criminal (as parents of young offenders) and failure to attend school. A report of this consultation, "Parents' Experience of Legal Proceedings", is available from the HSSD.
4. On occasion, in the course of working with children as mentioned in D above, there has been contact with parents who have been eager to give their views and experience.

F SPECIFIC CONSULTATION ON THE SCOTTISH CHILDREN'S HEARING

Full details of this are given in the consultation paper, "Children's Hearings" (Appendices 2 & 3). To summarise:

1. There have been a number of visits to Scotland by, among others, staff from probation, police, health, St James' Chambers and the Bailiff, as well as the former Children Board President and staff. These visits (two of which were to the Shetland Islands and one to Orkney) have included attendance at conferences and observation of hearings, panel member training and the sheriff court.
2. Experts in the hearing have visited Guernsey on four occasions (April 2002, March, June and November 2003) and given a range of presentations to, for example, police, public servants, voluntary and church groups, States' deputies, the judiciary, advocates and the general public.
3. Following the visit in March 2003, a short questionnaire was circulated, asking for feedback on whether the hearing might be appropriate (with adaptations) for Guernsey, and what were felt to be its strengths and weaknesses.

G GENERAL PUBLIC CONSULTATION

1. As already noted, a total of 11 consultation documents and 3 information papers have been published. Three of these papers ("Having a Say" and two on youth justice) came out early in 2003, the bulk of them in November 2003.
2. In November 2003, individual response forms for each of the 11 papers were also published.
3. Copies of the consultation papers were made available on the Guernsey government website, from which they could be downloaded, as could the response forms.
4. As well as the papers themselves, there were two summaries, one general summary and one specifically for children and young people. The general summary encouraged readers to obtain copies of the full consultation papers, as required, and gave details of how this could be done, as well as how to respond.

5. The general summary was translated into Portuguese and Latvian.
6. Full sets of the consultation papers were distributed to the main agencies involved and also made available for consultation at the Greffe, the Guilles-Alles Library and the Citizens Advice Bureau.
7. The summary papers were distributed to a range of venues, including schools, doctors' surgeries, hospital waiting areas, the probation office and Children Board premises.
8. The consultation papers asked for responses by 19 December 2003.
9. Responses from the general public were received as follows:

Assisted Reproduction	2
Basic Principles	4
Children As Witnesses	3
Children In Need	1
Children's Hearings	5
Corporate Parenting	2
International Conventions	2
Nurseries, Pre-schools etc	2
Parental Responsibility	6
Private Law	3
Youth Justice	2

The above include separate responses to most of the papers from the House Group at St Paul's Methodist Church. Three individuals also wrote in general terms in response to the consultation papers.

H DRAFT STATES' REPORT

In early 2004, a draft of the States' report was sent to the following:

- The Guernsey judiciary
- Advisory & Finance Committee*
- Board of Health*
- Home Affairs Committee*
- Social Security Authority*
- Education Council
- Housing Authority*
- Probation Service*
- The Guernsey Bar*
- Guernsey National Society for the Prevention of Cruelty to Children*
- Guernsey National Children's Homes

- Relevant agencies and bodies in Alderney*
- Relevant agencies and bodies in Sark

Formal responses were received from those marked * and these are attached at Appendix F

I ALDERNEY AND SARK

There has been consultation throughout with the other Bailiwick jurisdictions. For example:

1. In February 2002 a visit was made to Alderney and there was discussion with some States members, the Chair of the Alderney Court, the Clerk of the States and other public servants.
2. A meeting with two members of the Chief Pleas of Sark was held in March 2002.
3. Representatives from Alderney and Sark have been invited to presentations by the Scottish delegations.
4. Copies of the consultation documents were sent to relevant agencies in Alderney and Sark and deposited for public consultation in the Alderney States Office and Sark Greffe Office.

ESTIMATED RESOURCE REQUIREMENTS

Service	Requirement	Staffing	Revenue	Capital
<u>General Implementation Programme for new measures</u>	To draw up a detailed programme of implementation, to include: Development of policies and procedures Training programme and delivery timetable Initial drafting of new legislation	2 Staff (one senior officer) for 2 years 1 Training Officer for two years 6 months' fees to contracted lawyer	£100,000 p.a. for 2 yrs £40,000 p.a. for 2 years £10,000 additional training costs £30,000	Nil
<u>Combined Court Welfare Service and Safeguarder Service</u>	Court Welfare is currently provided by HSSD and Probation. A guardian service is being provided by NSPCC on a temporary basis pending the establishment of a service on the island. This service is required irrespective of the system for dealing with children's matters.	One established full time post will transfer from HSSD. Additional requirement of 2 posts to provided for a team of: Manager; 2 Social Work Staff plus 2 admin support staff. (There are currently 2 social workers undertaking this work in HSSD, one of whom is on a temporary contract to cover the workload.)	Additional staffing costs of £85,000 p.a. for professional staff and £40,000 p.a. for administrative support Initial set-up costs £50,000 Running costs £30,000 approx p.a.	This service is to be re-located as part of Court Services; it is therefore hoped that it will be accommodated within the court offices.

Service	Requirement	Staffing	Revenue	Capital
		The current demand indicates there will be a need to employ sessional staff to prepare reports	£30,000 p.a.	
<u>Registration of Day Care Facilities for the Under 8's</u>	Additional staff will be necessary to meet the additional requirement of the regulations being extended to include children aged 5 – 8, and the requirement of bi-annual registration.	Two additional posts within the Early Years Service.	£ 38,000 p.a.	Nil
	Information will need to be published about the new regulations.		£5,000 start up cost	
	Initial training costs for staff.		£2,000 start up cost	

Service	Requirement	Staffing	Revenue	Capital
<u>Corporate Parenting</u>	Additional staff will be required to provide a support service to care leavers up to the age of 21. Resources will also be required to assist them in setting up independently in the community, starting in work etc. There are currently approximately 17 young people aged 15 – 18 years in the care of the HSSD who will meet the criteria to receive this service	One additional Support Worker in the Looked After Children Team to work with care leavers.	£30,000 p.a. Additional annual revenue of £20,000 p.a. to provide this service	

Service	Requirement	Staffing	Revenue	Capital
<u>Children in Court as Witnesses</u>	Developments are already planned within the court to enable vulnerable witnesses to give their evidence by means of video or video link in appropriate civil cases. The HSSD already has facilities that have been developed with the Police where witnesses can be interviewed on video. The additional resource will enable a video link to be set up with the court so that vulnerable children and adults can give their evidence and be cross-examined away from the court building.	No additional staff required.	Initial start up costs for equipment of £10,000 Initial training costs of £2,000 On-going revenue cost of maintenance and use of lines £2,000 p.a.	

Service	Requirement	Staffing	Revenue	Capital
<u>Office of the Bailiwick Reporter</u>	To set up and staff the office of the Bailiwick Reporter. The figures are based on an estimated requirement of 9 -15 hearings a month.	2 established posts of Bailiwick Reporter and Assistant Reporter (it is envisaged that the first 2 years will be a secondment from the Scottish Children's Reporter Administration, incurring additional costs) 2 administration and secretarial posts Annual running costs (heating, lighting, stationery, IT, etc.) Training of assistant reporter and on-going training and support costs. Property rental costs for a building to provide for the office of the Reporter and staff and the CYPT Hearings	£150,000 p.a. £45,000 p.a. £20,000 p.a. £50,000 per annum (based on a requirement of approx. 1750 sq.ft.)	£200,000 to allow for the modifications and alterations to a rented property and equipment costs

Service	Requirement	Staffing	Revenue	Capital
<u>The Child, Youth & Community Tribunal (CYCT)</u>	To set up and maintain a panel of approximately 20 members who will hear the cases referred to them by the Bailiwick Reporter.	Additional staffing costs Tribunal Service to administer the CYCT 1 x part time post	£15,000 p.a.	Nil
	The CYCT will be established as part of the Tribunal Service Set – up costs of pre-training (to be provided from Scotland), preparation of materials, and induction training off-island for panel members.		£27,000	
	Initial recruitment costs – to include assistance from Scotland, publicity and information material		£15,000	
	On-going revenue costs for the training of panel members		£17,000 p.a.	
	Children's Panel Advisory Committee (equivalent) and family attendance		£3,000 p.a.	

Service	Requirement	Staffing	Revenue	Capital
	Allowances to panel members Other costs – books, publications etc		£13,000 p.a. £1,500 p.a.	

SUMMARY OF ANNUAL RESOURCE COSTS

SERVICES	REVENUE COSTS 2005	REVENUE COSTS 2006	REVENUE COSTS 2007	CAPITAL
IMPLEMENTATION	£ 100,000 40,000 10,000 30,000	£ 100,000 40,000 10,000 None	£ None " " "	
DRAFTING				
<u>SAFEGUARDER</u>				
Staffing	125,000	125,000	125,000 recurring	
Set up Costs	50,000	None	None	
Running Costs	30,000	30,000	30,000 recurring	
Sessional Staff	30,000	30,000	30,000 recurring	
<u>REGISTRATION & INSPECTION 0 – 8 YRS</u>				
Staffing				
Start up Costs		38,000 7,000	38,000 recurring None	
<u>CORPORATE PARENTING</u>				
Staffing		30,000	30,000 recurring	
Revenue		20,000	20,000 recurring	

SERVICES	REVENUE COSTS 2005	REVENUE COSTS 2006	REVENUE COSTS 2007	CAPITAL		
<u>CHILDREN IN COURT AS WITNESSES</u> Start up Costs Training Costs On-going Maintenance	£ 10,000 2,000 2,000	£ None None 2,000	£ 2,000 recurring		2006 Equip £	2007
<u>OFFICE OF THE REPORTER</u> Office Rental Staffing Running Costs	50,000	50,000 150,000 45,000 20,000 }	50,000 recurring 150,000 recurring 45,000 recurring 20,000 recurring	2005 Building £ 200,000 to allow for modification, and alteration and equipment costs		
<u>CHILD YOUTH & COMMUNITY TRIBUNAL (CYCT)</u> Staffing Set up Costs (Training) Initial Recruitment Costs Ongoing Revenue & Recruitment Costs CPAC (equip) & Family Attendance Allowances to Panel Books/Publications etc		15,000 27,000 15,000 3,000 13,000 1,500	15,000 recurring None None 17,000 recurring 3,000 recurring 13,000 recurring 1,500 recurring			

SERVICES	REVENUE COSTS 2005	REVENUE COSTS 2006	REVENUE COSTS 2007	CAPITAL		
TOTALS:	£479,000	£771,500	£589,500 recurring costs	2005 £200,000	2006	2007
ADDITIONAL ESTABLISHED POSTS (Excludes temporary contracts)						
	2005	2006	2007			
<u>COURT WELFARE</u>	4 posts					
<u>REGISTRATION & INSPECTION</u>		2 posts				
<u>CORPORATE PARENTING</u>		1 post				
<u>OFFICE OF REPORTER</u>		4 posts				
<u>CYCT</u>		0.5 posts				
TOTAL:	4 posts	7.5 posts	11.5 total established posts			

PROJECTED SAVINGS

The following are areas where it is anticipated that savings will be made:

- The establishment of the Child, Youth and Community Tribunal and Bailiwick Reporter Service will lead to a reduction in the number of cases appearing before the Juvenile Court resulting in reduced costs in both court time and costs and in legal aid costs. The Scots have been evaluating the children's hearing system, and such work demonstrates that it is considerably cheaper to deal with a case through the hearing as opposed to a court.
- Early intervention and a holistic community approach is more effective in addressing difficulties at an early stage, and thus saving on costs to the court, social services, criminal justice and mental and health services in the long term. This was noted in the Audit Commission Report "Youth Justice 2004", which found clear evidence that a holistic, community based approach is more effective in reducing youth offending.
- The Freagarrach Project in Scotland estimates savings of £2.4m over a 10-12 year period by working intensively with young offenders.
- The Safeguarder Service will result in some savings in reducing the need to employ NSPCC staff from the UK to undertake reports. The Probation Service will no longer be required to undertake Court Welfare Officer duties. Increased use of mediation by safeguarders at an early stage in custody/access disputes should result in saving in court time and legal aid costs.
- Orders which allow foster carers and relatives to obtain parental responsibility will mean that the children involved will no longer be in the care of the states. This will reduce the social work time as there will no longer be a statutory requirement to visit and review cases. There will also be some reduction in the level of some of the allowances.
- The development of services for children in need will lead to problems being addressed at an earlier stage, and prevent some of the need for more expensive resources as a result of more serious problems developing
- Increased support for care leavers will enable them to make a successful transition to adulthood, and contribute to society. Evidence indicates that care leavers are particularly vulnerable to becoming socially excluded and to have problems with unemployment, mental health difficulties and criminal behaviour.

CONCLUSIONS AND RECOMMENDATIONS

The Health and Social Services Department believes it is necessary to update child and family legislation, in the fields of both civil and criminal law, to bring the Bailiwick into line with international best practice and promote compliance with human rights law and practice. This is an opportunity for the Bailiwick to take the best from other systems, and also to learn from their mistakes, and create a law tailored to the unique character of the Bailiwick

The Department recommends that the States approve that legislation be enacted for the Bailiwick on the lines and upon the principles set out in this States' report, to include:

1. provision for a set of guiding principles to be applied by all those responsible for making decisions concerning the welfare of children;
2. that the responsibilities and rights of parents be specifically defined, including those of unmarried fathers;
3. provision for a lay tribunal to deal with the majority of troubled children in need of care, protection, guidance or control. Children who commit serious or persistent criminal offences may continue to be dealt with by a court, as appropriate /or where necessary;
4. that the age at which juvenile court procedures apply to alleged young offenders be increased to include those up to and including the age of 17 years;
5. that the age of criminal responsibility be increased from 10 to 12 years ;
6. that there be a duty on States agencies to co-operate with one another to provide information, assessment and services to children in need and those at risk;
7. that there be a duty on the States to provide on-going support and guidance into early adulthood to those who have been in the care of the States, as set out in the report, "Corporate Parenting" (States of Guernsey Children Board Legislative Review Team, October 2003);

and the Department further recommends the States:

8. to direct the Policy Council to consider whether the following conventions should be extended to Guernsey and to report back to the States within twelve months in the event of a decision being taken not to extend any of the specified conventions.
 - i. Hague Convention on the Civil Aspects of Child Abduction (1980); and

- ii. European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children (1980); and
 - iii. Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (1996) (known as the Convention for the Protection of Children); and
 - iv. United Nations Convention on the Rights of the Child; and
 - v. Hague Convention on Protection of Children and Co-operation in Respect of Inter-Country Adoption (1993); and
 - vi. Council of Europe Convention on Contact Concerning Children;
9. to direct the Health and Social Services Department and the Home Department to jointly prepare proposals for special measures to be introduced in criminal proceedings for the giving of evidence by children.
10. to direct the Treasury and Resources Department to take into account the financial resources required for implementation of new children's legislation when recommending to the States the revenue and capital allocations for 2005 and subsequent years.
11. to direct the Treasury and Resources Department to have due regard to the staffing implications for implementation of new children's legislation when administering the Staff Number Limitation Policy.

I should be grateful if you would lay this matter before the States with appropriate propositions, including one directing the preparation of the necessary legislation.

Yours faithfully

P J ROFFEY
Minister
Health & Social Services Department

Appendix A

Glossary

Children:

In this States' report, 'children' refers to all those aged under 18: this is for grammatical economy and to accord with the definition of 'child' in the United Nations Convention on the Rights of the Child (UNCRC).

(In current Guernsey legislation, the term 'children' is used to cover those aged up to 13 years and 'young person' means those aged 14-16. In some British and international contexts, 'young person' can mean those aged up to 21 or even up to age 25.)

Public law

Public law cases are where the state intervenes in the lives of children and their families. This is usually the Health and Social Services Department where there are child protection concerns but it may, for example, be the Education Department where a child is failing to attend school.

Private law

Private law means disputes between private individuals (usually but not necessarily between separated parents).

Juvenile justice / young offender

The terms 'juvenile justice' and 'young offender' are used where children have, or are alleged to have, broken the criminal law.

ECHR

European Convention for the Protection of Human Rights and Fundamental Freedoms

UNCRC

United Nations Convention on the Rights of the Child

Appendix B

Summary of review process and expertise engaged

The Children Board took the view from the outset that it was not realistic to undertake a major review of legislation without external assistance. This is partly because of the sheer volume of work required, and in addition, the Board was keen to ensure input from those with experience of other child law systems. The Board therefore decided to employ a legislative advisor, to be responsible for research, consultation and preparation of the States' report, under the direction of the Board.

The legislative advisor is an English solicitor who has specialised in child and family law for over 20 years. She started work in September 2001 and for a year lived full-time in the Bailiwick. Since October 2002, she has been working on the review from her home in England, visiting the Bailiwick regularly.

Between December 2001 and June 2003 the legislative advisor was assisted by one, and then two research assistants; two of these three are local residents.

Throughout the course of the review, the Children Board sought the advice of Ernest Ryder QC, an experienced barrister in family law matters, who, in the spring of 2004, was appointed a judge of the Family Division of the High Court of England and Wales. He has advised in general on progress and in particular on human rights implications and issues which have proved complex. He has read and approved this States' report in draft and continues to offer advice.

The review has also benefited from substantial assistance, almost entirely on a voluntary basis, by a number of experts from Scotland, several of whom have visited the Bailiwick, some more than once. Particular thanks are due to Alan Miller, the Principal Reporter; Boyd McAdam of the Scottish Executive; Joy Gillies from the Children's Panel Training Unit of Aberdeen University; Sandy Cluness of Shetland Island Council; Chief Inspector Allan Moffat of Central Scotland Police; Penny Simpson OBE and Tony Coughlan. Full details of the help given by them and many others are in the consultation document, "Children's hearings: a way forward for Bailiwick children and young people, based on Scottish experience". (This consultation document is referred to in this States' report by the shortened title "Children's hearings").

In June 2003, the Children Board also engaged Margaret Hunter as a consultant. She is a former authority reporter from Scotland. She undertook research and assisted in preparing proposals for the introduction of a system of justice for children based on what happens in Scotland.

Appendix C

LIST OF PUBLIC CONSULTATION PAPERS produced by the Children Board as part of the review of children law.

Background and Information

- A. Children's Lives
- B. Youth Justice in the Bailiwick of Guernsey
- C. Having a Say

Specific topics and proposals

- 1) Basic Principles of Children Law
- 2) Parental Responsibility
- 3) Children & Private Law
- 4) Children in Need
- 5) Corporate Parenting
- 6) Nurseries, Pre-schools, Childminders & others looking after other people's children
- 7) Assisted Reproduction
- 8) Children in Court as Witnesses
- 9) International Conventions
- 10) An Evaluation of Sentencing Options and Community-Based Initiatives for Young Offenders and Those at Risk of Offending
- 11) Children's hearings: a way forward for Bailiwick children and young people based on Scottish experience.

Summaries

- S1) Summary of Consultation Papers
- S2) Summary of Consultation Papers for Children and Young People

Appendix D**22nd December, 2002****PRACTICE DIRECTION NO. 5 of 2002****GUIDANCE FOR INTERIM MEASURES IN RESPECT OF CHILDREN MATTERS BEFORE THE CIVIL COURTS.**

I am directed by the Bailiff to issue the following guidance, drawn up by the States Children Board in consultation with the Law Officers of the Crown and the Royal Court.

1. Commencement of Proceedings and Place of Safety Orders

There is a clear distinction between urgent and non-urgent applications for an order under the 1967 Law.

- Non-urgent applications (under s.3(1)(a)) will, it is anticipated, be the rule rather than the exception.
 - They will commence by leave of the Procureur (Comptroller) following a written report from the Children Board, detailing the need for the action and proposed care plan (see below).
 - The first hearing will be within 7 days of the direction by HMP/HMC under s.3(1)(a), on an inter partes basis, notice having been given to the parents and, where appropriate, the child.
- Urgent applications (Place of Safety Orders - s.3(1)(b)) will be granted by HMP/HMC where immediate removal of the child is shown to be a necessary and proportionate response:
 - they will be granted for the shortest possible time (normally not more than 72 hours).

- even if done verbally, the applicant social worker will be expected to show the need for such a response (including why other protective action is not possible or appropriate) and the care plan for the child immediately following removal.
- a written record of the reasons and plan will be faxed, sent by email or otherwise delivered to HMC/HMP, usually within 24 hours and in any event by the end of the next working day (such a record may be handwritten and need not be detailed, provided it covers the essential matters). The Procureur/Comptroller will direct at the time of making a PoS Order when and where the written record is to be delivered. The written record may be available to the court and parties in any subsequent hearing.

2. Representation

Representation for the child will be considered at the earliest possible stage in proceedings:

- EITHER by HMP/HMC when making a PoS Order or directing proceedings commence under s.3(1)(a)
- OR at the latest by the Magistrate at the first appointment.

Similar considerations will apply to other possible parties, including in particular unmarried fathers.

At the first court hearing:

- An extension of the duty advocate scheme should enable the representation of children and other possible parties. Substantive legal aid for future representation will depend upon consideration of:
 - the actual or potential issues relating to interests of justice.
 - the means of the party & the impact upon public funding.
 - any conflict between the parties, including the child vis-a-vis parents and parents vis-a-vis one another.

- The court will consider whether the child should be represented by a guardian or advocate or both. The court will expect to hear submissions including:
 - the appointment of a guardian to provide advice about a child's best interests (including whether, if known, there is likely to be a conflict between that and a competent child's instructions).
 - the practical implications of identifying an independent guardian.
- Unmarried fathers (absent parents) should normally be invited to participate, at least to the extent of indicating whether he wishes to be involved, to what extent, for what purpose and how (ie with the assistance of a legal advisor or otherwise.) Where the father is absent the court will consider:
 - whether the de facto relationship with the child amounts to 'family life' in which case no distinction should be drawn between the parents.
 - the views of the residential parent on involvement of the absent parent (although an adverse view should not be taken at face value so as to exclude absent parents without full consideration).
 - directions as to notice of proceedings (eg: through GSSA) and service of some (but not necessarily all) documents.
 - whether family life is in issue to the extent that an early fact finding hearing will be necessary.
- In the case of other significant adults the court will wish to identify these at the earliest opportunity so as to ascertain whether and what role they have to play in the child's life and the court proceedings. Similar considerations apply as in the above paragraph.

3. Care Plans

- Before making any interim or final order or direction the court (or HMP/HMC) will require a care plan from the Children Board. This will apply at every stage in the proceedings, beginning with PoS Order, as outlined above.

- The care plan will include as a minimum:
 - Reasons for the order sought, the aim of the plan and summary of the timetable.
 - Summary of the child's needs and how they may be met, including:
 - a) details of the proposed placement.
 - b) proposed contact (especially with immediate family, including siblings).
 - c) education, health and other services to be provided.
 - d) the views, if known, of the child and family members.
 - e) details of any assessment proposed, including medical assessments, and any consents/refusals.

These issues should be addressed in every case and where it is not possible to do so, the reasons for this should be given, together with attempts already made and to be made.

- The format and detail of the care plan will depend upon the order sought and urgency of the situation. Thus, in an emergency, the plan will probably be short, basic and may be oral initially: at the other end of the spectrum, final care plans will require considerable detail and should address the short, medium and long term. A detailed format will be drafted and consulted upon.

4. Final care plans and variation

These proposals seek to address the possible ECHR, Arts 6 & 8 implications of what has hitherto been regarded as an inability for parents or children to challenge the implementation of a care plan, particularly where it involves termination of contact. In future, a liberal interpretation of s.8 of the 1967 Law (which provides for variation of orders) will enable such challenge, subject to the conditions set out below.

- On the making of a final order (or any other order which has significant consequences eg: in respect of off-island placements), the court will consider whether to identify any aspect of the plan as being 'fundamental'. This is likely to include matters such as

contact, placement and whether the eventual proposal is for rehabilitation or permanent non-family placement.

- Without consent of the court, major changes to the 'fundamental' aspects should not be made. Where such change is proposed, application will be made to the court for variation of the care plan under s.8. Major changes will depend upon the facts of the specific case: they would not include, for example, a change of contact from Friday to Saturday but would encompass altering contact from weekly to every three months. Where the inevitable 'grey areas' cannot be agreed, it will be for the court to decide whether the proposed change goes to the root of the plan.
- As s.8 of the 1967 Law does not expressly address applications for variation on behalf of the child, the cooperation of HMP will be sought for such applications, where no other party is willing or available to make the application. (It is anticipated that this will be an extremely rare occurrence as the Children Board will normally take the lead in bringing the matter before the court.)
- In cases where full fit person orders have been made prior to commencement of this guidance (often without a care plan along the lines set out above, or at all) the Children Board will take the following action:
 - At the latest by the next child in care review (which will take place in not more than six months from November 2002), the Board will, in consultation with the child and family, produce a care plan covering the matters set out in para. 3 above and in such format as may subsequently be agreed. Such a care plan will also include such details as are available of the plan for the child at the time the original final order was made, and the details of and reasons for any changes. It should be agreed with the child and family where possible, who should have an opportunity to take independent advice. Those parts which are not agreed should be clearly indicated.

- This Children Board generated care plan will form the basis for any subsequent application to court. It should include an indication of what the Board regards as 'fundamental' aspects for the purpose of a variation application and where, if at all, this differs from the views of the family and/or child. Adjudication of what amounts to a 'fundamental' aspect will ultimately be a matter for the court.
- The Board will bring the possibility of variation of fit person orders to the attention of the children and families with whom it works.

5. Secure accommodation

The Board accepts that the Guernsey secure unit is not suitable for anything other than short-term use (unlike provision in the UK) and that the services provided in the secure unit must be under continuous and careful scrutiny. To ensure compliance with Arts 3,5,6,8 ECHR the following steps will be taken:

- Any authority to use the secure unit granted under the powers of the Children Board Director will:
 - be preceded by an application for a PoS Order where the child is in the voluntary care of the Board.
 - be referred to the court at the earliest opportunity, usually within one working day of admission to the unit.
- The care plan accompanying an application for detention in the secure unit will contain proposals for what will follow the detention.

6. Off-island placements

The Children Board is concerned to regularise the uncertain legal position of children placed off-island, whether under voluntary agreements, fit person orders or special care orders. It wishes to set in place a protective legal regime that recognises its responsibilities to such children, even when they are not physically on Guernsey soil. Pending the

necessary negotiations with the UK authorities and change in legislation, the Board will take action as follows:

- Placements off-island will be made, wherever possible, with the sanction of the court and subject to a tightly drawn care plan.
- The Board will normally avoid the use of special care orders in civil proceedings.
- The Board would prefer to make such placements under a fit person order (usually on an interim basis where no final order has already been made). Such orders will contain a direction granting leave for the child to be placed off-island, subject to 'fundamental' conditions as to family contact, timescales and the other matters set out in the care plan. At the hearing granting leave for the placement, a further hearing date will be fixed, to coincide with the next stage of the approved care plan.
- The child will normally be represented by an advocate, and a guardian or other independent expert will be appointed to report to the court on the child's best interests.
- Ideally, a mirror order will be negotiated with the UK judicial authorities to clarify the child's legal status and assist speedy resolution of any difficulties that may occur while the child is in the UK

7. Adoption

The Guernsey Royal Court will adopt a similar protocol to that recently introduced in England and Wales to streamline adoption proceedings.

8. Case management

With the increasing complexity of cases, and introduction of legal aid in Guernsey, the court intends to take a more pro-active approach to all family matters, to ensure the most efficient and effective use of human, court and financial resources. Directions will in due course be given in respect of such matters as expert evidence; disclosure; content and filing

of statements and other documents; identification of key issues. It is anticipated that a practice direction on the conduct of ancillary relief proceedings will be piloted early in 2003.

Her Majesty's Greffier

**SCOTTISH CHILDREN'S HEARING: A PROPOSED STRUCTURE FOR GUERNSEY
(GLOSSARY OF SCOTTISH TERMS AND SOME POSSIBLE BAILIWICK EQUIVALENTS)**

Appendix E

Scottish Body	Functions	Possible Guernsey equivalent	Major differences envisaged	Assistance offered
Panel (hearing)	Voluntary body of 3 lay people. Hears cases (but NOT factual disputes) involving offending, child protection, school non-attendance etc. Establishes whether grounds of referral to the panel are accepted and if not, refers to Sheriff's Court.	Children's Tribunal, independent body within the Guernsey Tribunal Service.	Remit may include out of jurisdiction placements and some private law disputes (eg: quantum of access). Bailiwick Reporter, not panel, will establish whether grounds accepted and make referral to court if necessary.	Chairing of panels may be undertaken by experienced Scottish chair in initial stages.
Children's Panel Advisory Committees (CPAC)	One for each local authority. Voluntary body responsible for recruitment, selection, monitoring and some of the training of panel members.	An advisory body under the tribunal service, working in conjunction with head of the tribunal service.	Nothing significant in function.	Help offered with all functions of CPAC, perhaps with Guernsey equivalent to have at least one Scottish member.
Reporter	Receives all initial referrals on children, from police, social services, other agencies, private individuals. Investigates cases; decides whether to refer to hearing. Advises panel on legal issues. Presents case in court when facts disputed. Inter-agency liaison on children issues; member of Child Protection Committee.	Bailiwick Reporter, with (possibly part time) assistant.	Bailiwick Reporter's role to include scrutiny of out of jurisdiction placements.	SCRA (see below) will consider seconding initial reporter to help set up system and train first Bailiwick Reporter. On-going assistance with training and back-up support.
Safeguarder	Appointed by hearing in less than 10% of cases to report on particular issue, eg: views of the child, disputed contact.	Independent service, possibly under auspices of the court		

Scottish Body	Functions	Possible Guernsey equivalent	Major differences envisaged	Assistance offered
Scottish Children's Reporter Administration (SCRA)	Independent body responsible for administering reporter service throughout Scotland. Non-interference from politicians statutorily guaranteed; accountable to Scottish Parliament through SEED (see below). Board of 10 manages principal reporter and formulates/implements policy.	Bailiwick Reporter Service, with a Board, which would be responsible for recommendations on hiring and firing the Bailiwick Reporter and directing policy.	SCRA is responsible for administering a reporter service in 31 local authorities. A Bailiwick Reporter (plus assistant) would cover the whole Bailiwick.	See above ('reporter') SCRA has offered considerable assistance to date and will continue to do so.
Scottish Executive Education Department (SEED)	Ultimately political responsibility for SCRA rests with the Minister for Education who reports to the Scottish Parliament.	Reporter Service could be accountable to the States through Health and Social Service Department.		
Children's Panel Training Organisers (CPTO)	Six of these are responsible for delivering training throughout Scotland, in conjunction with CPACs.	Training to be responsibility of Guernsey Tribunal Service.		CPTO for the Highlands and Islands is willing to provide and deliver training package for Guernsey.
Sheriff Court	Adjudicates factual disputes where grounds of referral to hearing not accepted. Once facts established, case remitted to hearing for disposal. Hears appeals from hearing. Hears most criminal cases.	Magistrates and/or Royal Court.	Establishment of grounds will be a simpler process, with less work being referred to the court. In complex cases, may be scope for judge also to deal with disposal.	
Procurator fiscal (PF)	Public prosecutor. Decides (in consultation with reporter) what should happen in serious criminal matters or where child held in police custody. NB: all prosecutions undertaken by PF, NOT by police or reporter.	Role to be undertaken by HM Procureur.		

Appendix F

States of Guernsey HOUSING AUTHORITY



Sir Charles Frossard House
P O Box 43
La Charroterie
St Peter Port
Guernsey
GY1 1FH

Your ref:
Our ref: cb/769

13 APR 2004

Deputy Mrs Jean Pritchard
President
Children Board
Perruque House
Rue de la Perruque
Castel
GY5 7NT

7 April 2004

Dear Deputy Pritchard

Re: Draft Policy Letter on Children Legislation

I refer to your letter dated 5 March 2004, enclosing a draft policy letter with proposals for legislation to be called "The Children (Bailiwick of Guernsey) Law".

The Authority has now considered the proposals, and I am able to give you its comments, which I trust are helpful.

The Authority had little comment to make on the major part of the policy letter, since many of the proposals do not directly affect the work of the Authority.

We do, however, have comments to make in five areas:

1. Part 1: Guiding Principles

The Authority noted that the welfare of the child is considered to be the paramount consideration except where there is an immediate risk to the safety of another person.

As the Authority has mentioned in previous comment on the proposals regarding the possible setting up of a hearing system for children based on the Scottish Children's Hearing System, the Authority has a responsibility to protect all tenants in terms of ensuring that they are able to have peaceful enjoyment of their tenancy. We regularly experience situations where that enjoyment is severely undermined by the behaviour of children and, in a number of cases, where the health of the person is significantly affected.

That situation would not presumably be interpreted as meaning that the person affected by the behaviour of the child was actually at risk. However, the situation could be so severe as to prompt the Authority to review the tenancy and, possibly, to seek the eviction of the family responsible for causing the problems.

The Authority would not be prepared to abandon or compromise that principle.

I would add that the option of transferring the family causing the problem another estate may not be practical, either because of the seriousness of the problem or the fact that such a transfer might mean a move to a more desirable estate, whereby the result of the antisocial behaviour is seen as a reward rather than any other response.

The Authority would, therefore, continue to work on the principle within its own operations that, while it recognises the importance of the welfare of the child, there needs to be appropriate consideration not only to the safety of another person but also their wellbeing.

I appreciate that I have dwelt at length on this issue, but it is of concern to the Authority, and its views have been reinforced by recent events involving serious problems that a (relatively small) number of juveniles have caused on its estates.

2. Part 4: Duties of the States to Children and Families

Section B.1 provides that the new Law will require the duties and obligations of agencies responsible for the care of children to provide accommodation to children in need; further, under B.2. to require the provision of services for children leaving the care of the States, such services to include such assistance with accommodation as maybe assessed as necessary.

The policy letter does not go on to describe how these obligations will be discharged, although it notes that “those who have been in care traditionally have very poor employment and housing prospects and are over-represented in the prison and mental health system”. This indicates measures need to be taken to rectify this situation, which could place significant demands on social housing provision and/or affect the priorities for the allocation of existing social housing.

However, it is comforting to note that the policy letter also acknowledges that in “England and Wales there is a significant body of case law on the complex interaction between the statutory duty to children in need and duties under separate housing legislation to provide housing to those in priority need.”

In Guernsey, there is no housing legislation or, in deed, any legal obligation upon the States to house anybody. The Authority is, therefore, content with the proposal.

While the Authority would look forward to working with the agencies in helping to provide such support as may be required, it would not be prepared to accept an arrangement whereby priority were automatically given to housing a young person in need above the needs of everybody else on the Authority's waiting list.

A. General Duties

The Authority has significant problems with regard to rent arrears, as has been well publicised.

Some of the cases have been extremely difficult, and rent arrears have been at a level where the Authority has not felt that it is able to take any other action than to terminate the tenancy. This is only taken after the Authority has exhausted efforts to persuade the tenant to recognise the responsibilities of their tenancy.

Some of these cases involve families with dependent children, and the Authority has taken action to evict families where necessary.

While we are hopefully a tolerant and patient landlord, the Authority cannot accept a situation whereby a family is allowed to remain in its accommodation without respecting the responsibilities of the tenancy.

In the past, we did flag up with the Children Board any concerns that might arise from time to time in respect of cases involving families with problems that we feared might conclude with the termination of the tenancy. A procedure was established whereby the Authority advised the Children Board of such cases at an early stage in order to give the opportunity for Board officers to work with the family to see what might be done to salvage the tenancy. Unfortunately, that arrangement was abandoned but may be worth reintroducing, although it may be that the appropriate agency might not in fact be the equivalent of the Children Board but might be the Social Work Department.

Irrespective, the Authority is happy to work with all the various agencies in order to minimise the eviction of families with dependent children. However, it is important that such action can be prompted early and not at the time of application for eviction, when it may be too late for effective steps to be taken to avoid eviction.

3. Children Hearings

As the Authority indicated in its earlier response, it is sympathetic to proposals to keep children out of the criminal system.

However, as we indicated in our comments of 1 May 2003, the Authority did have concerns over how the system might be implemented and the Authority went into some detail at that time over its concerns.

In addition to the comments that it made at that time, we would also wish to comment on the maximum age that would apply with regard to the proposed Child, Youth and Community Tribunal.

We note that under Part 5: D.1. it is proposed that the changes include the power for the CYCT to deal with children up to and including the age of 17 in appropriate cases.

I appreciate that the Board has considerably more knowledge of the Scottish system, which it is using as a model, than the Authority. However, the Authority understands that in Scotland the Children's Hearings only become involved with sixteen/seventeen year old offenders if they are already under a supervision requirement or if a Court decides to refer a young person to a Children's Hearing for advice where the young person has pleaded, or been found, guilty of an offence.

The Special Report made to Scottish Ministers and which had the support of the Council on Tribunals expressed concern over the proposed extension of the age limit from fifteen to seventeen and the report indicated that huge resources would be needed to deal appropriately with the additional cases; it expressed concern whether the panels would be able to cope with all of the implications without significant resourcing.

Bearing in mind that the Children Board is modelling the CYCT on the Scottish Children's Hearings system, we were surprised that there appeared to be a straight recommendation for the local arrangement to apply to seventeen year olds in view of the concerns expressed over a similar proposal in Scotland.

I recognise that this does not necessarily affect the work of the Authority directly, although there will inevitably be a number of young people who are living in our States houses and who will be affected the proposed arrangements.

4. Anti Social Behaviour Orders

The Authority noted that no references made in the Board's report to the possible provision of ASBOs in the Island, although recognising that any such provision might be made outside of the Board's own proposed legislation.

The Authority was interested to note that consideration is being given in Scotland to extending Anti Social Behaviour Orders from children of sixteen and above to children aged twelve to fifteen; we believe that the Scottish Parliament is currently at the first stage of adopting those proposals.

We appreciate that it can reasonably argued that children legislation should not be expected to incorporate such provision; however, the proposed legislation is intended to include control as well as support mechanisms.

Irrespective, it is, therefore, surprising that, at this stage in the process, there is no mention of Anti Social Behaviour Orders, other than the comments that were recently attributed to you in the Press to the effect that the Hearing System offered as one of its benefits considerable savings in time and cost in comparison with ASBOs and referral to the Court.

While it is true that the take-up of ASBOs by Local Authorities in the United Kingdom has varied considerably from one area to another and suffered lengthy delays in some cases, the situation has changed considerably, with provision for fast tracking. As a result, Orders have become increasingly recognised as an effective option in managing antisocial behaviour.

The Authority believes that the use of such Orders, albeit on a limited basis, could be helpful and possibly necessary, to ensuring control of anti social behaviour on its estates. Further, it also believes that the use of such Orders might introduce a level of control that, in some cases might be a preferred option to controlling a situation that might otherwise lead to the termination of a tenancy and the eviction of the offending family.

The Authority Members did, therefore, express considerable interest in clarifying the Board's position in respect of Anti Social behaviour Orders.

5. NCH

The Authority was surprised that the NCH was not included in the list of organisations with whom the Board is consulting in view of the status of the NCH within the housing of young children leaving care but often requiring ongoing support from agencies.

I hope that the above comments are of help to the Board in finalising its proposals. I appreciate that some of the comments might seem to challenge some of the Board's proposals, but in some instances it is difficult to visualise the detailed arrangements that would apply on implementation and the detail of the proposals will clearly have a major impact.

I would reiterate that, in general terms, the Authority is very supportive of what the Board is planning to achieve and recognises the effort that has gone into producing such a scope of proposals.

However, we would wish to be assured that the detailed implementation does not lead to a situation where the Board and the Authority are in conflict, which we believe can be avoided. We would be grateful for your clarification on how Board anticipates managing the issues that have been raised.

Yours sincerely

B M Flouquet

President

States Housing Authority



States of Guernsey
Committee for Home Affairs

- 2 APR 2004

The President
States Children Board
Perruque House
Rue de la Perruque
Castel
GY5 7NT

Committee Secretariat,
Sir Charles Frossard House,
P.O. Box 43, La Charroterie,
St. Peter Port, Guernsey,
GY1 1FH, Channel Islands.
Switchboard (01481) 717000
Direct Line (01481) 717
Fax No. (01481) 712520

/ April 2004

Dear Deputy Pritchard

DRAFT POLICY LETTER ON CHILDREN LEGISLATION

Thank you for your letter of 5 March enclosing the draft policy letter which was considered by the Committee for Home Affairs at its meeting held on 29 March.

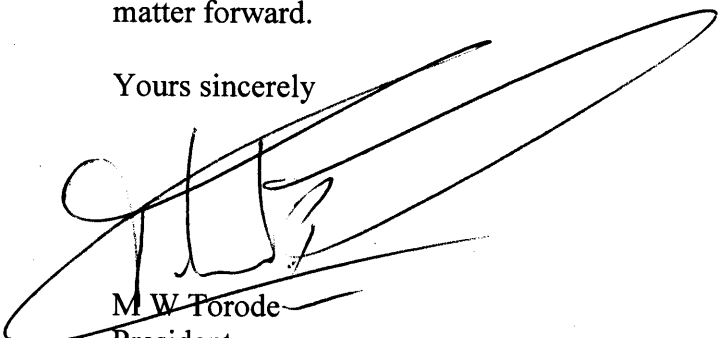
I enclose for your information a copy of a memorandum dated 24 March from the Chief Officer of Police commenting on the draft policy letter.

The Committee for Home Affairs supports the Children Board proposals but would ask the Board to take note of the two issues raised by the Chief Officer of Police in his memorandum

- the age of children who could be brought before the proposed Child, Youth and Community Tribunal
- recognition of the good points in the existing Guernsey system when considering detailed proposals based on the Scottish system.

I hope that this response will be of assistance to the Children Board in moving this matter forward.

Yours sincerely


M W Torode
President

-2 APR 2004



GUERNSEY POLICE

MEMORANDUM

TO: THE PRESIDENT AND MEMBERS
COMMITTEE FOR HOME AFFAIRS

FROM: CHIEF OFFICER

SUBJECT: DRAFT POLICY LETTER ON CHILDREN LEGISLATION

DATE: 24 MARCH 2004

Sirs/Madam

1. The President of the Children Board, Deputy Mrs Jean Pritchard has forwarded for consideration of the Committee a draft Policy Letter containing proposals for a single piece of legislation to be called 'The Children (Bailiwick of Guernsey) Law'.
2. The proposals are as a result of a lengthy process of consultation over the last 2½ years which included dialogue with the Island Police.
3. The Children Board are anxious to complete the preparation of the Policy Letter prior to the Government change in May 2004 and are therefore requesting comments from the Committee for Home Affairs by 8 April 2004.
4. During the consultative process a submission was made by the Island Police and I include this at Appendix 1 for the information of the Committee.
5. The Policy Letter is a wide ranging document covering a number of issues as they relate to children. In particular Part 5 of the document which is broken down into six areas:-
 - a) Grounds for compulsory intervention in respect of children.
 - b) Duties to children at risk.
 - c) Emergency protection.
 - d) The child, youth and community tribunal.
 - e) Parental responsibility orders.
 - f) The age of criminal responsibility.

These are the areas that it is thought most likely that a Police involvement in the administration of the Law will occur.

6. Having had the benefit of consultation the views of Police on the implementation of the Law would broadly accord with those of the present Children Board.

7. (a) However, there would be concern in relation to matters contained within the paragraph marked 1 – the penultimate paragraph – on page 27 of the draft Policy Letter where it refers to the Child, Youth and Community Tribunal (CYCT) dealing with children up to and including the age of seventeen years in appropriate cases. Presently juvenile proceedings extend to those persons up to and including the age of sixteen. Should the age limit be extended to seventeen then the administrative effect it would have upon Police resources would be quite considerable. Presently once a child attains the age of seventeen years a Police Officer is not required to interview them whether as a witness or offender, in the presence of an appropriate adult. During 2003 Police dealt with young people within the age bracket of seventeen but under eighteen years on 512 occasions. If it is intended that this age group would be treated as juveniles then they will have to be interviewed in the presence of a parent or appropriate adult. When one considers the delays that can be built in quite innocently to the availability of parent or appropriate adult and the further administrative processes that are attached to dealing with juveniles this will have a knock-on effect of resources and pro-active policing capability.
7. (b) The Senior Management Team are not convinced that a case to change the current situation has been made out and consequently, do not support this proposal.
8. Paragraph D entitled 'The Child, Youth and Community Tribunal' on page 31 highlights that in Scotland the Children Hearings has come under attack in recent years for not being sufficiently effective in tackling youth crime. It goes on to describe how in response to that criticism a number of measures have been introduced or are under discussion and as a consequence there has since been some positive results. Our present system has been in existence for some 20 years and whilst obviously there is always room for improvement it appears, given the Island's circumstances, has served it well. Clearly there are benefits that can be gained from the whole holistic approach to the problem of youth offending and one would hope that due consideration is given to the fact that the Scottish system which has been in place for so many years is still not perfect and there may be areas of the Guernsey system which may have to be maintained.

RECOMMENDATION

I would commend to the Committee the acceptance in its broadest form the draft Policy Letter that has been forwarded by the Children Board and would ask that any response the Committee Secretariat make on behalf of the Committee for Home Affairs the concerns as raised in paras. 7 and 8 be included.

Respectfully submitted

G B LE PAGE
Chief Officer of Police

1. Page 19 – A. General Duties

There was a consensus of opinion that any States departments that this section seeks to place a duty upon should be identified in any subsequent legislation. Whilst it is appreciated that not every department is involved in every case, if subsequent legislation is to be effective and unambiguous, those departments should be identified and if they impact or could impact upon a particular case, then duty/responsibility is imposed by law. This may benefit any future statutory footing of the CPC, as the departments identified should all be represented on the Committee and such identification would place a legal responsibility upon them to support the work of the Committee

2. Page 22 – para. A. ii

This section seeks to update and amend Article 2 of the 1967 Law. The proposal at (ii) would appear to replace, in part, para. (d) of the current law. Whilst the proposal is more flexible than the existing law in as much as it does not limit intervention to the parent or step-parent having a First Schedule conviction or residing in the same house as the child, the proposal does not appear to cater for a child living in a house where the parent is in a common law relationship with a person who presents such a risk to a child – the current legislation covers such a situation.

3. Page 23 – B. Duties to Children at Risk Para. 1

We would encourage and support the Children Board in its efforts to extend its statutory responsibilities Bailiwick wide. It is appreciated that this will not be without some difficulties. For example page 6 para. (f) identifies that the current legal aid scheme does not extend to Sark, presumably because Sark makes no contribution to the scheme's funding due to its non-taxation status. There would undoubtedly be ECHR issues regarding the provision of legal representation if the full implication of these proposals were imposed upon Sark.

Both Alderney and Sark utilise Guernsey's hospital services when the need arises. The Princess Elizabeth Hospital could admit a child from either island as a consequence of an unlawful physical or sexual act and as a consequence of admission, a joint investigation is instigated. Had such an act occurred in this island, the child would be supported and protected thereafter by legislation. It would be little comfort to the child, and professionals involved at that stage, knowing that such provision is not extended to the other islands. That said, it is acknowledged that in the first instance, extending the law, at least as far as Sark is concerned, may not be achievable but considerable dialogue must take place with representatives of both islands to achieve a satisfactory compromise, until such time as political/constitutional barriers are removed.

Para. 7

Is it intended that any failure regarding a proposed duty to report/disclose a suspicion of child abuse will be punishable by law? If so, we would recommend that such duty be restricted to professionals only. Extending the duty to voluntary workers and the public in general is likely to be problematic with levels of knowledge, experience, training etc. being the crux of such problems. One only has to consider some of the criticism levelled at professionals in recent high profile public enquiries to realise that placing such a duty on non-professionals will be problematic.

4. Page 24 – C. Emergency Protection of Children

Para 1.

We consider the term “Child Protection Order” appropriate. Given the limitation of any order to a period of 7 days we are relaxed as to who the issuing authority should be. However, should the court be considered the appropriate venue, as in the UK, consideration should be given to HMP having emergency powers, perhaps with some correlation to the duration of police emergency powers.

Para 2

It is unclear whether this proposal is an attempt to incorporate most of the powers afforded to UK Police under the Children Act 1989. If so, such an order should be styled Police Protection Order so that we can follow best practice and guidelines in UK. Under that legislation, no specific powers of entry exist for forced entry as sufficient powers are contained within PACE. Such orders can be effective for a maximum of 72 hours but it is not the norm to utilise the maximum time limit. Locally the duration of any such police power will obviously be dependent upon the willingness of the court to sit at weekends. As an example, when a person breaches an order under the Domestic & Matrimonial Proceedings Law 1988, police have a power to arrest in specific circumstances. In such situations we are required to produce the detained person before a court within 24 hours. **No account is taken of Christmas Day, Good Friday or Sundays.**

Para 3

The authority to attach an exclusion restriction to an order should rest with the court, as in the case of the Domestic & Matrimonial Proceedings Law.

Page 25

The proposal to include children up to and including the age of 17 (under 18 in effect) within the CYCT system will have an effect upon policing if as a consequence, it is intended that young people aged 17 but under 18 years are also to be considered as juveniles. Currently once children attain the age of 17 years a police officer is not required to interview them, whether as witness or offender, in the presence of an appropriate adult. During 2003, Police dealt with young people within the age bracket of 17 – u18 years on 512 occasions. If it is intended that this age group will be treated as juveniles, it will significantly impact upon Police investigation time. We are not convinced that a case to change the current situation has been made out and consequently, do not support this proposal.

Page 27

F. The Age of Criminal Responsibility

As stated, the age of criminal responsibility in the Bailiwick is 10 years (the position on other relevant jurisdictions is set out on page 30 para. F). We agree with the statement that it should not be lower than any statutory age at which the new Law presumes children able to form opinions of their own (and by implication have some understanding of the consequences of their actions).

The following tables record the number of juvenile offenders under the age of 14, processed for criminal and summary offences during 2003, who were dealt with other than by a prosecution route.

CRIMINAL OFFENCES

METHOD OF DISPOSAL	9 YRS	10 YRS	11 YRS	12 YRS	13 YRS	TOTAL
CAUTION	0	1	2	9	12	24
NFA	3	4	12	12	4	35
TOTAL	3	5	14	21	16	59

SUMMARY OFFENCES

METHOD OF DISPOSAL	9 YRS	10 YRS	11 YRS	12 YRS	13 YRS	TOTAL
CAUTION	0	1	1	1	0	3
NFA	0	0	1		0	3
TOTAL	0	1	2	2	0	6

To provide similar statistical data on those children prosecuted has not been undertaken at this stage given the scope of the task.

We would not resist any move to raise the age of criminal responsibility to 12 years and feel that there should be a close, if not identical, correlation between this age and that at which this Law will presume children are capable of forming their own opinions. There appears to be no pressure or justification to raise the age any higher and given that the CYCT model will reduce the number of children passing through the criminal justice system, that should serve as further comfort to those who think the age should be raised further.

Page 30 – last para.

We are unsure as to how many responses you received from the Police – we are aware of only one which was not representative of this organisation.

Page 32

Detention in Secure Unit on criminal grounds – one would assume that an Advocate representing the interests of a child in court would, unless the offence is so grave that it is blatantly apparent that no court would grant open remand, seek to apply for open remand which would in most cases, accord with the parents wishes. Are we in danger of unnecessarily adding to the cost of this process by affording parents free legal representation?

With regard to detention, it is difficult to understand the nature of the Board's role to review "all cases" – "to ensure continuing compliance with criteria for detention and ECHR" in circumstances where a court remands a child to the Secure Unit.

We are unable to comment on the appropriateness of any maximum period of detention in the Secure Unit given that we are not aware of the extent of the proposed facilities.

We are relaxed as to whether it will be Police or a Law Officer who will make remand applications. However, an issue that might require further consideration is who will be responsible for conveying the detainees to and from court?

Page 37 – Police Checks

It appears that the question being posed is whether or not Police would extend their checking service (Police Clearance Certificate) to parents employing live-in nannies and au pairs. The facility is currently available to any individual subject to payment and proof of identification. However, a realistic understanding needs to be appreciated of the difficulties encountered when undertaking checks on certain foreign nationals. It would not be appropriate to expand further within this document but given that consideration is being given to a legislative approach to this group of employees, many of whom are Europeans, we would advise further dialogue in the first instance.



STATES OF ALDERNEY 19 MAR 2004
States Office P.O. Box 1, Alderney, Channel Islands GY9 3AA

POLICY & FINANCE COMMITTEE

CW/djh/HW 4

17 March 2004

Deputy Mrs Jean Pritchard
President, Children Board
Perruque House
Castel GUERNSEY GY5 7NT

Dear Deputy Pritchard

Draft Policy Letter on Children Legislation

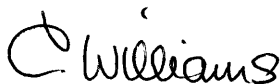
I refer to your letter of 5 March 2004 and enclosure.

At its meeting held on 16 March 2004, the Policy & Finance Committee approved the draft Policy Letter. As requested, they noted their accord with the items in capitals (referred to as "highlighted in red" in your letter).

Whilst the Policy & Finance Committee supports and appreciates all the good work done by the various parties in producing the policy letter, we are still left with the issue raised in my letters of 14 March 2003 and 18 February 2004 i.e. How will the initiatives listed be implemented in Alderney?

I would appreciate your comments on this and previous letters before the Children Board disappears under the new Government of Guernsey legislation.

Yours sincerely



Colin Williams
Member responsible for liaison on
Transferred Care Services

15 APR 2004

Children Board Policy Letter on Children Legislation
Probation Service response

The Probation Service responded in detail to the series of consultation documents which preceded the Policy Letter.

The draft policy letter and the Probation Service response to the consultation were discussed at a meeting of the Probation Service Committee on 29th March.

The Probation Service Committee gave broad support to the contents of the policy letter commenting as follows on areas of specific relevance to the Service:-

1. The Probation Service Committee felt that the age of criminal responsibility should be raised from 10 to 12 years as outlined in the Guiding Principles of the new law.
2. Full consultation and appropriate representation for children is supported, with adherence to the guiding principles as outlined.
3. A system for dealing with children in trouble and need based on the Scottish Hearing System (here called the Child, Youth and Community Tribunal) is supported by the Probation Service Committee on the basis that research clearly shows that an holistic community based approach is more effective in reducing youth offending than one based on court and custody.
4. The Probation Service Committee acknowledges that the most efficient way of delivering services to children at risk of, or having been involved in, breaking the law may be a multidisciplinary team.
5. The Probation Service Committee supports the Child Protection Committee being given a clear statutory mandate. It is believed that multiagency responsibility for child protection should be mandated in law wherever possible.

Court Welfare/Safeguarder Service: The proposal for an independent coordinated service providing reports in public/private and adoption cases is fully supported. This area of work, traditionally a role of the Probation Service, has been reduced over time as the Probation Service concentrates on its core business of providing a service to the Courts in criminal cases. The remaining work, mainly guardian ad litem in adoption proceedings, has been contracted out to sessional workers wherever possible as there is insufficient capacity in the Probation team.

Outline of Resource Implications for the Probation Service:-

The Children Board proposals seek to vastly improve the structure of services for children in need in the Bailiwick, this will not be resource neutral for the Children Board or the other agencies involved. With increased multiagency responsibility for child protection at front line and management levels extra resources are likely to be needed. Nothing that is proposed will remove workload from the Probation Service with the possible exception of the Safeguarder Service. As mentioned above, this work has been mainly contracted out for the past few years as criminal work has expanded. There would thus be minimal saving (the bulk of the work is currently being undertaken by a Probation Officer seconded one day a week from Jersey).

If a multidisciplinary team were to be formed to deal with Young People who have broken the law this may require extra resources for the Probation Service.

Summary of Response:- The Probation Service has been kept fully informed throughout the research and development phase of developing the new law. The Probation Service Committee supports the Children Board ideas for a radical overhaul of current law, the adoption of International treaties and the setting of fundamental guiding principles.

15th April 2004

Anna Guilbert
Chief Probation Officer

- 2 APR 2004

GUERNSEY
**SOCIAL
SECURITY**
AUTHORITY

Edward T. Wheadon House, St. Peter Port
Guernsey, Channel Islands. GY1 3WH
Fax: (01481) 732501 Tel: (01481) 732581

Deputy J Pritchard
President
Children Board
Perruque House
Rue de la Perruque
Castel, Guernsey
GY5 7NT

Our Ref: OLET

Your Ref:

Date: 31 March 2004

Dear Deputy Pritchard

Draft policy letter on children legislation

I refer to your letter of 5 March 2004, with enclosed draft policy letter.

While grateful for the opportunity, the Authority has not identified anything in the report which has a substantial relationship with the areas covered by our own mandate and legislation and, therefore, does not wish to make any comment.

Yours sincerely

O D Le Tissier
President

Our Ref: sk

- 1 APR 2004



States of Guernsey

**BOARD OF
HEALTH**

CORPORATE HEADQUARTERS

LE VAUQUIEDOR,
ST. MARTIN'S,
GUERNSEY GY4 6UU,
CHANNEL ISLANDS.

TEL. 01481 725241

FAX. 01481 235341

The President
Children Board
Perruque House
Rue de la Perruque
Castel
GY5 7NT

31st March 2004

Dear Deputy Pritchard

Draft Policy Letter on Children Legislation

Thank you for your letter of 5 March 2004 enclosing the above.

This was considered by the Board of Health at its meeting on 22 March, at which we also had the advice of the Board's Medical Advisory Committee.

The Board agreed to support the principles espoused in the policy letter and specifically to advise that the age of consent for medical treatment should be 16 years, albeit that Gillick competency would come into play at a younger age where appropriate.

Yours sincerely

P J ROFFEY
President



STATES OF GUERNSEY
ADVISORY
& FINANCE
COMMITTEE

Our ref: CM/C/5

The President
 States Children Board
 Perruque House
 Rue de la Perruque
 Castel
 Guernsey
 TY5 7NG

15 APR 2004

Sir Charles Frossard House
 P.O. Box 43 · La Charroterie
 St. Peter Port · Guernsey
 GY1 1FH · Channel Islands
 Switchboard (01481) 717000
 Direct Line (01481) 717
 Fax No. (01481) 712520

14 April 2004

Dear Deputy Pritchard

Draft Policy Letter on Children Legislation

Thank you for the opportunity for the Advisory and Finance Committee to consider and comment on the draft policy letter on the review of legislation relating to children.

The Committee is very supportive of the proposals.

It recognised that the proposals would involve significant additional revenue expenditure and believes that when the final policy letter is submitted the Treasury and Resources Department will seek the fullest details of estimated expenditure and the potential savings of diverting juvenile offenders from the judicial system.

Please do not hesitate to contact the Committee if you wish to seek clarification on any point.

Yours sincerely

L C Morgan
 President
 Advisory and Finance Committee

28 APR 2004

1882

Ashton Allen
ADVOCATES

The President
States Children Board
Perruque House
Rue de la Perruque
Castel
Guernsey
GY5 7NT

Lombardy Chambers
16a Cornet Street, St. Peter Port
Guernsey GY1 1LF, Channel Islands
Telephone: +44 (0)1481 715105
Facsimile: +44 (0)1481 715205
E-mail: info@ashtonallen.com

27 April 2004

Dear Madan

I was asked by the Batonnier to review the Policy Letter on the changes to the child care laws on behalf of the Bar Council.

Having had an opportunity to consider the proposals and the rationale behind the proposals, it is clear that the main thrust of the changes are to allow our laws to be more in line with the present thinking on childcare matters which is prevalent in the UK, following their own changes to the laws in 1989.

Whilst the new concepts of parental responsibility, residence and contact orders will, to some degree, alter the present concepts of custody, care and control and access, it will make it easier for the legal advisers to have a better feeling for the up to date UK case law and its persuasive effect on decisions in Guernsey. However, it is likely that it will be more in the drafting of the legislation together with its interpretation and the execution of the ethos and ideals of the new laws by the childcare professionals which will have the greatest impact on how the new proposals will affect how childcare matters are determined in Guernsey for the foreseeable future.

From the Bar's point of view the changes will have little effect on the practice of the lawyers. Parents will still have disagreements between themselves or with the States' departments and unless these can be resolved through the offices of the various welfare agencies to be established, the practice of the lawyers in acting for the parents or children will remain basically as it is at the moment.

The Bar welcomes the inclusion of mediation as a means of diffusing child orientated disputes, but unless the task is undertaken by trained mediators, the results could be less than acceptable in the long run. **MEDIATE** does undertake child based mediation and unless the number of Court Welfare Officers is increased substantially to cover the need for mediation in the

Ashton Allen
PARTNERS Dr. Raymond K. Ashton Adv. Pauline A Allen

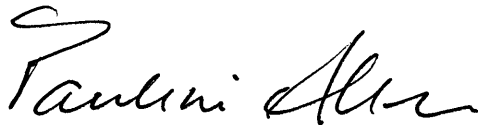
ADVOCATES SPECIALISING IN TAX | INTERNATIONAL TAX | TRUST AND PRIVATE CLIENT | COMMERCIAL | FAMILY | MEDIATION

amount likely to be generated by the proposals, then legal aid for mediation may need to be revisited.

The concept that fathers should have equal rights and a level playing field when it comes to the matter of the welfare of a child is perfectly acceptable as an ideal. The introduction therefore of more father-orientated involvement, which is very obviously in line with the various pressure groups that are active at the present time, is to be expected, however, this one area may itself lead to more protracted disputes than at present. Such disputes, if not dealt with and diffused quickly by the childcare professionals involved, would almost certainly have a serious detrimental effect on the child. It remains to be seen therefore whether this change will increase, rather than decrease, the number of cases which end in full-scale litigation.

From the Bar Council's point of view therefore we can say that the changes have the support of the Bar, and all members of the Bar, in particular the members of the Family Bar, will strive to assist the courts and clients in understanding the changes and the ethos of the legislation when it is enacted, to the best of our ability.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Pauline Allen', with a stylized, flowing script.

Advocate Pauline Allen

Co-Chairman Family Bar Association
on behalf of the Guernsey Bar Council

1884



THE NSPCC'S RESPONSE

TO

**THE REVIEW OF
CHILDREN LAW
IN THE
BAILIWICK OF GUERNSEY**

**NSPCC
Weston House
42 Curtain Road
London EC2A 3NH**

www.nspcc.org.uk

**19th December, 2003
(Amended April 2004)**

Registered Charity No. 216401

Contents

Introduction.....	2
The NSPCC	3
Bailiwick of Guernsey NSPCC.....	4
NSPCC Bailiwick of Guernsey - General Information	5
Policy and Strategy – Full Stop Campaign	7
Services Provided	8
Appeals	9
Diversity	10
Specific Proposals	11
Basic Principles of Children Law.....	11
Parental Responsibility.....	11
Children and Private Law	13
Children in Need	19
Corporate Parenting.....	19
Nurseries, Pre-Schools, Childminders and Others looking after other people’s children	20
Children in Court as Witnesses	21
International Conventions	21
An Evaluation of Sentencing Options and Community- Based Initiatives for Young Offenders and Those At Risk of Offending	21
Children’s Hearings : A Way Forward for Bailiwick Children and Young People Based on the Scottish Experience	22
General Comments	24
Links to Papers Referenced	27
Contact Details	28

REVIEW OF CHILDREN LAW IN THE BAILIWICK OF GUERNSEY

The NSPCC's Response to the Consultation

INTRODUCTION

The NSPCC welcomes the Review of Children Law Consultation. We share the Children Board's vision that **all** children must have the opportunity to achieve their maximum potential and mature into happy, health, law-abiding citizens and applaud the Children Board's recognition that many of the Bailiwick laws affecting children and young people need to be modernised.

We also welcome the opportunity extended to children and young people to participate in a variety of ways in the consultation process.

The NSPCC's response to the consultation, contained within this document, comments on the specific papers individually. This is followed by more general comments which the NSPCC would like to share with the Children Board based on it's many years' experience in putting children and young people first, listening to their concerns and campaigning on their behalf. It is based on the experience we have had working with English Government and the devolved Assemblies of Northern Ireland and Wales and also our experience of working on Guernsey and Jersey. It is also based on our extensive research base which is widely recognised as a source of excellence amongst professionals.

This response makes reference to our responses to the recent English Consultation documents:

- *Every Child Matters*
- *Youth Justice – The Next Steps*
- *Safety and Justice: the Government's Proposals on Domestic Violence*

We are also referencing the NSPCC Discussion Paper in response to the Victoria Climbié Inquiry : *"Someone to Turn To - An effective child protection system for the 21st century"*.

We recognise that within these responses there will be certain matters will not always be relevant for the Guernsey approach, but we feel some of the issues highlighted may be helpful for your consideration at this very significant time in the history of children's legislation in Guernsey.

In addition to the above, we have referenced the publication: *NSPCC Review of Legislation relating to Children in Family Proceedings (published 1st December 2003)*.

We hope that these comments will be accepted in the spirit in which they are offered: that of attempting to be helpful and a extending genuine offer to work with you and share any experience we have gained in more than 100 years of working with children and young people.

THE NSPCC

The NSPCC is not just another children's charity. It is an organisation, which will fight to obtain the citizenship of every child and justice for all children.'

(Reverend Benjamin Waugh, founder of NSPCC, 1894)

The National Society for the Prevention of Cruelty to Children (NSPCC) is the UK's leading charity specialising in child protection and the prevention of cruelty to children. The NSPCC was founded in 1884 and received a Royal Charter in 1895.

The NSPCC's vision is to 'create a society within which all children are loved, valued, and able to fulfil their potential'. Our mission is to 'end cruelty to children'. Our role is to:

- prevent children from suffering significant harm as a result of cruelty
- help children who are at risk of such harm
- help children who have suffered cruelty to overcome its effects
- work to protect children from further harm.

We have more than 180 teams and projects throughout England, Wales, Northern Ireland and the Channel Islands. Our work includes:

- quality parenting and family support, assessment, counselling and therapy to children and families experiencing abuse;
- investigations into allegations of child abuse;
- work within schools and other youth organisations to provide a voice for children and advocate their rights;
- provision of telephone and internet helplines.

The aim of our Full Stop Campaign is to end cruelty to children within a generation. We believe that, given the will, most abuse can be prevented. In order to achieve this, it is vital that all children, whatever their needs, have a range of services that are flexible and offer them support and protection.

Throughout the organisation there is a commitment to ensuring that the diversity of needs of actual and potential service users is addressed. A shared commitment to learning from knowledge and experience helps us to ensure best practice is embedded within our organisational structure and culture.

We are committed to the UN Convention on the Rights of the Child (1989) and these principles underpin our activities; including children's right to participate in policymaking and service planning in areas that affect their lives.

The NSPCC's Training and Consultancy Service works with other agencies and organisations to promote best practice in safeguarding children and young people in a range of contexts. The NSPCC works with partners in business, sport, leisure and community professionals to ensure that our communities benefit children.

BAILIWICK OF GUERNSEY NSPCC

The NSPCC is talking a lead role in developing a Community Development Project/Family Support Project, which will be in the parish of St. Peter Port. The aim will be to provide a community needs led initiative that will demonstrably improve the health, well-being and life opportunities for young children in the 0 – 5 years age group.

This initiative has arisen from the research report by the Townsend Centre for International Poverty Research, which was commissioned by the States of Guernsey Advisory and Finance Committee to undertake a survey of relative poverty. The Townsend Centre has made a number of recommendations and policy options in order to address the relative poverty on the island. This follows the recommendations that are made in that report both by means of the delivery of the service, through a combination of public sector, private sector and community initiatives and with development through community participation. The proposals are built on the experience of successful projects run in the UK.

The decision to encompass the St. Peter Port Parish is based on the information contained in the report from the Townsend Centre that identified families living in privately rented accommodation as being in most need. This project will therefore be aimed at targeting those families, as well as the needy families in areas already identified as areas of deprivation, such as the area around the Bouet estate.

The initial part of the project will be to research the current services and needs and to gain the views of children, parents, carers and professional staff serving the community. This will be facilitated by the setting up of an operational management group led by the NSPCC with representatives of all the relative agencies both statutory, voluntary and private sector. Gaining views from parents/carers is vital and the project will look at what help, support or services are needed and how these will be provided.

The purpose of the community initiative will be to achieve measurable outcomes that will significantly benefit young children in all areas of their development.

NSPCC BAILIWICK OF GUERNSEY – GENERAL INFORMATION

The NSPCC Bailiwick of Guernsey provides services to children and young people within the geographical area that covers the islands of Guernsey, Alderney, Sark and Herm. The majority of our work is undertaken in Guernsey and Alderney.

Guernsey is an island of 24 square miles with a population of 60,000, and Alderney is an island 3.5 miles long by 1.5 miles wide, with a population of 2,000 and is only accessible by air.

The NSPCC has had a presence in Guernsey since 1937, but the recent history is that in 1993 the NSPCC conducted a survey into whether there was a continuing need for services on the island. As a result of this survey the NSPCC provided assessments of children at risk; parent and child game, which involved coaching parents through a behavioural management programme; and undertaking therapeutic work with children who had been abused.

In 1997 the NSPCC moved to its current address at 16, Fountain Street, St. Peter Port and this was opened by the late Princess Margaret.

In 1999 the NSPCC continued to develop therapeutic services and also developed young witness support and sexually harmful behaviour programmes. These new programmes replaced the Assessment of families and the Parent and Child game programme which helped parents/carers to learn how to care for their children in a positive way.

In 2004 we reviewed our services in the light of our expansion into Family Support and made a decision to end our involvement with Sexually Harmful Behaviour and Witness Support Programmes. These are being offered by other agencies.

The service to Alderney developed over the last three years from an initial request to do work with sexual abuse to now developing a therapeutic room in St. Anne's House in St. Anne's in Alderney. The NSPCC is the only charity concerned with the welfare of children working within Alderney.

The NSPCC Bailiwick of Guernsey provides a therapeutic service to children and young people who have experienced sexual, physical, emotional abuse and neglect. The majority of referrals come from the States of Guernsey Children Board, the Board of Health, the Police and the local NCH action for children project.

The project has been actively trying to increase its self-referrals from families and children and there has been an increase in self-referrals both from Alderney and Guernsey in the last year.

In line with the NSPCC's policies of offering a more open service throughout for children, relating to their age and stage of development, we have had a number of referrals recently of children who received a service many years ago who have come back at times of adolescence and other transitional periods for more therapeutic help.

The Island of Alderney is interesting in the sense that it has only had child protection and child care legislation over the last four years. This is based on Guernsey Law and not on The Children's Act in England. The island is very new to the idea of child protection and services for children and this is an exciting time to be developing services there.

The initial referral we worked with for sexual abuse has developed a good reputation for the NSPCC and other families have contacted us direct for services for children who have been abused.

Guernsey is part of the British Isles and not part of the United Kingdom. It has its own constitutional and legislative structures and is independent in most respects from England. The NSPCC Bailiwick of Guernsey operates within Guernsey Child Care Law and is the only service in the Bailiwick of Guernsey to offer a therapeutic service to children and young people who have suffered abuse.

The aims of the therapeutic service is to provide a safe and child led approach to help children and young people recover from the effects and experience of abuse in a way that respects their uniqueness and diversity and encourages and recognises the importance of their involvement in developing services.

POLICY AND STRATEGY – FULL STOP CAMPAIGN

NSPCC Vision:

The NSPCC's vision for children is a society where all children are loved, valued and able to fulfil their potential. The NSPCC's mission is to end cruelty to children.

At the heart of our strategy to end cruelty to children are five priorities for action – or programmes – which when taken together will impact on our ultimate vision, to end cruelty to children in a generation. The programmes are:

1. **Child Protection:** to develop a child protection system which responds sensitively to children, reflects their needs, fears and concerns, and is proactive and effective in anticipating and preventing cruelty.
2. **Quality Parenting and Family Support:** to promote the development of high quality parenting, a culture of self-help, and the provision of effective support to families.
3. **Education:** to ensure that optimum use is made of education and the education system so that children are effectively protected and cruelty to children prevented.
4. **Child Friendly Communities:** to stimulate the development of communities which are inclusive and child friendly through co-operative strategies across all sectors.
5. **Cultural Change:** to achieve a fundamental shift in values, attitudes and behaviour in order to secure a genuine and effective valuing of children and those who nurture them, and to eliminate cruelty.

SERVICES PROVIDED

We provide services to children aged from 4 to 17 years old. We provide a therapeutic service to children and young people who have suffered harm or who are at risk of suffering harm and abuse. The children can access our service in three ways. Referral through the statutory agencies including the States of Guernsey Children Board, the Board of Health and Police; assisted referral via family members or carers; and children can contact us directly for therapeutic help.

The main focus of our work is therapeutic work to help children to recover from the harmful effects of abuse. This is undertaken by developing a safe, secure relationship with the young person or child that seeks to help the child with concerns and problems that they experience as well as the concerns and problems that have been identified by the referring agencies or parents and carers.

The primary focus of our work is the child or young person and that the work with them is carried out to meet their needs at their pace and encourages them to have a say in the kind of help they want. This is done in a way that makes them feel comfortable, whether that be talking, drawing, painting, playing with sand, messy play, puppets, or whatever method of communication method that they feel most comfortable with.

We have a playroom with sand, water, puppets, dolls, drawings and many other activities that children can choose from. In addition we have a counselling room if older children or young people would prefer to have a more young person orientated environment. However many older children and teenagers like to play and we encourage them if they want to use any play materials or toys or puppets, to do so.

We have recently opened up a play/counselling room in the island of Alderney. This is our first resource in Alderney that offers therapeutic work to children and young people and is a major step forward in developing service on an island that has had very input from child care agencies.

We also offer consultation, advice and support to the Children Board social workers, foster-carers and other agencies, including Maison St. Pierre which is a resource developing services for vulnerable women and their children.

We are involved on the Guernsey Child Protection Training Sub-committee, developing child protection courses for multi-agency groups.

We have also been involved in large major multi-agency conferences delivering child protection training to healthcare staff including Doctors, Midwives, and Nurses.

APPEALS

There is a strong relationship between the Appeals and Services to Children and Young People. The Guernsey Branch is well established and works very hard to fund raise and they are also very interested in the work of the NSPCC Bailiwick of Guernsey.

The Children's Services Manager meets with the Branch on a quarterly basis, which provides a good partnership and a two-way process of listening to each other about fund raising and developments within the Branch and also for the Branch to hear about the work of the Project. This is very helpful for the Executive Branch because they are relying on dedicated volunteers and fund raisers to raise the considerable amounts of money to promote the project and without the knowledge about how that money is being used and the work that is being undertaken it can be quite difficult for fund raisers to answer questions if asked.

This relationship between the Appeals and Children and Young Persons staff also means that there is goodwill in trying to have fund raising events. People share tasks, the commitment is there and all in all this is all underpinned by very good support from Jeanne Petersen the Appeals Manager covering the Bailiwick of Guernsey.

The Children's Services Manager attends the AGM and recently was one of the speakers there as well as having a speaker from Appeals at Weston House, which was well received.

Recently we had a stall at the Liberation Day in Guernsey promoting the work of the NSPCC. We have held a successful Open Day and again branch members were very helpful and supportive in organising this.

The NSPCC Bailiwick of Guernsey is very keen for anyone who helps and contributes to funds, whether this is a small amount or large amount, to visit the project. They can see what we do and see what the money is being spent on, to see how we are helping children and how we are working towards ending Cruelty to Children. We have had a number of visits in relation to this and people have found it very interesting to know what we do here. This also raises awareness of the NSPCC within the Island.

The NSPCC Bailiwick of Guernsey has a very good relationship with the States of Guernsey Children Board from where we get our main referrals, and other statutory agencies who have concerns about the welfare of children. The relationship with the States of Guernsey Children Board is very positive and they are very aware and appreciate the work that is undertaken within the NSPCC Bailiwick of Guernsey and are a major source of referring children who have suffered abuse for therapeutic help.

There is also a good working relationship with the Board of Health, which culminated in multi-agency training child protection conference, which was co-run by the NSPCC, Board of Health and Children Board, which took place recently.

DIVERSITY

The NSPCC Bailiwick of Guernsey is addressing diversity by seeking to access services to the Portuguese community. We are also reviewing our information and leaflets to seek translation into Portuguese as Guernsey has a significant Portuguese population mainly from the island of Madeira.

The NSPCC Bailiwick of Guernsey is also trying to be diverse by gaining a better understanding of the family patterns and culture within the Bailiwick of Guernsey. Also the different in family patterns and support structures within the very diverse islands, each of which has a unique identity, positive benefits and problems.

For example the Island of Alderney has only had Child Care legislation for four years. This is the Bailiwick of Guernsey Child-care Law. This presents a very positive opportunity but a challenge to develop child-centred services in an island that is very new to child protection, to the rights of children, to the idea of therapy for children, to even words like counselling. These present unique opportunities but will have to be managed in a sensitive and respectful way, addressing the islands unique culture and heritage.

These are comments from children and young people who we have offered a therapeutic service to:

"Talking about my problems was a lot easier than I thought it would be once I had got used to coming here". Young man, aged 15 years.

"From time to time when things get tough I bury my head in the sand, I do appreciate your helping hand.

Thank you is the special word I would like to say, you have helped me feel better each day". Ending poem from a 15-year-old girl who had suffered sexual abuse.

"Thank you for your help and support, I thought I would be really, really scared when I went to give evidence, but I was really pleased how strong I felt". Girl, aged 13, giving evidence in court.

"He is so much better and happier after being able to speak to you, it has helped him to come to terms with what happened to him". Mother of 11-year-old boy who had been sexually abused.

"Dear Mick, Thank you for coming to see me to help me from getting sad and angry, I feel much better now you have helped me, I can go out all by myself now and play with my friends". 8 year old boy who had been sexually abused.

SPECIFIC PROPOSALS

Basic Principles of Children Law

- The NSPCC applauds the proposal to adopt the principles set out in this paper, and particularly welcomes the Children Board's recognition of the UN Convention on the Rights of the Child and European Convention on Human Rights in setting out the basic principles of children law. (See comments under "International Conventions" below).
- Recommendation 4 : Specific age at which children are presumed in law to form a view and be consulted on matters affecting them. We welcome the statement that the views of younger children must also be sought and taken into account. It is our experience that all children, apart from non-verbal babies, can give a view and that this can be obtained by the use of a variety of relevant methodologies. The NSPCC's Guernsey team works with children as young as three and a half. Consideration also needs to be given to children and young people with learning difficulties: chronological age here is irrelevant and in these cases assessments need to be undertaken to determine the most appropriate methodology for consultation with individuals. (See additional comments on Children and Private Law below).
- Recommendation 5 : Principle that the child's welfare is paramount. We would welcome examples and greater clarification of the definition of the exception to this principle "where there is a conflict between the best interests of the child and an immediate risk to the safety of another person. In such a case, the Board proposes that the welfare of the child should still be a "primary consideration"". The NSPCC believes that a child's welfare should always be paramount, however we accept that in exceptional cases the welfare of a child should be a "primary consideration".
- The Voice of the Child – Section 5 – "Children may express their views in one or a combination of ways, e.g.". We would welcome addition of communication through play, art or drawings. This methodology is widely practised within the NSPCC's Guernsey team work.
- Children in Care – Corporate Parenting – Section 6 – Highlights the need for balance between safeguarding and the right of a child to family life¹, which is particularly pertinent for children/young people in residential care. There is a need for additional resources to fulfil this difficult balance in residential care in order to provide more qualified and well trained staff who are competent to make complex decisions, adequate supervision for staff, and greater numbers of staff than are currently employed. The NSPCC has significant knowledge and experience of safeguarding in this context and our Training and Consultancy Unit offer training and materials to support this.

Parental Responsibility

- The NSPCC strongly supports the Children Board's view that Guernsey should ratify more international conventions than at present, in particular the UN Convention on the Rights of the Child and the Hague Convention on Abduction. (See comments under "International Conventions" below).

¹ Article 8, European Convention for the Protection of Human Rights and Fundamental Freedoms 1950

- Age limit for parental responsibility – UK legislation offers up differing age limits for different areas of legal responsibility. The NSPCC believes that parental responsibility should extend as long as possible, and considers 18 to be a minimum age for consideration, but would ask that the States consider 21 as an appropriate limit. This is particularly relevant in the Channel Islands where young people can be particularly vulnerable over the age of 18 when pursuing further education/employment away from their home. This is also relevant for corporate parenting provision.
- Parental responsibility for unmarried fathers and step-parents – We welcome the proposals to bestow rights on fathers and step-parents as proposed within the paper. We believe that birth fathers should automatically have parental responsibility or be able to apply for this at birth. With regard to step-parents, we believe that children should be consulted before parental responsibility is granted, since this would present children with an opportunity to discuss any concerns they may have with these relationships.
- Parental Responsibility for foster parents should be an option in situations where children have been on long-term placements with foster carers, but no adoption is planned. This would enable a young person to continue in this placement without being in care.
- Parental Responsibility for Grandparents/other relatives when they take on responsibility for a child.
- A Care Order may prevent a family from applying for parental responsibility.
- If children are at risk or significant harm then parental responsibility should be given to the non-abusing family members.
- Off-island placements – We would be supportive of independent scrutiny for off island placements. Whilst we appreciate that there are some placements that necessitate being made off-island, a lack of resources or a lack of imaginative care planning should not be sound rationale for this in circumstances when there are appropriate resources within the island.

Children and Private Law

Many of our comments in this section are also relevant to and may be carried through to matters of public law not separately specifically set out within this response paper.

- Private Law Orders :

The NSPCC is pleased to note the Board's provisional recommendation to replace the current custody and access arrangements with a wider range of Orders in the Bailiwick of Guernsey.² The Board does not mention any review they have undertaken of the potential use of family assistance orders³. The Board shall be aware that this provision enables a court making Orders with respect to a child in family proceedings to effectively provide a person to be available to "advise, assist and befriend" any person named in the Order. We believe that this provision has been under utilised by the UK courts. For example, we have recommended on numerous occasions that the provision could be used to facilitate safe and appropriate contact for children. In particular, for families who have suffered domestic violence, for those families where the parents are unable to communicate directly or effectively post separation and in any other instance where there may be issues regarding the safety of the child during contact visits.⁴

In regard to contact arrangements generally, the NSPCC is concerned about the risk to children and abused⁵ parents in the UK caused primarily by the failure of the courts to appropriately consider child protection issues. The NSPCC is pleased to note the Board's review of international mechanisms in regard to private law children matters and would ask them to consider in particular the following specific issues;

- Welfare of the child (Welfare Principle)⁶

The UK courts have long held a pro-contact position interpreting the Welfare Principle as the basis for this. In our opinion this view is fundamentally flawed. In some instances a pro contact view prioritises parental rights to contact over the best interests of the child. The safety and protection of children should be the primary factor in determining the welfare principle. Most often contact with both parents is in the best interests of the child but not in every case. Residence and contact Orders should only be granted where they pose no risk to the child.⁷

² Review of Children Law in the Bailiwick of Guernsey, Children and Private Law, page 28, recommendation 1.

³ Section 16 Children Act 1989.

⁴ NSPCC Review of Legislation relating to Children in Family Proceedings 1 December 2003 (Children in family proceedings) page 13 , NSPCC response to Safety and Justice: the Governments proposals on Domestic violence , September 2003 page 26 (Safety and Justice), NSPCC response to Every Child Matters 1 December 2003 (Every Child Matters) page 8.

⁵ "Abused" here is used to encompass all forms of physical, psychological and financial behaviour.

⁶ Section 1, Children Act 1989

⁷ For example, in cases of established domestic abuse the NSPCC has advocated for a rebuttable presumption against contact. See NSPCC response to Safety and Justice, page 24, NSPCC response to Every Child Matters, 1 December 2003, page 7.

In some instances the problem may be caused by consideration and interpretation of the Welfare Checklist⁸. One example of the limited interpretation some English courts have given to the checklist is provided by the historic reluctance to consider domestic abuse as a factor relevant to the welfare of the child in private law proceedings⁹. When considering the incorporation of a similar interpretation of “welfare” in the new private children law in Guernsey we would ask the Board to seriously consider the limitations that a checklist can have as well the need to emphasise that “one size” does not always fit all. Guidelines are a necessary tool for adjudicators to facilitate a more uniform and consistent approach but careful consideration must be given to the content of such tools.

- The use of contact centres

When contact does take place it is important that the contact is safe, takes place in a suitable setting and that anybody supervising contact is fully trained.¹⁰ We would ask the Board to bear this in mind when considering the further use of the Guernsey contact centre and in particular when assessing whether an alternative NACC accredited facility would be required to ensure the protection of children in high risk situations.

- Separate representation in private law matters

The Board notes the discrepancy regarding the separate representation of children in public and private law matters in the England and Wales¹¹. The NSPCC is firmly of the belief that the insufficiency of the Children Act 1989 in private law matters in this regard is severely detrimental to the rights of the child and requires immediate amendment.¹²

The NSPCC urges the Board to give the matter of separate representation of children in proceedings which affect them (including the right of every child to be

⁸ Section 1(3) Children Act 1989. We note the Boards proposals to include a welfare checklist in the new law, Op Cit. n.1, Basic principles page 11; we also welcome the consideration of including children suffering as a result of exposure to domestic violence as a ground for referral to the proposed Reporter, Children’s Hearing, Appendix 5, page 4.

⁹ This has now been addressed by an amendment to the meaning of “harm” in the Welfare Checklist by Section 120 Children and Adoption Act 2002, to include “ for example, impairment suffered from seeing or hearing the ill treatment of another”.

¹⁰ There is concern in England about the inappropriate use of contact centres. Centres created with the intention of facilitating contact for non-resident parents who had no where else to accommodate the child are only “ supported contact centres” and should not be used where there has been (or should have been) a risk assessment determining that the safety and protection of the child or resident parent requires “supervised” contact to be utilised. Supervised contact centres are high vigilance, secure venues which have an important role to play in ascertaining the welfare of the child before permitting greater or unsupervised contact with absent parents.

¹¹ Op. Cit n.1, page 10.

¹² We have advocated to the UK Government that the following immediate steps be taken: The wishes and feelings of the child (section 1(3) (a) Children Act 1989) should be ascertained by means of separate legal representation for all children in contested private law family proceedings, this could be facilitated by the immediate incorporation of section 122 Adoption and Children Act 2002, revival of section 64 Family Law Act 1996 and more prevalent use of rule 9.5 Family Proceedings Rules.

See the NSPCC response to Safety and Justice, page 25, NSPCC response to Every Child Matters, page 7.

separately represented at public expense in public law matters¹³), serious consideration¹⁴. In particular, the NSPCC would suggest that the child's right to be advised of proceedings (in light of their age and understanding) and their right to have their view represented to the court separately should be enshrined in legislation and explained to them by a dedicated person¹⁵. Their representation should then be at public expense and proper judicial weight should be given to their wishes and feelings.

We note the Board's intention to give the matter of whether there should be a specific age at which children are presumed in law to be able to form a view and be consulted on matters affecting them¹⁶. The NSPCC does not operate in Scotland however we are aware of the provisions of the Children (Scotland) Act 1995 and the recent feasibility study undertaken by the Scottish Executive¹⁷. The Board shall be aware of one of the reports conclusions is that 12 year olds (the age delineated in the legislation) were treated differently to younger children and specialist sheriffs in particular used this age marker as a focus for obtaining children's views.

As noted, the courts in England and Wales work more on a sliding scale of appreciation of children's maturity in this regard. Whilst we do not accept that this English power is used uniformly or consistently in the courts we do not believe that statutory delineation of a chronological age shall facilitate greater participation of children in proceedings that concern them. Many factors may attribute to the maturity of a child and the strength or weight of their views in each individual case. We would suggest that open and public guidelines should accompany the statutory duty to seek children's views facilitated by separate representation. These guidelines could provide greater detail on factors that may help to determine the understanding of a child concerned. Chronological age is not always an indicator¹⁸.

The afore-mentioned feasibility study¹⁹ also concludes that most children are unaware of their right to be advised and separately represented in private law matters in Scotland. This is of concern to the NSPCC generally as legislation that facilitates children's rights should be easily accessible and understandable to children. The method of informing children (public education as well as individual focused advice) and facilitating their involvement in proceedings that concern children should be the most important aspect of the Board's current review .

¹³ Op. Cit. n1 The Children's Hearings, Appendix 5 page 21.

¹⁴ The Board notes the requirements under article 12 UN Convention on the Rights of the Child, Op Cit. n.1 , Basic Principles, page 7

¹⁵ These rights are part of but additional to those that should be facilitated by the welfare checklist Section 1 (3) obligation to " have regard in particular to...(a) the ascertainable wishes and feelings of the child concerned". Refer to our comments regarding the utilisation of the "safeguarder in Children's Hearings on page 13 of this response. This same individual could hold the family court role proposed here.

¹⁶ Op. Cit n.12, page 11.

¹⁷ Voice of the Children under the Children (Scotland) Act 1995, Feasibility Study Volume 2, 2002.

¹⁸ For example younger children and children with special needs may still have relevant views and be able to express them with assistance.

¹⁹ Op. Cit. n16

Once accepted that children have a right to have their views represented to the court and be given appropriate weight, consideration must be given to methods of facilitating the provision of their views. In particular we would ask the Board to specifically consider the following matters;

Children should not be *required* to provide evidence or views in proceedings concerning them or their carers. They should be offered the opportunity to do so. The invitation would clearly be more appealing if they felt secure and confident about a number of related issues; confidentiality²⁰, fear about taking sides, formal proceedings in a court room, and that their views really matter to those concerned in the process²¹. All these issues may be best addressed by flexibility in court rules and specific training for all those involved in the process.

Further consideration is necessary of the role of any children's representative to ensure that children's views are adequately represented. The Board's current proposals for a safeguarder in Children's Hearings may be considered to satisfy the child's needs proposed above.

- Enforcement of private family law orders

It is of concern to the NSPCC that much emphasis is put on "enforcement" in family law matters instead of mediation and conciliation. The NSPCC welcomes the Board's provisional recommendation that mediation should be used to settle private law disputes where possible and that measures proposed for obedience of orders include further consideration of the staged approach favoured by Australia and noted in the Sub Committee report for the Lord Chancellor in February 2002.²² Any compulsory requirement to undertake joint parenting or mediation/ counselling should of course be flexible enough to address issues between the parties such as historical abuse, fear and intimidation.

The risk of financial hardship and imprisonment does not go unnoticed by children who are frequently caught between hostile parents. The increased burden these risks place upon them serve only to further distress and alienate children.

The difficulty of enforcement in practice in the English courts has largely been due to the demand that would be placed on the court and public services if they were required to be more pro-active in facilitating contact. The Board notes the provision in New Zealand which enables the court to arrange for the removal of the child for the purpose of the contact visit²³. If the Board were able to undertake a statistical review of the likelihood of use of such a power in Guernsey and

²⁰ Some children would prefer that their parents were not present nor advised of their evidence. The parents rights to full disclosure and the need to meet the needs of natural justice could be met by alternative and imaginative methods such as allowing an independent friend of the court or reporter to review the child's evidence and ascertain whether their was anything contentious or that should be contested by either party and failing which excluded.

²¹ These are all factors to consider in formulating the methods of obtaining and interpreting the child's views. The need to have the decision properly communicated and explained to the child forms a crucial part of this process as noted by the Board, Op Cit n. 12 page 8.

²² Op. Cit n.1, page 28

²³ Op. Cit n.1, page 25

undertake a pilot scheme they may find that this was not a cost or resource prohibitive option for the Bailiwick of Guernsey. If considered appropriate the Board should also give consideration to the skills, recruitment and training of individuals who would be used to facilitate contact in this way and great consideration should be given to the need for dedicated named individuals (not the police or child welfare employees in order to avoid stigmatising these families), their training and supervision in order to ensure child protection and welfare.

- Children applying for orders themselves

The Board shall be aware of the difficulty in England for children to apply for orders themselves²⁴. This right is rarely used. We are also aware of the child's right to sue in Scottish law²⁵ but our understanding is that this provision is rarely used or known about by children.

We would propose that the Board ensures an effective facility for children to apply for Orders in the new legislation. Any measures should be adequately informed to children and real measures should be put in place to allow children who wish to use this facility to easily do so. For example, there should be special training and accreditation for lawyers to act for children in order to improve their ability to communicate effectively with children and understand issues of importance to children. They should also undergo child protection checks. These representatives should be accessible to children by advertising in places relevant to children, such as schools, libraries and youth clubs.

- Training

The Board notes the training and accreditation of CAFCASS representatives and solicitors specialising in children's law in England and Wales²⁶. This is a welcome tool for facilitating greater respect for children's rights and child protection but much more can be achieved. We note the Board's comments with regard to resource implications²⁷ for the new law. The NSPCC's Training and Consultancy Division has developed a training resource for lawyers (in both criminal and private law) which you may wish to note for future reference.

- Recommendation of a "Scottish type" panel for family law disputes

The NSPCC is opposed to the confrontational and adversarial approach of many family proceedings in England. Acrimonious and long drawn out court proceedings are not conducive to a child's welfare needs and often create insecurity and increased child protection risks for vulnerable children caught up in the battle.

We welcome the Board's proposals for a pilot scheme of a "Scottish type" panel to hear at least some private law matters and your recognition that not all disputes

²⁴ Children may do so with leave of the High Court, only given where the child has sufficient age and understanding.

²⁵ Section 11, Children (Scotland) Act 1995

²⁶ Op. Cit. n1, page 10.

²⁷ Ibid, Children's Hearings page 14.

may be appropriate for this forum. We envisage that the Board intends to separate the functions of a lay panel from those of a legally qualified panel to hear and adjudicate on disputed matters of fact²⁸. In such disputed cases parties should be afforded full realisation of their civil hearing rights including the right to be represented and have their evidence presented to a qualified and experienced Bench.

Where private law disputes relate merely to the operation of arrangements for the children, for example a dispute as to days and times of contact, disputes as to contact during holiday periods, or in any other circumstances where the parties agree that a lay panel are qualified to and may adjudicate on their matter such matters may more efficiently be dealt with by a lay panel.

We would ask the Board to bear in mind that even in cases referred to a children's hearing children have the right to have their views heard and parties should have the right to **formal appeal**. We note the Board's proposal for appointment of a guardian or safeguarder, prior to the pre hearing meeting, for children too young or incapable of instructing or simply without legal representation²⁹. We are concerned that this person should in fact seek the views of the relevant child and make their own judgement as to whether the child is capable of instructing, providing views and greater involvement in the hearing. Based on the current proposals we are unsure how this could be determined by the reporter who does not appear to have met the child either.

Independent and child appropriate specialists should be appointed to represent the children's views at these hearings. A basis in statute should then facilitate guidelines for conformity and consistency in training, appointment, supervision, responsibilities and content of this individual's role³⁰.

We are concerned that with the exception of involvement at the pre hearing stage, it is not proposed that the child shall be offered further assistance by the guardian/safeguarder at public expense. It may not always be the case that the parents/carers, although present at the hearing, effectively express the child's views or concerns and children themselves may be unable to do so effectively in the forum. It appears to the NSPCC that in order to ensure children feel they have been truly participatory in the process proposed they should have the opportunity to elect that the guardian/safeguarder represents their views throughout the hearing³¹. An additional reason that the NSPCC believe this should be a right of the child is due to our research and work in regard to child protection. Many of the specific grounds that are likely to lead to referral to the hearing can arise as a consequence, or cause, serious child protection concerns³². This may not have been detected at an earlier or external stage but may be elicited or come to light due to the close and trusting relationship that should be established between child and safeguarder.

²⁸ We note the Boards proposals with regard to establishing the grounds for referral, Op. Cit n.1 Children's Hearings appendix 5 page 4.

²⁹ Op. Cit n.24 page 6.

³⁰ There have previously been problems recognised with consistency in Scotland now sought to be remedied by new national arrangements introduced by the Scottish Executive.

³¹ That is, this person should be able to act as the proposed role of "supporter" but at public expense.

³² For example, truanting, offending and substance misuse.

If the Board truly believes that the “ children’s hearing looks at all aspects of a child’s needs and deeds”³³ then every effort should be made to ensure the child’s absolute participation in the hearing process. The opportunity to have an independent supporter may assist this.

Children in Need

- We welcome the move to introduce a statutory definition of Children in Need.
- We support the proposal to introduce a statutory requirement to produce a Children’s Services Plan.
- Introduction of a statutory obligation upon agencies to promote and safeguard the welfare of children, and to provide services to those children who meet the definition of “in need” will have resourcing implications for agencies who currently struggle to meet their child protection responsibilities. It is essential that adequate resources are made available to give effect to this proposal; without this we believe it is highly unlikely that children and young people on Guernsey will receive the services that are needed. The NSPCC supports the proposal backed by allocation of increased resources to give effect to this statutory duty.
- The NSPCC welcomes the view that the above proposal includes all agencies having a responsibility to children and young people, and is not restricted to the Children Board but importantly includes Health and other agencies.
- A multi-agency approach and integrated planning is supported.
- We welcome recognition that preventative services (e.g. Sure Start schemes etc.) can do much to improve life outcomes for all children and young people. The NSPCC’s Jersey Pathways Project provides a working example of the success of this approach. This approach has recently been endorsed by the UK Government in it’s Green Paper : *Every Child Matters*. However, clearly any such recommendations need to be supported by adequate resourcing.
- We welcome recognition that poverty plays an important part in the life of many children and their families and that addressing this is fundamental to giving children an opportunity to achieve their maximum potential and mature into happy, health, law-abiding citizens.

Corporate Parenting

- The NSPCC welcomes and strongly supports the views of the Children Board on children in care.
- There is a need to ensure that whilst in care, children’s educational needs, physical health and emotional health are prioritised and developed. (Example – Current case of “Child L” – Serious Case Review)
- Recommendation 1 – We are concerned with the words “as far as practicable”. Under what circumstances would it not be practicable for children and young people in care to be entitled to good parenting, equal to that which is expected by those living in normal families? The NSPCC believes that the inclusion of this wording could present a legal loophole which could lead to a legal defence that lack of such good parenting provision was “impracticable”.
- There is a need to develop island-based services to ensure that as many children and young people as possible are given the opportunity to live in their own

³³ Op. Cit n.24, page 3

community. This will involve significant allocation of resources to develop a child centred approach. In addition, there is a need to incorporate long term residential care which, it is recognised, is needed for some children.

- The location of the existing residential unit is unsatisfactory. Children should be placed in community-based locations where they will not suffer stigmatisation and are given an opportunity to have contact with communities and develop a greater sense of responsibility from this interaction.
- There is considerable stigma for children in care, and public misunderstanding of the particular problems such children may have experienced. There is a need for wider recognition of the impact of abuse and cruelty and the specific problems experienced by young people within the care system so that these are not perceived as behavioural and criminal issues, but as issues which can be addressed through therapy, practical and financial help.

Nurseries, Pre-schools, Childminders and others looking after other people's children

- The NSPCC is highly supportive of the recommendations contained within this proposal, although many of the proposals have resourcing implications which will need to be addressed.
- The NSPCC supports the extension of the age for regulation of day care provision to eight years.
- The NSPCC notes the proposals with regard to private fostering and welcomes greater regulation in this area.
- The NSPCC believes that there should be a legislative requirement to maintain a register of private foster parents who are approved as suitable. This register should be available to birth parents who wish to make arrangements for their child.
- Further to the above, it should be an offence to foster a child privately if the carer is unregistered, or to place a child with an unregistered carer.
- There should be a continuing campaign to inform professionals, birth parents and private foster carers of their legal responsibilities.
- The NSPCC believes that the age should be extended to 18 years (as a minimum) for young people still in full-time education within the Bailiwick. The experience of the NSPCC's Guernsey team is that in particular children coming from Alderney/Sark and staying on Guernsey are especially vulnerable and need to be supported. The NSPCC believes that in general there should be greater regulation with regard to safeguarding for students from Alderney and Sark.
- The NSPCC is supportive of increased pre-school provision both within schools and the community and there is evidence (e.g. Sure Start) that this can play an essential role in parenting and family support. It is noted that the majority of day care provision, nurseries and pre-school facilities are provided at the private-sector Swissville. Ideally, increased (state funded) provision in alternative locations would present improved access for families most in need of these services.

Children in Court as Witnesses

- The NSPCC supports the proposals within this paper. The NSPCC has significant experience in the UK in this area and would be very pleased to contribute to the development of services in Guernsey.
- The use of intermediaries – from our experience, we believe it is essential that such intermediaries are independent.
- Advocates acting as legal representatives for children should be required to have specialist training in these matters.
- There is a need for definitions, policies and procedures in relation to pre-trial therapy. It is recognised that there are many children and young people who are in need of therapeutic support and counselling following abuse: in some cases there is a delay in providing this for fear of contamination of witness evidence. There are measures issued by the Crown Prosecution Service that outline the circumstances and conditions under which therapeutic help can be given which will also minimise the risk of having an effect on court proceedings.

International Conventions

- We strongly urge the States of Guernsey to sign up to the Conventions, and in particular the UN Conventions on the Rights of the Child. This should be considered a priority if the States are serious about child protection.
- The NSPCC considers that the European Charter of Fundamental Rights should also be included within this paper, which, although not legally binding, is included in the draft EU Constitutional Treaty which is currently under negotiation by EU Heads of State.

An Evaluation of Sentencing Options and Community-Based Initiatives for Young Offenders and Those at Risk of Offending

- In general, we are supportive of the recommendations within this paper. However, whilst we support the need for community initiatives, the impact of abuse should not be underestimated and identified this should be referred on within a community sentencing programme for effective treatment.
- The emphasis on multi-agency working, to include the statutory and voluntary sectors, and early intervention, is welcome. NSPCC experience is that intervention, particularly by an independent voluntary organisation at an early stage is often highly effective.
- The NSPCC believes that sentencing options are currently very restricted in Guernsey and is optimistic that some of the measures introduced in this proposal, together with the new Children's Hearing system, will help to remedy this situation.
- It is important to consider the sentencing options and risk factors with regard to children and young people who display sexually harmful behaviour. Our Guernsey team has significant experience in dealing with these issues.
- We would make specific reference to the matters referred to in the *NSPCC's response to "Youth Justice – The Next Steps"* as referenced at the end of this document. In particular, although not formally part of this consultation process,

we would refer to the background paper “Youth Justice in the Bailiwick of Guernsey” and the debate surrounding age of criminal responsibility. The NSPCC believes that the age of criminal responsibility should be raised to 14 years³⁴ and there should be recognition that a young person should be treated in the same way as a child by the criminal justice system, up to and including age 18 years³⁵.

Children’s Hearings: A way forward for Bailiwick children and young people based on the Scottish Experience

- The NSPCC does not operate within Scotland and therefore has no direct experience of this system. We do, however, welcome the thoroughness of research into this system which has clearly taken place, and also recognition that the Scottish system is currently under review and that recommendations from this should be taken into account when introducing any such system in Guernsey.
- We are taking this opportunity to share with you the comments of the NSPCC’s sister organisation in Scotland, CHILDREN 1st, which directly relate to the Children’s Hearing system. We are attaching as an appendix to this document CHILDREN 1st’s response : “*Putting Our Communities First: A Strategy for Tackling Anti-Social Behaviour*”. Key areas to note have been underlined for ease of reference. In particular, we note that under-resourcing of the Children’s Hearing system is a significant issue. It is therefore essential for the success of implementing this new system that adequate resources are allocated.
- We would also refer you to the report of the Child Protection Audit and Review in Scotland “*It’s Everyone’s Job to Make Sure I’m Alright*” which found that most social workers simply do not have the time to do direct work with children and families, and that hearings were often delayed due to social workers being unable to deliver reports promptly; one Reporter had outstanding reports that were more than a year overdue³⁶
- In response to the recent Scottish Executive’s Early Year’s Strategy consultation³⁷, Children 1st drew attention to the inappropriateness of one of the indicators used to monitor outcomes – a reduction in referrals to the children’s hearing system. They said: “This is not necessarily a desirable outcome, since a reduction in referrals per se does not necessarily mean there has been a reduction in the numbers of children requiring care and protection. We would hope that universal access to family support services, as well as greater successful use of voluntary measures, would indeed result in a reduction in referrals, attributable to children’s needs being met at an early stage and without the need for compulsory

³⁴ By no means the optimum but more in line with our European partners. See NACRO: Youth Crime Briefing, *Children’s Rights – Recommendations for Youth Justice*, December 2002 page 3.

³⁵ The present UK system of treating 17 year olds as adults both for the purposes of bail and remand and in regard to detention at a police station directly conflicts with other legislation regarding children who retain their status until aged 18 years, as a minimum and sometimes 21 or 24 for the purposes of the Children (Leaving Care) Act 2000. Such practice also contravenes UN Convention on the Rights of the Child, Article 1, “...a child means every child under the age of 18 ...[unless majority is attained earlier]”.

³⁶ See *It’s everyone’s job to make sure I’m alright* 3.54-3.60 and 5.6-5.19 (Scottish Executive website)

³⁷ Response of CHILDREN 1ST to the Scottish Executive’s consultation document “Integrated Strategy for the Early Years”.

measures of care. However, we have no way of knowing whether a reduction in referrals could, in fact, be attributable to this. An increase in referrals might in fact reflect an increase in the identification of children who are in need of compulsory measures of care. This point is raised in 'It's Everyone's Job to Make Sure I'm Alright' (para 7.60). Bearing these issues in mind, careful consideration should be given as to whether referrals on particular grounds (rather than referrals per se) may be a better indicator here".

GENERAL COMMENTS

The NSPCC offers up the following additional matters for consideration by the Children's Board. These are issues which the NSPCC has campaigned for long and hard within England, Wales and Northern Ireland and firmly believes would be to the benefit of the children and young people within Guernsey.

An Independent Children's Commissioner

Children, especially those who have been abused or neglected, need an independent champion with clout to force the pace of change. They cannot always rely on the Government or professionals to do it for them.

Within the UK, Welsh children and children in Northern Ireland and Scotland have such a champion, and in its recent Green Paper *"Every Child Matters"* the Government outlined proposals for an Independent Children's Commissioner for England. The NSPCC believes that children in Guernsey (and indeed, all the Channel Islands) should have a children's champion too.

A Children's Commissioner is independent of government, established by statute to act as a champion and watchdog for children's welfare and interests. A Commissioner for Guernsey should have the powers necessary to put children's needs at the heart of the States of Guernsey's thinking.

He or she should have four key roles:

To act as an advocate for children

The Commissioner should be a voice for children and their views should be sought to inform all of his or her work. The Commissioner should monitor the effectiveness of complaint procedures for children and undertake investigations, where there is concern that children's rights are not being respected.

To influence policy and practice

The Commissioner should monitor all legislation and be consulted on proposed legislation to ensure that children's needs and interests are met. He or she should also monitor the work of public agencies and make recommendations for changes in policy and practice to better meet the needs of children.

To protect children

The Commissioner should have specific child protection functions such as:

- Overseeing all reviews of child deaths: the Commissioner would monitor the response from government departments to the recommendations made in reports following child deaths.
- Overseeing and/or carrying out inquiries into major child abuse and child death scandals to highlight problems with existing systems

- Examining the adequacy of public agencies' practices in terms of their responsibilities for children in need.

To undertake and commission research

The Commissioner should identify gaps in current research on matters affecting children, undertake or commission research to fill the gaps, and make recommendations for improvement. For example, the Commissioner should look at the causes and nature of child deaths and best practice in the collection of relevant data and statistics on issues affecting children.

Equal Protection for Children from Assault

In the UK, the continued existence of the defence allowing parents to use 'reasonable chastisement'³⁸ when disciplining their children remains a barrier to fully respecting children as human beings in their own right – developing citizens, the responsibility and not the property, of their parents.

In common with many other professional organisations, the NSPCC believes that giving children equal protection with adults under the law on assault would make a significant contribution to the protection of children from physical danger, as well as according them their basic human right to freedom from physical violence. It would also encourage a culture of greater respect for children from physical danger, as well as according them their basic human right to freedom from physical violence. It would also encourage a culture of greater respect for children and help to promote the use of positive parenting techniques which would contribute to happier child-rearing experiences for both children and parents.

Over the last three decades, the movement against physical punishment of children has brought about principled legal reform in ten countries: Sweden, Denmark, Norway, Austria, Cyprus, Latvia, Croatia, Germany and Israel, and a Supreme Court judgement in Italy has effectively banned the use of violence discipline. Many states have prohibited the use of physical punishment in the education system or are in the process of doing so³⁹.

Such reforms indicate the enormous change in attitudes towards physical punishment over the last century.

Article 19 of the UN Convention on the Rights of the Child states that Governments should "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent, legal guardian or any other person who has the care of the child".

In 1995, the UN Committee criticised the UK law of 'reasonable chastisement', stating that "it does not appear to be compatible with the provisions and principles of

³⁸ Children and Young Persons Act 1933

³⁹ See NSPCC publication "Equal Protection for Children" An overview of the experience of countries that accord children full legal protection from physical punishment

the UN Convention”. Since then, in 1998, the European Court of Human Rights ruled that the UK law does not protect children adequately. Despite this, and against the advice of child protection professionals, the UK Government has decided not to change the law and the NSPCC was disappointed that the opportunity to address this matter was not taken up in the recent proposals for change contained within “*Every Child Matters*”.

The NSPCC believes that if children are to have a real chance of having better lives, there should be clear expectations and understanding of helpful and nurturing parenting practices, and those that are harmful. There is extensive evidence that physical punishment can harm children both emotionally and physically, and has the potential to escalate into abuse. We believe that the law must be amended to give children better protection by removing the parental defence of ‘reasonable chastisement’.

If the Children Board is serious about wanting to reduce the number of children who are abused, then it must create a culture in which children are respected and treated as equal citizens with rights of their own, not as adjuncts of their parents. There should be a clear expectation that this should not include the use of physical force. This would result in genuine cohesiveness of policy on children and young people. Without this essential legal underpinning, efforts to promote positive parenting can always be undermined by parents citing their legal right to use physical force to discipline their children⁴⁰.

Safeguarding Children

The NSPCC believes child protection is everyone’s responsibility, and that greater community involvement in safeguarding children should be encouraged through initiatives, such as:-

- Public awareness campaigns to raise awareness of abuse, positive parenting and sources of help, such as the NSPCC’s “Someone To Turn To” campaign
- Increased resources and training for professionals working with children to enable them to respond to concern raised by members of the public
- Campaigning to raise awareness of helplines such as ChildLine, Parentline and the NSPCC’s Child Protection Helpline
- An advice service, independent of the direct services providers, for members of the public, carers and professionals, giving them advice about how to respond when they are concerned about a child
- Publicity to inform parents and carers how to report suspicious activity by sex offenders and provide information about how they can safeguard children in the community.
- Funding for schools to provide independent schools-based counselling services and peer support schemes.
- Positive parenting programmes and family support schemes.

⁴⁰ The NSPCC has produced *Encouraging Better Behaviour* –publication for parents outlining alternatives to physical punishment (www.nspcc.org.uk/documents/ebb.pdf) and *Encouraging Parents to Use Positive Discipline – Advice to Professionals* – NSPCC publication for professionals.

LINKS TO PAPERS REFERENCED

The NSPCC is taking this opportunity to share with the Children Board it's responses to the proposals contained within the UK Government's recent consultation documents "Every Child Matters", "Youth Justice – the Next Steps", "Safety and Justice: The Government's Proposals on Domestic Violence". We are also including reference to the NSPCC Discussion Paper in response to the Victoria Climbié Inquiry : "Someone to Turn To - An effective child protection system for the 21st century". In addition we believe that the NSPCC's Review of Legislation relating to Children in Family Proceedings, published on 1st December, 2003, is of relevance.

Many of the issues highlighted will have relevance for Guernsey at this time, and the NSPCC will be happy to provide more information upon request.

NSPCC Response to "Every Child Matters"

http://www.nspcc.org.uk/publicaffairs/documents/NSPCC_Response_to_Every_Child_Matters.doc

NSPCC Response to "Youth Justice – the Next Steps"

http://www.nspcc.org.uk/publicaffairs/documents/NSPCC_Response_to_Youth_Justice_the_next_steps.doc

NSPCC Response to "Safety and Justice: The Government's Proposals on Domestic Violence"

http://www.nspcc.org.uk/publicaffairs/documents/NSPCC_Response_to_Safety_and_Justice.doc

NSPCC Discussion Paper in response to the Victoria Climbié Inquiry : "Someone to Turn To - An effective child protection system for the 21st century"

http://www.nspcc.org.uk/publicaffairs/documents/Someone_to_turn_to.doc

NSPCC Review of Legislation relating to children in Family Proceedings (published 1st December 2003)

<http://www.nspcc.org.uk/inform/Downloads/ReviewOfLegislation.pdf>

CONTACTS

NSPCC CONTACTS

SHARON COPSEY
Policy Adviser Midlands & West Division
3rd Floor, 9 Broad Street
Worcester WR1 3LH
Tel: 01905 734992

PETER LIVER
Divisional Director
4th Floor Alexandra Warehouse
The Docks
Gloucester GL1 2LG
Tel: 01452 399616

PHILIP DURBAN
Area Children's Services Manager
Wellington House
Queen Street
Taunton
Somerset TA1 3UF
Tel: 01823 346350

MICK DUNBAR
Children's Services Manager
16 Fountain Court
St. Peter Port
Guernsey GY1 1BX
Tel: 01481 723224

CHILDREN 1ST CONTACT

NATALIE MORGAN-KLEIN
83 Whitehouse Loan
Edinburgh EH 9 1AT
Tel. 0131 446 2300

Appendix G

Response to the consultation documents by those supporting fathers' rights groups and HSSD reply.

In recent years, there have been an increasing number of high profile complaints and campaigns by fathers who feel betrayed by the family justice system. Guernsey is no exception to this trend. The most detailed responses to the consultation documents made by individual members of the public came from fathers, all of them unhappy with the law as it currently operates in Guernsey and concerned that new law in the Bailiwick should not repeat what are seen to be fundamental failings in the system in the UK.

The HSSD believes that the issues raised by fathers are important and must be addressed. The concerns/demands of fathers and the HSSD's responses are summarised under the bullet point headings below:

➤ Rights and responsibilities for unmarried fathers

One of the HSSD's major concerns is to bring the law up to date with the realities of modern family life, including the fact that many children are now born out of wedlock to fathers who nonetheless play a substantial role in the child's life. The HSSD fully accepts that it is no longer acceptable to discriminate simply on the grounds of marital status and the interim measures introduced into the courts' practice in 2002 have already begun to address this. The States' report proposes that unmarried fathers should be able to acquire parental responsibility in a number of ways, including attending at registration of the birth. There is a wide range in the circumstances of unmarried conceptions, with couples living together in stable and committed relationships at one extreme, and children born as the result of rape at the other. The HSSD believes the law should be sufficiently flexible to encompass this wide range and that an automatic grant of parental responsibility to all fathers would be inappropriate and potentially harmful to the child in some instances.

➤ Equality of parenting and an end to institutional bias towards mothers in private law matters

The HSSD accepts that there is no inherent reason why a man cannot parent a child as well as a woman (with the obvious exception of breastfeeding). It also accepts that some people have a firm belief that the courts and other institutions, including the court welfare service, are automatically biased in favour of mothers. While not necessarily accepting that this is in fact the case, the HSSD believes that bias based on matters such as gender is unacceptable and it is for this reason that it is proposing the new law be underpinned by guiding principle 11 (see page 14), which should help to ensure that all those dealing with disputes between parents are not swayed by prejudice (whether conscious or unconscious).

The HSSD is conscious that, for any loving parent, the breakdown of a relationship and consequential separation from children, on a day to day basis, is an exceedingly painful situation for the children and parent concerned. There are no easy answers to the dilemmas posed. Research finds that many children who live, in effect, half time with each parent feel that they have no proper base of their own. One solution proposed (by Bob Geldof, for example) is that children should remain in the former marital home and parents take turns to care for them there: this requires not only a very high degree of organisation and co-operation, it effectively means provision of three homes, which is simply not practical except for the very wealthy and, even for them, the acute shortage of housing in the Bailiwick is an additional difficulty. The matter becomes even further complicated where new partners and step-children feature.

In the vast majority of matters involving disputed residence/custody, the case is concluded on the basis of the children living primarily with the mother and this fact is often quoted as evidence of a generalised pro-mother bias. However, such a conclusion does not necessarily follow: research by the Equal Opportunities Commission, for example, shows that even in dual income families, mothers undertake two thirds of the parental child care. In striving to give children stability, the HSSD believes that it is normally important to maintain the status quo as far as is possible; thus, making a residence/custody order to a mother is likely to reflect that it is she who has in fact undertaken more of the childcare.

Although totally equal parenting on a pragmatic, day to day level, is likely in most circumstances of separation to be a practical impossibility, the Department believes that the law should strive to encourage regular, frequent and positive contact with the non-resident parent: issues arising from contact difficulties are addressed in more detail under the following bullet point (Increased use of mediation).

The Department also believes that the law should support equality of responsibility for children. Once fathers have parental responsibility, whether as a result of marriage, agreement with the mother, court order etc., under the proposals, they will continue to share this, even after separation or divorce, save in the most exceptional cases (such as causing serious and deliberate injury to the child).

The Department has considered in detail whether, and on what issues, **all** those with parental responsibility must consent. It is proposed in the consultation documents that this should apply to change of a child's name (forename or surname), removal from the Bailiwick, adoption, marriage, change of school. As a result of the consultation, change of religion has been added to this list. A number of other instances were proposed by respondents, including involvement in dangerous pursuits, a range of medical treatments and chastisement by a parent's new partner.

Following the recommendations of the Law Commission, the 1989 Children's Act specifically states that, in all but a few specified circumstances (as outlined in the previous paragraph), those with parental responsibility can act independently of one another. The

Law Commission reasoned that " a legal duty of consultation seems both unworkable and undesirable. The person looking after the child has to be able to take decisions...as and when they arise... the child may well suffer if that parent is prevented by the other's disapproval ... [or] is inhibited by the fear [of disapproval]..or by the difficulties of contacting him..."

The Department endorses the reasoning of the Law Commission and believes that an inflexible obligation to obtain joint consent on a wide range of issues is not in children's interests. It does, however, propose that the new Law specifically expect anyone with parental responsibility to consult with all other holders of parental responsibility on decisions affecting the child and in the event of irreconcilable disagreement, it will be possible as a last resort to apply to the court for a ruling on any disputed matter relating to parental responsibility

➤ **Increased use of mediation**

The Department does not underestimate the difficulties for the non-residential parent in adjusting their relationship with the children, especially where they have played a major role in daily domestic care. These difficulties may be exacerbated by feelings of hurt, anger, fear and betrayal between the parents, which can often colour an objective assessment of what is in the best interests of the children; this in turn leads to problems in establishing an appropriate contact (access) regime in the crucial early stages of the separation, with the non-residential parent feeling unfairly excluded and the residential parent perhaps feeling bullied. Caught in the middle are the children, distressed to see both parents angry and unhappy, desperate to please them both, grieving for the loss of their family and wanting nothing more than for their parents to get back together. The result, too often, is that positions quickly become entrenched and failure to sort out suitable arrangements at this stage sets up a pattern of fraught, irregular and unsatisfactory visits, a pattern that can be extremely difficult to break. It is at this stage that a court application may be made, where the traditional adversarial approach of litigation is unlikely to help and at worst it can exacerbate an atmosphere of recrimination.

The Department believes that it is vital to encourage mediation as a means of settling family disputes, in accordance with guiding principle 9 (p.13). Ideally, mediation should be available from an early stage, to avoid problems becoming deeply rooted. Effective mediation will ensure that only a tiny minority of cases needs to be adjudicated by a court and in the case of those that do, an ethos of non-confrontation will prevail.

The Department concurs with the view expressed by many respondents, not only fathers, that every effort should be made to promote mediation and that the possibility of agreement should be explored in every case before recourse to a court adjudication is permitted. However, the Department would be reluctant to support the suggestion, put forward by one

respondent, that “Mediation should be COMPULSORY.” In a minority of cases it will not be appropriate, for example where there is a history of domestic abuse, and the Department is also concerned that ‘agreements’ reached reluctantly and with a sense of compulsion have a high risk of breaking down. This is not to say that an initial reluctance to engage in mediation should be accepted without enquiry and challenge, undertaken by someone with the appropriate training and skills.

➤ **Better enforcement of court orders for contact (access)**

This is probably the issue on which fathers, both in Guernsey and further afield, feel most aggrieved.

It will be seen in Part 2 of the proposals (page 13 above) that the HSSD is proposing a definition of parental responsibility that sets out the right and responsibility of each parent to maintain regular direct contact with the child. In guiding principle 10, there is a presumption that it is normally in the interests of a child to have contact with both parents, and it should be the responsibility of both parents to promote this. This goes further than the position in the UK, where case law has established the principle but it is not enshrined in statute. It is important that the paramountcy principle must ultimately prevail as there will always be a small number of exceptional cases where contact with a parent is not in the child’s interests.

Enforcement of contact orders has long been a notoriously difficult issue, as traditional methods of enforcing court orders (eg: fines, imprisonment) may well end up alienating the child. The consultation document, “Private Law” goes into some detail on the work done in the UK and further afield to try and tackle the problems; particularly challenging are cases of domestic abuse and/or where one parent is alleged to have deliberately alienated the child from the other. In England and Wales, a green paper has very recently been published on “Parental Separation: Children’s Needs and Parents’ Responsibilities”. This makes a number of suggestions for changes to current practice, some of which are already being piloted. HSSD believes it is important to keep abreast of these developments, and consider what may be appropriate for the Bailiwick, while bearing in mind that many of the solutions being tried in other countries are in their infancy and have yet to be properly tested and evaluated.

One example is Australia, which recently introduced a staged process for enforcement of contact orders, concentrating initially on such things as education, parenting programmes and psychiatric intervention. Newly published research into the effectiveness of the Australian measures suggests that they are suffering from under-resourcing, lack of judicial understanding and, perhaps most crucially, a view that educative and counselling programmes need to be employed at a much earlier stage of a contact dispute, before orders have been made to be broken. The HSSD believes that identification of, and intensive

input into potentially intractable contact disputes at an early stage will go a long way to preventing the need for draconian (and often counter-productive) enforcement further down the line. It therefore suggests that the court should have power to make interim orders, as set out in paragraph e of Part 11, "Enforcement of Orders" (above at p.52). Subject to availability of such resources and further research into their effectiveness, orders might provide, for example, for attendance at parenting or anger management classes.

A proposal put forward by one respondent was that parents should provide a 'parenting plan' at an early stage in contested proceedings and this is one of the key proposals in the green paper referred to above.

In conclusion on this issue, the HSSD emphasises that measures to tackle contact disputes are likely to be resource-intensive and will fail unless the necessary resources are available. It is important to identify how best to utilise the limited resources available to a small jurisdiction.

➤ **Removal from the jurisdiction of the Bailiwick.**

Most respondents thought this was an issue where consent of all those with parental responsibility should be granted. The HSSD agrees with this view, as set out in its consultation documents and there is a specific proposal in the States' report to this effect (see Part 2: Parental Responsibility, p.17 above). The HSSD is also proposing that unauthorised removal of the child from the jurisdiction should become a criminal offence (see Part 11: Enforcement of Orders, p.51).

The issue of permanent removal from the jurisdiction is an emotive one, with no easy answers. One respondent father made a strong case for it to be permitted only in the most exceptional circumstances. On the other hand, a mother raised the issue of how difficult it is to manage as a single parent in the Bailiwick with limited job and education opportunities and a shortage of affordable housing. The HSSD believes there can be no hard and fast rules, and that each case must be considered very carefully on its individual merits. The HSSD also believes that adoption by the Bailiwick of international treaties on enforcing family law orders, would give greater security to all parties where children are travelling between parents who live in different jurisdictions.

(NB Attached is an exchange of correspondence between the Health and Social Services Department and the Home Department)

The Minister
Home Department
Sir Charles Frossard House
La Charroterie
St Peter Port
GY1 1FH

5th August 2004

Dear Deputy Torode,

States' report on new children legislation

I am writing further to the letter of 16 April 2004 from the President of the Children Board, sent in reply to your response of 1 April to the draft policy letter (as it then was).

The Health and Social Services Department plans to bring the matter of new children legislation to the States meeting in October. The report is virtually ready but, before it is finalised, there are a couple of matters I would like to raise with you.

Inclusion of 17 year olds within the remit of the juvenile court

This is an issue that the Health and Social Services Department intends to pursue and I note that the former Home Affairs Committee was opposed to this, based on the concern of the police that the need to interview all 17 year olds in the presence of a parent or other appropriate adult would involve considerable extra pressure on already tight resources. (This was set out by the chief officer under the paragraph headed "7(a)" in the final page of the memorandum of 24 March 2004 appended to your letter of 1 April.)

Having made some further investigation, I hope that I can allay concerns in this respect. I understand that, in fact, the code of practice to the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law 2003 (known colloquially as the "PPACE Law") does not require an appropriate adult to be present after the age of 16 (Code C para.1.7).

The proposals for new legislation do not envisage a change to the PPACE code of practice, but will simply extend to 17 year olds a court procedure geared to youthful offenders. Were this to be enacted in the Bailiwick, it would mirror the position in England and Wales where appropriate adults are not required as a matter of course to attend at the interview of

17 year olds, although offenders of this age do appear before the youth (as opposed to adult) court.

There has been some informal discussion with the police at officer level very recently on this issue and I gather that in the light of the PPACE code, the concerns expressed in March (which was prior to issue of the code) may no longer be as strong.

I therefore wonder whether, in these circumstances, the Home Department would now feel able to withdraw its objection to the proposal to extend the remit of the juvenile court to 17 year old offenders (allowing, of course, for exceptions, such as for very serious offences and for some juveniles charged jointly with an adult).

Treatment of children and other vulnerable witnesses in criminal proceedings

Although this was not originally intended to be part of the review of law, it was an issue that came up with a number of agencies in the early stages of the review, particularly the police, who were concerned that those charged with offences involving children were escaping conviction because of the difficulty and trauma associated with giving direct evidence in open court. In view of this response, the Children Board did in fact produce a consultation paper on the giving of evidence, setting out a number of options (including, for example, video recorded evidence). Responses to that consultation paper were in favour of a range of measures.

Giving of evidence in criminal proceedings is beyond the scope of the proposed Bailiwick children law. There is, however, enabling provision in the PPACE law for secondary legislation which could cover not only children, but all vulnerable witnesses (for example, victims of serious sexual offences or those with learning disabilities or mental health problems).

I am writing to suggest to you that the detail of such enabling provision be pursued jointly and urgently by our departments, as each clearly has an interest in protecting victims and witnesses as far as possible, while ensuring that perpetrators do not escape justice.

I look forward to hearing from you on the issues and would be grateful if you could respond as soon as possible, as the plan is to submit the children legislation States Report for the October 2004 States meeting.

Yours sincerely

P. J. ROFFEY.
Health and Social Services Minister

The Minister
Health and Social Services
Corporate Headquarters
Le Vauquiedor
St Martins
GY4 6UU

27th August 2004

Dear Deputy Roffey

STATES' REPORT ON NEW CHILDREN LEGISLATION

Thank you for your letter of 5 August 2004 and for the opportunity to comment.

Inclusion of 17 year olds within the remit of the juvenile court

The Home Department would now broadly support this proposal. However, concerns have been raised regarding the impact on such proposals may have upon the judicial system. Presently, there are sufficient cases to justify a full juvenile court on one afternoon each week. This court is always full and, generally, the youth appears in court some 5 to 6 weeks after committing the offence. The juvenile panel adjourn after the evidence has been heard on each case, and some time may be taken in considering their verdict and what sanctions are to be made. This can be quite time-consuming. It is fair to say that there are not a great number of 17 year olds committing crime, but there is a large number of that age group that commit traffic offences. At present, these would be prosecuted in a guilty plea court and would take up very little time. If traffic offences for 17 year olds were to be prosecuted in the juvenile court then one could see a backlog developing and, rather than the 5 to 6 week period presently taken to place a person before the court, it could increase substantially.

Treatment of Children and other vulnerable witnesses in criminal proceedings

I fully support your proposal that the detail of such enabling provision be pursued jointly by our Departments. The Home Department will be only too willing to nominate an appropriate office to deal with staff from the Health and Social Services Department in this matter and I look forward to hearing from you in this regard.

Yours sincerely

M W Torode
Minister
Home Department

(NB The Policy Council supports the proposals)

(NB The Treasury and Resources Department supports the proposals)

The States are asked to decide:-

Whether, after consideration of the Report dated 27th August, 2004, of the Health and Social Services Department, they are of the opinion:-

1. That legislation be enacted for the Bailiwick on the lines and upon the principles set out in that Report including
 - a) provision for a set of guiding principles to be applied by all those responsible for making decisions concerning the welfare of children;
 - b) that the responsibilities and rights of parents be specifically defined, including those of unmarried fathers;
 - c) provision for a lay tribunal to deal with the majority of troubled children in need of care, protection, guidance or control provided that children who commit serious or persistent criminal offences may continue to be dealt with by a court, as appropriate /or where necessary;
 - d) that the age at which juvenile court procedures apply to alleged young offenders be increased to include those up to and including the age of 17 years;
 - e) that the age of criminal responsibility be increased from 10 to 12 years ;
 - f) that there be a duty on States agencies to co-operate with one another to provide information, assessment and services to children in need and those at risk; and
 - g) that there be a duty on the States to provide on-going support and guidance into early adulthood to those who have been in the care of the States, as set out in the report, "Corporate Parenting" (States of Guernsey Children Board Legislative Review Team, October 2003)
2. To direct the Policy Council to consider whether the following conventions should be extended to Guernsey and to report back to the States within twelve months in the event of a decision being taken not to extend any of the specified conventions
 - a) Hague Convention on the Civil Aspects of Child Abduction (1980);

- b) European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children (1980);
 - c) Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (1996) (known as the Convention for the Protection of Children);
 - d) United Nations Convention on the Rights of the Child;
 - e) Hague Convention on Protection of Children and Co-operation in Respect of Inter-Country Adoption (1993); and
 - f) Council of Europe Convention on Contact Concerning Children;
3. To direct the Health and Social Services Department and the Home Department to jointly prepare proposals for special measures to be introduced in criminal proceedings for the giving of evidence by children.
 4. To direct the Treasury and Resources Department to take into account the financial resources required for implementation of new children's legislation when recommending to the States the revenue and capital allocations for 2005 and subsequent years.
 5. To direct the Treasury and Resources Department to have due regard to the staffing implications for implementation of new children's legislation when administering the Staff Number Limitation Policy.
 6. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

IN THE STATES OF THE ISLAND OF GUERNSEY

ON THE 28TH DAY OF OCTOBER, 2004

(Meeting adjourned from 27th October, 2004)

The States resolved as follows concerning
Billet d'État No. XVII dated 24th September, 2004

HEALTH AND SOCIAL SERVICES DEPARTMENT

MATTERS AFFECTING CHILDREN, YOUNG PEOPLE AND THEIR FAMILIES

After consideration of the Report dated 27th August, 2004, of the Health and Social Services Department:-

1. That legislation be enacted for the Bailiwick on the lines and upon the principles set out in that Report including
 - a) provision for a set of guiding principles to be applied by all those responsible for making decisions concerning the welfare of children;
 - b) that the responsibilities and rights of parents be specifically defined, including those of unmarried fathers;
 - c) provision for a lay tribunal to deal with the majority of troubled children in need of care, protection, guidance or control provided that children who commit serious or persistent criminal offences may continue to be dealt with by a court, as appropriate /or where necessary;
 - d) that the age at which juvenile court procedures apply to alleged young offenders be increased to include those up to and including the age of 17 years;
 - e) that the age of criminal responsibility be increased from 10 to 12 years ;
 - f) that there be a duty on States agencies to co-operate with one another to provide information, assessment and services to children in need and those at risk; and
 - g) that there be a duty on the States to provide on-going support and guidance into early adulthood to those who have been in the care of the States, as set out in the report, "Corporate Parenting" (States of Guernsey Children Board Legislative Review Team, October 2003)
2. To direct the Policy Council to consider whether the following conventions should be extended to Guernsey and to report back to the States within twelve

months in the event of a decision being taken not to extend any of the specified conventions

- a) Hague Convention on the Civil Aspects of Child Abduction (1980);
 - b) European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children (1980);
 - c) Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (1996) (known as the Convention for the Protection of Children);
 - d) United Nations Convention on the Rights of the Child;
 - e) Hague Convention on Protection of Children and Co-operation in Respect of Inter-Country Adoption (1993); and
 - f) Council of Europe Convention on Contact Concerning Children;
- 3. To direct the Health and Social Services Department and the Home Department to jointly prepare proposals for special measures to be introduced in criminal proceedings for the giving of evidence by children.
 - 4. To direct the Treasury and Resources Department to take into account the financial resources required for implementation of new children's legislation when recommending to the States the revenue and capital allocations for 2005 and subsequent years.
 - 5. To direct the Treasury and Resources Department to have due regard to the staffing implications for implementation of new children's legislation when administering the Staff Number Limitation Policy.
 - 6. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.
 - 7. To direct the Health and Social Services Department to investigate the merits, practicalities and resource implications of establishing an independent mediation and conciliation service to which referral may be made in private law children disputes and to identify:-
 - a. the circumstances in which such a referral should be compulsory or, in the alternative, deemed inappropriate; and
 - b. the most appropriate mechanism for establishing such a service;
- and to report back to the States within twelve months.

K. H. TOUGH
HER MAJESTY'S GREFFIER