

Orders of the Royal Court

**IV
2009**

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 22nd day of December, 2009 before Sir Geoffrey Rowland, Bailiff; present:-
Stephen Edward Francis Le Poidevin, Esquire, The Reverend Peter Gerald Lane,
Susan Mowbray, Barbara Jean Bartie, Claire Helen Le Pelley, Constance Helyar-
Wilkinson and Terry George Snell, Esquire, Jurats

No. 4 Order, 2009

ENTITLED

THE FAMILY PROCEEDINGS (GUERNSEY AND ALDERNEY) RULES, 2009

The Family Proceedings (Guernsey and Alderney) Rules, 2009

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The Family Proceedings (Guernsey and Alderney) Rules, 2009

THE ROYAL COURT, in exercise of the powers conferred upon it by section 34 of the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988^a, sections 50, 52, 58, 67, 98, 99, 100, 101, 102, 103, 105, 121 and 122 of the Children (Guernsey and Alderney) Law, 2008^b, section 33 of the Magistrate's Court (Guernsey) Law, 2008^c and all other powers enabling it in that behalf hereby orders:-

PART I

THE OVERRIDING OBJECTIVE

Statement and application of overriding objective.

1. (1) The overriding objective of these rules is to enable the relevant court to deal with cases justly, having regard to –

- (a) the overriding principle that the child's welfare is the paramount consideration,
- (b) the child welfare principles, and
- (c) the child welfare checklist,

the whole as more particularly set out in sections 3 and 4 of the Law.

^a Ordres en Conseil, Vol. XXXI, p. 171.

^b Order in Council No. XIV of 2009.

^c Order in Council No. XVIII of 2009

(2) The parties are required to help the relevant court to further the overriding objective.

PART II

APPLICATION OF RULES AND DEFINITION OF “RELEVANT COURT”

Application of rules.

2. (1) Subject to paragraphs (2), (3) and (4), these rules apply to family proceedings.

(2) These rules do not apply to proceedings –

(a) under the the Loi ayant rapport au Divorce et à d'autres Causes Matrimoniales, 1939^d, or

(b) under the Adoption (Guernsey) Law, 1960^e.

(3) These rules apply to

(a) applications to the relevant court by the Children's Convenor for a disclosure order under section 39 of the Law, and

(b) referrals by the Children's Convenor to the Juvenile Court of any matter for determination under section 42(3) and 42(4) of the Law,

^d Ordres en Conseil Vol. XI, pg. 318.

except insofar as they are disapplied or modified by the provisions of Part X of these rules.

(4) These rules shall apply to such other proceedings, or part thereof, concerning the welfare of a child, as the relevant court, whether by practice direction or otherwise, may direct.

“Relevant court”.

3. For the purpose of exercising jurisdiction under the Law, “**relevant court**” means such of the Royal Court, the Court of Alderney, the Magistrate’s Court and the Juvenile Court as shall be prescribed by practice direction for the purposes of any proceedings to which these rules apply.

PART III
SERVICE OF DOCUMENTS

Service on an individual.

4. (1) Service of a document in Guernsey or Alderney on an individual shall be effected by the Sergeant, where the document is to be served in Guernsey, or the Alderney Greffier, where the document is to be served in Alderney -

- (a) personally,
- (b) by leaving the document at his last known place of residence,

^e Ordres en Conseil Vol. XVIII, pg. 192.

- (c) where, in the proceedings to which the document relates, the individual has given an address for service, by leaving the document there, or
- (d) where an address for service has been given in any document which relates to the proceedings or to the subject-matter thereof, being a document to which the individual was a party, by leaving the document there.

(2) Service of a document in Guernsey or Alderney on an individual may be effected in such other manner as the relevant court may direct including, without limitation, substituted service in accordance with rule 12.

Service on a body corporate.

5. (1) Service in Guernsey or Alderney of a document on a body corporate shall be effected by the Sergeant or the Alderney Greffier, as the case may be -

- (a) by leaving the document at the registered office in Guernsey or Alderney of the body corporate,
- (b) where the body corporate has no such registered office but carries on business in Guernsey or Alderney, by leaving the document at any such place of business of the body corporate, or
- (c) in accordance with rules 4(c) or (d), as if the references therein to the individual were references to the body corporate.

(2) Service in Guernsey or Alderney of a document on a body corporate may be effected in such other manner as the relevant court may direct including, without limitation, substituted service in accordance with rule 12.

Service on an unincorporated body.

6. (1) Service in Guernsey or Alderney of a document on an unincorporated body shall be effected by the Sergeant or the Alderney Greffier, as the case may be,

- (a) personally on any member of the committee or other similar governing body, manager or other similar officer thereof,
- (b) by leaving the document at the last known place of residence of such person described in subparagraph (a), or
- (c) in accordance with rules 4(c) or (d), as if the references therein to the individual were references to the body.

(2) Service in Guernsey or Alderney of a document on an unincorporated body may be effected in such other manner as the relevant court may direct including, without limitation, substituted service in accordance with rule 12.

Service on the States of Guernsey or the States of Alderney.

7. (1) Service of a document on the States of Guernsey or any Department or Committee thereof shall be effected by the Sergeant leaving the document at the Chambers of the Law Officers of the Crown and service on the

States of Alderney or any Committee thereof shall be effected by the Alderney Greffier by personal service on the Chief Executive of the States of Alderney.

(2) Service of a document on the States of Guernsey or any Department or Committee thereof, or on the States of Alderney or any Committee thereof, may be effected in such other manner as the relevant court may direct including, without limitation, substituted service in accordance with rule 12.

Service on the Children’s Convenor or the Safeguarder Service.

8. (1) Service of a document on the Children’s Convenor or the Safeguarder Service shall be effected by the Sergeant leaving it at the offices of the Children’s Convenor, or the Safeguarder Service, as the case may be.

(2) Service of a document on the Children’s Convenor or the Safeguarder Service may be effected in such other manner as the relevant court may direct including, without limitation, substituted service in accordance with rule 12.

Service on or by a child.

9. (1) Where a child is a party to an application under the Law, service of any document on or by the child shall be effected -

- (a) on or by his Advocate, or
- (b) where he is not represented by an Advocate, on or by his Safeguarder, or
- (c) where he is not represented by an Advocate, and no Safeguarder has been appointed, in accordance with the directions of the relevant court.

(2) Service of a document on a child who is a party to an application under the Law may be effected in such other manner as the relevant court may direct including, without limitation, substituted service in accordance with rule 12.

Sergeant or Alderney Greffier to certify mode of service.

10. The Sergeant, or the Alderney Greffier, as the case may be, having effected service of a document in accordance with these rules, or having attempted so to effect service, shall certify the mode of service as follows-

- (a) in the case of service in accordance with rule 4(1)(a) or (c), 5(1)(a) or (b), 6(1)(a), 7(1), 8(1) or 9(1), with the letter “A”,
- (b) in the case of service in accordance with rules 4(1)(b) or (d) or 6(1)(b), where the Sergeant or the Alderney Greffier left the document, at the place of residence of the person to be served, with a person who appeared to him to be a reliable adult and who undertook to bring the document to the attention of the person to be served, with the letter “B”,
- (c) otherwise, with the letter “C”,

unless service was effected in some other manner in accordance with an order of the relevant court including, without limitation, substituted service in accordance with rule 12, in which case proof of service shall be in accordance with the order of the court, or rule 12, as the case may be.

Effect of certificate of service.

11. A certificate under rule 10 -

- (a) with the letter “A”, shall enable the matter to proceed in all respects,
- (b) with the letter “B”, shall enable the matter to proceed in all respects, with leave of the relevant court,
- (c) with the letter “C”, shall enable the matter to be tabled but nothing more unless, when the matter is tabled –
 - (i) the party who was to be served appears (in person or by his Advocate), or was present in court (in person or by his Advocate) when a date was set for the hearing, or
 - (ii) the relevant court is satisfied that that party has notice of the document,

in either of which cases the matter may proceed in all respects.

Substituted service within the jurisdiction.

12. (1) Where service in Guernsey or Alderney of a document in the manner required by these rules would, but for the provisions of this rule, be impracticable or would entail undue expense, the relevant court may make such order for substituted or other service, whether by notice, by advertisement or otherwise, as it thinks just.

(2) A party applying for an order under paragraph (1) shall file an affidavit in support of his application.

(3) Where the relevant court makes an order under paragraph (1), proof of service in accordance with the order shall be by affidavit or, where service was effected by the Sergeant or the Alderney Greffier, by the certificate of the Sergeant or of the Alderney Greffier, as the case may be.

Service out of the jurisdiction.

13. (1) The relevant court may give leave to effect service of a document out of the jurisdiction.

(2) The relevant court shall not make an order under paragraph (1) unless satisfied (by affidavit or otherwise) that the matter to which the document relates-

(a) is properly justiciable before the relevant court, and

(b) is a proper one for service out of the jurisdiction.

(3) An order of the relevant court under paragraph (1) shall state-

(a) the form, manner and time in which, and conditions subject to which, service is to be effected, and

(b) the minimum period which must elapse between the date of service and the date upon which the matter may be pursued.

(4) Where the relevant court makes an order under paragraph (1),

proof of service in accordance with the order shall be by affidavit or, where service was effected by the Sergeant or by the Alderney Greffier, by the certificate of the Sergeant or of the Alderney Greffier, as the case may be.

Service in other manner permitted by law.

14. (1) The provisions of rules 4 to 13 -

- (a) are in addition to, and not in derogation from, the provisions of any enactment or rule of court relating to the service of documents,
- (b) do not apply where the relevant court orders service in some other manner or dispenses with service in accordance with rule 15.

(2) Where service of any document is required to be made out of normal office hours, such service may be effected by the Sergeant, or by the Alderney Greffier, or -

- (a) where the document to be served relates to an application to be made by the Department, or where it relates to an order of a relevant court made pursuant to such an application, by any representative of the Department duly authorised by the Chief Officer of the Department,
- (b) where the document to be served relates to an application to be made by the Children's Convenor, or where it relates to an order or finding of a relevant court made pursuant to such an application, by the

Children's Convenor, or by any person duly authorised by the Children's Convenor,

- (c) where the document to be served relates to an application to be made by a person represented by an Advocate, or where it relates to an order of a relevant court made pursuant to such an application, by a representative of that Advocate's firm, or
- (d) by a police officer,

but otherwise in accordance with the provisions of rules 4 to 9, and proof of service shall be by affidavit or, where service was effected by the Sergeant or by the Alderney Greffier, by the certificate of the Sergeant or of the Alderney Greffier, as the case may be.

(3) For the purposes of paragraph (2), "out of normal office hours" means on a Saturday, Sunday, Good Friday, Christmas day or public holiday, or between the hours of 5 pm and 9 am on any other day.

Power of court to dispense with service.

15. Notwithstanding any rule or practice direction requiring any document to be served on any person, the relevant court may direct that the requirement for service in any particular case shall be dispensed with, or that any time specified for complying with a requirement may be reduced, or may direct that service in any such case shall be deemed to have been properly effected in accordance with these rules.

PART IV
APPLICATIONS TO THE COURT

Form and manner of application to the court.

16. (1) An application to the relevant court shall be made in the form and manner prescribed for that purpose by practice direction or, if no such form has been prescribed, by a statement in writing of the order, finding or determination sought.

(2) The form of application shall include the applicant's address for service and shall be accompanied by such information and documents as may be prescribed.

Service of notice of application on parties.

17. (1) Except where an application is made ex parte, pursuant to rule 20, the applicant shall serve a copy of the application, together with any relevant documents, together with a notification of the date of the first hearing, in accordance with paragraph (2).

(2) Service under paragraph (1) shall be effected on all other parties at least 4 clear days, or such other period as the relevant court may direct, prior to the date of the first hearing.

Withdrawal of application.

18. Subject to rule 52 (Withdrawal of proceedings by Convenor), an application may be withdrawn only with leave of the relevant court.

Parties to give address for service.

19. Each party shall, no later than the first directions or other hearing at

which he is present or represented, give an address for service.

Ex parte applications.

20. (1) Any application may, with leave of the relevant court, be made ex parte, subject to the provisions of this rule.

(2) Where the relevant court refuses to make an order on an ex parte application, it may direct that the application shall be made inter partes and may, if it thinks fit, set a date for the inter partes hearing, and the applicant shall thereupon serve a copy of the application in accordance with rule 17.

(3) Where the relevant court makes an order on an ex parte application, it shall fix a date for the hearing of the matter inter partes and the applicant shall serve a copy of the order and any supporting documentation, together with a notification of the date set for the inter partes hearing, on all parties to the application.

PART V

PARTIES TO PROCEEDINGS ETC.

Parties.

21. (1) The respondents to proceedings to which these rules apply shall, subject to paragraphs (2) and (3), and except where section 50 (Parties to referrals by Children's Convenor) applies, be any person whom the applicant believes to be interested in or affected by the proceedings, including, without limitation, the following persons –

- (a) any person who has parental responsibility for the child,

- (b) any person who, immediately before the making of any order by the relevant court which had the effect of terminating that person's parental responsibility, had parental responsibility for the child,
- (c) where the child is accommodated by, or on behalf of, the Department, the Department,
- (d) in the case of an application to extend, vary or discharge an order, the parties to the proceedings in which the order was made, and
- (e) any person whom the relevant court has ordered, on an application or otherwise, at any stage of the proceedings, should be joined as a party.

(2) A child shall not be a party to any proceedings, except proceedings relating to a community parenting order, unless the relevant court so directs.

(3) The relevant court may, at any stage of the proceedings, whether or not an application has been made, direct that a party to the proceedings cease to be a party.

Separate representation of children.

22. (1) If in any proceedings, where a child is not, by virtue of rule 21, a party to those proceedings, and rule 50 (Parties to referrals by Children's Convenor) does not apply, it appears to the relevant court that it is in the best interests of the child that the child is made a party to those proceedings, the court may appoint –

(a) a Safeguarder, and/or

(b) an Advocate

to represent the child in the proceedings.

(2) An order under paragraph (1) may be made by the relevant court of its own initiative, or on the application of –

(a) a party to the proceedings, or

(b) a Safeguarder or Advocate already appointed in relation to the child, or

(c) the child himself, if the court is satisfied that the child has the necessary understanding.

(3) Unless the relevant court otherwise directs, a person appointed under this rule to represent the child in any proceedings shall be treated as a party for the purposes of any provision of these rules requiring a document to be served on, or notice to be given to, a party to the proceedings.

(4) An Advocate appointed in relation to a child, whether under this rule or otherwise, shall represent the child –

(a) in accordance with instructions received from the Safeguarder, if any, appointed, unless it appears to the Advocate, having taken account of the views of the Safeguarder, that the child wishes to give instructions

which conflict with those of the Safeguarder, in which case the Advocate shall apply to the relevant court for directions as to whether the Advocate should represent the child in accordance with the child's instructions,

- (b) where no Safeguarder has been appointed, and the child has sufficient understanding to instruct an Advocate, and wishes to do so, in accordance with instructions received from the child, or
- (c) in default of instructions under paragraphs (a) or (b), in furtherance of the best interests of the child.

Appointment of Safeguarder.

23. The relevant court may, at any stage of the proceedings, appoint a Safeguarder to act in the proceedings either generally or for a specific purpose or purposes, and may, at any stage of the proceedings, discharge the Safeguarder from so acting or alter the purpose or purposes for which the Safeguarder was appointed.

PART VI

CASE MANAGEMENT BY COURT

Court's duty to manage cases.

24. (1) The relevant court shall actively manage cases for the purpose of furthering the overriding objective.

(2) Active case management includes (without limitation)-

- (a) encouraging the parties to co-operate with each other in the conduct of the proceedings,

- (b) identifying the issues, and the parties, at an early stage,
- (c) deciding promptly which issues need full investigation and hearing and which do not;
- (d) deciding the procedure to be followed in the case and the order in which issues are to be resolved;
- (e) encouraging the parties to use any appropriate form of alternative dispute resolution and facilitating the use of such procedures;
- (f) actively encouraging and assisting parties to settle the whole or part of the case on terms that reflect the overriding objective of these rules;
- (g) fixing timetables or otherwise controlling the progress of the case;
- (h) dealing with as many aspects of the case as is practicable on the same occasion;
- (i) dealing with the case, or any aspect of it, where it appears appropriate to do so, without requiring the parties to attend court;
- (j) making appropriate use of technology;

- (k) giving directions to ensure that the case proceeds quickly and efficiently; and
- (l) ensuring that no party gains an unfair advantage by reason of that party's failure to give full disclosure of all relevant facts prior to the trial or the hearing of any application, and
- (m) giving directions to ensure that the case proceeds quickly and efficiently.

General powers of court.

25. (1) The relevant court has the powers set out in this rule, except where these rules provide otherwise, in addition to any powers conferred on the relevant court by these rules or any other rule, practice direction or enactment.

- (2) The relevant court may –
 - (a) extend or shorten the time for compliance with any rule, practice direction, court order or enactment even if the application for an extension is made after the time for compliance has expired,
 - (b) adjourn or bring forward a hearing,
 - (c) stay the whole or part of any proceedings generally or until a specified date or event,
 - (d) decide the order in which issues are to be heard and/or give directions as to the steps to be taken in the

proceedings,

- (e) dismiss or give judgment in any proceedings after a decision on a preliminary issue,
- (f) direct that part of any proceedings be dealt with separately,
- (g) consolidate any proceedings, or make an order that two or more proceedings be tried at the same time, or one immediately after another, or that any of them shall be stayed until any other of them is determined,
- (h) exclude an issue from determination if in the opinion of the relevant court the determination of that issue is unnecessary in order to achieve justice in the proceedings,
- (i) waive any requirement that evidence in support of any application be given by affidavit,
- (j) require the maker of an affidavit to attend court for cross-examination or generally to give evidence in the proceedings,
- (k) require any party, Advocate, Safeguarder or any other person to attend the court, and give directions as to the attendance or otherwise of the child,
- (l) give directions concerning the appointment of an

Advocate to represent the child,

- (m) deal with any matter in the absence of any party,
- (n) hold a hearing and receive evidence by telephone or other electronic means or by using any other method of direct oral communication: Provided that where evidence is received by telephone or other electronic means, all persons participating must be able to hear one other and to identify each other so far as practicable,
- (o) deal with a matter on written representations submitted by the parties instead of by oral representations,
- (p) direct that any evidence be given in written form,
- (q) direct that notice of any proceedings or application be given to any person, and
- (r) take any other step, including the giving, varying or revoking of directions, or make any other order for the purpose of managing the case and furthering the overriding objectives of these rules.

Variation of case management timetable.

26. The relevant court may, on application by one or more of the parties or otherwise, vary any date which has been fixed for any act required to be performed by any party or generally vary the timetable for the management of the proceedings.

Attendance at hearings.

27. (1) Subject to paragraph (2), a party shall attend a directions or other hearing of which he has been given notice unless the relevant court directs otherwise.

(2) Proceedings, or any part of them, may take place in the absence of any party, including the child, if –

- (a) the relevant court considers that it is in the interests of the child, having regard to the matters to be discussed or the evidence likely to be given, and
- (b) the party is represented by an Advocate or, in the case of a child, a Safeguarder,

and the party or his Advocate, and/or Safeguarder in the case of a child, has been given the opportunity to make representations.

(3) Where a party has been given notice of a directions hearing, the relevant court may hear the application in his absence if –

- (a) the court is satisfied that he received reasonable notice of the date and time of the hearing, or
- (b) the court is satisfied that the circumstances of the case justify proceeding with the hearing.

PART VII
CONDUCT OF PROCEEDINGS

Court's power to make order of its own initiative.

28. (1) Except where a rule or enactment provides otherwise, the relevant court may exercise its powers on an application or of its own initiative.

(2) Where the relevant court proposes to make an order of its own initiative, it must, unless in all the circumstances it considers it inappropriate so to do, give any person likely to be affected a reasonable opportunity to make representations, whether orally, in writing, by telephone or by such other means as the relevant court thinks fit.

Other powers in relation to orders.

29. (1) When a relevant court makes an order or gives a direction, it may –

- (a) make the order or give the direction subject to conditions, and
- (b) specify the consequence of failure to comply with the order, direction or a condition.

(2) A power of the relevant court under these rules to make an order –

- (a) may be made at any stage of the proceedings, and
- (b) includes a power to stay, vary or revoke that order.

Consent orders.

30. (1) Where all the parties to the proceedings reach agreement as to the disposal of the proceedings or any part thereof, the relevant court may, if it considers it appropriate to do so, approve the proposals and make an order accordingly without the necessity for a final hearing.

(2) Where the relevant court does not consider that it is appropriate to approve any proposals for the disposal of proceedings or part thereof agreed by the parties, it may make such directions as it thinks fit for the continuation of the proceedings.

Rectification of errors of procedure.

31. Where there has been an error of procedure such as a failure to comply with a rule or practice direction –

- (a) the error does not invalidate any step taken in the proceedings unless the relevant court so orders, and
- (b) the relevant court may make an order to remedy the error.

Obtaining further information.

32. Subject to any rule of law to the contrary, the relevant court may at any time order any party to –

- (a) clarify any matter which is in dispute in the proceedings, or
- (b) give additional information in relation to any such matter.

PART VIII
EVIDENCE IN PROCEEDINGS

Documentary evidence

Documentary evidence.

33. (1) At a directions or other hearing, no party shall file or serve any document, nor adduce any documentary evidence or seek to rely on a document, other than in accordance with these rules or with leave of the relevant court.

(2) The relevant court may, if it thinks fit, in exceptional circumstances, order that a document, or part thereof, or any information contained therein, should be withheld from a party to the proceedings, or that disclosure of such document or information should be subject to conditions.

(3) Where a child is a party to the proceedings and, in the opinion of the relevant court, the disclosure of a document, or any information contained therein, may be damaging to the child, the court may withhold the document or information from the child; but if the child is represented by an Advocate and/or Safeguarder, such document or information shall be disclosed to that Advocate and/or Safeguarder.

(4) Any documents which have been filed or served in the course of proceedings shall not be disclosed to any person who is not -

(a) a party to the proceedings, or

(b) the Advocate, and/or Safeguarder acting for a party to

the proceedings, or

- (c) the Legal Aid Administrator or a member of staff of the Legal Aid Administrator authorised for that purpose,

except with the leave of the relevant court.

Disclosure and inspection

Meaning of “disclosure” and “inspection”.

34. For the purposes of rules 35 and 36 -

“**disclosure**”, in relation to a document, means a statement that a document exists or has existed, and

“**inspection**”, in relation to a document, means inspection by a person of a document disclosed by another person.

Disclosure and inspection of documents generally.

35. Subject to rule 36, the relevant court may give directions –

- (a) as to what disclosure of documents, if any, is necessary, and
- (b) as to inspection of documents.

Orders for disclosure against a person not a party.

36. (1) This rule applies where an application is made to the relevant court for disclosure by a person who is not a party to the proceedings and is without

prejudice to any other power which the relevant court may have to order such disclosure.

(2) The relevant court may make an order under this rule only where disclosure is necessary in order to dispose fairly of the proceedings.

(3) An order under this rule must specify the document or the classes of documents which the respondent must disclose, may require the respondent to indicate what has happened to any documents which are no longer under his control, and may specify the time and place for disclosure and inspection.

Witness statements

Witness statements.

37. (1) A witness statement is a written statement signed by a person which contains the evidence which that person would be allowed to give orally.

(2) A witness statement must comply with any requirements set out in a relevant practice direction.

(3) A witness statement must be supported by affidavit or by the oath of the person who made it.

(4) The relevant court may give directions as to the requirements for, and use in any hearing of, witness statements.

Expert evidence

Meaning of “expert”.

38. For the purpose of these rules, an “expert” is a person who has been

instructed to give or prepare expert evidence for the purpose of proceedings, but does not include a Safeguarder acting in that capacity.

Duty to restrict expert evidence.

39. (1) Expert evidence will be restricted to that which is reasonably required to resolve the proceedings.

(2) No party may call an expert or put in evidence an expert's report without the leave of the relevant court.

(3) A party applying for leave under this rule must identify –

(a) the field in which he wishes to rely on expert evidence,
and

(b) where practicable, the expert in that field on whose evidence he wishes to rely,

and where leave is granted it will be in relation to that field and/or the named expert.

(4) In granting leave, the relevant court may limit the amount of the expert's fees and expenses that the party who wishes to rely on the expert may recover from any other party.

(5) The relevant court may, in any case, limit the amount that can be paid by way of fees and expenses to an expert.

Expert's duty to the court.

40. (1) It is the duty of an expert to help the relevant court on matters

within that expert's expertise.

(2) The duty of an expert under paragraph (1) overrides any obligation to the person from whom the expert has received instructions or by whom the expert is paid.

Examination of child.

41. (1) No person may cause a child to be medically or psychiatrically examined, or otherwise assessed, for the purpose of preparation of expert evidence for use in the proceedings without the leave of the relevant court.

(2) Where the permission of the relevant court has not been given under paragraph (1), no evidence arising out of an examination or assessment referred to in that paragraph may be adduced without the leave of the court.

Written report.

42. (1) Expert evidence is to be given in a written report unless the relevant court directs otherwise.

(2) The relevant court shall not direct an expert to attend a hearing unless it is necessary to do so in the interests of justice.

(3) A party may, with leave of the relevant court, put written questions to an expert, instructed by any party in the proceedings, for the purpose only, unless the relevant court otherwise directs, of clarification of the report; and the answers to such questions shall be treated as part of the expert's report.

(4) Where a party puts written questions to an expert instructed by another party in accordance with paragraph (3), and the expert does not answer that question, the relevant court may order –

- (a) that the instructing party may not rely on that expert's evidence, or
- (b) that the instructing party may not recover the fees and expenses of that expert from any other party.

Joint instructions to single expert.

43. (1) Where two or more parties (“the instructing parties”) wish to submit expert evidence on a particular issue, the relevant court may direct that the evidence on that issue is to be given by one expert only.

(2) Where the instructing parties cannot agree who should be the expert, the relevant court may –

- (a) select the expert from a list prepared or identified by the instructing parties, or
- (b) give directions as to an alternative manner of selection.

(3) Where the relevant court gives a direction under paragraph (1), the instructions to the expert are to be contained, unless the court otherwise directs, in a jointly-agreed letter and, in default of such agreement, the instructions may be determined by the court.

(4) Where the relevant court permits the instructing parties to give separate instructions to a single joint expert, each instructing party must send a copy of his instructions to the other instructing parties.

(5) Where an expert who has been jointly-instructed under this

rule is directed by the relevant court to attend a hearing, any party may question the expert notwithstanding that he was one of the instructing parties.

Disclosure of expert's report.

44. Where a party has obtained an expert's report in connection with proceedings, such report shall be disclosed to the relevant court and, unless the court gives leave for it not to be further disclosed, to all other parties; and in such a case any party may use that expert's report as evidence at any relevant hearing.

Directions of court in relation to experts.

45. The relevant court may, in addition to any other power to give directions, whether under these rules or otherwise, give such directions in relation to any matter concerning expert evidence as it considers appropriate.

PART IX

SPECIAL PROVISIONS CONCERNING CERTAIN APPLICATIONS

Community parenting order

Application for special contact order.

46. An application for a special contact order under section 50 of the Law may be made by a person of the following classes or descriptions –

- (a) any person who has parental responsibility for the child,
- (b) any person who cared for the child immediately before the making of the community parenting order, except a foster carer acting on behalf of the Department,

- (c) any person in favour of whom an order relating to contact with the child has at any time been made, or
- (d) any other person, with leave of the relevant court.

Application for discharge of community parenting order.

47. An application for the discharge of a community parenting order may be made by -

- (a) the Department,
- (b) the child,
- (c) any person who had parental responsibility for the child immediately before the making of the community parenting order, or
- (d) any other person, with leave of the relevant court.

PART X

REFERRALS TO JUVENILE COURT BY CHILDREN'S CONVENOR AND
APPEALS FROM CHILD, YOUTH AND COMMUNITY TRIBUNAL

General.

48. (1) This Part shall apply to -

- (a) applications to the relevant court by the Children's Convenor for a disclosure order under section 39 of the Law, and

- (b) referrals by the Children's Convenor to the Juvenile Court of any matter for determination under section 42(3) and 42(4) of the Law.

(2) Subject to rule 49 and the following provisions of this Part, these rules shall apply to the proceedings mentioned in paragraph (1).

Disapplication of certain rules.

49. Rules 21, 22, 25(2)(c) and 25(2)(h), 28, 29 and 61 shall not apply to proceedings to which this Part applies.

Parties to referrals by Children's Convenor.

50. (1) Where a condition for referral is stated by the Children's Convenor and referred for determination by the Juvenile Court under section 42(3) or (4) of the Law, the parties to the proceedings shall be the Children's Convenor who, for the avoidance of doubt, shall be deemed for the purposes of these rules to be the applicant in such proceedings, together with -

- (a) any person of a class or description prescribed for the purposes of section 42(3) of the Law by an Ordinance made under section 34 of the Law, and
- (b) any person whom the Juvenile Court has ordered, on an application or otherwise, at any stage of the proceedings, should be joined as a party.

(2) The Juvenile Court may, at any stage of the proceedings, whether or not an application has been made, direct that a party to the proceedings cease to be a party.

Date of first and subsequent hearings.

51. (1) Where possible, the first hearing of a matter to which this Part applies will take place within 14 clear days of the date when application is made under rule 16.

(2) Subsequent hearings will be listed as expeditiously as possible, having regard to all the circumstances of the case.

Withdrawal of proceedings by Convenor.

52. (1) Notwithstanding the provisions of rule 18, and at any stage before the proceedings are determined, the Children's Convenor may withdraw any application or referral to which this Part applies, in whole or in part, without the leave of the relevant court.

(2) In the event of the withdrawal by the Children's Convenor of an application or referral in whole, the Juvenile Court shall dismiss the application.

Powers of the Court.

53. (1) The Juvenile Court may, at any time, whether or not an application has been made, allow amendment of any statement supporting the conditions of referral.

(2) At the conclusion of any proceedings before it under section 42(3) or 42(4) of the Law, the Juvenile Court shall –

(a) where it finds that none of the conditions for referral have been established in whole or in part, dismiss the application, or

(b) where it finds that any condition for referral stated by

the Children's Convenor is established, in whole or in part, remit the matter to the Children's Convenor for referral to the Tribunal for consideration and determination under section 42(1) of the Law.

PART XI APPEALS

Persons who may appeal.

54. (1) Subject to paragraph (2), the persons who may appeal against a decision made in any proceedings in a relevant court or the Tribunal are the parties to those proceedings.

(2) The following additional persons may appeal against decisions made in the course of specified proceedings notwithstanding that they were not a party to those proceedings –

- (a) the Department, against a decision of the Tribunal under Part VII of the Law,
- (b) the Children's Convenor, against a decision of the Juvenile Court on an application under section 42(3) or (4) of the Law,
- (c) any placement agency involved in the the placement of a child out of the jurisdiction, against a decision of the Tribunal under Part XI of the Law,
- (d) the Children's Convenor, and any placement agency involved in the placement of a child out of the

jurisdiction, against a decision of the Juvenile Court on an appeal from a decision of the Tribunal under Part XI of the Law,

and any other person, against a decision made in any other proceedings, with the leave of the appellate court.

Manner and grounds of appeal.

55. (1) An appeal against any decision of a relevant court to which these rules apply shall be instituted by notice served on all the parties to the proceedings in the course of which the decision was made, stating the grounds of appeal and the order sought.

(2) The grounds of appeal shall, except where the Law provides that an appeal must be on a question of law only, be any ground of appeal which involves -

- (a) a question of law alone,
- (b) a question of fact alone, or
- (c) a question of mixed fact and law.

Powers of Juvenile Court.

56. (1) On an appeal to which section 104(1) of the Law applies, the Juvenile Court -

- (a) where it is satisfied that the decision of the Tribunal was justified in all the circumstances, shall confirm the decision of the Tribunal, or

(b) where it is satisfied that the decision of the Tribunal was not justified in all the circumstances, may -

(i) remit the matter to the Tribunal, or

(ii) reverse, vary or substitute the decision of the Tribunal, and exercise any power which could have been exercised by the Tribunal.

(2) A decision of the Juvenile Court under paragraph (1)(b)(ii) which varies or substitutes the decision of the Tribunal, or exercises any power which could have been exercised by the Tribunal, shall be deemed to be a decision of the Tribunal.

PART XII

GENERAL AND MISCELLANEOUS PROVISIONS

Disclosure of addresses etc.

57. (1) Nothing in these rules shall be construed as requiring any party to reveal the address of their private residence (or that of any child), except by order of the relevant court.

(2) Where a person declines to reveal an address in reliance on paragraph (1), he shall give notice of that address to the relevant court and that address shall not be revealed to any person except by order of the court.

(3) A party is not required to reveal to any person, except by order of the relevant court, the name of any person, not being the applicant, with whom a child is living.

Communication of information relating to proceedings.

58. (1) Subject to the following provisions of this rule, no person may communicate information relating to proceedings held in private to which these rules apply, whether or not such information is contained in a document filed with the relevant court, unless permitted to do so in accordance with this rule.

(2) The relevant court may give directions concerning the communication of information by parties or other specified persons relating to such proceedings, and such directions may impose different requirements in respect of different persons or classes of person, and may include conditions restricting the persons, or classes of person, to whom such information is permitted to be communicated, or the purposes for which it is communicated.

Dissemination of judgments.

59. (1) No part of any judgment of a relevant court may be published unless permitted to do so in accordance with this rule.

(2) The relevant court may, at any stage of the proceedings, give directions concerning the publication, or prohibiting or restricting the publication, of any judgment of the court.

Confidentiality of Acts of Court.

60. An Act of Court evidencing a decision of a relevant court made in the course of any proceedings shall not be disclosed to any person not a party to those proceedings except to the extent permitted by direction of the relevant court.

Costs.

61. The relevant court may, at any time during the proceedings, make such order as to the costs of the proceedings, or of any stage or application in the

proceedings, as the court thinks just.

Affidavits.

62. An affidavit for the purposes of these Rules shall be made -

- (a) in the Island of Guernsey, Herm or Jethou, before the Bailiff, Deputy Bailiff or Lieutenant-Bailiff, a Judge of the Royal Court, a Jurat of the Royal Court, a Notary Public or an Advocate of 5 years' standing or more,
- (b) in the Island of Alderney, before a Jurat of the Court of Alderney, a Notary Public or an Advocate of 5 years' standing or more,
- (c) in the Island of Sark, before the Seneschal, his deputy or a Lieutenant Seneschal or before a Notary Public or an Advocate of 5 years' standing or more,
- (d) in a place outside the Bailiwick -
 - (i) before a person empowered to administer oaths in that place, or
 - (ii) in accordance with the rules in force in that place governing the administration of oaths for any judicial or other legal purpose, or
 - (iii) where the deponent is serving in any of the regular armed forces of the Crown, shall be made before an officer holding a commission

in any of those forces.

Repeals and amendment.

63. (1) The following enactments are repealed –

- (a) rule 36 of the Matrimonial Causes Rules 1952^f,
- (b) the Domestic Proceedings and Magistrate’s Court Rules, 1989^g,

(2) Immediately after rule 92 of the Royal Court Civil Rules, 2007^h, insert the following additional rule –

“Disapplication of Rules in certain cases.

92A. Subject to any direction of the Court to the contrary, these Rules shall not apply to proceedings to which the Family Proceedings (Guernsey and Alderney) Rules, 2009 apply."

Interpretation.

64. (1) In these rules, unless the context otherwise requires -

“**address for service**” means an address in the jurisdiction of the relevant court at which any summons or other document relating to the proceedings can validly be served on the party giving the address for service,

^f ORC No. IV of 1952.

^g ORC No. IX of 1989.

“**Advocate**” means an Advocate of the Royal Court of Guernsey,

"**Alderney Greffier**" means the Greffier appointed under section 20 of the Government of Alderney Law, 2004 and includes any deputy Greffier so appointed and any other person appointed by the Greffier to act on his behalf,

"**Chief Executive of the States of Alderney**" means the Chief Executive of the States appointed under section 52(1) of the Government of Alderney Law, 2004, and includes any Deputy or temporary Chief Executive appointed under section 53(1) of the said Law,

“**Children’s Convenor**” means the holder for the time being of the office of Children’s Convenor established under section 30 of the Law,

"**clear day**" means a period of 24 hours ending at midnight and does not include -

(a) a Saturday, Sunday, Good Friday or Christmas Day,
or

(b) a public holiday,

“**the Department**” has the meaning given in the Law,

"**direction**" means any direction of the relevant court, including a practice direction, and “**direct**” shall be construed accordingly,

^h Order of the Royal Court No. IV of 2007.

"enactment" means any Law, Ordinance or subordinate legislation,

"family proceedings" has the meaning given in the Law, subject to the provisions of rule 2,

"file", in relation to a document, means deliver to the Greffe for the purpose of any proceedings,

"Greffe" means the Greffe in Guernsey, where the relevant court is a court in Guernsey, or the Greffe in Alderney, where the relevant court is the Court of Alderney,

"jurisdiction" means the jurisdiction of the relevant court,

"Juvenile Court" means the Court constituted in accordance with section 67 of the Law,

"the Law" means the Children (Guernsey and Alderney) Law, 2008,

"leave of the court" means leave of the relevant court given by order, and "leave" shall be construed accordingly,

"Legal Aid Administrator" means the person appointed under section 6 of the Legal Aid (Bailiwick of Guernsey) Law, 2003ⁱ to hold that office,

"Magistrate's Court" has the meaning given in the Law,

“**parties**” has the meaning given in Part V and rule 50, and “party” shall be construed accordingly,

“**placement agency**” has the meaning given in the Law,

“**relevant court**” has the meaning given in rule 3,

“**Royal Court**” means the Matrimonial Causes Division of the Royal Court of Guernsey or the Royal Court of Guernsey sitting as an Ordinary Court,

“**Sergeant**” means Her Majesty’s Sergeant of the Royal Court or any of the Deputy or Assistant Sergeants,

“**subordinate legislation**” means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect,

“**tabled**” means placed before a court by a party or his Advocate,

“**Tribunal**” means the Child, Youth and Community Tribunal established under section 33 of the Law.

(2) The Interpretation (Guernsey) Law, 1948^j applies to the interpretation of this Order.

ⁱ Order in Council No. VI of 2004.

^j Ordres en Conseil Vol. XIII, p. 355.

(3) Any reference in these rules to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Transitional provisions.

65. (1) Subject to paragraphs (2) and (3), these rules shall not apply to proceedings which have commenced before the commencement date.

(2) For the purpose of paragraph (1), proceedings shall be deemed to have commenced if a copy of the application has been served on the other parties or an ex parte application has been made.

(3) Notwithstanding the provisions of paragraph (1), the Court may make such orders in respect of proceedings commenced before the commencement date as it thinks just.

Citation.

66. These rules may be cited as the Family Proceedings (Guernsey and Alderney) Rules, 2009.

Commencement.

67. These rules shall come into force on the 4th January, 2010.