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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