

GREFFE  
ROYAL COURT

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GUERNSEY

GUERNSEY STATUTORY INSTRUMENT

2010 No 108

**Children (Children's Convenor)  
(Guernsey and Alderney) Regulations, 2010**

<i>Made</i>	<i>25<sup>th</sup> May, 2010</i>
<i>Coming into operation</i>	<i>25<sup>th</sup> May, 2010</i>
<i>Laid before the States</i>	<i>, 2010</i>

**THE HEATH AND SOCIAL SERVICES DEPARTMENT** in exercise of the powers conferred upon it by sections 36(2) and (3)(h), 37, 42(5)(a) and 120 of the Children (Guernsey and Alderney) Law, 2008<sup>a</sup> and of all other powers enabling it in that behalf, hereby makes the following Regulations:-

NOTIFICATION

**Persons having duty to notify under section 36(2) of the Children Law.**

1. (1) The following persons shall notify the following matters to the Children's Convenor under section 36(2) of the Law in the manner indicated -

- (a) in relation to the detention of a child in secure accommodation under section 71 of the Children Law, the Department shall, within 36 hours of commencement of the detention, notify the Convenor of the child's detention,

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<sup>a</sup> Order in Council No. XIV of 2009.

(b) in relation to a child detained by a police officer, the Chief Officer of the Island Police Force shall, where the child is not within 36 hours of commencement of the detention -

(i) granted bail, or

(ii) otherwise released from custody,

notify the Convenor of the child's detention as soon as reasonably possible,

(c) in relation to a child detained by a customs officer, the Chief Officer of Customs and Excise shall, where the child is not within 36 hours of commencement of the detention -

(i) granted bail, or

(ii) otherwise released from custody,

notify the Convenor of the child's detention as soon as reasonably possible,

(d) in relation to the making of an emergency child protection order in respect of a child, the Department shall, within 24 hours of the order being made -

(i) notify the Convenor of the making of the order, and

(ii) provide the Convenor with -

(A) a copy of the order itself, and

- (B) any written information provided to the court when applying for the order,
- (e) in relation to the making of an exclusion order in respect of a child, the Department shall, within 5 business days of the order being made -
  - (i) notify the Convenor of the making of the order, and
  - (ii) provide the Convenor with -
    - (A) a copy of the order itself, and
    - (B) any written information provided to the court when applying for the order,
- (f) in relation to a recommendation to place a child outside the jurisdiction under Part X of the Children Law, the Department, or such person as may be appointed jointly by the chief officer of the Education Department and the Chief Officer of the Department shall, within 7 business days of the decision to make the recommendation -
  - (i) notify the Convenor of the recommendation, and
  - (ii) if the child is not subject to a care requirement or order of a relevant court, provide the Convenor with details of the reasons why the placement agency concerned with the recommendation is of the view that -

- (A) the conditions in section 79(1)(b) of the Children Law are satisfied, and
  - (B) the proposed placement outside the jurisdiction is in the best interests of the child,
- (g) in relation to an application made by the Department for a community parenting order, the Department shall, within 5 business days of the making of the application -
  - (i) notify the Convenor of the application, and
  - (ii) where –
    - (A) the Convenor or Tribunal has previously taken action in relation to the child, and
    - (B) the Convenor requests the Department to provide him with a copy,provide the Convenor with a copy of the written application submitted to the court,
- (h) in relation to the detention of a child in youth detention -
  - (a) where the child is detained in secure accommodation administered by the Department, the Department, and

(b) where the child is detained in Guernsey Prison, the prison governor,

shall, within 5 business days of the commencement of the detention, notify the Convenor of the child's detention,

(i) in relation to an application for an adoption order, the applicant shall, within 5 business days of making the application –

(i) notify the Convenor of the application, and

(ii) where the Convenor or Tribunal has previously taken action in relation to the child provide the Convenor with a copy of the written application submitted to the court,

(j) in relation to an application made by the Department for a secure accommodation order, the Department shall, within 12 hours of the making of the application -

(i) notify the Convenor of the application, and

(ii) where the Convenor or Tribunal have previously taken action in relation to the child, provide the Convenor with a copy of the written application submitted to the court,

(k) in relation to an application for an order under section 17 of the Children Law, where the child is known by the applicant to be the subject of a care requirement or

proceedings for a care requirement under Part VII of the Children Law the applicant shall, within 5 business days of the making of the application -

- (i) notify the Convenor of the application, and
- (ii) provide the Convenor with a copy of the written application submitted to the court,

(l) in relation to an application for a special contact order, the applicant shall, within 5 business days of the making of the application -

- (i) notify the Convenor of the application, and
- (ii) where the Convenor or Tribunal has previously taken action in relation to the child, provide the Convenor with a copy of the written application submitted to the court,

(m) in relation to the exercise of police powers under section 64 of the Children Law the Chief Officer of the Island Police Force shall, within 24 hours of exercise of the powers, notify the Convenor of the exercise of the powers,

(n) in relation to the detention of a child under the Mental Treatment (Guernsey) Laws, 1939 to 1984<sup>b</sup>, the Chief Officer of the Department shall, within 5 business days of the commencement of the detention -

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<sup>b</sup> Ordres en Conseil Vol. XI, p. 405.

- (i) notify the Convenor of the detention of the child, and
  - (ii) where an order has been made by a Law Officer under those Laws in respect of the child, provide the Convenor with a copy of the written application submitted to the Law Officer who has made the order, and
- (o) in relation to the making of a secure accommodation order or interim secure accommodation order the responsible officer within the Department shall, within 24 hours of the making of the order notify the Convenor that an order has been made.

(2) In subsection (1), "**notify**" means written notify in writing and includes notification by means of email transmission.

**Further matters prescribed for purposes of section 36(2) of the Children Law.**

2. The following matters are prescribed for the purposes of section 36(2) of the Children Law -

- (a) an application made by the Department for a secure accommodation order,
- (b) an application for an order under section 17 of the Children Law, where the child is known by the applicant to be the subject of -
  - (i) a care requirement, or

- (ii) proceedings for a care requirement,  
  
under Part VII of the Children Law,
- (c) an application for a special contact order,
- (d) the exercise of police powers under section 64 of the Children Law,
- (e) the detention of a child under the Mental Treatment (Guernsey) Laws, 1939 to 1984, and
- (f) the making of a secure accommodation order or interim secure accommodation order.

INVESTIGATION, REPORTS AND OTHER ACTION TO BE TAKEN BY  
CHILDREN'S CONVENOR

**Investigation.**

3. Where a matter is referred to the Children's Convenor under section 36(1) of the Children Law, the Convenor may make such investigation as the Convenor considers necessary in order to assess whether -

- (a) there is sufficient evidence of one or more of the conditions for compulsory intervention listed in section 35(2) of the Children Law,
- (b) there is, or appears to be, no person able and willing to exercise parental responsibility such as to provide the child with adequate care, protection, guidance or control, and

- (c) compulsory intervention may be necessary to ensure the provision of adequate care, protection or control for the child.

**Reports.**

4. (1) Where considered necessary by the Children's Convenor for the purpose of any investigation, he may request the persons or bodies referred to in paragraph (2) to provide him with a written report on the child to which the investigation relates and such matters concerning the child as the Convenor may specify.

(2) The persons or bodies for the purpose of paragraph (1) are --

- (a) the Department,
- (b) any other department of the States, or committee of the States of Alderney, which the Convenor believes may hold information relating to the child, and
- (b) where the child is enrolled at a school in Guernsey or Alderney, the head teacher of that school.

(3) A person or body which is requested to provide a report under this regulation shall --

- (a) provide the report as soon as reasonably practicable, and
- (b) in the case of the Department, provide a report which addresses the matters set out in the child welfare checklist under section 4 (2) of the Children Law.

**Action to be taken by Children's Convenor.**

5. Where a matter is notified to the Children's Convenor under section 36(2) of the Children Law, the Convenor shall take the following action -

- (a) in relation to the detention of a child in secure accommodation -
  - (i) if the child is not subject to a care requirement, no action need be taken by the Convenor unless the Department when notifying the detention indicates that it wishes the notification to be treated as a referral,
  - (ii) if the child is subject to a care requirement, the Convenor shall consider whether the proposed placement is contrary to any condition made under section 44(3)(e) of the Children Law,
- (b) in relation to a child detained by a police officer, the Convenor shall take such action as he considers necessary for the purpose of discharging his functions under section 4 of The Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law 2008<sup>c</sup>,
- (c) in relation to a child detained by a customs officer, the Convenor shall take such action as he considers necessary for the purpose of discharging his functions under section 4 of The Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law 2008,

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<sup>c</sup> Order in Council No. VI of 2009. See also Order in Council No. XVIII of 2009.

- (d) in relation to the making of an emergency child protection order, the Convenor shall regard the notification in the same manner as a referral under section 36(1) of the Children Law,
- (e) in relation to the making of an exclusion order in respect of a child, the Convenor shall regard the notification in the same manner as a referral under section 36(1) of the Children Law,
- (f) in relation to a recommendation to place the child outside the jurisdiction under Part X of the Children Law -
  - (i) if the child is not subject to a care requirement or order of a relevant court, the Convenor shall -
    - (A) decide whether section 79(2) of the Children Law applies in relation to the proposed placement outside the jurisdiction, and
    - (B) notify the responsible officer of the placement agency of his decision in writing, or
  - (ii) if the child is subject to a care requirement, the Convenor shall decide whether the proposed placement is contrary to any condition made under section 44(3)(e) of the Children Law, and
    - (A) if the Convenor decides that the proposed placement is contrary to such a condition,

the Convenor shall apply to the Tribunal for a review of the requirement under paragraph 9 of the Third Schedule to the Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009<sup>d</sup>, or

- (B) if the Convenor decides that the proposed placement is not contrary to such a condition, the Convenor shall take no further action,
  
- (g) in relation to an application made by the Department for a community parenting order, if the Convenor or Tribunal has previously taken action in relation to the child, the Convenor shall, if he thinks fit, provide factual information regarding that action to the court considering the application but, for the avoidance of doubt, no action need be taken by the Convenor unless the Department when notifying the application indicates that it wishes the notification to be treated as a referral,
  
- (h) in relation to the detention of a child in youth detention where the Department, or the prison governor, as the case may be, when notifying the detention indicates that it or he wishes the notification to be treated as a referral under section 36(1) of the Children Law, the Convenor shall regard the notification in the same manner as a referral under section 36(1) of the Children Law,

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<sup>d</sup> Ordinance No. XLVIII of 2009.

- (i) in relation to an application for an adoption order, if the Convenor or Tribunal has previously taken action in relation to the child, the Convenor shall, if he thinks fit, provide factual information regarding that action to the court considering the application, but, for the avoidance of doubt, no action need be taken by the Convenor unless the applicant when notifying the application indicates that it wishes the notification to be treated as a referral,
  
- (j) in relation to an application for a secure accommodation order, if the Convenor or Tribunal has previously taken action in relation to the child, the Convenor shall, if he thinks fit, provide factual information regarding that action to the court considering the application, but, for the avoidance of doubt, no action need be taken by the Convenor unless the Department when notifying the application indicates that it wishes the notification to be treated as a referral,
  
- (k) in relation to an application for an order under section 17 of the Children Law, where the child is known by the applicant to be the subject of a care requirement or proceedings for a care requirement under Part VII of the Children Law, if the Convenor or Tribunal has previously taken action in relation to the child, the Convenor shall, if he thinks fit, provide factual information regarding that action to the court considering the application, but, for the avoidance of doubt, no action need be taken by the Convenor unless the applicant when notifying the application indicates that it wishes the notification to be treated as a referral,

- (l) in relation to an application for a special contact order, if the Convenor or Tribunal has previously taken action in relation to the child, the Convenor shall, if he thinks fit, provide factual information regarding that action to the court considering the application, but, for the avoidance of doubt, no action need be taken by the Convenor unless the applicant when notifying the application indicates that it wishes the notification to be treated as a referral,
- (m) in relation to the exercise of police powers under section 64 of the Children Law, the Convenor shall regard the notification in the same manner as a referral under section 36(1) of the Children Law,
- (n) in relation to the detention of a child under the Mental Treatment (Guernsey) Laws, 1939 to 1984, the Convenor shall regard the notification in the same manner as a referral under section 36(1) of the Children Law,
- (o) in relation to the making of a secure accommodation order or interim secure accommodation order -
  - (i) if the child is not subject to a care requirement and the responsible officer within the Department when notifying the detention indicates that he wishes the notification to be treated as a referral under section 36(1) of the Children Law, the Convenor shall regard the notification in the same manner as a referral under section 36(1) of the Children Law, or

- (ii) if the child is subject to a care requirement, the Convenor shall consider whether the proposed placement is contrary to any condition made under section 44(3)(e) of the Children Law.

NOTIFICATION OF DECISION THAT COMPULSORY INTERVENTION NOT  
REQUIRED

**Notification of decision that compulsory intervention not required.**

6. For the purposes of section 42(5)(a) of the Children Law, when the Children's Convenor decides that compulsory intervention in relation to a child is not necessary, the Convenor -

- (a) shall notify the decision -
  - (i) where the referral was made by a police officer, the Department or other department of the States or committee of the States of Alderney, to the person or body who referred the child to the Convenor under section 36(1) of the Children Law or section 4 of the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law 2008 as the case may be,
  - (ii) to the person or body who, or that, provided the Convenor with information following a request by the Convenor as part of his investigation under section 37 of the Children Law,

(iii) where he refers the matter under section 42(5)(b) of the Children Law, to the Department, or other person, to whom the child is referred, and

(b) may notify the decision to –

(i) the child (in a manner appropriate to the child's age and understanding),

(ii) any person with parental responsibility in relation to the child,

(iii) any other person with whom the child had his home at the time of the investigation,

(iv) the person who made the referral (other than a person specified in subparagraph (a) , and

(v) such other person as the Convenor thinks fit.

#### MISCELLANEOUS AND GENERAL

##### **Interpretation.**

7. (1) In these Regulations, unless the context requires otherwise -

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

"**Chief Officer of Customs and Excise**" includes any officer of Customs and Excise nominated for the purpose of these Regulations by the Chief Officer of Customs and Excise,

"**Chief Officer of the Island Police Force**" includes any police officer nominated for the purpose of these Regulations by the Chief Officer of the Island Police Force,

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

"**Department**" means the States Health and Social Services Department,

"**placement**" means placement under section 69 or 71 of the Children Law,

"**prison governor**" means the Governor of Guernsey Prison,

"**relevant court**" means the Royal Court of Guernsey, the Court of Alderney, the Magistrate's Court and the Juvenile Court,

"**youth detention**" means detention under the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990<sup>e</sup> or section 14 of the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008,

and other expressions have the same meanings as in the Children Law.

(2) The provisions of the Interpretation (Guernsey) Law 1948<sup>f</sup> shall apply to the interpretation of these Regulations throughout Guernsey and Alderney.

(3) Any reference in these Regulations to an enactment is a reference thereto or from time to time amended, replaced, re-enacted, extended or applied.

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<sup>e</sup> Ordres en Conseil Vol. XXXII, p. 106.

<sup>f</sup> Ordres en Conseil Vol. XIII, p. 355.

**Extent.**

8. These Regulations have effect in Guernsey and Alderney.

**Citation and commencement.**

9. These Regulations may be cited as the Children (Children's Convenor) (Guernsey and Alderney) Regulations, 2010 and shall come into force on the 25<sup>th</sup> May 2010.

Dated this 25<sup>th</sup> day of May, 2010



A.H. ADAM

Minister of the States Health and Social Services Department

For and on behalf of the Department

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EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made under the Children (Guernsey and Alderney) Law, 2008 ("the Law") by the Health and Social Services Department and cover notification to the

Children's Convenor, investigation and action to be taken by the Children's Convenor and notification of any decision that compulsory intervention is not required

Section 36(3) of the Law sets out matters which must be notified to the Children's Convenor. Those matters include, by way of example, whenever a child is detained in secure accommodation or by a police officer or customs officer.

Regulation 1 prescribes in detail the persons who are under a duty to notify the Convenor about the matters described in section 36(3) of the Law and the manner and circumstances in which notification must be made.

Regulation 2 extends the list of matters to be notified so as to include, for example, whenever a child is detained under mental health legislation.

Regulations 3, 4 and 5 make provision concerning the investigation that the Children's Convenor may carry out on receipt of a referral and the action to be taken on receipt of a notification.

Regulation 6 lists those persons whom the Children's Convenor must, and may, notify of any decision that compulsory intervention in relation to a child is not necessary.

Regulations 7, 8 and 9 deal respectively with interpretation, the extent of the Regulations (which extend to both Guernsey and Alderney) and commencement (the Regulations commence on 25<sup>th</sup> May 2010).