

GUERNSEY STATUTORY INSTRUMENT

2013 No. 52

**Children (Placement out of the Jurisdiction)  
(Guernsey and Alderney) Regulations, 2013**

<i>Made</i>	<i>18<sup>th</sup> September, 2013</i>
<i>Coming into operation</i>	<i>23<sup>rd</sup> September, 2013</i>
<i>Laid before the States</i>	<i>, 2013</i>

**THE HEALTH AND SOCIAL SERVICES DEPARTMENT**, in exercise of the powers conferred on it by sections 82 and 120 of the Children (Guernsey and Alderney) Law, 2008<sup>a</sup> and all other powers enabling it in that behalf, hereby makes the following Regulations:-

**Scope of Regulations.**

1. These Regulations apply -
  - (a) to a child who is placed out of the jurisdiction, where -
    - (i) the child is in the care of the Department under section 26(3) of the Law,
    - (ii) the child, in the opinion of the Education Department has special educational needs that cannot adequately be met within the jurisdiction, or

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

- (iii) the child is so placed further to recommendations made, by the service of the Department known as Child and Adolescent Mental Health Services ("CAMHS"), and
- (b) to a child who has not been placed out of the jurisdiction -
  - (i) in respect of whom, arrangements have been made for placement out of the jurisdiction for a period of at least 30 days, and
  - (ii) who, in the opinion of the Panel, requires the protection of these Regulations to ensure that he has adequate care, protection, guidance and control,

**Duties to children placed out of the jurisdiction.**

2. The arrangements for placement, in respect of any child to whom these Regulations apply, shall meet, throughout their duration, the welfare needs of the child, taking into account as far as reasonably practicable or possible -

- (a) all of the child's needs, including emotional, social, educational, physical and any identified special needs,
- (b) the resources in Guernsey and Alderney which are immediately available or could reasonably be made available within an appropriate timescale for the child,
- (c) the likely effect on the child, in the short, medium and long term of the arrangements, including how the

arrangements may affect the child's return to and reintegration into Guernsey or Alderney, and

- (d) the wishes, feelings and views of the child , the child's parents and others of significance to the child (including where appropriate a father without parental responsibility and other members of the child's family).

**Complex Needs Panel.**

3. (1) There is established a panel to be known as the Complex Needs Panel ("**the Panel**").

(2) The Panel shall be run jointly by the Education Department and the Department.

**Purpose of the Panel.**

4. The functions of the Panel are -

- (a) to approve, monitor and review the arrangements for the placement of any child to whom these Regulations apply,
- (b) to identify the department(s) of the States and key worker responsible for the arrangements,
- (c) to consider and authorise the necessary funding for the arrangements for the placement of any child to whom these Regulations apply, including any funding ancillary to the arrangements (including by way of example, costs of travel, costs of the person maintaining contact with parents and family, extra-

curricular expenses and costs of additional support),  
and

- (d) to carry out such other functions as the Chief Officers of the Department and the Education Department may from time to time request in the interests of providing services for the complex needs of any child to whom these Regulations apply.

**Composition of the Panel.**

5. (1) The Panel shall consist of five members as follows -

- (a) two representatives appointed by the Chief Officer of the Education Department, and
- (b) three representatives appointed by the Chief Officer of the Department.

(2) The chairperson of the Panel shall be appointed by the Chief Officer of the Department from the members appointed under paragraph (1).

(3) In the event that a member appointed under paragraph (1) is unable to attend a meeting of the Panel, the absent member or appropriate Chief Officer may appoint a deputy to attend in their absence.

(4) Subject to regulations 6(2) and (3), a deputy appointed under paragraph (3) may exercise all the powers and is subject to all obligations and duties of the member in respect of whom the appointment relates.

**Meetings and quorum.**

6. (1) The Panel shall meet -

- (a) at least once in every quarter,
  - (b) at such dates and times as the Panel may determine.
- (2) The quorum for a meeting of the Panel shall be three members, provided that -
- (a) at least one member appointed by the Chief Officer of the Education Department and one member appointed by the Chief Officer of the Department under regulation 5(1) are present, and
  - (b) at least two of the members present are members of the panel appointed under regulation 5(1) and are not attending as deputies under regulation 5(3).
- (3) In the absence of the chairperson, the members present shall elect from amongst the members present, a member appointed under regulation 5(1) to chair the meeting.

**Decisions.**

7. (1) Decisions of the Panel shall be by a majority vote and in the event of a tied vote, it shall be taken that no decision has been made. The Panel may issue guidance as to what further steps are taken in the event of no decision being made under this section.

- (2) Decisions of the Panel shall be recorded in writing.

(3) Written confirmation of a decision of the Panel, together with details of the appeal process established under these Regulations, shall be given by the chair -

- (a) to the parents of the child,
- (b) to any other person with parental responsibility for the child,
- (c) to the child's keyworker who must ensure that the information is shared with the child in a manner appropriate to the child's age and understanding unless it would not be in the child's best interests to do so, and
- (d) to such other person as the Panel thinks fit.

**Appeals.**

8. (1) The following persons may appeal against a decision of the Complex Needs Panel -

- (a) the child to whom the decision relates, and
- (b) the parent or other person who has parental responsibility for the child.

(2) An appeal shall be made within 28 days of the date upon which written confirmation of any decision of the Panel is given under regulation 7; provided that the Complex Needs Panel may, for just cause, extend the time limit for an appeal.

(3) Appeals shall be decided by the Complex Needs Appeal Panel which shall, subject to paragraph (4), consist of the following persons -

- (a) a person appointed by the Chief Officer of the Education Department,
- (b) a person appointed by the Chief Officer of the Department, and
- (c) some other person appointed jointly by the Chief Officers of the Education Department and the Department; provided that such person shall not be someone with operational or managerial responsibility for placing children out of the jurisdiction.

(4) A person who is a member of the Panel against whose decision an appeal is made shall not be appointed under paragraph (3).

(5) An appeal -

- (a) should be in writing,
- (b) should be given or sent to the person identified in the decision letter, and
- (c) should set out in detail the basis upon which it is submitted that the original decision of the Complex Needs Panel falls outside the range of possible reasonable decisions.

(6) Where appropriate further information should be sought from the Appellant and/or the Education Department and the Department

(7) Where possible, an appeal should be heard within six weeks after the day on which a valid appeal has been received by the person identified in the decision letter.

(8) An appeal may be on a consideration of the papers only.

(9) An appeal hearing will be conducted in private

(10) Oral representations may be heard at the discretion of the Complex Needs Appeal Panel having regard to the need to do justice to the case.

(11) In the event that oral representations are made, the Appellant may be accompanied by a supporter who may make the oral representations on the Appellant behalf if the Appellant feels unable to do so.

(12) Whether or not oral representations are heard, the onus is upon the Appellant to prove on the balance of possibilities that the original decision falls outside of the range of possible reasonable decisions

(13) The Complex Needs Appeal Panel may invite a representative of the Education Department and/or the Department to attend any appeal hearing if it would assist for such person(s) to be present to provide information and/or to answer questions arising from the Appellant's submissions.

(14) A decision of the Complex Needs Appeal Panel shall be by simple majority and, in reaching its decision -

- (a) will have regard to the written, and any oral, submissions received and all other information in the documents before it, and
- (b) will decide which of the matters before it, it accepts and which it does not.

(15) The decision of the Complex Needs Appeal Panel shall be notified to the Appellant and all other persons notified of the original decision within seven days of the determination of the appeal.

**Procedures to be followed when a child is placed outside the jurisdiction.**

9. A department of the States with responsibility for placing any child to whom these Regulations apply outside the jurisdiction, shall have procedures to govern such placements.

**Consents and approvals required for placements outside the jurisdiction.**

10. (1) Subject to regulation 11, no child may be placed outside the jurisdiction unless consent or leave has been obtained under section 79 or 81 of the Law, and one of the conditions in paragraph (2) is satisfied.

(2) The conditions are -

- (a) that the proposed placement is approved in accordance with laws and or regulations of the jurisdiction in which the placement is situated, and
- (b) in the case of a placement with family members, that the placement is appropriate for the needs of the child and the placement has been approved for such purposes

**Emergency placements.**

11. (1) Where a placement outside the jurisdiction is the only means of providing a child to whom these Regulations apply, with adequate care, protection, guidance or control, but the urgent nature of the circumstances is such that a condition under regulation 10 is not satisfied, the Department responsible for the placement must -

- (a) take all reasonable measures necessary to determine the matter, within 28 days of the making of the placement, and
- (b) give written notice of the placement to the Panel.

(2) Where the Panel has been given notice of a placement under paragraph (1)(b), it must consider the matter and take such action as it thinks fit for ensuring the welfare of the person concerned as soon as possible and, in any event, within 28 days of the making of the placement.

**Interpretation.**

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

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

"**the Panel**" means the Complex Needs Panel established under regulation 3(1),

"**placed out of the jurisdiction**" has the meaning given by section 78(1) of the Law,

and other expressions used in these Regulations have the same meanings as in the

Law.

(2) The provisions of the Interpretation (Guernsey) Law 1948<sup>b</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 as from time to time amended, replaced, re-enacted, extended or applied.

**Extent.**

13. These Regulations have effect in Guernsey and Alderney.

**Citation and commencement.**

14. These Regulations may be cited as the Children (Placement out of the Jurisdiction) (Guernsey and Alderney) Regulations, 2013, and shall come into force on the 23<sup>rd</sup> September, 2013.

Dated this 18<sup>th</sup> day of September, 2013



M. H. DOREY

Minister of the States Health and Social Services Department  
For and on behalf of the Department

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<sup>b</sup>

Ordres en Conseil Vol. XIII, p. 355.

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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 by the Health and Social Services Department in consultation with the Education Department. They make provision relating to the placement outside Guernsey and Alderney of certain children in the care of the Health and Social Services Department or who have special educational needs or mental health needs that cannot adequately be met within the jurisdiction. The regulations make provision for a panel to oversee such placements and for appeals against certain decisions of the panel.

The Regulations come into force on the 23<sup>rd</sup> September, 2013