

ORDINANCE OF THE CHIEF PLEAS OF SARK

Ordinance No. V of 2021

**The Child Protection (Sark) Ordinance, 2021**

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# The Child Protection (Sark) Ordinance, 2021

THE CHIEF PLEAS OF SARK, in pursuance of their Resolution of the 3<sup>rd</sup> October, 2018, and in exercise of the powers conferred on them by sections 5, 11(2) and (3)(e), 22, 43(a), 44, 46, 48, 57, 82 and 86 of the Child Protection (Sark) Law, 2020<sup>a</sup>, and all other powers enabling them in that behalf, hereby order:-

## PART I

### CHILDREN IN NEED AND THEIR FAMILIES

#### **MASH to identify and assess children in need.**

1. (1) MASH must –
  - (a) take reasonable steps to identify children in need in Sark,
  - (b) make arrangements to assess the extent to which those children are in need, and
  - (c) establish and maintain a register of those children for the purposes of paragraphs (a) and (b) and for the exercise or performance of any of its functions under the Law.

(2) MASH may keep the following information in a register maintained for the purposes of sections 1(c), 3(c) and 6(b) where MASH considers it necessary to keep that information for the exercise or performance of its functions –

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<sup>a</sup> Order in Council No. XIII of 2020.

- (a) personal information relating to the child,
- (b) details of the relationship of the child with members of the child's family,
- (c) personal information relating to members of the child's family,
- (d) details of the relationship of the child with any professionals involved in the care or education of the child,
- (e) personal information relating to any professionals involved in the care or education of the child,
- (f) professional reports relevant to the child,
- (g) details of welfare or safeguarding concerns, and
- (h) details of any actions taken by MASH or others in relation to welfare or safeguarding concerns.

**MASH may provide services to children in need.**

2. (1) MASH may provide services to or for any child in need where MASH considers it necessary in order to –

- (a) safeguard or promote the child's welfare, and

(b) prevent the need for compulsory intervention in respect of the child or reduce the degree to which the child needs or might need compulsory intervention.

(2) Services under subsection (1) –

(a) may include or facilitate the provision of accommodation, assistance in kind or, exceptionally, cash or other direct payments, and

(b) may be provided unconditionally or conditionally, including upon conditions as to repayment of any payments made.

(3) Without limiting the generality of subsections (1) and (2), MASH may provide the services specified in sections 3 to 6 for the purpose specified in subsection (1).

(4) When providing or arranging for the provision of services under or for the purposes of subsection (1), MASH must have regard, so far as is reasonable and practicable, to –

(a) the religion, racial origin, cultural and linguistic background and views of the child, and

(b) the views of –

(i) the parents of that child,

- (ii) any person with parental responsibility in relation to that child,
- (iii) a father or mother of that child, who does not have parental responsibility for that child, and
- (iv) any person who appears to ordinarily (and other than by reason of the person's employment) have care of that child.

**Services for disabled children or children affected by disability within family.**

3. MASH may –

- (a) provide services to –
  - (i) minimise the adverse effect of their disabilities on children with disabilities, and
  - (ii) give disabled children the opportunity to lead lives which fulfil their potential,
- (b) provide services or assessments for a child who is adversely affected by the disability of any other person –
  - (i) in the child's family, or
  - (ii) who cares for the child, and
- (c) establish and maintain a register of disabled children

and children adversely affected by the disability of another person for the purposes of paragraphs (a) and (b).

**Provision of accommodation in order to protect a child.**

4. (1) Where MASH determines that compulsory intervention may be needed in respect of a child who is living on particular premises due to the actions of another person who is living on those premises, MASH may assist or facilitate that other person in obtaining alternative accommodation.

(2) Assistance under subsection (1) may be provided by means of cash or direct payments and may be provided unconditionally or conditionally, including upon conditions as to repayment of any payments.

**Other services for children in need.**

5. MASH may provide the following services for children in need –

- (a) advice, guidance and counselling,
- (b) health and social services,
- (c) occupational, social, cultural and recreational activities,
- (d) community-based assistance and services, or
- (e) any other service that MASH considers necessary to meet the needs of those children.

**Child protection plan and register.**

6. MASH may –
- (a) prepare and adopt a child protection plan designed to protect a child in need, and
  - (b) establish and maintain a register of children who are subject to a child protection plan.

PART II

COMPULSORY NOTIFICATIONS

**Duties of public authorities and safeguarding officers.**

7. (1) When any concern about a child comes to the attention of a public authority, the public authority must immediately notify –

- (a) where an officer or other person is designated as the safeguarding lead for the public authority, the person so designated, and
- (b) otherwise, MASH.

(2) A person notified under subsection (1)(a) must make any inquiries that the person considers reasonably necessary and practicable in order to determine whether or not the concern is sufficiently serious that MASH ought to be notified.

(3) A person carrying out inquiries under subsection (2) must –

- (a) record –
  - (i) the nature of the concern referred to the person,
  - (ii) the inquiries that person has carried out, or caused to be carried out,
  - (iii) the lines of inquiry that that person has chosen not to pursue,
  - (iv) the decision reached as to whether or not to notify MASH, and
  - (v) the reason for that decision, and
- (b) where that person decides that MASH ought to be notified, do so immediately.

(4) In this section, "**public authority**" means –

- (a) any committee of the Chief Pleas,
- (b) the holder of a public office, or
- (c) the head teacher of the School (within the meaning given by section 9(1) of the Education (Sark) Ordinance,

2003<sup>b</sup>).

**Duty to notify specific matters to MASH.**

8. (1) The person specified in each of paragraphs (a) to (d) must give written notice to MASH of the matters specified in the paragraph, in the manner specified in that paragraph –

- (a) where a child is detained by a police officer or customs officer in Sark and neither granted bail nor otherwise released from custody within 36 hours of commencement of the detention, the police officer or (as the case may be) customs officer must notify MASH of that detention as soon as reasonably possible,
- (b) where a police officer exercises powers in respect of a child in Sark under section 39 of the Law, the police officer must notify MASH of the exercise of those powers within 24 hours of their exercise,
- (c) where an application is made by an approved social worker, within the meaning of section 99(1) of the Mental Health (Bailiwick of Guernsey) Law, 2010<sup>c</sup>, for an assessment order or a treatment order in respect of a child in Sark under that Law, the approved social worker

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<sup>b</sup> As amended by Sark Ordinance No. IX of 2018; No. X of 2019; and No. IV of 2020.

<sup>c</sup> Order in Council No. XV of 2011; amended by Ordinance No. IX of 2016; and No. I of 2017.

must –

- (i) notify MASH of the application within five business days of the application being made, and
  - (ii) give MASH on request a copy of the written application submitted (for the assessment order or treatment order), and
- (d) where an application is made for an order under section 16 of the Children Law in respect of a child and the applicant knows that the child is the subject of a care requirement or proceedings for a care requirement under Part III of the Child Protection (Sark) Law, 2020, that applicant must notify MASH of the application within five business days of making it.

(2) In this section, for the avoidance of doubt, "**child**" means a child who is ordinarily resident in Sark.

### PART III

#### COURT REFERRALS AND CARE REQUIREMENTS

##### **Referrals to the Court.**

9. A referral by MASH to the Court of any matter under section 17, or any case under section 54, of the Law -

- (a) must be made in the form of an application by MASH to the Court to determine the matter or case concerned in accordance with the Law, and
- (b) is to be regarded for all purposes as such an application.

**Fixing date for review of care requirement.**

10. When the Court makes a care requirement in respect of a child whose case has been referred under section 17(1) of the Law, the Court may fix a date upon which the requirement must be reviewed in accordance with section 11(1)(a).

**Review of care requirement.**

11. (1) Subject to the following subsections, the Court must review a care requirement –

- (a) where the Court has fixed a date for review of that care requirement under section 10, or
- (b) upon the application of –
  - (i) the child, or any party to the proceedings, at any time after a period of three months has expired from the later of the date of the making of the requirement, or any variation or continuation of the requirement, or
  - (ii) MASH.

(2) MASH must make an application under subsection

(1)(b)(ii)–

- (a) upon the expiration of the period of nine months from the later of the date of the making of a care requirement, or any variation or continuation of the requirement, if no review or other application for review has taken place or been made, or
- (b) if it believes that a care requirement, or a condition attached to a care requirement –
  - (i) is no longer required, or
  - (ii) should be varied.

#### PART IV

#### SECURE ACCOMMODATION

##### **Meaning of "secure accommodation order".**

12. In this Part, "a **secure accommodation order**" means an order made by the Court under section 44 of the Law.

##### **Age restrictions on placement.**

13. A child who has not reached the age of 13 years must not, without the prior approval of Her Majesty's Procureur –

- (a) be placed in secure accommodation under section 46 of the Law, or

- (b) be made subject to a secure accommodation order.

**Special restrictions on MASH placement.**

14. (1) A child who has reached the age of 13 years may be placed by MASH in secure accommodation under section 46 of the Law only where –

- (a) in the case of any placement, the Island Safeguarding Officer consents to the placement,
- (b) in the case of a placement exceeding 48 hours, Her Majesty's Procureur consents to the placement,
- (c) either or both of the criteria set out in section 44(2)(a) and (b) of the Law are met, and
- (d) at least one of the criteria set out in subsection (2)(a) to (d) is met.

(2) The criteria mentioned in subsection (1)(d) are –

- (a) MASH has parental responsibility for the child,
- (b) the child is subject to a care requirement or an interim care requirement,
- (c) the child has not reached the age of 16 years and a person having parental responsibility for the child consents to the placement, or

- (d) the child has reached the age of 16 years and consents to the placement.
- (3) For the purposes of subsection (2)(c) and (d), any child who –
- (a) reaches the age of 16 years at any time from the beginning of a school year up to and including the last Friday in June in that school year is deemed not to have reached that age until the end of that last Friday in June, or
  - (b) is to reach the age of 16 years at any time after the last Friday in June in a school year but before the beginning of the next school year is deemed to have reached that age at the end of that last Friday in June,

and "school year" means the twelve month period commencing on 1<sup>st</sup> September in any year.

(4) MASH must notify the Seneschal within 36 hours of the commencement of any detention of a child in secure accommodation under section 46 of the Law.

**Maximum period of MASH placement.**

15. (1) MASH must not place a child in secure accommodation under section 46 of the Law for a period exceeding 72 hours in aggregate (whether or not consecutive) in any period of 28 consecutive days.

(2) Where –

- (a) a child is placed by MASH in secure accommodation at any time between 12 midday on the day before and 12 midday on the day after a public holiday or a Sunday,
- (b) during that period the maximum period under subsection (1) expires, and
- (c) in the 27 days before the day on which the child was placed in secure accommodation, that child had been placed and kept in such accommodation for an aggregate period of more than 48 hours,

the maximum period specified in subsection (1) does not expire until 12 midday on the first day, which is not itself a public holiday or a Sunday, after the public holiday or (as the case may be) Sunday.

**Maximum period of secure accommodation orders.**

16. (1) A secure accommodation order issued for a child on the first occasion must not place the child in secure accommodation for any period exceeding 28 consecutive days, but this period may be extended in accordance with subsection (2) or (3).

(2) Where a child subject to a secure accommodation order is placed within Sark, the Court may order the child to continue to be placed in secure accommodation for a further period that the Court thinks fit, but the child must not in any case be placed in secure accommodation for any continuous period exceeding three months in aggregate (including any period of secure accommodation ordered by the Court on the first occasion).

(3) Where a child subject to a secure accommodation order is placed outside Sark, the Court may order the child to be placed in secure accommodation for a further period that the Court thinks fit, but the child must not be so placed for any continuous period exceeding six months in aggregate (including any period of secure accommodation ordered by the Court on the first occasion) without a further order by the Court.

(4) Where MASH proposes to transfer a child subject to a secure accommodation order between a placement in Sark and a placement outside Sark, or vice versa, for a period of more than 14 days during the currency of that order, MASH must bring the matter before the Court to review the length of the secure accommodation order having regard to all the circumstances.

(5) For the avoidance of doubt, neither the period mentioned in subsection (1) nor the aggregate period mentioned in subsection (2) or (3) includes any period of placement in secure accommodation under section 46 of the Law.

**Mandatory review of placements.**

17. (1) Where a child has been made subject to a secure accommodation order for a continuous period exceeding eight days, MASH must convene a Secure Review Panel ("**the Panel**") to which it will appoint at least three persons, one of whom must be independent of MASH.

(2) The Panel will review the placement of the child in secure accommodation –

(a) if the child is placed within Sark, within 14 days and then at intervals not exceeding 28 days where the child

continues to be placed in such accommodation, or

- (b) if the child is placed outside Sark, within twenty-eight days and then at intervals not exceeding three months where the child continues to be kept in such accommodation.

(3) When reviewing the placement of the child, the Panel must consider if –

- (a) the reasons for ordering the child to be placed or kept in secure accommodation continue to apply,
- (b) the placement in such accommodation continues to be necessary, and
- (c) any other description of accommodation would be appropriate for the child,

and in so doing must have regard to the welfare of the child whose case is being reviewed.

(4) In undertaking the review, the Panel must, so far as practicable, ascertain and take into account the wishes and feelings of –

- (a) the child,
- (b) the parents of that child,

- (c) any person with parental responsibility in relation to that child,
- (d) a father or mother, of that child, who does not have parental responsibility for that child, and
- (e) any member of the child's family or any person who appears to ordinarily (and other than by reason of the person's employment) have care of the child, where in the opinion of the Panel, that person's wishes and feeling should be taken into account.

(5) So far as practicable, the Panel must inform all those whose views are required to be taken into account under subsection (4) of the outcome of the review and the reasons for that outcome.

(6) If the Panel determines that the criteria for the child to be subject to a secure accommodation order are no longer satisfied –

- (a) the child must be discharged from secure accommodation within 24 hours (or 48 hours if placed outside Sark), or
- (b) the matter must be returned to the Court on the next business day.

**Criteria for designating secure accommodation.**

18. MASH may designate accommodation provided for the purpose of restricting the liberty of a child within Sark as secure accommodation only if MASH

is satisfied that the accommodation –

- (a) is designed to prevent unauthorised entry or exit,
- (b) facilitates supervision and minimises opportunities for self-harm while, so far as practicable, being appropriate for its purpose and function,
- (c) is properly maintained and furnished, and
- (d) is operated in accordance with any current policies, procedures and guidance of MASH governing the provision of secure accommodation.

**Standard of care of children in secure accommodation.**

19. Without prejudice to the requirements of section 18, and so far as is necessary, practicable and appropriate, MASH must ensure that a child placed in secure accommodation receives the same standard of care as a child otherwise in the care of MASH.

**Terms and conditions of designation.**

20. (1) Designation of secure accommodation may be made on such terms and conditions as MASH thinks fit and may include –

- (a) the maximum number of children who can be accommodated, and
- (b) the duration of the designation.

(2) No accommodation may be designated as secure accommodation for a period exceeding three years at any one time.

**Mandatory review of designations.**

21. MASH must review any designation of secure accommodation in accordance with its current policies, procedures and guidance at intervals of not more than three years.

PART V

PLACEMENT OF CHILDREN OUT OF THE JURISDICTION

**Interpretation.**

22. In this Part, unless the context requires otherwise –

"**placed out of the jurisdiction**" has the meaning given by section 53(1) of the Law, and "**place**" and "**placement**" has a corresponding meaning, and

"**placement agency**" has the meaning given by section 53(1) of the Law.

**Application.**

23. (1) This Part applies to –

(a) a child who is placed out of the jurisdiction, where –

(i) the child is in the care of MASH within the meaning of section 7(4) of the Law, or

(ii) in the opinion of the Committee, the child has special educational needs that cannot adequately

be met within the jurisdiction, and

- (b) 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 Court, requires the protection of this Part to ensure that the child has adequate care, protection, guidance and control.

(2) For the purposes of subsection (1)(b)(ii), any of the following persons may apply to the Court for a determination that a child requires the protection of this Part to ensure that the child has adequate care, protection, guidance and control–

- (a) the child,
- (b) the parents of that child,
- (c) any person with parental responsibility in relation to that child,
- (d) a father or mother, of that child, who does not have parental responsibility for that child, or
- (e) any member of the child's family or any person who appears to ordinarily (and other than by reason of the

person's employment) have care of the child.

**MASH to notify recommendations to place without Court permission.**

24. If MASH decides to recommend that a child be placed outside the jurisdiction under Part VI of the Law other than by permission or leave of the Court, MASH must –

- (a) notify the Court of the recommendation within seven business days of making it, and
- (b) if the child is not subject to a care requirement or an order of a relevant court, include in the notification details of the reasons why MASH is of the view that the conditions in section 54(1)(b) of the Law are satisfied and the proposed placement outside the jurisdiction is in the best interests of the child.

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

25. A placement agency ("P") making arrangements for placement of a child must ensure that throughout the duration of the placement those arrangements meet the welfare needs of that child, taking into account so far as reasonable and practicable –

- (a) all of the child's needs, including emotional, social, educational, physical and any identified special needs,
- (b) the resources in Sark 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 Sark, and
- (d) the wishes, feelings and views of –
  - (i) the child,
  - (ii) the parents of that child,
  - (iii) any person with parental responsibility in relation to that child,
  - (iv) a father or mother, of that child, who does not have parental responsibility for that child, and
  - (v) any member of the child's family or any person who appears to ordinarily (and other than by reason of the person's employment) have care of the child, where in P's opinion, that person's wishes, feelings and views should be taken into account.

**Procedures to be followed when a child is placed.**

26. A placement agency placing children out of the jurisdiction must establish procedures to govern these placements.

**Requirements for placements.**

27. (1) Subject to section 28(1), no child may be placed out of the jurisdiction unless –

(a) either of the following has been obtained –

(i) the permission of a court under section 54(1) or 55(2) of the Law, or

(ii) the leave of a court under section 56(2) of the Law, and

(b) either of the conditions in subsection (2) is satisfied.

(2) The conditions are –

(a) that the proposed placement is approved, and

(b) in the case of a placement with family members, that the proposed placement is appropriate for the needs of the child and has been approved for such purposes,

by the appropriate authority in accordance with laws and or regulations of the jurisdiction in which the placement is made.

**Emergency placements.**

28. (1) Where, in the opinion of a placement agency, placement out of the jurisdiction is the only means of providing the child with adequate care, protection, guidance or control, but the urgent nature of the circumstances is such that

a requirement under section 27(1)(a) or (b) is not satisfied, the placement agency may place the child out of the jurisdiction despite section 27.

(2) Where a placement is made under subsection (1), the placement agency concerned must take all reasonable measures necessary to determine the matter as soon as possible, and in any event within 28 days of making the placement, by –

- (a) satisfying the requirement, or
- (b) if it is not possible to do so, terminating the placement.

## PART VI

### MISCELLANEOUS AND GENERAL

#### **MASH to act on behalf of Chief Pleas.**

29. (1) MASH's functions under the Law and this Ordinance are to be carried out on behalf of the Chief Pleas.

(2) MASH must carry out its functions in accordance with any regulations made or written guidance issued by the Committee.

(3) Subject to subsection (2), MASH may carry out its functions and provide services for the purposes of the Law and this Ordinance in whole, or in part –

- (a) itself, or
- (b) through arrangements made with the Committee, any other committee of the Chief Pleas or any other person.

**Interpretation.**

30. In this Ordinance, unless the context requires otherwise –

"**children in need**" has the meaning given by section 4 of the Law,

"**document**" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its disclosure include references to producing a copy of the information in legible form,

"**the Children Law**" means the Children (Sark) Law, 2016<sup>d</sup>,

"**the Committee**" means the Education Committee of the Chief Pleas established under the Education (Sark) Ordinance, 2003,

"**information**" includes documents,

"**the Law**" means the Child Protection (Sark) Law, 2020,

"**MASH**", for the avoidance of doubt, means the Multi-Agency Safeguarding Hub established by section 9 of, and Schedule 1 to, the Law,

"**public office**" means any office, however created –

(a) to which functions are assigned by an enactment or

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<sup>d</sup> Order in Council No. VIII of 2016; amended by Guernsey Ordinance No. IX of 2016; Sark Ordinance No. I of 2017; and Order in Council No. XIII of 2020.

otherwise by custom or rule of law, and

- (b) the holder of which is remunerated out of funds provided by the Chief Pleas, and

"**secure accommodation**" or "**accommodation**" includes any outdoor area associated with the accommodation concerned.

**Citation.**

31. This Ordinance may be cited as the Child Protection (Sark) Ordinance, 2021.

**Commencement of the Law and this Ordinance.**

32. (1) Subject to subsection (2), the Law and this Ordinance shall come into force on the 1<sup>st</sup> May, 2021.

(2) Part IV (Secure Accommodation) of the Law and Part IV (Secure Accommodation) of this Ordinance shall come into force on the day appointed by a further Ordinance.