

# Child law: The basics

December 2020

The law in Guernsey in relation to children is largely governed by ['The Children \(Guernsey & Alderney\) Law, 2008'](#). This law came into force on 4th January 2010 and is the most comprehensive overhaul of child law in the Bailiwick for over twenty years.

The 2008 Law sets out general principles and provides a child welfare checklist setting out the particular factors that will be considered by the Court in any dispute regarding children.

The new law also creates a new order called 'parental responsibility' and changes the terminology of the various orders available in relation to children. What used to be called 'care & control' is now referred to as a 'residence order'. 'Access' is now termed 'contact' and there are new orders called 'specific issue' and 'prohibited steps'. Applications for these orders are made under Paragraph 17 of the Child Law and are sometimes referred to as Section 17 Orders or private law proceedings.

The 2008 Law also covers what used to be called care proceedings and public law proceedings. These proceedings are largely dealt with by the creation of a new tribunal system called The Child, Youth & Community Tribunal.

Here we deal with the general principles and the orders available in relation to private law proceedings.

## General principles

The guiding principle of the new law is that the welfare of the child is paramount. In practical terms, this means that the welfare of the child is the single most important factor in making any decision about his future.

The law sets out the general principles, which include the following:

- A child should always have the opportunity to express their wishes in relation to all matters affecting them, irrespective of their age, development or ability.
- From the age of twelve, a child is presumed to be capable of forming a considered view. In practical terms, this means that the Court is likely to listen to the views of a child aged twelve and above. This will depend not only upon the chronological age of the child, but also upon the maturity and development of the child. In simple terms the older and more mature the child, the more the Court is likely to listen to what the child wants, and why.
- Any delay in making a decision about a child is likely to be detrimental to their welfare.
- The Court should not intervene in a child's life unless it is necessary to provide care, protection, guidance or control.
- It is generally regarded to be in a child's best interest to be brought up within their own family. If this is not possible, then the child's welfare is normally best served by maintaining regular contact with their family and community.

## Welfare checklist

The law provides a specific list of the matters to be taken into account by the Court in making any decision relating to a child:

Regulatory | Real estate | Private client and trusts | Insolvency and restructuring | Dispute resolution | Corporate | Banking and finance

- The child's wishes and feelings.
- Age, gender, ethnicity, cultural background, language, religion and any other relevant characteristics of the child.
- Any harm the child has suffered or is at risk of suffering.
- The child's physical, emotional and educational needs.
- How capable each of the parents is of meeting the child's needs.
- The importance and likely effect of contact between the child and their parents, siblings, relatives and any other people significant to the child.
- The effect or likely effect of any change in the child's circumstances.

For details of the various orders available to the Court in private law proceedings, see [Orders available](#).

### **Applications**

Applications for parental responsibility, residence, contact, specific issue and prohibited steps orders can be made either to the Magistrate's Court or to the Royal Court.

If there are divorce proceedings then the application should be issued in the Royal Court.

If parties are married but there are no divorce proceedings, then the application can be issued in either the Royal Court or the Magistrate's Court.

If the parties are not married, then the application should be issued in the Magistrate's Court.

Both the Royal Court and the Magistrate's Court can transfer proceedings to the other Court if appropriate.

Whilst there are some procedural differences between the Royal Court and the Magistrate's Court, the basic procedure is the same. For a pictorial version of what happens on an application regarding children, see [Flow chart of applications relating to children](#).