

STATES OF JERSEY



DRAFT CHILDREN'S PROPERTY AND TUTEURS (JERSEY) LAW 201-

Lodged au Greffe on 15th December 2015
by the Chief Minister

STATES GREFFE



Jersey

DRAFT CHILDREN'S PROPERTY AND TUTEURS (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Chief Minister has made the following statement –

In the view of the Chief Minister, the provisions of the Draft Children's Property and Tuteurs (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

Chief Minister

Dated: 4th December 2015

REPORT

Introductory

1. At the present day, under Jersey law, a minor (*i.e.* a person who is not yet 18) is not competent to deal with property. This means, technically speaking, that if a minor inherits, is gifted, or wishes to disclaim property, a *tuteur* must be appointed to deal with the property. The *tuteur* is nominated by a body of 7 *électeurs*. Collectively, this is known as a *tutelle*.
2. But a *tutelle* is not formed on each and every occasion that a minor comes to hold property: the reality is that the burden of running a *tutelle* will only be assumed if there is some good reason for doing so. That good reason is likely to arise in one of the following circumstances –
 - (i) where a person has property to transfer to a minor, and requires some form of discharge for the transfer of that property – the classic example would be trustees or executors seeking some form of discharge from the minor for the item of property or other asset transferred;
 - (ii) where a minor has been given land or some interest in land;
 - (iii) where, for whatever reason, the minor is in a position where some contractual capacity is required to transact.
3. By and large, in other circumstances, people do not go to the lengths of forming a *tutelle*. So it is that banks operate bank accounts for minors notwithstanding that the person is too young to have legal capacity to enter into contractual relationships. Any contract between a minor and another person is not prohibited, as such; rather it is ineffective because the child lacks capacity, except where the contract may be one for the supply of ‘necessaries’.
4. The Jersey Law Commission Topic Report No. 3 “The Law of Tutelles” (July 2002) highlighted the following drawbacks in the present system, namely, that –
 - it is cumbersome to have to have 7 *électeurs*;
 - even though the *électeurs* are liable for any defaults of the *tuteur*, they have no real control over the *tuteur* (other than that the *tuteur* is required to agree the accounts of the *tutelle* annually with them and can be fined if he or she fails to do so);
 - *électeurs* are seldom aware of the extent of their potential liability; and
 - consent of the Royal Court is only required where the *tuteur* is dealing in immovable property.
5. The Law Commission went on to suggest equating the office of *tuteur* with that of a curator (under the Mental Health Law) and had put forward proposals –
 - (a) to abolish the office of *électeur* and provide for the appointment of a *tuteur* alone, making the appointment of a *tuteur* voluntary below certain financial limits but ensuring at all events that an executor would be able obtain a good discharge in respect of assets to be inherited by a minor;
 - (b) to enable other interested parties, including the Attorney General or indeed the Court of its own volition, to call for the appointment of a *tuteur*;

- (c) to give broad powers to the *tuteur* to apply capital or income as the circumstances demanded (subject to rules similar to those that bind a curator), and to require accounts to be submitted annually to the Court;
 - (d) to remove any distinction in treatment between movables and immovables;
 - (e) to limit the responsibility of the *tuteur* to the care of the property of the minor (so excluding responsibility for the person of the minor and liability for the acts of the minor).
6. Work was undertaken over some years by the Legislation Advisory Panel to prepare draft legislation to implement at least some measure of reform. At one stage, the Panel examined the present position regarding the capacity of children of certain ages to enter into transactions without the need for the appointment of a *tuteur*. The possibility was explored of extending the legal capacity of 16 and 17 year-olds (bearing in mind certain reforms of the law of Scotland under which the capacity of 16 and 17 year-olds to enter into contracts without the need for a tutor had been extended). Eventually it was decided to proceed with the following – more limited – reforms rather than delay any longer.

The reforms proposed

7. The reforms to which this *Projet de Loi* would give effect are the following:

Removal of électeurs

8. We have seen in paragraph 1 *above* that a *tuteur* is presently nominated by a body of 7 *électeurs*, collectively known as a *tutelle*. The need for *électeurs* will fall away under the draft Law,¹ because the appointment of the *tuteur* will be in the discretion of the Royal Court, and the application for the appointment will be made by certain interested persons – *see* paragraph 12 *below*.
9. As already mentioned, the Jersey Law Commission noted that, although the *électeurs* were liable for any defaults of the *tuteur*, they had no real control over the *tuteur* (other than that the *tuteur* was required to agree the accounts of the *tutelle* annually with them failing which he/she was liable to a fine). The function of *électeurs* will be replaced in the draft Law by requirements that put a *tuteur* on a similar footing to a curator under the Mental Health Law, where the role of *électeurs* has also become redundant.

Appointment by the Court – core provision

10. The core provision² is that, whenever –
- (a) immovable property;³ or
 - (b) movable property⁴ of a value of £25,000⁵ or more,
- is owned by or due to a minor, an application must be made to the Royal Court for the appointment of a *tuteur* to administer that property. There are certain exemptions from the requirement to appoint a *tuteur* where property is already being administered by an executor or administrator, or is already held on trust for the minor.⁶

¹ *See Article 12*

² *Article 2(1) and (4)*

³ Essentially, land and anything affixed to land

⁴ *i.e.* anything other than immovable property (money, shares, motor vehicles, valuables, *etc.*)

⁵ This figure will be able to be amended by Order of the Chief Minister

⁶ *Article 2(2)*

11. This will not prevent the appointment of a *tuteur* in other cases if the Court thinks it right to appoint one.⁷

Who may apply?

12. An application to the Court to appoint a *tuteur* may be made by a parent or relative⁸ of the minor, or his/her guardian. A creditor of the minor may also apply, as may the Attorney General.⁹
13. Any other person will require the leave of the Court to do so.¹⁰

Who may be appointed?

14. Only individuals are able to be appointed as *tuteurs*;¹¹ corporate bodies may not be. The fact that someone is the parent or guardian of the minor, or has applied for the appointment of a *tuteur*, does not prevent him/her being appointed.¹²
15. The Court will be able to appoint more than one individual as *tuteur* if it is convenient to do so.¹³

What property does the appointment cover?

16. The Royal Court must either make the appointment in relation to all of the minor's property or may appoint a *tuteur* in relation only to the minor's immovable property¹⁴ (where the movable property does not exceed £25,000).¹⁵

When does the appointment take effect?

17. The appointment of a *tuteur* takes effect upon the individual taking the oath.¹⁶ (The oath taken by a *tuteur* is set out in set out *Schedule 1* – see also paragraph 19 below.)

Powers/duties of tuteur

18. A *tuteur* is responsible for the administration of the property in relation to which he or she is appointed, and for no other matter.¹⁷ This clearly limits the responsibility of the *tuteur* to the care of the property of the minor (so excluding responsibility for the person of the minor and liability for the acts of the minor – see paragraph 5(e) above).

⁷ Article 2(3)

⁸ 'parent' and 'relative' includes adoptive parents and relatives (*Article 1*); a relative is defined as a grandparent, a brother or sister (full or half-blood), an uncle or aunt or a first cousin; relatives by marriage or civil partnership are included

⁹ Article 2(6)(a)–(d)

¹⁰ Article 2(6)(d)

¹¹ Article 2(8)

¹² Article 2(9)

¹³ Article 2(13)

¹⁴ Article 2(11) and (12)

¹⁵ This amount may be amended by Order – see paragraph 10 above (and footnote 5)

¹⁶ Article 2(14)

¹⁷ Article 3(1)

19. The new oath of *tuteur* will be in the following terms –
- “YOU swear and promise that well and faithfully you will discharge the duties of tuteur in relation to the property of in respect of which you have been appointed; that you will administer and safeguard such property with equal or even greater concern than you would manifest for your own; that you will deliver good and faithful accounts to whomsoever may be entitled to demand the same: and that you will generally discharge all the duties appertaining to the said office.”*
20. This reflects the provision (which is being retained)¹⁸ in the Code of Laws of 1771 requiring *tuteurs* [in translation] *“to take the same care of the property and affairs of minors as a responsible head of the family would do for his or her own, on pain of liability for fraud (dol) and neglect of duty”*.
21. A *tuteur* acting in the discharge of his or her duties has the same powers in relation to the minor’s property as the minor would have if he or she were of full age,¹⁹ although the Court may impose restrictions on the powers of a *tuteur*.²⁰ A *tuteur* ordinarily will have rights to employ experts and to delegate certain limited functions in the same way as a trustee under the Trusts (Jersey) Law 1984.²¹
22. Various duties are imposed²² upon *tuteurs* in relation to –
- preparing inventories and accounts of the property of the minor,
 - submitting the same to the Judicial Greffier,
 - delivering up books, papers and other documents held in connection with the administration of a minor’s property.

Discharge/cessation of office

23. The Royal Court may discharge a *tuteur* from office at any time.²³ An application to discharge a *tuteur* may be made by the *tuteur* him/herself. Alternatively the Attorney General may make the application; otherwise, leave must be obtained from the Court.²⁴
24. When discharging someone from the office of *tuteur*, *the Court must appoint a replacement if a tuteur is still needed;*²⁵ *and the Court is able to give all necessary directions for the administration of the minor’s property.*²⁶

¹⁸ See Article 3(2)

¹⁹ Article 3(3)

²⁰ Article 2(11)(b)

²¹ Article 3(4)

²² See Article 8 and Schedule 2

²³ Article 5(1)

²⁴ Article 5(2)

²⁵ Article 5(3)

²⁶ Article 5(4)

25. When the minor reaches 18, the *tuteur* ceases to hold office.²⁷ But he/she must still take whatever steps are needed to transfer the administration of the property to the former minor (or to any curator if applicable).²⁸ If the minor has died, there is a similar duty on the *tuteur* to do whatever is needed to assist the minor's executor or administrator with the administration of the estate.²⁹

Supervisory function of the Royal Court

26. The Royal Court is empowered to give directions at any time³⁰ concerning the administration of a minor's property (whether or not a *tuteur* has been appointed). Such directions may extend to the transfer of the administration of property from a *tuteur* to another person.
27. A *tuteur* may always apply to the Court for directions.³¹ If there is no *tuteur*, a person holding property that is owned by or due to the minor may apply to the Court for directions, as may a creditor of the minor.³²
28. The Attorney General may apply to the Court for directions at any time (whether or not there is a *tuteur*).³³
29. Any other person must obtain leave (whether or not there is a *tuteur*).³⁴
30. The Royal Court would retain its role under the *Loi* (1959) *touchant la vente des immeubles de mineurs*. Under this *Loi*,³⁵ the permission of the Royal Court is required for sales land on behalf of a minor. When a request is presented for this purpose, the Court must nominate 2 Jurats to examine the property that it is desired to alienate. They can have the property valued and must make a written report to the Court regarding the proposed sale. In arriving at a decision on the report, the Court may approve, vary or reject the recommendations contained in it. One of the Jurats must be party to any eventual sale.

Criminal offences

31. It will be an offence for someone other than the *tuteur* to administer a minor's property once a *tuteur* has been appointed in respect of that property.³⁶ It will also be an offence to administer property of a minor where this Law requires that a *tuteur* be appointed.³⁷
32. There is protection for persons who act in accordance with directions given by a *tuteur*; or who administer property only for the purpose of preserving it, or in accordance with directions given by the Royal Court; or who are properly employed by a *tuteur* or are exercising functions properly delegated to them by the *tuteur*.³⁸

²⁷ Article 6(1)

²⁸ Article 6(2)

²⁹ Article 6(3)

³⁰ Article 7(1)

³¹ Article 7(2)(a)

³² Article 7(3)(a) and (b)

³³ Article 7(2)(b) and (3)(c)

³⁴ Article 7(2)(c) and (3)(d)

³⁵ A translation of the *Loi* of 1959 may be found at:

[http://www.jerseylaw.je/law/display.aspx?url=LawsInForce/Consolidated/18/18.845_Loi\(1959\)TouchantlaVentedesImmeublesdeMineurs_RevisedEdition_31August2004_Translated.htm?Mode=Translated](http://www.jerseylaw.je/law/display.aspx?url=LawsInForce/Consolidated/18/18.845_Loi(1959)TouchantlaVentedesImmeublesdeMineurs_RevisedEdition_31August2004_Translated.htm?Mode=Translated)

³⁶ Article 9(1)

³⁷ Article 9(5)

³⁸ Article 9(2)-(4)

33. The above offences carry an unlimited fine and/or 12 months' imprisonment.³⁹

34. A *tuteur* or former *tuteur* who neglects to file inventories and accounts as required by the Law⁴⁰ will be liable to a fine of level 3 on the standard scale.⁴¹

Existing tuteurs – transitional provisions

35. The Chief Minister will be empowered⁴² to make an Order containing all necessary transitional provisions and savings for the purposes of the commencement of the Law and the repeal, if need be, of any other enactment and the abolition by it of any rule of customary law. Such an Order (or Orders) will include provision as regards anyone already holding the office of *tuteur* when the Law comes into force, and the *électeurs* in relation the relevant *tutelle*; and the extent (if any) to which the new requirements will affect such persons.

Power to amend the Law by Regulations

36. The States will be able to make Regulations amending this Law and the *Loi (1959) touchant la vente des immeubles de mineurs*.⁴³

Rules of Court

37. The Superior Number will be able to make Rules of Court in the usual way to specify court procedures in connection with any matter under this Law.⁴⁴

Conclusion

38. This legislation will be of benefit to those concerned with minors' property, as the existing system is cumbersome and costly for those involved. There is also an element of uncertainty about the existing law that is of concern to the legal profession as evidenced by Jersey Law Commission's Topic Report No. 3 referred to above. It is intended that by introducing this new legislation, the law surrounding the administration of a minor's property will not only be clarified, but be better suited to present day family arrangements. Moreover, the new Law will provide for better supervision of the management of a minor's property, thus protecting the minor, and also giving the *tuteur* additional flexibility in its application.

39. In short, the draft Law will be consistent with the modern legal framework within which Jersey family and property law need to operate.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this draft Law.

Human Rights

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

³⁹ Article 9(8)

⁴⁰ See Schedule 2

⁴¹ Article 9(9)

⁴² See Article 15

⁴³ Article 14 and Schedule 3

⁴⁴ Article 11

APPENDIX TO REPORT

Human Rights Note on the Draft Children's Property and Tuteurs (Jersey) Law 201-

1. This Note has been prepared in respect of the Draft Children's Property and Tuteurs (Jersey) Law 201- ("the draft Law") by the Law Officers' Department. It summarises the principal human rights issues arising from the contents of the draft Law and explains why, in the Law Officers' opinion, the draft Law is compatible with the European Convention on Human Rights ("ECHR").

Article 1, Protocol 1 ECHR

2. Article 1, Protocol 1 of the ECHR provides that –
“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”
3. The draft Law engages Article 1, Protocol 1 as appointing a *Tuteur* to administer a minor's property shall be a control of use (rather than a deprivation) of that minor's property.
4. However, Article 1, Protocol 1 is a qualified right, and the second paragraph of the Article permits control of use subject to the control being “in accordance with the general interest”. There is no distinction between the general interest and the public interest, and states have a wide margin of appreciation in determining what is in the public or general interest.
5. A control of use must be in accordance with law and be exercised in a manner which is proportionate to the general interest aim pursued.
6. Therefore, any interference must be in pursuit of a legitimate aim, be in accordance with law and be proportionate. The measures imposed by the draft Law are aimed at protecting the interests of minors who acquire immovable property or movable property over a prescribed *de minimis* amount. The European Court of Human Rights has found that a measure does not need to benefit the public in general to be considered a legitimate aim in the general interest.
7. The introduction of the draft Law will ensure that any interference is clearly prescribed in principal legislation.
8. Finally, the scheme which the draft Law prescribes is a proportionate one aimed at ensuring the interests of the minor are maintained and protected. There are strict duties placed on the *tuteur* under the draft Law and indeed in the *Code of 1771*, which ensure that the minor's property is adequately administered. The *tuteur* is at all times ultimately answerable to the Royal Court, and the draft Law contains provisions which complement this oversight rôle, i.e. the Court appoints and may dismiss the *tuteur* and the Court may also give directions regarding the minor's property. The scheme is therefore fair and proportionate,

and strikes the right balance between achieving the aims sought and mitigating the prejudice to those affected.

9. **The draft Law is, therefore, based on the reasoning above, compatible with Article 1, Protocol 1 ECHR.**
10. No other provisions of the ECHR are engaged by the draft Law.

Explanatory Note

This Law makes provision for the appointment and duties of *tuteurs* and empowers the Royal Court to give directions regarding a minor's property, whether or not a *tuteur* has been appointed in relation to the property.

Article 1 provides for the interpretation of expressions used in the Law.

Article 2 provides for the appointment of a *tuteur*. A *tuteur* must be appointed for immovable property that is owned by or due to a minor, irrespective of its value. A *tuteur* must be appointed for a minor's movable property if its total value exceeds £25,000. In determining the total value of a minor's movable property, for the purposes of the requirement to appoint a *tuteur*, movable property that is already being administered by the executor or administrator of an estate or by the trustee of a trust is disregarded. In other cases, a *tuteur* may be appointed, but isn't required. The Royal Court may also direct the extent of the *tuteur's* responsibility for the minor's property, and impose restrictions on a *tuteur's* powers, as it sees fit. The *tuteur* need not be appointed in relation to property that is already administered by an administrator or executor or a trustee. If a minor owns immovable property and also movable property worth less than £25,000, the *tuteur* need only be appointed in relation to the immovable property. The Royal Court may appoint more than one individual as *tuteur* for a minor. The Royal Court appoints a *tuteur*, on an application made by one of the persons listed in paragraph (5). The individual's appointment takes effect when he or she takes the oath set out in *Schedule 1*.

The Chief Minister (the "Minister") may, by Order, amend the £25,000 threshold for movable property.

Article 3 describes the responsibility and powers of a *tuteur*. A *tuteur* is only responsible for administering the property to which his or her appointment relates. A *tuteur*, when discharging his or her duty, has all the same powers in relation to the property as the minor would have if the minor was of full age. These powers include delegating the management of property to investment managers and employing professionals such as accountants and lawyers. Provision in the Code of 1771 already provides for the manner in which a *tuteur* must discharge his or her responsibility and for the civil liability of a *tuteur* who does not discharge his or her responsibility as required.

Article 4 provides that a *tuteur* will be paid for his or her expenses reasonably incurred in the discharge of his or her duties, and remunerated, at a rate specified in rules of court, for the work he or she does as *tuteur*.

Article 5 allows the Royal Court to discharge an individual from the office of *tuteur*, on an application made by one of the persons listed in paragraph (2). If, at the time of discharge, the minor has immovable property or movable property worth more than £25,000, the Court must appoint another *tuteur*. Otherwise, the Court has a discretion as to whether to appoint another *tuteur*. The Court may, in either case, give directions about the administration of the minor's property, under *Article 7*. *Schedule 2*, given effect by *Article 8*, imposes specific obligations on the former *tuteur* regarding the delivery of accounts and paperwork.

Article 6 is concerned with what happens when the minor attains full age or dies. Generally, when the minor attains full age, the former *tuteur* is responsible for transferring the administration of the property to the former minor. However, if it were the case that a curator was appointed for the former minor, under the Mental Health (Jersey) Law 1969, the former *tuteur* would, instead, be required to make the transfer to the curator. If a minor dies before attaining full age, the former *tuteur* is required to do

anything necessary to facilitate the transfer of the administration of the property to the deceased minor's executor or administrator. *Schedule 2*, given effect by *Article 8*, imposes specific obligations on the former *tuteur* regarding the delivery of accounts and paperwork.

Article 7 is of wider application than the foregoing Articles, in that it empowers the Royal Court to give directions in relation to the administration of a minor's property, whether or not a *tuteur* has been appointed in relation to the property. It also empowers the Royal Court to give directions in relation to the transfer of the administration of a minor's property from a *tuteur* to another *tuteur* or to a curator or, where the minor has attained full age, to the former minor. Paragraphs (2) and (3) describe the persons who may apply for directions.

Article 8 gives effect to *Schedule 2*, described below, and gives the Chief Minister power to amend *Schedule 2* by Order.

Article 9 creates offences associated with the administration of a minor's property. If a *tuteur* has been appointed, it is an offence for another person to administer the property in relation to which the *tuteur* is appointed. There is an exception for a person who is acting as directed by the *tuteur* and reasonably believes that the direction is lawfully given; who is a delegate or employee of the *tuteur* and reasonably believes that the terms of the delegation or employment were lawfully specified by the *tuteur*; or who is acting in accordance with directions given by the Royal Court. If a *tuteur* should be, but has not been, appointed, it is an offence for a person to administer the minor's property. Again, there is an exception for a person who administers the property only in order to preserve it, or who is acting in accordance with directions given by the Royal Court. The penalty for these offences is an unlimited fine and/or imprisonment for up to 12 months.

Article 9 also makes it an offence for a *tuteur* or former *tuteur* to fail to comply with *Schedule 2*. The penalty for the offence is a fine of level 3 on the standard scale (currently £2,000).

Article 10 makes the standard provision for the liability of officers of a corporate or similar entity that commits an offence under the Law.

Article 11 confers a power on the Royal Court to make rules of court for the purposes of the Law.

Article 12 abolishes the customary law, to the extent that it requires the formation of a *tutelle* and concerns the appointment, duties and liabilities of *électeurs*.

Article 13 gives effect to *Schedule 3*, which amends or repeals other enactments consequentially upon the enactment of this Law.

Article 14 empowers the States to amend this Law by Regulations.

Article 15 empowers the Minister to make an Order regarding the application of this Law on its commencement, including transitional provisions and savings, and regarding the abolition of customary law in *Article 12* and the repeal of the *Loi (1862) sur les Tuteurs*.

Article 16 provides for the citation and commencement of this Law.

Schedule 1 contains the oath to be taken by a person upon his or her appointment as a *tuteur*. A person who does not wish to take an oath may, by virtue of the Solemn Affirmations (Jersey) Law 1967, make a solemn affirmation instead.

Schedule 2 imposes duties on a *tuteur* or former *tuteur* regarding the preparation of inventories and accounts and the handing over of papers when his or her office comes to an end.

Schedule 3 amends or repeals enactments. In particular –

- (a) enactments are amended consequentially upon the abolition, by *Article 12*, of the requirement for a *tutelle* as well as a *tuteur*;
- (b) a power is taken to amend the Loi (1959) touchant la vente des immeubles de mineurs by Regulations – see paragraph 8(c) of Schedule 3. Article 4A, inserted by that provision says, in translation “The States may, by Regulations, amend this Law.”.



Jersey

DRAFT CHILDREN'S PROPERTY AND TUTEURS (JERSEY) LAW 201-

Arrangement

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Jersey

DRAFT CHILDREN'S PROPERTY AND TUTEURS (JERSEY) LAW 201-

A **LAW** to provide for the appointment and discharge of *tuteurs* and the duties and liabilities of *tuteurs* and former *tuteurs*; to empower the Royal Court to give directions in relation to the property of any minor; to empower the States to make Regulations amending the Loi (1959) touchant la vente des immeubles de mineurs; and for connected purposes

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law –

“curator” means a person appointed as such under Article 43 of the Mental Health (Jersey) Law 1969¹;

“guardian” means, in relation to a minor, the person (if any) appointed as the minor’s guardian under Article 7 of the Children (Jersey) Law 2002²;

“Minister” means the Chief Minister;

“minor” means, in relation to a *tuteur*, the minor in relation to whose property the *tuteur* is appointed, and “former minor” means the minor, once he or she has attained full age;

“property” means –

- (a) movable and immovable property; and
- (b) where a *tuteur* has been appointed, the property to which the appointment relates;

“relative” means, in relation to a minor –

- (a) a grand-parent;
- (b) a brother or sister (whether of the full blood or half blood);

- (c) an uncle or aunt (including a person who is an uncle or aunt by marriage or civil partnership);
- (d) a first cousin (including a person who is a first cousin).

2 Appointment of *tuteur*

- (1) A *tuteur* must be appointed in relation to property owned by or due to a minor if the property is or includes –
 - (a) immovable property; or
 - (b) movable property having a value, in the aggregate, which exceeds £25,000.
- (2) Movable property shall be disregarded for the purposes of paragraph (1)(b) if the property –
 - (a) forms part or the whole of the estate of a deceased person and the executor or administrator of the estate is for the time being responsible for its administration; or
 - (b) is held on trust and for the time being administered by the trustee of the trust.
- (3) A *tuteur* may be appointed in any other case.
- (4) The Minister may, by Order, amend the amount in paragraph (1)(b).
- (5) An application for the appointment of a *tuteur* must be made to the Royal Court.
- (6) An application for the appointment of a *tuteur* may be made by –
 - (a) a parent or relative of the minor;
 - (b) a guardian of the minor;
 - (c) a creditor of the minor;
 - (d) the Attorney General; or
 - (e) with the leave of the Royal Court, any other person.
- (7) On an application for the appointment of a *tuteur* being made, the Royal Court –
 - (a) shall appoint a *tuteur* in a case described in paragraph (1); and
 - (b) may appoint a *tuteur* in any other case.
- (8) Only an individual may be appointed as *tuteur*.
- (9) The fact that an individual is the parent or guardian of the minor, or has applied for the appointment of a *tuteur*, does not prevent the individual being appointed as *tuteur*.
- (10) Subject to paragraphs (11) and (12), the Royal Court shall appoint a *tuteur* in relation to all of the minor's property.
- (11) The Royal Court may –
 - (a) direct that a *tuteur's* appointment does not extend to any property described in paragraph (2);
 - (b) impose restrictions on a *tuteur's* powers.

- (12) Where a minor who owns or has due to him or her immovable property also owns or has due to him or her movable property having a value, in the aggregate, that does not exceed the amount referred to in paragraph (1)(b), the Royal Court may direct that the *tuteur's* appointment does not extend to the minor's movable property.
- (13) The Royal Court may, in any case, appoint more than one individual as *tuteur* in relation to the property of a minor.
- (14) The appointment of a *tuteur* takes effect upon the person taking the oath set out in Schedule 1.

3 Powers and duties of *tuteur*

- (1) A *tuteur* is responsible for the administration of the property in relation to which he or she is appointed, and for no other matter.
- (2) The Code of 1771³ makes provision as to the manner in which a *tuteur* must discharge his or her responsibility and the liability of a *tuteur* who does not discharge his or her responsibility in that manner.
- (3) Subject to any restriction imposed by the Royal Court, a *tuteur* acting in the discharge of his or her duties shall have the same powers in relation to the property as the minor would have, if the minor was of full age.
- (4) Without prejudice to the generality of paragraph (3), the powers referred to in that paragraph include the same powers of delegation and to employ other persons as a trustee has under Article 25(2) and (4) of the Trusts (Jersey) Law 1984⁴.

4 Expenses and remuneration of *tuteur*

A *tuteur* is entitled to be paid, from the property –

- (a) his or her expenses reasonably incurred in the discharge of his or her powers and duties as *tuteur*;
- (b) remuneration, in accordance with a scale or rate specified in rules of court, for his or her work done in the discharge of his or her powers and duties as *tuteur*.

5 Discharge of *tuteur*

- (1) The Royal Court may discharge an individual from the office of *tuteur* at any time.
- (2) An application for a person to be discharged from the office of *tuteur* may be made to the Royal Court by –
 - (a) the *tuteur*;
 - (b) the Attorney General; or
 - (c) with the leave of the Royal Court, any other person.
- (3) When discharging an individual from the office of *tuteur* the Royal Court –

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- (a) must, where Article 2(1) applies, appoint one or more individuals as *tuteur* in his or her place, if there would otherwise be no-one appointed as *tuteur* in relation to the minor's property; and
 - (b) may, in any other case, appoint one or more individuals as *tuteur* in his or her place.
- (4) When discharging an individual from the office of *tuteur*, the Royal Court may give directions under Article 7.

6 Cessation of appointment of *tuteur*

- (1) An individual shall cease to hold the office of *tuteur* upon the minor attaining full age or dying.
- (2) Upon the minor attaining full age the former *tuteur* shall, without delay, take any steps necessary to transfer the administration of the property to the former minor or, if a curator is appointed for the former minor, to the curator.
- (3) Upon the minor dying, the former *tuteur* shall, without delay, take any steps necessary to facilitate the devolution of the administration of the minor's property on the executor or administrator of the deceased minor's estate.
- (4) The general duties in paragraphs (2) and (3) do not derogate from the specific duties in Schedule 2.

7 Directions of the Royal Court in relation to property of minor, whether or not *tuteur* appointed

- (1) The Royal Court may give directions in relation to –
 - (a) the administration of the property of a minor, whether or not a *tuteur* has been appointed in relation to the property;
 - (b) the transfer of the administration of property from a *tuteur* to another person.
- (2) Where a *tuteur* has been appointed in relation to property, an application for directions may be made by –
 - (a) the *tuteur*;
 - (b) the Attorney General; or
 - (c) with the leave of the Royal Court, any other person.
- (3) Where a *tuteur* has not been appointed for the minor, an application for directions may be made by –
 - (a) a person holding property that is owned by or due to the minor;
 - (b) a creditor of the minor;
 - (c) the Attorney General; or
 - (d) with the leave of the Royal Court, any other person.

8 Inventories, accounts and papers

- (1) Schedule 2 has effect to impose duties on *tuteurs* and former *tuteurs* –
 - (a) to prepare inventories and accounts of the property of the minor, in such form and containing such information as may be specified in that Schedule; and
 - (b) to submit such inventories and accounts to such persons, by such dates, and at such intervals or on the occurrence of such events as may be specified in that Schedule;
 - (c) to deliver up such books papers and other documents held in connection with the administration of a minor's property to such persons, by such date, as may be specified in that Schedule.
- (2) The Minister may, by Order, amend Schedule 2.

9 Offences

- (1) A person (other than the *tuteur*) who administers the property of a minor in relation to which a *tuteur* is appointed commits an offence.
- (2) Paragraph (1) does not apply to a person who takes action concerning property in relation to which a *tuteur* is appointed if the person –
 - (a) takes the action in accordance with a direction given by the *tuteur*; and
 - (b) reasonably believes that the direction is lawfully given by the *tuteur*.
- (3) Paragraph (1) does not apply to a person who takes action concerning property in relation to which a *tuteur* is appointed if the person –
 - (a) is the delegate of the *tuteur*;
 - (b) acts in accordance with the terms of the delegation; and
 - (c) reasonably believes that the delegation is lawfully made by the *tuteur*.
- (4) Paragraph (1) does not apply to a person who takes action concerning property in relation to which a *tuteur* is appointed if the person –
 - (a) is employed by the *tuteur*;
 - (b) acts in accordance with the terms of the employment; and
 - (c) reasonably believes that his or her employment by the *tuteur* is lawful.
- (5) A person who administers the property of a minor in relation to which a *tuteur* is required by Article 2(1) to be appointed but for which no *tuteur* is appointed commits an offence.
- (6) Paragraph (5) does not apply to a person who administers the property –
 - (a) only for the purpose of preserving it; and
 - (b) only to the extent necessary for that purpose.
- (7) Paragraphs (1) and (5) do not apply to a person who administers the property of a minor in accordance with directions given by the Royal Court under Article 7.

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- (8) The penalty for an offence under paragraph (1) or (5) is imprisonment for a term of 12 months and a fine.
- (9) A *tuteur* or former *tuteur* who fails, without reasonable excuse, to comply with any requirement in Schedule 2 commits an offence and is liable to a fine of level 3 on the standard scale.

10 General provisions as to offences

- (1) Where an offence under this Law committed by a body corporate, limited liability partnership or separate limited partnership, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
- (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the company; or
 - (b) any person purporting to act in any such capacity,
- the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to acts and defaults of a member in connection with his or her functions of management as if the member were a director of the body corporate.

11 Rules of court

The power in Article 13 of the Royal Court (Jersey) Law 1948⁵ to make rules of court includes the power to make rules of court for the purposes of this Law.

12 Abolition of customary law rules

The customary law requiring the formation of a *tutelle* and as to the appointment, duties and liabilities of the *électeurs* is hereby abolished.

13 Enactments repealed or amended

Schedule 3 has effect to repeal or amend enactments consequentially upon the enactment of this Law.

14 Regulations

The States may, by Regulations, amend this Law.

15 Application, transitional provisions and saving

The Minister may by Order, make provision for the application of this Law on its commencement, and transitional provisions and savings for the purposes of its commencement and the repeal by it of any other enactment and the abolition by it of any rule of customary law.

16 Citation and commencement

This Law may be cited as the Children's Property and Tuteurs (Jersey) Law 201- and shall come into force one month after it is registered.

SCHEDULE 1

(Article 2(14))

OATH OF TUTEUR

YOU swear and promise before God that you will well and faithfully discharge the duties of *tuteur* in relation to the property of in respect of which you have been appointed; that you will administer and safeguard such property with equal or even greater concern than you would manifest for your own; that you will deliver good and faithful accounts to whomsoever may be entitled to demand the same: and that you will generally discharge all the duties appertaining to the said office.

SCHEDULE 2

(Article 8(1))

INVENTORIES, ACCOUNTS AND PAPERS**1 Interpretation of Schedule 2**

In this Schedule –

“appointment date” means the date a *tuteur*'s appointment takes effect, in accordance with Article 2(14);

“cessation date” means –

- (a) in relation to a *tuteur* who is discharged from office under Article 5, the date of such discharge;
- (b) in relation to a *tuteur* whose appointment ceases under Article 6, the date of such cessation;

“minor's property” means, in relation to a *tuteur*, the property of the minor to which the *tuteur*'s appointment extends;

“*tuteur*” includes a former *tuteur* who has been discharged from office under Article 5 or whose appointment has ceased under Article 6.

2 Delivery of inventory

A *tuteur* must, within the period of 90 days following his or her appointment date, deliver to the Judicial Greffier an inventory of the minor's property.

3 Preparation and delivery of annual accounts

- (1) A *tuteur* must prepare accounts in connection with the administration of the minor's property.
- (2) Accounts must be prepared for the period of 12 months commencing with the appointment date and, for the duration of the *tuteur*'s appointment, each anniversary of that date.
- (3) The *tuteur* must, as the Judicial Greffier requires, have the accounts audited or certified by a person holding such qualifications as the Judicial Greffier specifies.
- (4) Accounts must be prepared and a copy of them submitted to the Judicial Greffier within the period of 30 days following the period of 12 months to which the accounts relate.

4 Discharge or cessation of appointment of *tuteur*

- (1) A *tuteur* must prepare accounts in connection with the administration of the minor's property for the period –
 - (a) beginning with the day following the end of the last period for which accounts were or must be prepared under paragraph 3; and
 - (b) ending with the cessation date.

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- (2) A *tuteur* must, within the period of 30 days following the cessation date deliver a copy of the accounts referred to in sub-paragraph (1) and of all accounts required under paragraph 3 to the Judicial Greffier and –
- (a) where the *tuteur* is discharged from office and one or more individuals are appointed as *tuteur* in his or her place – to the individual or individuals so appointed;
 - (b) where the *tuteur* is discharged from office and no-one is appointed as *tuteur* in his or her place – to the person having parental responsibility for the minor;
 - (c) where the *tuteur's* appointment ceases upon the minor attaining full age – to the minor;
 - (d) where the *tuteur's* appointment ceases upon the death of the minor – to the minor's executor or administrator.
- (3) Every copy of accounts delivered under sub-paragraph (2) must be verified by an affidavit sworn by the *tuteur*.
- (4) A *tuteur* must, forthwith after delivery of the copies required by sub-paragraph (2), deliver up to the person to whom such copies were delivered by virtue of clause (a), (b) or (c) of sub-paragraph (2) all books, papers and other documents held by the *tuteur* in connection with the administration of the minor's property.

SCHEDULE 3

(Article 13)

ENACTMENTS REPEALED OR AMENDED**1 Loi (1961) sur l'exercice de la profession de droit à Jersey amended**

In Article 2(2) of the Loi (1961) sur l'exercice de la profession de droit à Jersey⁶ the words “, une tutelle” are deleted.

2 Loi (1938) sur les honoraires des Jurés-Justiciers amended

In the tariff in the Loi (1938) sur les honoraires des Jurés-Justiciers⁷, the entry headed “CONTRATS” is deleted.

3 Age of Majority (Jersey) Law 1999 amended

Article 3 of the Age of Majority (Jersey) Law 1999⁸ is repealed.

4 Children (Jersey) Law 2002 amended

In Article 7 of the Children (Jersey) Law 2002⁹, paragraphs (12) and (13) are repealed.

5 Loi (1862) sur les *Tuteurs* repealed

The Loi (1862) sur les *Tuteurs*¹⁰ is repealed.

6 Code of 1771 amended

In the Code of 1771¹¹ –

- (a) the oaths for *Electeurs* and *Tuteurs* are repealed;
- (b) in the section headed “*Tuteurs*” –
 - (i) the first, third and fourth paragraphs are repealed,
 - (ii) in the second paragraph, for the words “Ils seront” there are substituted the words “Les *tuteurs* seront”.

7 Loi (1832) sur les décrets amended

In Article 5 of the Loi (1832) sur les décrets¹² for the words beginning “en produisant” and ending “2 de ses électeurs,” there are substituted the words “en prêtant serment”.

8 Loi (1959) touchant la vente des immeubles de mineurs amended

In the Loi (1959) touchant la vente des immeubles de mineurs¹³ –

- (a) in Article 1(a) and (b) the words “du consentement de ses électeurs” are deleted;
- (b) in Article 3(1) the words “et ses électeurs” are deleted;
- (c) after Article 4 there shall be inserted the following Article –

5

Les Etats pourront, par des Règlements, amender cette Loi.”.

9 Food Costs Bonus (Jersey) Regulations 2014 amended

In paragraph 6 of the Schedule to the Food Costs (Bonus) (Jersey) Regulations 2014¹⁴ –

- (a) in sub-paragraph (1) –
 - (i) the word “and” is inserted after clause (a),
 - (ii) clause (c) and the word “and” following clause are deleted;
- (b) in sub-paragraph (2)(a) the words “or *tuteur*” are deleted.

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- 1 *chapter 20.650*
 - 2 *chapter 12.200*
 - 3 *chapter 15.120*
 - 4 *chapter 13.875*
 - 5 *chapter 07.770*
 - 6 *chapter 07.315*
 - 7 *chapter 07.420*
 - 8 *chapter 12.150*
 - 9 *chapter 12.200*
 - 10 *chapter 12.950*
 - 11 *chapter 15.120*
 - 12 *chapter 18.225*
 - 13 *chapter 18.845*
 - 14 *chapter 26.470*