



Jersey

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

### Report

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#### *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,<sup>1</sup> 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 (as described in paragraph 9 *below*).

9 We have also seen in paragraph 4 *above* that 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*

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<sup>1</sup> See Article 11

10 The core provision<sup>2</sup> is that, whenever –

- (a) immovable property;<sup>3</sup> or
- (b) movable property<sup>4</sup> of a value of £25,000<sup>5</sup> 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.

11 This will not prevent the appointment of a *tuteur* in other cases if the Court thinks it right to appoint one.<sup>6</sup>

*Who may apply?*

12 An application to the Court to appoint a *tuteur* may be made by a parent or relative<sup>7</sup> of the minor, or his/her guardian. A creditor of the minor may also apply, as may the Attorney General.<sup>8</sup>

13 Any other person will require the leave of the Court to do so.<sup>9</sup>

*Who may be appointed?*

14 Only individuals are able to be appointed as *tuteurs*;<sup>10</sup> 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.<sup>11</sup>

15 The Court will be able to appoint more than one individual as *tuteur* if it is convenient to do so.<sup>12</sup>

*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 property<sup>13</sup> (where the movable property does not exceed £25,000).<sup>14</sup>

*When does the appointment take effect?*

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<sup>2</sup> Article 2(1) & (4)

<sup>3</sup> Essentially, land and anything affixed to land

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

<sup>5</sup> This figure will be able to be amended by Order of the Chief Minister

<sup>6</sup> Article 2(2)

<sup>7</sup> 'parent' and 'relative' includes adoptive parents and relatives (*Article 1*); a relative is defined as a grand-parent, a brother or sister (full or half-blood), an uncle or aunt or a first cousin; relatives by marriage or civil partnership are included

<sup>8</sup> Article 2(5)(a)-(d)

<sup>9</sup> Article 2(5)(e)

<sup>10</sup> Article 2(7)

<sup>11</sup> Article 2(8)

<sup>12</sup> Article 2(11)

<sup>13</sup> Article 2(9) & (10)

<sup>14</sup> This amount may be amended by Order – *see* paragraph 10 *above* (& footnote 5)

17 The appointment of a *tuteur* takes effect upon the individual taking the oath.<sup>15</sup> (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.<sup>16</sup> 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).

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)<sup>17</sup> 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 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.<sup>18</sup>

22 Various duties are imposed<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup>

24 When discharging someone from the office of *tuteur*, the Court must appoint a

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<sup>15</sup> Article 2(12)

<sup>16</sup> Article 3(1)

<sup>17</sup> See Article 3(2)

<sup>18</sup> Article 3(3)

<sup>19</sup> See Article 7 and Schedule 2

<sup>20</sup> Article 4(1)

<sup>21</sup> Article 4(2)

replacement if a *tuteur* is still needed;<sup>22</sup> and the Court is able to give all necessary directions for the administration of the minor's property.<sup>23</sup>

25 When the minor reaches 18, the *tuteur* ceases to hold office.<sup>24</sup> 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).<sup>25</sup> 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.<sup>26</sup>

### *Supervisory function of the Royal Court*

26 The Royal Court is empowered to give directions at any time<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup>

28 The Attorney General may apply to the Court for directions at any time (whether or not there is a *tuteur*).<sup>30</sup>

29 Any other person must obtain leave (whether or not there is a *tuteur*).<sup>31</sup>

30 The Royal Court would retain its role under the *Loi (1959) touchant la vente des immeubles de mineurs*. Under this *Loi*,<sup>32</sup> 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*

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<sup>22</sup> Article 4(3)

<sup>23</sup> Article 4(4)

<sup>24</sup> Article 5(1)

<sup>25</sup> Article 5(2)

<sup>26</sup> Article 5(3)

<sup>27</sup> Article 6(1)

<sup>28</sup> Article 6(2)(a)

<sup>29</sup> Article 6(3)(a) & (b)

<sup>30</sup> Article 6(2)(b) & (3)(c)

<sup>31</sup> Article 6(2)(c) & (3)(d)

<sup>32</sup> 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\(1959\)TouchantlaVentesImmeublesdeMineurs\\_RevisedEdition\\_31August2004\\_Translated.htm?Mode=Translated](http://www.jerseylaw.je/law/display.aspx?url=LawsInForce/Consolidated/18/18.845_Loi(1959)TouchantlaVentesImmeublesdeMineurs_RevisedEdition_31August2004_Translated.htm?Mode=Translated)

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.<sup>33</sup> It will also be an offence to administer property of a minor where this Law requires that a *tuteur* be appointed.<sup>34</sup>

32 There is protection for persons acting in accordance with directions given by a *tuteur* or who administers property only for the purpose of preserving it, or in accordance with directions given by the Royal Court.<sup>35</sup>

33 The above offences carry an unlimited fine and/or 12 months' imprisonment.<sup>36</sup>

34 A *tuteur* or former *tuteur* who neglects to file inventories and accounts as required by the Law<sup>37</sup> will be liable to a fine of level 3 on the standard scale.

#### *Existing tuteurs*

35 Anyone presently holding the office of *tuteur* will continue to function and be liable as though he/she had been appointed by the Royal Court under this Law<sup>38</sup> (albeit that his/her *électeurs* on the *tutelle* will cease to have any function).

#### *Power to amend the Law by Regulations*

36 The States will be able to make Regulations amending this Law.<sup>39</sup>

#### **Conclusion**

37 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.

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

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<sup>33</sup> Article 8(1)

<sup>34</sup> Article 8(3)

<sup>35</sup> Article 8(2), (4) & (5)

<sup>36</sup> Article 8(6)

<sup>37</sup> See Schedule 2

<sup>38</sup> Article 11(3)

<sup>39</sup> Article 13



Jersey

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

### Report

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### Explanatory Note

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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 other cases, a *tuteur* may be appointed, but isn't required. In particular, 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. 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* 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 6. Schedule 2*, given

effect by *Article 7*, imposes specific obligations on the former tuteur regarding the delivery of accounts and paperwork.

*Article 5* 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 7*, imposes specific obligations on the former tuteur regarding the delivery of accounts and paperwork.

*Article 6* 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 7* gives effect to *Schedule 2*, described below, and gives the Chief Minister power to amend *Schedule 2* by Order.

*Article 8* 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, 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 8* 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 (£2,000).

*Article 9* makes the standard provision for the liability of officers of a corporate or similar entity that commits an offence under the Law.

*Article 10* confers a power on the Royal Court to make rules of court for the purposes of the Law.

*Article 11* abolishes the customary law, to the extent that it requires the formation of a tutelle and concerns the appointment, duties and liabilities of électeurs. An électeur remains liable for anything that happens (or does not happen) before this provision comes into force. A person appointed as a tuteur by électeurs before the commencement of this Law shall be taken to have been appointed by the Royal Court under *Article 2*.

*Article 12* gives effect to *Schedule 3*, which amends or repeals other enactments consequentially upon the enactment of this Law.

*Article 13* empowers the States to amend this Law by Regulations.

*Article 14* 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.

*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, enactments are amended consequentially upon the abolition, by *Article 11*, of the requirement for a *tutelle* as well as a *tuteur*.

CONSULTATION DRAFT





Jersey

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

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CONSULTATION DRAFT





Jersey

## 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; and for connected purposes

*Adopted by the States*

*[date to be inserted]*

*Sanctioned by Order of Her Majesty in Council*

*[date to be inserted]*

*Registered by the Royal Court*

*[date to be inserted]*

**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 1969;

“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 2002;

“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;

“parent” includes an adoptive parent;

“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 or by adoption);

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

## 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, that exceeds £25,000.
- (2) A *tuteur* may be appointed in any other case.
- (3) The Minister may, by Order, amend the amount in paragraph (1)(b).
- (4) An application for the appointment of a *tuteur* must be made to the Royal Court.
- (5) 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.
- (6) 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.
- (7) Only an individual may be appointed as *tuteur*.
- (8) 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*.
- (9) The Royal Court shall appoint a *tuteur* in relation to all of the minor's property or, in accordance with paragraph (10), may appoint a *tuteur* only in relation to the minor's immovable property.
- (10) 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.
- (11) The Royal Court may, in any case, appoint more than one individual as *tuteur* in relation to the property of a minor.
- (12) 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 1771 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) 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 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 –
  - (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 6.

**5 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 minor's executor or administrator.
- (4) The general duties in paragraphs (2) and (3) do not derogate from the specific duties in Schedule 2.

**6 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.

**7 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 the 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 the 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 the Schedule.
- (2) The Minister may, by Order, amend Schedule 2.

**8 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) 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.
- (4) Paragraph (3) 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.
- (5) Paragraphs (1) and (3) do not apply to a person who administers the property of a minor in accordance with directions given by the Royal Court under Article 6.
- (6) The penalty for an offence under paragraph (1) or (3) is imprisonment for a term of 12 months and a fine.
- (7) 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.

## 9 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.

## 10 Rules of court

The power in Article 13 of the Royal Court (Jersey) Law 1948 to make rules of court includes the power to make rules of court for the purposes of this Law.

## 11 Abolition of customary law rules

- (1) The customary law requiring the formation of a *tutelle* and as to the appointment, duties and liabilities of the *électeurs* is hereby abolished.
- (2) Paragraph (1) does not affect the liability of an *électeur* for an act done by, or an omission of, a *tuteur* before the day paragraph (1) comes into force.
- (3) A person who, immediately before the commencement of this Law, holds the office of *tuteur* shall, on such commencement, continue to hold that office as if appointed under Article 2.

**12 Enactments repealed or amended**

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

**13 Regulations**

The States may, by Regulations, amend this Law.

**14 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.

CONSULTATION DRAFT

**SCHEDULE 1**

(Article 2(12))

**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]<sup>1</sup>; 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.

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<sup>1</sup> These words are added having regard to Article 2(10).

**SCHEDULE 2**

(Article 7(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(12);

“cessation date” means –

- (a) in relation to a *tuteur* who is discharged from office under Article 4, the date of such discharge;
- (b) in relation to a *tuteur* whose appointment ceases under Article 5, 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<sup>2</sup>;

“*tuteur*” includes a former *tuteur* who has been discharged from office under Article 4 or whose appointment has ceased under Article 5.

**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, if the Judicial Greffier so requires, have the accounts audited.
- (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

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<sup>2</sup> This definition is included having regard to Article 2(10).



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- (b) ending with the cessation date.
- (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 12)

**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 Jersey 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-Justiciers, the entry headed “CONTRATS” is deleted.
- 3 Age of Majority (Jersey) Law 1999 amended**  
Article 3 of the Age of Majority (Jersey) Law 1999 is repealed.
- 4 Children (Jersey) Law 2002 amended**  
In Article 7 of the Children (Jersey) Law 2002, paragraphs (12) and (13) are repealed.
- 5 Loi (1862) sur les Tuteurs repealed**  
The Loi (1862) sur les *Tuteurs* is repealed.
- 6 Code of 1771 amended**  
In the Code of 1771 –
  - (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 décrets 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 mineurs –



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- (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.

**9 Food Costs Bonus (Jersey) Regulations 2014 amended**

In paragraph 6 of the Schedule to the Food Costs (Bonus) (Jersey) Regulations 2014 –

- (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.

CONSULTATION DRAFT

