

Witness Name: Richard Whitehead
Statement No: First
Exhibits: RW1-RW87
Dated: 1st September 2014

THE INDEPENDENT JERSEY CARE INQUIRY

WITNESS STATEMENT OF RICHARD WHITEHEAD

I, **Richard William Whitehead**, of the Law Officers' Department, Morier House, St Helier, Jersey JE1 1DD will say as follows -

PART 1: INTRODUCTION AND BACKGROUND

1.1 Introduction

1. I am a Principal Legal Adviser in the Law Officers' Department and the Director of the Civil Division of the Department, a post I have held since 2009. I am a Barrister at Law in England and Wales. I was called to the Bar by the Honourable Society of the Middle Temple in November 1974. I have lived and worked in Jersey since December 1988, first as an Assistant Law Draftsman in the Law Draftsman's Office, then from February 1994 until January 2000, as a Legal Adviser in the Law Officers' Department and from then up to date as a Principal Legal Adviser.
2. I have been asked to assist the Independent Jersey Care Inquiry with evidence about the history and development of Jersey legislation relating to children and child care, from 1945 to the present day. In order to do this I have searched in the files kept in the Law Officers' Department and in the files kept by the States Greffe and Law Draftsman's Office relating to the various items of legislation.
3. A short description of the different types of legislation in Jersey may be helpful to set the scene.

1.2 Principal or primary legislation

4. **Laws** - are made by the Sates Assembly and sanctioned by Her Majesty in Council and registered in the Royal Court. They are principal or primary legislation and are thus equivalent to an Act of Parliament.
5. **Acts of the UK Parliament** - rarely, Acts may apply to Jersey directly. More commonly, but nowadays only infrequently, Acts may be extended to Jersey by Order in Council under a permissive extent provision. Section 107 of the Children Act 1989 is an example of such a provision, though it has not been used, of course. Extension may be with such modifications as are requisite. Extension of an Act is always done at the request of the Jersey Government. They rank as principal legislation.

1.3 Subordinate or secondary legislation

6. Permanent **Regulations** are made by the States Assembly but do not require Royal sanction. They are made by virtue of an enabling power in a Law (or rarely in an Act applying to Jersey) and they are subordinate or secondary legislation, except when they amend a Law, in which case they count for some purposes at least as principal legislation (see Article 1(1) Human Rights (Jersey) Law 2000). The closest UK parallel to this type of Regulations might be Regulations made in the UK which are subject to the affirmative resolution process in Parliament.
7. **Orders** - are also made under a provision in a Law (or in an Act applying to Jersey) but are made, since 2005, by a Minister, or before the coming into effect of Ministerial government, by a Committee of the States. Orders may be annulled by a resolution of the States (see Article 1, Subordinate Legislation (Jersey) Law 1960).
8. **Triennial Regulations** - are made by the States Assembly under an Order in Council of 1771, may exist for up to three years and may be renewed for successive periods of three years under an Order in Council of 1884, if they relate to purely municipal and administrative matters, do not infringe the Royal Prerogative and are not repugnant to the permanent political or fundamental laws of the Island. They count for some purposes as principal legislation (see Article 1(1) of the Human Rights (Jersey) Law 2000).

9. **Rules of Court** - governing the conduct of proceedings under a Law are made by the Royal Court either under specific enabling power in a Law or under the Royal Court (Jersey) Law 1948.
10. Other forms of legislation applying in Jersey but which are not likely to be relevant to the work of the Inquiry include:
 - a. Standing Orders governing proceedings in the States Assembly, prerogative Orders in Council;
 - b. Church measures;
 - c. Regulations and Orders made by a UK authority, usually a Minister or a body such as OFCOM, under an Act as extended to Jersey by an Order in Council; and
 - d. EU legislation within the scope of Article 355(5)(c) of the Lisbon Treaty and Protocol 3 to the UK Act of Accession to the EC Treaty, having direct effect in Jersey.
11. I should also mention, in addition to legislation, and of far greater antiquity in its origins, that the other principal source of Jersey law is the customary law, which is derived from the customary law of the Duchy of Normandy.

PART 2: CHILD CARE LEGISLATION IN FORCE IN 1945

12. The following child care legislation was in force in Jersey in 1945.
 - 2.1 **Loi appliquant à cette Île certaines des dispositions de l'Acte de Parlement intitulé "Children and Young Person's Act, 1933" (23 Geo. 5, ch 12), confirmé par Ordre de Sa Majesté en Conseil en date du 21 Février 1935 ("the 1935 Loi")**
 - a. The 1935 *Loi* introduced the elements of the UK's Children and Young Person's Act 1933, which related to criminal justice for children and young people and provided the Royal Court with the authority to order young offenders and young people in need of protection to be sent to an "Approved School". A letter from the Attorney General to the President of the Legislation Committee, dated 5th September 1934 shows that the coming into force of the UK Act was the trigger for repealing the "*Loi (1896) sur la détention de jeunes enfants &ca*", which the Attorney General said "*should*

be replaced by a new local law the provisions of which should be in harmony with the material provisions of the English law.”¹.

- b. The 1935 *Loi* also established the age of criminal responsibility at 8 years old (Art. 1), it did not allow anyone less than 17 years old to be sentenced to penal servitude (Art. 2) and prohibited the imposition of the death penalty on anyone under 18 years of age (Art. 3).
- c. The 1935 *Loi* set out the conditions under which the Royal Court could send people under 17 to an “Approved School”. This included those who had committed an indictable offence and “a person in need of protection” which was defined in Article 8 as a person under 17 years old who had no parents or anyone legally entitled to care for them, or who was neglected by his parents or legal guardians and as a result of keeping bad company was exposed to moral or physical danger or was not under effective control.
- d. Boys under 14 were sent to the States run Jersey Home for Boys, or any other Institution ready to receive them, until they were 16 under the 1935 *Loi* whereas girls under 14 were sent until the age of 18 to any Institution ready to receive them. The difference for girls and boys within the 1935 *Loi* was because there was no States run institution for girls when the 1935 *Loi* came into force. Elizabeth House, the institution which was set up to receive girls, was privately run at that time and could not be compelled in law to receive any particular girl.

Amendments

- e. *Proposed amendments*: a note found on the file, dated 10th July 1946 and signed by A.K. Tyrer² provided a list of suggested amendments to the Children and Young Persons Law 1935, in response to the Public Instruction Committee’s wishes to amend the Law “*so as to permit the control of children and young persons in need of care and protection, after they have left the Jersey Home for Boys or a similar institution, and so as to compel any such child or young person if necessary to follow the employment which has been found for him*”. The note provides suggestions to address the matter, linking each to similar provisions in the Children and

¹ Letter dated 5th September 1934 from Attorney General to President of the Legislation Committee [RW1]

² Note dated 10th July 1946 entitled Suggested Amendments to the Children and Young Persons Law, 1935 [RW-S1]

Young Persons Act 1933 and concludes by suggesting that to achieve this “it would probably be advisable to take the opportunity to enact legislation also on the lines of Parts I and II of the Children and Young Persons Act, 1933, which respectively deal with the prevention of cruelty and exposure to moral and physical danger as far as children and young persons are concerned, and impose restrictions on their employment.” There is no further correspondence on the files to show why these suggestions were not taken forward.

- f. 1947: an amendment was introduced in 1947, to vest in the Public Instruction Committee the right of parental responsibility for anyone placed in, or already in, an institution in Jersey until they reached 18 years old. This also applied to giving consent to marry³.
- g. *Unsuccessful amendments*: In January 1952 the Elizabeth House Committee proposed that the Loi should be amended to provide that the Royal Court could send female persons in need of care and protection to Elizabeth House as an alternative to sending them to an approved school⁴. Records of minutes, acts and correspondence of the Public Instruction Committee, the Greffier of the States, the Attorney-General and the Education Committee, show that this proposal was considered in some depth during the period 1952 – 1956⁵. During this time a further proposal was added to amend the Loi to empower the Royal Court to order a child to remain in an institution in the Island up to the age of 21 instead of 18. Ultimately, both proposed amendments were rescinded on the advice of the Attorney General who felt that the proposals would not receive Royal Assent⁶.
- h. 1957: an amendment was introduced to change the contribution from the parents or guardian of a person, ordered by the Royal Court to be sent to the Jersey Home for Boys or a similar institution, from a fixed rate of 23

³ Letter dated 24th October 1946 from Law Draftsman to Deputy Le Quesne, President of Public Instruction Committee [RW-S2]

⁴ Act of Elizabeth House Committee (11th Meeting) dated 11th January 1952 [RW-S3]

⁵ Act of Public Instruction Committee meeting dated 22nd January 1952; Letter dated 29th January 1952 to Law Officers of the Crown from Greffier of the States; Act of Elizabeth House Committee (14th Meeting) dated 8th April 1952; Minutes of Elizabeth House Committee (36th Meeting) dated 12th November 1954; Letter dated 11.2.55 with comments that AG agrees; Act of Elizabeth House Committee (40th Meeting) dated 11th February 1955; Minute of Elizabeth House Committee (41st Meeting) dated 18th March 1955; Act of Education Committee (102nd Meeting) dated 22nd March 1955; Act of Elizabeth House Committee (42nd Meeting) dated 15th April 1955; Act of Education Committee (104th Meeting) dated 3rd May 1955; [RW-S4]

⁶ Act of Education Committee (125th Meeting) dated 6th March 1956; Act of Elizabeth House Committee (56th Meeting) dated 20th April 1956 [RW-S5]

shillings a week so as to allow the Court complete discretion as to the amount of the contribution which it might require according to the means of the parents or guardians as the case might be⁷.

2.3 **Brig-y-Don Children’s Convalescent and Holiday Home Incorporation Law 1939**

- a. This Law, recognising the value of the Brig-y-Don home in providing respite care for children who were convalescing after an illness, physically weak and requiring a period of treatment in the open air or suffering from a curable, non-contagious disease, incorporated the “*Brig-y-Don Children’s Convalescent and Holiday Home*” enabling it to act as a business.

2.4 **Loi (1939) autorisant le transfert au Public de cette Île des immeubles appartenant à L’Asile dit: “The Jersey Female Orphans’ Home”**

- a. This institution was located in the Parish of Grouville. The purpose of this *Loi*, was to empower the Trustees of the Jersey Female Orphans’ Home to cede the “real property” belonging to that institution to the States of Jersey, free of all the conditions attached to it, with the exception of the condition that “*the Institution shall for all times be made use of solely as a Refuge or School (“Asile ou maison d’Éducation”) for poor children of the female sex who are orphans, or who have been abandoned by their parents.*”.
- b. Until this point, the Jersey Female Orphans’ Home had survived on donations from the public, contributions from the Parishes for girls in its care and occasional grants from the States of Jersey. The facilities had become run down and were described by the Attorney General and Solicitor General in their letter to the Lieutenant Governor, dated 3rd June 1939⁸, as “*neither adequate nor satisfactory*” and required an investment of £17,000 to bring it up to the standard of the Jersey Home for Boys, which would not be possible without significant public investment. Since the enactment of the *Loi appliquant à cette Île certaines des dispositions de l’Acte de Parlement intitulé “Children and Young Person’s Act, 1933”* the Jersey Female Orphans’ Home had gained a new importance and semi-official status as an “Approved School” and this *Loi* aimed to formalise that status “*to ensure that young girls will in the future receive the same high degree of*

⁷ Act of Prison Board dated 7th August 1957 [RW-S6]

⁸ Letter dated 3rd June 1939 from Attorney General to Lieutenant Governor (ref 39/12) [RW2]

comfort and of advantage as is now, and has been for many years, received by the boys at the Jersey Home for Boys”⁹.

2.5 Loi concernant les témoignages d’enfants dans les poursuites criminelles 1940

- a. This *Loi* enabled the unsworn evidence of a child to be received in criminal proceedings, if the child was of sufficient intelligence to give evidence and understood the duty to tell the truth. However, if the child was a witness for the prosecution, confirmation (corroboration) by another witness was needed in order to convict the accused.

2.6 Loi sur la Protection de l’Enfance 1940

- a. This *Loi* had an unusual, perhaps unique, procedural history. It was adopted by the States on 20th February 1940 and sanctioned by the Privy Council on 26th June 1940 but could not be registered in the Royal Court (a process which all Jersey principal legislation is normally required to go through before it can be brought into force) until 9th June 1945. This was because Jersey was occupied by German forces from 1st July 1940 until May 9th 1945. The *Loi* was brought in to protect children who were placed in private foster care in return for a fee. The *Loi* made any such child the object of a supervision order to protect their life and health by requiring that any person taking in a child for money obtained authorisation from the Public Health Committee. The *Loi* set out the conditions that the foster parent must meet to receive such authorisation, including: a certificate of good living and morals from the Connétable of the parish in which the foster mother lived; a certificate of aptitude from a registered doctor; and, a health certificate from a health inspector. The *Loi* also placed a requirement on both the parent(s) and the foster carer to communicate any changes in care to the Medical Inspector.
- b. Examination of files relating to the *Loi* reveals the following issues of possible relevance for this Inquiry -
 - b (i) In a letter dated 14th October 1950 to the Attorney General, the Medical Officer of Health (“MoH”)¹⁰ proposed a draft regulation to

⁹ Ibid.

¹⁰ Letter dated October 14th 1950 from Medical Officer of Health to Attorney General [RW3]

be made under the *Loi* which would enable the Public Health Committee to pay for the upkeep of foster children and to receive part or all of the payment from parents or guardians. The Attorney General responded by letter dated 2nd November 1950¹¹, that although he agreed with the arrangements proposed within the draft Regulations, there were no *vires* in the *Loi* for making them and the only basis for making provision on the lines of the proposed Regulations was by amending the Law itself.

- b (ii) In a letter from the MoH to the Solicitor General dated 29th August 1951¹², the MoH explained tension between the MoH and the Parish leading to dissatisfaction with the way in which the provisions of this Law were being executed. He sought advice from the Solicitor General about who had overall administrative control, as he felt that the Public Health Committee was responsible in law. A file note dated 6th September 1951¹³ recorded that in conversation with the MoH the Solicitor General had agreed with the MoH's stated legal position and had recommended that the MoH try to "*straighten out the matter with the Constable as a first step*" and offered to "*arrange a conference*" between himself and the parties if this was not successful. No further correspondence on this matter is available in the files.
- b (iii) In a letter dated 5th February 1954¹⁴, the MoH raised further concerns that children boarded out or otherwise under the care of the States came under the supervision of three separate bodies (the Public Health Committee, the Public Instruction Committee and the Poor Law Commission and the Constable - these last two being regarded as one body) with no clear overall control for one of those bodies. He felt that the "*multiplicity of control leads at times to children being pushed around like cattle to their mental and physical detriment*". He explained that he had tried to form a committee at the administrative level but that it had failed. He sought confirmation from the Attorney General that power be vested in one

¹¹ Letter dated 2nd November 1950 from Attorney General to Medical Officer of Health [RW4]

¹² Letter dated 29th August 1951 from the MoH to the Solicitor General [RW5]

¹³ File note dated 6th September 1951 [RW6]

¹⁴ Letter dated 5th February 1954 from Medical Officer of Health to Attorney General [RW7]

committee, namely the Public Health Committee, who would be ultimately responsible “*if a foster child died under conditions which on investigation by the Court were unsatisfactory*” so that he could use it to “*strengthen his hand*” when calling the other organisations together to give the proposed administrative committee their official blessing. There is no evidence on the files that the death of a child in a private fostering had prompted the MoH’s concerns.

- b (iv) It is unclear from the files, whether he received the confirmation he sought.
- c. The *Loi* was repealed in 1969, when the Children (Jersey) Law 1969 came into force.

PART 3: CHILD CARE LEGISLATION INTRODUCED SINCE 1945

3.1 1945 - 1968

3.1.1 Adoption Laws

(i) *Adoption of Children (Jersey) Law 1947 (and amendments)*

- a. The Adoption of Children (Jersey) Law 1947 (originally referred to as the draft Adoption of Infants (Jersey) Law 19.) was based on the Adoption of Children Act 1926 (9 Stat.827) as amended by the Adoption of Children (Regulation) Act, 1939 (32 Stat.305) with a few minor amendments to reflect that Jersey did not have any adoption societies¹⁵. An “infant” is defined in the Law as a person under the age of 20, whereas the 1926 Act defined an “infant” as a person under the age of 21. The difference was “*to bring the proposed Law into line with existing legislation in Jersey*”¹⁶. Twenty was historically the age of majority under the customary law of Jersey until it was reduced to 18 by the Age of Majority (Jersey) Law 1999, with effect from 1st November 1999.
- b. Although there is nothing within the files to indicate this, the timing of its enactment might seem to support anecdotal evidence suggests that the trigger for bringing in this legislation in Jersey at that time was the number of illegitimate births both during and post war. As well as providing some

¹⁵ Notes on the Draft Adoption of Infants (Jersey) Law 19- [RW8]

¹⁶ Notes on Draft Adoption of Infants (Jersey) Law 19- [RW9]

legal protection for parents who had taken in orphaned and/or illegitimate children as their own, this Law enabled mothers of illegitimate children to adopt their child with a new husband.

- c. In 1957, the Adoption of Children (Amendment) Jersey Law 1957 was introduced to allow the adopted child or adopter to benefit from insurance policies that were taken out in the name of the child by the natural parents.
- d. In 1959, a further amendment (Adoption of Children (Amendment No. 2) Jersey Law 1959) was introduced to change the meaning of the word “abroad” to mean outside the British Islands. The amendment of the Jersey Law was triggered by an equivalent amendment of the adoption law in England and Wales, as notified by letter dated 28th June 1957¹⁷ from A.D. Gordon-Brown (Home Office) to the Attorney General. In his response dated 6th August 1957¹⁸ the Attorney General agreed with the proposition and asked to be kept informed as to whether the proposal was adopted in the UK as he noted that a reciprocal change of Jersey’s law would be required so the UK would no longer be regarded as “abroad” for the purposes of the Adoption of Children (Jersey) Law 1947. This was duly done¹⁹.

(ii) Adoption (Jersey) Laws 1961-1965

- a. The Adoption (Jersey) Law 1961 closely followed the Adoption Act 1958 of England and Wales except for in one important respect. As explained in a letter from the Attorney General to Mr Gordon-Brown, Home Office, dated 5th February 1962²⁰. Whereas, under section 16(1) of the Adoption Act 1958, an adopted child lost any right to property to which he might have been or become entitled as the child of his natural parents but acquired instead new rights of property as the child of the adopter, the corresponding Article 15 in the Adoption (Jersey) Law 1961 worked in the opposite way in that an adopted child retained its rights to property to which he may have been or become entitled as the child of his natural parents, but did not acquire any new rights to property as the child of the adopter.

¹⁷ Letter dated 28th June 1957 from A.D. Gordon-Brown, Home Office to C.S. Harrison, Attorney General [RW10]

¹⁸ Letter dated 6th August 1957 from C.S. Harrison to A.D. Gordon-Brown [RW11]

¹⁹ Letter dated 26th August 1958 from A.D. Gordon-Brown to R.H. Le Masurier, Solicitor General [RW12]

²⁰ Letter dated 5th February 1952 from Attorney General to A.D. Gordon-Brown, Home Office [RW13]

- c. Firstly, following dissatisfaction expressed by a number of States Members in relation to the difference in inheritance rights outlined above, the Education Committee quickly brought forward a proposition to reflect the provisions of section 16(1) of the Adoption Act 1958.
- d. Secondly, a working group was brought together with representatives from the Island, England and Wales, Scotland, Northern Ireland, Isle of Man and Guernsey to effect changes in the respective laws to accord reciprocal recognition of adoption orders between the separate jurisdictions of the British Isles²¹. Following this the Deputy Bailiff wrote to the President of the Legislation Committee to inform him that the Home Office was preparing legislation to secure reciprocal recognition of adoption orders between the various jurisdictions of the British Isles²².
- e. Subsequent Acts of the Legislation Committee²³ show that this amendment was debated and agreed and both amendments were enacted in the Adoption (Amendment) (Jersey) Law 1965.

3.1.2 Public Instruction Committee Act 1953

- a. This executive act²⁴, which replaced the Public Instruction Committee Act of 4th December 1949²⁵, whilst not strictly speaking legislation is relevant. It set out the conditions for the reception of children into the care of the Public Instruction Committee. This replacement Act came about on the advice of the Treasurer of the States that there was no legal authority for the Public Instruction Committee to increase the charges for children boarded out with foster parents²⁶.

²¹ Note of a meeting held at the Home Office (Thames House South) on 15th July to discuss the recognition of adoption orders in the British Isles [RW14]

²² Letter dated 17th September 1963 from Deputy Bailiff to President of the Legislation Committee [RW15]

²³ Acts of the Legislation Committee dated 6th December 1963, 4th December 1964 and 15th January 1965 [RW16]

²⁴ Act, dated 17th November, 1953, of the Public Instruction Committee Submitting to the States, for their Information, Conditions for the Reception into Care of the Public Instruction Committee [RW17]

²⁵ Act, dated 3rd December, 1946, relating to the admission of children to, and withdrawal of children from, the Westaway Creche, the Jersey Home for Boys and the Jersey Home for Girls (lodged 18-12-46, adopted 20-01-47) [RW-S7]

²⁶ See Act of Public Instruction Committee (45th Meeting) dated 8th June 1953; Act of Finance Committee dated 17th June 1953; Act of Public Instruction Committee (46th Meeting) dated 23rd June 1953; letter dated 18th July 1953 from States Auditor to President of the Finance Committee; Act of Finance Committee dated 29th July 1953 [RW18]

- b. A report entitled Children Boarding Out presented at a meeting of the Public Instruction Committee in October 1953²⁷ stated that “*the boarding out of children as a definite policy of the [Public Instruction] Committee began in 1949 (Act of Committee 4/4/49) when the Institutions were overcrowded.*”. Boarding out was considered by the Committee “*as an extension of boarding at one or other of the Institutions. A special amount was included in the Budget and claims have been made on the Constables and others for repayment*”. It was only when the Public Instruction Committee decided to increase the fee levied for children boarded out that it became evident that the charging regime needed to be regularised. An Act of the Public Instruction Committee in November 1953 shows that from 1st November 1953 the Poor Law Commission agreed to pay the fees formerly paid by the Public Instruction Committee to foster parents in respect of children chargeable to the Parish of St Helier²⁸.
- c. The Act required applications to take over the care of a child to be made by the Constable or other authority or person responsible for the maintenance of the child (Art. 1(1)) and to be accompanied by a recent certificate of health, signed by a medical practitioner (Art. 1(2)). The Committee could, at its discretion, admit the child to a Children’s Home (*i.e.* Westaway Crèche, Jersey Home for Boys or Jersey Home for Girls (Art. 5)) or a private home (Art. 2) and also had the right to refuse to receive a child into its care under certain conditions set out in Art. 3. The Constable or other authority or person responsible for the maintenance of the child in the care of the Committee also had to pay a fee towards the cost of maintenance of the child (Art. 4).
- d. In 1955 the name of the Public Instruction Committee was changed to the Education Committee²⁹ and subsequent amendments were made by Acts of the Education Committee dated 22nd March 1960³⁰, 4th December 1963³¹ and 25th December 1965³² to increase the level of payments levied.

²⁷ Act of Public Instruction Committee (54th Meeting) dated 13th October 1953 with accompanying note entitled “Children Boarded Out” [RW19]

²⁸ Act of Public Instruction Committee (57th Meeting) dated 10th November 1953 [RW-S8]

²⁹ Public Instruction Committee (Change of Name) (Jersey) Act, 1955 [RW20]

³⁰ Act of the Education Committee dated 22nd March 1960 [RW21]

³¹ Act of the Education Committee dated 4th December 1963 [RW22]

³² Act of the Education Committee dated 28th April 1965 [RW23]

3.1.3 Various laws relating to homes

- (i) *Jersey House of Help (Transfer to Public) (Jersey) Law 1960* - as the name suggests, this Law transferred the property housing the Jersey House of Help to the public.
- (ii) *Haut de la Garenne Act 1960* – an executive Act of the States rather than legislation, adopting a decision of the Education Committee to change the name of “Jersey Home for Boys” to “Haut de la Garenne”. This coincided with the reception of females to the institution after the closure of the Jersey Home for Girls in 1959.
- (iii) *Jersey Female Orphans’ Home Law 1961* - annulled a condition subject to which the Jersey Female Orphans’ Home was ceded to the public of the Island and authorised the transfer of the trust funds of this institution to the States. This was to reflect the fact that “*the States have for some time and with considerable success been pursuing the policy of boarding-out orphan children in private homes and of maintaining those who could not be so boarded-out, both boys and girls, in one institution and the institution chosen for that purpose, because much better suited to it, is the one originally provided for boys*”³³.
- (iv) *Westaway Trust (Amendment No. 2) (Jersey) Law 1966* - as a result of the decision to accommodate all “*poor and abandoned children . . . in the children’s home now established in the Island*” thereby rendering the property in which the Westaway Creche was housed redundant for its original purpose, this Law annulled the condition on which the Westaway Creche was transferred to the public of the Island.

3.2 1969 - 2000

3.2.1 Children’s Benefits Funds (Jersey) Law 1969

The Law consolidated a number of different funds established by bequests, devises or gifts into one fund to be applied for the benefit of children in the care of the States.

³³ Letter dated 29th March 1961 from Attorney General and Solicitor General to the Lieutenant Governor [RW24]

3.2.2 Children (Jersey) Law 1969 (plus associated Orders and Rules)

This Law was the major piece of legislation bringing together and repealing almost all of the existing child care and welfare legislation in Jersey, with the exception of the Adoption laws.

Provisions of the Law

Part I: Introduction

- a. These Articles contained the interpretation provisions and placed the Education Committee under a duty to provide or arrange for the provision of remand centres.

Part II: Employment

- a. These Articles contained controls on the employment of young people.

Part III: Children exposed to physical and moral danger

- a. Article 9 set out the punishments for inflicting cruelty on persons under 16 years of age.
- b. Article 10 gave the Bailiff authority to issue a warrant to a police officer, or officer of the Committee, to search for or remove a child under 17 years of age to a place of safety, if there was cause to believe that the child was being mistreated.

Part IV: Protection of children in relation to judicial proceedings

- a. This Part of the Law included provisions relating to judicial proceedings for young offenders (Arts 11-26) and also for judicial proceedings for children and young people “*in need of care, protection or control.*” (Arts 27-28).
- b. Article 11 increased the age of criminal responsibility to 10 years of age.
- c. Part IV also included ancillary provisions relating to “fit persons” (Arts 29-31) and the return to the family of a person committed to the care of the Committee.
- d. Articles 36 - 37 contained special procedures with regard to offences specified in the First Schedule, which included particularly serious offences against a child such as murder, sexual offences, assault and stealing a child.

- e. Articles 38- 48 established the Juvenile Court and set out its jurisdiction and powers and the procedures to be followed in the Juvenile Court.

Part V: Protection of Children of Parties to Proceedings for Divorce, Nullity of Marriage or Judicial Separation

- a. This Part made provision in relation to the children of persons who are involved in proceedings under the Matrimonial Causes (Jersey) Law 1949 for divorce etc. They included powers for the Matrimonial Division of the Royal Court to make orders committing children to the care of the Education Committee (Art. 53) or to provide for supervision of children by a welfare officer or the Committee (Art. 54).

Part VI: Protection of Foster Children and certain children during school holidays

- a. Articles 55 - 67 set out comprehensive measures for ensuring the well-being of foster children. These articles both placed a duty on the Education Committee and also provided it with certain rights to ensure that foster children in Jersey were properly looked after and protected.

Part VII: Nurseries and child-minders

- a. Articles 68 - 76 introduced a registration scheme for nurseries and child-minders of children under school age and vested in the Committee the power to impose requirements in connection with registration.

Part VIII: Voluntary homes

- a. Articles 77 - 81 defined “voluntary homes” and governed the registration of such homes and the standards required.

Part IX: Duty of Committee to assume care of children

- a. Article 82 placed a duty on the Committee to assume care of children who were temporarily or permanently abandoned by their parents. Articles 83 - 87 set out the conditions surrounding a “parental rights order”.

Part X: Treatment of children in care of Committee

- a. This part of the Law (Arts 88 - 91) relates to the powers and duties of the Committee in relation to children committed to its care.

Part XI: Contributions towards maintenance of children

- a. Under this part of the Law (Arts 92 - 97), parents had a duty to pay a financial contribution to the Committee for the care of their child.

Part XII: Escapes from remand centres and approved schools, and from care of fit persons

- a. Articles 98 - 100 make it an offence both to escape from a remand centre or approved school and to assist anyone to do so.

General

- a. Articles 101 - 109 contain a miscellany of provisions relating to a variety of issues, such as service of notices, determination of age, obstruction of officers.
- b. The 1969 Law repealed the following Laws -
 - i. Articles 7 and 8 of the "*Loi (1895) modifiant le droit criminel*"
 - ii. The "*Loi appliquant à cette Ile certaines des dispositions de l'Acte de Parlement*" intitule "Children and Young Persons Act, 1933" (23 Geo. 5, c.12), confirmed by Order of His Majesty in Council of the twenty-first day of February, 1935.
 - iii. The "*Loi (1940) concernant les témoignages d'enfants dans les poursuites criminelles*"
 - iv. The "*Loi (1940) sur la Protection de l'Enfance*"
 - v. The "*Loi pour investir le Comité d'Instruction Publique des droits paternels à l'égard des personnes qui ont été trouvées par la Cour Royale en besoin de protection et qui ont été envoyées à une Institution dans cette Ile*"
 - vi. The Children (Criminal Proceedings) (Jersey) Law 1956 (gave power to the Courts to order parents to pay costs or fines for children under 17 years of age).
 - vii. Article 2 and paragraph (2) of Article 8 of the Criminal Justice (Jersey) Law 1957

- viii. The “*Loi appliquant à cette Ile certaines des dispositions de l’Acte de Parlement*” intitule “Children and Young Persons Act, 1933” (23 Geo. 5, c.12), confirmed by Order of His Majesty in Council of the twentieth day of December, 1957.

Discussion – the genesis of the 1969 Law

- a. There appears to have been a general recognition from the late 1950s/early 1960s that new, all-encompassing children’s legislation was required.
- b. The preamble to a report prepared in early 1960 by the Children’s Officer Patricia Thornton, Children’s Sub-Committee, entitled “Suggested new children’s legislation”³⁴ starts -
- “The Legislation which I am suggesting that we build our new Children’s Legislation on is -*
- *The Children and Young Person Act (Northern Ireland) 1950.*
 - *The Children and Young Person Act 1933, and the Jersey Acte des États 1935 based on the Children and Young Person Act 1933.*
 - *The Children Act 1948, and the Boarding-Out of Children Regulations 1955.*
 - *The Children Act 1958.*
 - *The Matrimonial Proceedings Children’s Bill 1958.*
 - *The Jersey Loi (1940) sur la protection de l’enfance, and the Child Welfare Memorandum’s Act of the Education Committee No. 3388 dated the 17th November 1953 and No.4128 dated the 22nd March 1960.”*
- c. The report included a comprehensive table showing how each of these pieces of legislation was covered in the draft bill.
- d. Within the files are further tables³⁵ setting out the various Acts, Regulations and Laws mentioned above to cross-check how the principles of each have been included within the draft law, which eventually became the Children

³⁴ Report by Patricia Thornton of the States of Jersey Education Committee. Children’s Sub-Committee, entitled “Suggested new Children’s Legislation”, dated 30th May 1960 sent to States Greffier. [RW25]

³⁵ Tables (undated) showing cross-referencing of Laws new Children (Jersey) Law 196- [RW26]

- (Jersey) Law 1969, and annotated copies of the Children Act 1958³⁶ and the Matrimonial Proceedings (Children) Act, 1958³⁷, which show how these law were to be adapted to suit Jersey's legislative requirements.
- e. A draft copy of the Bill was circulated by the States Greffe for comment in October 1961³⁸. In his notes on the proposed Bill, dated 18th January 1962, the Police Magistrate, R.E.B. Voisin, makes the point that in the absence of a local detention centre he *"fail[ed] to see how the law [could] operate"*³⁹. Further comments are included in the file, which also appear to be from the Police Magistrate R.E.B Voisin⁴⁰, along with notes from the Law Draftsman⁴¹. These are undated but from their placement in the file would appear to be from later in 1962 or early in 1963. Further comments were received from Mr Voisin again in January 1964⁴² and from Mr Newell, also a Police Court Magistrate, in February 1965⁴³, to which the Attorney General replied in May 1965⁴⁴. This second exchange centred around the local provision of a Detention Centre before the new Children Law came into force in Jersey.
- f. Concurrently, the Children and Young Persons Bill was making its way through its various stages to becoming an Act in the UK. Correspondence between Miss Wakeman of the Home Office and the Attorney General highlighted provisions within the Bill of interest to Jersey relating to the arrest in one part of the British Islands of children or young persons escaping in another part⁴⁵. The Children and Young Persons Act 1963 came into force in the UK in October 1963 and February 1964 and was registered and published in Jersey, at the request of the Island authorities, in March 1964. This had the effect of giving notice to Jersey that it had been

³⁶ Annotated copy of The Children Act 1958 [RW27]

³⁷ Annotated copy of The Matrimonial Proceedings (Children) Act, 1958 [RW28]

³⁸ Letter dated 7th October 1961 from States Greffe to Miss Thornton, Children's Officer with draft copy of the Children (Jersey) Law 196 . attached. [RW-S9]

³⁹ Notes of R.E.B. Voisin, Police Magistrate on Children (Jersey) Law 196- [RW29]

⁴⁰ Comments from R.E.B. Voisin, Police Magistrate entitled "Childrens Law" (undated but appear from place in file to be from the end of 1962 / beginning of 1963) [RW-S10]

⁴¹ Note on latest draft of Children Law (ref EJP/MM/301) by Law Draftsman (undated but appear from place in file to be from the end of 1962 / beginning of 1963) [RW-S11]

⁴² Letter dated 4th January 1964 from R.E.B. Voisin to E.J.M. Potter, Law Draftsman [RW-S12]

⁴³ Observations of Mr Newell, Police Court Magistrate on Part IV of Children's Bill (February 1965) [RW-S13]

⁴⁴ Letter, dated 17th May 1965, with attachment, from Attorney General to M. Newell, Police Court Magistrate [RW-S14]

⁴⁵ Letters from Miss Wakeham, Home Office to Attorney General dated 2nd October 1962 and 7th June 1963. Letter from Attorney General to Miss Wakeham, Home Office, dated 24th October 1962 [RW-S15]

passed in the UK so that although it was not essential to its operation in Jersey 'Her Majesty's subjects' in Jersey were bound by it⁴⁶.

- g. From its inception to the enactment of the 1969 Law took almost 10 years. It provided, in the widest sense, for the general welfare and well-being of children and young persons in Jersey. One of the reasons for the delay in the second half of the decade when a first draft was sent to the Home Office for comment was because the UK authorities were occupied with a complete overhaul of the UK criminal justice system for young offenders and in turn these changes needed to be reflected in the forthcoming Jersey Children Law. This is because, at that time, Jersey sent all of its young offenders, who were sentenced to detention, to an institution in the UK as there was no local facility.
- h. There are a number of references within correspondence between the Attorney General and the Home Office recognising the need to rectify the deficiencies within Jersey's child care legislation at that time. For instance, in 1965 in a letter dated 29th May 1965, the Attorney General provided to D.B. Staines of the Home Office⁴⁷, four copies of Jersey's proposed Children (Jersey) Law 196- and requested comments on the draft Bill from the Home Office and other appropriate authorities. This letter opened with the sentence "*The existing law of the Island concerning children and young persons is substantially inadequate, and many important aspects of this subject are not covered by any Insular legislation at all.*". The Attorney General further remarked that "*The Bill re-enacts, with amendments, certain parts of the existing insular enactments governing children and young persons, but many of the provisions of the Bill are new and are based on United Kingdom legislation.*". The Attorney General further noted that the UK government was also undertaking a major reform of the trial and treatment of young offenders and asked to be informed if anything within it would affect Jersey's Bill.
- i. The response to this letter was received on 24th September 1965⁴⁸ explaining that the delay was due to the general review of UK law and practice being undertaken at that time, which had resulted in Command

⁴⁶ Notification of the registration of The Children and Young Persons Act 1963 in Jersey, dated 26th March 1964 [RW-S16]

⁴⁷ Letter dated 29th May 1965 from Attorney General to D.B. Staines, Home Office [RW30]

⁴⁸ Letter dated 24th September 1965 from D.B. Staines, Home Office to Attorney General [RW31]

Paper 2742. In light of this, the Home Office asked whether Jersey would “prefer to consider whether the proposals in the Command Paper are likely to affect your own proposals before [the Children’s Department] proceed further with a detailed consideration of your draft.”

- j. The Solicitor General immediately responded on behalf of the Attorney General (in a letter dated 30th September 1965⁴⁹) that the appropriate authorities in Jersey would examine the impact of the proposals in the Command Paper on their Bill. This was duly done and a report from the Education Committee dated 26th January 1966⁵⁰ noted that the Education Committee had approved a recommendation from the Attorney General that the Committee should proceed to bring the present draft into force, with the exception of Part IV, which dealt with the establishment of a juvenile court.
- k. The following day, 27th January 1966, the Solicitor General wrote again to Mr D.B. Staines at the Home Office⁵¹ requesting that the Children’s Department proceed with a detailed consideration of the remainder of the Bill as “. . . the present state of the law of Jersey governing children is so inadequate for modern needs that the Committee would like to press forward with the Bill, so that at least some of the provisions which are urgently required can be brought into force as soon as possible”.
- l. There appears to have been a delay in receiving comments from the Children’s Department of the Home Office during 1966. The Attorney General wrote to Mr D.B. Staines in August 1966⁵², re-emphasising the inadequacy of Jersey’s existing laws on children, stating that “we are continually having to try to improvise in order to keep in step with modern ideas on child care and treatment” and requesting observations so that it would be possible to keep to the proposed timetable of introducing the Bill in early 1967. Concerns about the delay were also raised by the Education Committee⁵³ and shared in a confidential memo by the Attorney General who wrote in a letter to the Director of Education dated 20th September 1966 that he had “written to, and telephoned, the Home Office several times

⁴⁹ Letter dated 30th September 1965 from Attorney General to the Home Office [RW32]

⁵⁰ Act of the Education Committee dated 26th January 1966 [RW33]

⁵¹ Letter dated 27th January 1966 from the Attorney General to D.B. Staines, Home Office [RW34]

⁵² Letter dated 6th August 1966 from Attorney General to D.B. Staines, Home Office [RW35]

⁵³ Minutes of the Children’s Sub-Committee of the Education Committee, dated 24th August 1966 [RW36]

since the beginning of the year". In his view it was "pointless to present the Bill to the States until the Home Office comments [had] been received".⁵⁴

- m. Comprehensive comments on the draft Bill were received from the Home Office in November⁵⁵ ⁵⁶ and December 1966⁵⁷, resulting in a number of changes to the draft Bill followed by a meeting in January 1967 of the relevant parties in Jersey to discuss the policy implications of the changes suggested by the Home Office. After further consideration, a new and, it was hoped, final draft of the Bill was sent to the Home Office in October 1967⁵⁸ for comment. Further comments were provided by the Home Office to the Attorney General in January 1968⁵⁹, which necessitated further amendments to the Bill, to which the Attorney General responded later in the same month.⁶⁰
- n. In a letter dated 11th July 1968⁶¹ the Home Office wrote to the Attorney General informing him of proposals which were to be implemented in a UK Bill, which would have the effect of abolishing approved schools and replacing them with residential establishments run by local authorities. At that time, all young offenders sentenced in Jersey were sent to approved schools in the UK to serve their sentence as there was no suitable institution in Jersey. The Home Office suggested that "*it might be possible to arrange for [Jersey's] children to be accommodated in the new residential establishments run by [the UK's] local authorities on a repayment basis*" but could not guarantee it until after discussions with the local authorities. The Home Office asked for Jersey's initial views on the matter.
- o. Further internal and external correspondence⁶² recognised that there would be a need to amend further the draft Jersey Bill as a result of the UK Government's decision to abolish approved schools and concluded that Jersey would wish to have the option of sending young people who up until

⁵⁴ Memo dated 20th September 1966 from Attorney General to Director of Education [RW37]

⁵⁵ Letter dated 15th November 1966 from Home Office to Attorney General, with accompanying notes [RW38]

⁵⁶ Letter dated 22nd November 1966 from Home Office to Attorney General, with accompanying notes [RW39]

⁵⁷ Letter dated 20th December 1966 from Attorney General to the Home Office [RW40]

⁵⁸ Letter dated 10th October 1967 from Attorney General to Home Office [RW41]

⁵⁹ Letter dated 10th January 1968 from Home Office to Attorney General [RW42]

⁶⁰ Letter dated 17th January 1968 from Attorney General to Home Office [RW43]

⁶¹ Letter dated 11th July 1968 from Home Office to Attorney General, plus attached Command Paper 3601 entitled "Children in Trouble" [RW44]

⁶² Correspondence dated August and September 1968 [RW45]

that point had been committed to approved schools to the successor institutions. There was further correspondence from the Home Office on this issue during the rest of the year as progress was made on the UK Bill⁶³. However, the Jersey authorities decided not to delay the Law further by waiting for the UK Bill in full recognition of the fact that it would be necessary to bring in an amendment, as required, once the UK's Children and Young Persons Bill came into force⁶⁴.

- p. The States finally adopted the Children (Jersey) Law 1969 on 22nd April 1969, it was sent for Royal Assent on 4th June 1969⁶⁵ and it came into force, with the exception of Articles 38-41 and the Second Schedule, on 1st January 1970⁶⁶. The remaining parts of the Law came into force on 1st September 1970⁶⁷.

3.2.3 Amendments of the Children (Jersey) Law 1969 (“the principal Law”)

(i) *Children (Amendment) (Jersey) Law 1972*

Provisions of the Law

- a. The effect of this amendment was to remove all references to “approved school” and “approved school orders” in the principal Law following the abolition of approved schools in the UK.
- b. Other amendments included a change in the wording of Article 10 of the principal Law to enable the Bailiff to issue a warrant to search for and remove a child under the age of 17 on the ground of apprehension as to any future ill-treatment of a child, not just when there was reasonable cause to suspect it was actually happening, as was the case with the principal Law, as enacted.
- c. Finally, in the correspondence between the Home Office and the Attorney General there was some discussion about co-ordinating the upper and lower age limits for borstal training. To achieve this, an amendment was introduced to remove the necessity to amend the principal Law by means of

⁶³ Letter dated 10th December 1968, from Home Office to Attorney General [RW46]

⁶⁴ Act of Education Committee dated 25th September 1968 [RW47]

⁶⁵ Letter dated 4th June 1969 from Solicitor General to Deputy Governor [RW48]

⁶⁶ Jersey R&O 5300, Children (Jersey) Law, 1969 (Commencement) Act 1969 [RW49]

⁶⁷ Jersey R&O 5375, Children (Jersey) Law, 1969 (Commencement) (No. 2) (Jersey) Act 1970 [RW50]

a “*Projet de Loi*” in the event of ages applicable to Borstal training in the UK being varied (Art. 3).

Discussion

- a. The trigger for bringing the 1972 Amendment into force was the need to reflect the far-reaching changes in the treatment of young offenders in the UK, which resulted in the abolition of approved schools and consequently approved school orders⁶⁸. At that time there was no facility in Jersey to deal with young offenders locally and so young persons who the court felt should be removed from their homes were sent, on the issue of an approved school order by the Royal Court, to an approved school in the UK. Following the introduction of the Children and Young Persons Act 1969, approved schools were replaced in England and Wales with community homes under the control of the local authority.
- b. This amendment was the subject of considerable discussion and correspondence between the Home Office and the Jersey authorities throughout 1969 and 1970⁶⁹ before it came into force. There were two debates running in parallel, firstly on a practical level what form the transitional arrangements would take whilst the new legislation and the new centres were coming into being. Secondly, the type of order that would be needed to ensure that there was provision within the UK’s new legislation to enable children from Jersey to be accommodated in the community homes and similarly, the provisions that would be needed within Jersey law to allow that to happen, subject to appropriate safeguards.
- c. In the meantime the Home Office drafted the “*Children and Young Persons (Designation of Jersey Order) Order 1972*” to enable the Secretary of State to authorise a local authority in England or Wales to receive into their care any person who was the subject of an order made by a court in Jersey (and

⁶⁸ Letter dated 10th June 1969 from Home Office to Attorney General [RW51]

⁶⁹ Letters dated: 18th June 1969 from Children’s Officer to Attorney General; 19th June 1969 from Senior Probation Officer to Attorney General; 10th July 1969 from Home Office to Attorney General; 14th July 1969 from Lieutenant-Governor to Bailiff; 7th August 1969 from Attorney General to Director of Education; 5th June 1970 from Children’s Officer, Jersey to Miss Cooper, Children’s Department Inspectorate, Home Office; 29th June 1970 from Home Office to Children’s Officer; 20th July 1970 from Attorney General to Miss Turner; 13th August 1970 from Attorney General to Miss Turner, Home Office; 21st August 1970 from Miss Turner, Home Office to Attorney General; 26th August 1970 from Attorney General to Miss Turner, Home Office; 30th November 1970 from Home Office to Attorney General. [RW52]

similar Orders were made in respect of the Isle of Man and other Channel Islands), which was designated for that purpose. The wording of this Order provided some flexibility as to which order was used by the Jersey court.

- d. This Order designated a fit person order made by virtue of Article 31 of the principal Law (which enabled a fit person order made by the Royal Court to provide for the committal of the child who is subject to the order to the care of the Education Committee) for the purposes of section 26 of the Children and Young Persons Act 1969. This section enabled the Secretary of State to authorise a local authority in England or Wales to receive into their care any person who is the subject of an order made by a court in Jersey (and the Isle of Man and other Channel Islands), which is designated for this purpose.
- e. This Order was not brought into force until agreement was reached about the use of the fit person order and the contents of the Children (Amendment) (Jersey) Law 1972.
- f. What later became the Children (Amendment) (Jersey) Law 1972 was first drafted and submitted for Royal Assent on 14th May 1971⁷⁰ based on the Education Committee's wish for a separation between fit persons orders, reserved for situations where a young person was to stay in Jersey under the supervision of a "fit person", and "special care orders" for situations where persons were to be sent to the UK to a community home.
- g. The Home Office responded on 25th June 1971 with comments from the Children's Department, raising concerns about the use of two different types of orders by the Jersey Court and the Secretary of State, requiring further amendments to be made in relation to provisions for special care orders⁷¹. The Home Office suggested that the Jersey order should commit the child to the care of the Education Committee who would then have the power or duty to transfer to the care of a local authority in England and Wales.
- h. After consultation with the Law Draftsmen⁷² and Education Committee the Attorney General responded to the Home Office proposing the use of fit

⁷⁰ Letter dated 14th May 1971 from Attorney General and Solicitor General to Lieutenant Governor of Jersey [RW53]

⁷¹ Letter dated 25th June 1971 from M J Hill, Home Office to P L Crill, Attorney General [RW54]

⁷² Letters dated 7th July 1971 (from Solicitor General to Law Draftsmen) and 13th July 1971 (from Law Draftsmen to Solicitor General) [RW55]

person orders for both purposes to overcome the previous difficulties foreseen by the Home Office⁷³. This proposal was accepted by the Home Office with the proviso that all children subject to fit person orders would be returned to Jersey on attaining the age of 19. This was because Jersey's fit person orders issued under the principal Law continued until age 20, whereas under the UK's Children and Young Persons Act 1969 there was no provision to accommodate persons of 19 years of age or over.

- i. In the meantime, agreement was reached between the UK and Jersey about the transitional arrangements, made under section 26 of the Children and Young Persons Act 1969, which made provision for the transfer to England from Jersey of a person committed to the care of a public authority by an insular court and whom the Secretary of State has authorised a local authority in England to receive into their care. Attempts by Jersey to be included within the jurisdiction of one of the Regional Planning Committees so that children subject to a care order made in Jersey could be received into accommodation provided in a particular area⁷⁴ were resisted by the Home Office who felt that this would go beyond Jersey's requirements⁷⁵.
- j. There was a further delay in bringing the revised Amendment to the States as the Education Department decided to deal with the question of Contribution Orders within the same amendment, which resulted in "*lengthy consultation with the Constables*". In a letter to the Director of Education, dated 1st May 1972, the Attorney General expressed his embarrassment at the delay and reiterated the need to push forward with the amendment in order to regularise the transfer of young offenders to Community Homes in the UK and requested that the Education Committee separate out the two issues in order to expedite the coming into force of the required amendments. The Education Committee accepted this suggestion and the refined amendment, described above, was duly passed by the States on 19th September 1972 and put forward for Royal Assent on 6th November 1972⁷⁶. The Amendment finally came into force on 12th January 1973.

⁷³ Letter dated 7th September 1971 from Attorney General to Home Office [RW56]

⁷⁴ Letter dated 17th May 1971 from Attorney General to Home Office [RW-S17]

⁷⁵ Letter dated 26th August 1971 from Home Office to Attorney General with attached letter [RW-S18]

⁷⁶ Letter dated 6th November 2012 from Attorney General to Lieutenant Governor [RW57]

3.2.4 Orders and other subordinate legislation made under the Children (Jersey) Law 1969

(i) Children (Boarding Out) (Jersey) Order 1970

- a. This Order set out the legislative requirements for boarding out (fostering) children in private households. It required a “visitor”, defined in Article 1 as a person carrying out the duties under this Order on behalf of the Education Committee, to oversee the process by checking the suitability of both the accommodation and person responsible for looking after the child. The visitor also had a duty to visit and report from time to time on the welfare, health, conduct and progress of the child (Arts 8-10). The person looking after the child also had to sign a form of undertaking as a suitable person, in relation to the treatment of the child.

(ii) Children (Contribution Orders) (Jersey) Rules 1972

- a. Article 93 of the principal Law determined which persons, by whom (parents, legal guardians and children themselves already being paid) and to whom (foster parents and the Education Committee) contributions towards the maintenance of a child were payable. Article 94 of the principal Law provided the power to ensure that these contributions were paid. These rules set out the circumstances under which the Judicial Greffier could make a contribution order under paragraph (2) of Article 94 of the principal Law to compel a contributor to pay and the rules governing the rescission or modification or a contribution order by the contributor.

(iii) Children (Amendment No. 2) (Jersey) Law 1974

- a. This Law brought in the right of appeal from the Juvenile Court, which had not been provided for in the principal Law, with the establishment of a Juvenile Appeal Court.
- b. The Law also repealed the Articles within the principal law (Arts 44-48) that dealt with the issue of children in court and introduced an amended Part (Part XIIA), which set out the general provisions as to proceedings in court.

(iv) Children (Amendment No. 3) (Jersey) Law 1978

- a. This Law further amended the principal Law in relation to the treatment of young offenders. The purpose of the amendment was to take account of the availability of the young offenders’ centre for the detention of male

offenders aged 14 to 20 with the replacement of the term “detention centre” and “detention centre order” with “young offenders’ centre” and “young offenders’ centre order” throughout the principal Law.

- b. Further provisions include Article 3 of the Law, which introduced amendments of Article 19 of the principal Law (detention of offenders aged 14 to 20) such that only male offenders could be sent to the young offenders’ centre. The Article also provided that the Prison Board would make a report to the court as to whether the young offender would benefit from a period of detention and would further ensure that offenders would not be sentenced if the centre was already full. Article 6 of the Law amended paragraph (5) of Article 22 of the principal Law to provide that the total period of detention at the young offenders’ centre would not exceed six months, instead of nine months.

(v) *Children (Amendment No. 4) (Jersey) Law 1986*

- a. This Law amended the principal Law in order to prohibit the pronouncement of a life sentence on a person who appeared to the court to be under 18 years of age when the offence was committed. Instead he would be sentenced to be detained at Her Majesty’s pleasure in such a place and under such conditions as the Secretary of State may direct.

(vi) *Children (Amendment No. 5) (Jersey) Law 1996*

- a. This Law brought in amendments to Articles 100A-100C of the principal Law, which dealt with Court proceedings involving children, whether as defendant, victim or witness to raise the age limits in those Articles from up to and including 16 years old to up to and including 17 years old. The effect of this was to bring the maximum ages in line with the provisions of the Criminal Justice (Young Offenders) (Jersey) Law 1994, which set up a Youth Court with the same jurisdiction as the United Kingdom Youth Court, namely to deal with young offenders up to and including 17 years old⁷⁷.
- b. This Law further amended all of the Articles within the principle Law that dealt with penalties for offences under the principal Law in order to bring

⁷⁷ Letter dated 19th September 1994 from Richard Whitehead, Legal Adviser to Deputy Rumboll, President of the Legislation Committee [RW58]

them broadly into line with the equivalent penalties in the UK, as shown in the table attached⁷⁸.

3.2.5 Amendments of the Adoption Legislation

- a. The period from 1969 - 2000 saw the introduction of three amendments of Jersey's adoption legislation.

(i) Adoption (Amendment No. 2) (Jersey) Rules 1974

- a. This Law introduced amendments of the Royal Court rules dealing with adoptions in relation to confidential reports to the Court by a guardian *ad litem*.

(ii) Adoption (Amendment No. 3) (Jersey) Law 1995

- a. This law amended the Adoption (Jersey) Law 1961 so as to:
- (i) give the Education Committee the power to act as an adoption agency;
 - (ii) make further provision for the freeing of an infant for adoption; and
 - (iii) give an adopted person access to their birth records and to relatives, with the establishment of an adoption contact register by the Superintendent Registrar.

(iii) Adoption (Amendment No. 4) (Jersey) Law 1995

- a. This Law amended the 1961 Law to allow for the establishment of an Adoption Panel to carry out such powers and duties of the Committee in relation to the Adoption Service as it may by Order determine.

3.2.6 Protection of Children (Jersey) Law 1994

- a. This Law prohibits the taking of indecent photographs of children and penalises the possession, distribution, showing and advertising of such indecent photographs or pseudo-photographs.
- b. Amendments were introduced to this Law in 1997 and 1999

⁷⁸ Ibid

(i) ***Protection of Children (Amendment) (Jersey) Law 1997***

- a. This Law amended the 1994 Law to include taking or making of indecent photographs or pseudo-photographs and also penalised the possession, distribution, showing and advertising of such indecent photographs or pseudo-photographs.
- b. All articles of the 1994 Law were amended to include both taking and making of photographs or pseudo-photographs.

3.2.7 Transfer of Functions (Health and Social Services Committee) (Jersey) Act 1995

- a. This Act transferred all of the functions of the Education Committee under the following legislation to the Health and Social Services Committee:
 - (i) Article 12 of the Westaway Trust (Jersey) Law 1930, as amended
 - (ii) The Adoption (Jersey) Law 1961, as amended
 - (iii) Article 2 of the Children's Benefit Funds (Jersey) Law 1969
 - (iv) The Children (Jersey) Law 1969, as amended with the exception of functions relating to the provision of remand centres (Article 2) and Nurseries and Child-minders (Part VII).
 - (v) Article 10 of the Criminal Justice (Young Offenders) (Jersey) Law 1994
 - (vi) All other functions relating to the protection and welfare of children which are performed on behalf of the Education Committee by the Children's Service.

3.3 2000 to present

3.3.1 Events leading up to the introduction of the Children (Jersey) Law 2002

- a. This section covers the development of the Child Care Laws that were brought into force in Jersey, largely as a result of the introduction of the Children Act 1989 in the UK and a growing recognition that the Children (Jersey) Law 1969 was no longer fit for purpose.

- b. At a meeting on 8th June 1989, in response to the introduction of the Children Act 1989 in the UK the Attorney General requested Stéphanie Nicolle, then Crown Advocate and Anton Skinner, Children's Officer, to prepare a review of Jersey's Children's Law. This work was done in draft by Advocate Nicolle and sent to the Children's Officer in February 1991, who summarised it in the form of a report, which was to act as a drafting brief for the proposed changes to the Adoption (Jersey) Law 1961 and the Children (Jersey) Law 1969 and the drafting of necessary subordinate legislation. The report⁷⁹ set out six areas for reform:
- (i) Power of the Education Committee to act as an Adoption Agency;
 - (ii) Freeing for adoption / dispensing with consent;
 - (iii) Access to adoption records;
 - (iv) Child Assessment Orders;
 - (v) Parental responsibility, custody and access;
 - (vi) Care Orders in criminal proceedings.
- c. It was put before the Education Committee on 27th March 1991 when the Committee "*decided to request the Law Draftsman to prepare the proposed amendments to legislation relating to the care of children and requested the Children's Officer to forward an appropriate brief, together with copies of the relevant United Kingdom legislation to the Law Draftsman.*"⁸⁰. Further amendments were later added which would provide for the cross border transfer of Care Orders and the recovery of children abducted from local jurisdictions throughout the UK⁸¹.
- d. In early 1992 the Law Draftsman produced a first draft of the proposed amendments under the title of Children (Amendment No. 5) (Jersey) Law 199-. In the accompanying note, the Law Draftsman expressed misgivings about amending existing legislation rather than producing a new Law. Despite this there were a number of re-drafts throughout 1992. However, in

⁷⁹ Report dated 20.3.91, entitled 'Child Law Reform' [RW59]

⁸⁰ Education Committee minutes of meeting dated 27th March 1991 [RW60]

⁸¹ Education Committee minutes of meeting dated 11th September 1991 [RW61]

January 1993 the Law Draftsman wrote in a letter to the Children's Officer⁸² -

"It is always risky to adopt legislation from another jurisdiction on a piecemeal basis, and the risk is heightened when the legislation is as long as the Children Act. At the outset, it was not possible to specify the kind of problems which were likely to arise, but, as our draft has developed, some of these have become easier to identify."

- e. The Law Draftsman then went on to list some of the anomalies in his letter. The Children's Officer responded to these concerns but stated that he felt the problems were surmountable, whilst recognising that he may be "unduly optimistic". He acknowledged the difficulty of fitting major elements of new legislation into an old Law but felt that it would not be possible to *"embrace the 1989 Act without taking on the new concept of parental responsibility and all the implications this may have for various parts of our local legislation."*⁸³.
- f. The Law Draftsman opened his response in February 1993 *"Try as I may, I am unable to convince myself that the 1969 Law is the appropriate legislative vehicle to accommodate such fundamental and far-reaching amendments."*⁸⁴. Although the Law Draftsman continued to work on the amendments, there continued to be a difference between his views and those of the instructing Department, who favoured a middle route, in the hope that it would be a quicker way of securing the identified amendments needed, rather than bringing in an entirely new Law.
- g. In recognition of this, the Law Draftsman suggested dealing with the more difficult aspects of the amendments separately. However, in August 1993 in his response to a request from the Assistant Director of the Education Department to include a further amendment of the Children (Jersey) Law 1969, the Law Draftsman informed her that the draft was currently "on hold" until he received further instruction due to his concern, shared by the Children's Officer and the Crown Advocate, that *"if the amendments are proceeded in their present form, the principal Law as a whole may be*

⁸² Letter dated 11th January 1993 from Law Draftsman to Children's Officer [RW62]

⁸³ Letter dated 25th January 1993 from Children's Officer to Law Draftsman [RW63]

⁸⁴ Letter dated 8th February 1993 from Children's Officer to Law Draftsman [RW64]

rendered virtually incomprehensible to all but the few who are directly concerned with its administration.”⁸⁵.

- h. This position continued, as recorded in a handwritten file note by Crown Advocate Nicolle of a meeting with the Children’s Officer dated 21st October 1993. However, by April 1994, in a letter to the Chief Adviser to the States about the Law Drafting Programme for 1994/95⁸⁶, the Children’s Officer referred to the Children Law amendments and said that although the Department had resisted the proposal for a new Law as suggested by the Law Draftsman, for *“purely practical reasons i.e. whilst it was thought there was a good chance of realising amendments within a reasonable timescale it was feared that the enactment of a new Law would take a great deal of time to achieve. However as the Law Draftsman now feels that the amendments would take almost as long to produce as an entirely new Law I believe that there may be grounds for a compromise”*. He concluded his letter by suggesting that he work with Advocate Nicolle, now the Solicitor General, to *“revise the original amendments to produce a brief for a new Law, based on the Children Act, 1989 [which would] afford an opportunity of perhaps producing a more comprehensive and fully up to date Children’s Law.”*
- i. In May 1994 the Children’s Officer wrote to the Solicitor General, informing her that the Education Committee had agreed that a Working Party should be formed to look at the possible introduction of a new Children’s Law to replace the 1969 legislation, appropriate to the Island’s needs⁸⁷.
- j. The first meeting of the Working Party on the Children’s Law was held in June 1994, bringing together representatives from Day Care Services, Probation Services, Community Nursing Services, the Judicial Greffe, the Law Society and the Education Department. Prior to the meeting, the Children’s Officer circulated a copy of the Children’s Act 1989, which was

⁸⁵ Letter dated 23rd August from Law Draftsman to Education Officer, with following attachments: Letter dated 23rd August 1993 from Law Draftsman to Assistant Director, Education Department; letter dated 12th August 1993 from Assistant Director, Education to Law Draftsman; Note entitled “Amendments to the Childrens Law” by J. Davies-Bennett dated 10/05/93; Note for Law Draftsman entitled “Child Law Reform” by J Davies-Bennett dated 28/04/93 [RW65]

⁸⁶ Letter dated 28th April 1994 from Children’s Officer to Chief Adviser to the States entitled “Re: 1994/95 Law Drafting Programme” [RW66]

⁸⁷ Letter dated 18th May 1994 from Children’s Officer to Solicitor General [RW67]

annotated with comments as to the implications of introducing each section locally⁸⁸.

- k. At the meeting the members divided the various components of the UK Act into eight different sub-sections, which were allocated between the members of the group to review and prepare a paper for the next meeting with a suggested way forward.

Part 2: General principles

Part 3: Orders with respect to children in family proceedings

Part 4: Local authority support for children and families

Part 5: Care and supervision orders

Part 6: Emergency protection of children

Part 7: Residential care for children

Part 8: Arrangements for fostering children

Part 10: Welfare of children accommodated in independent schools, child-minders and day care of young children

- l. The Group noted that Parts 2 and 3 of the Act were particularly important as they introduced new legal concepts to replace the old concepts of custody, care and control of children. The new concepts of parental responsibility, residence orders, contact orders, prohibited steps orders and specific issue orders extended the powers of the Court and the range of persons who might be enjoined to issues of the care and responsibility for children both within and outside marriage. The concept of parental responsibility shifted the emphasis in law from parents' rights to responsibility in respect of children.
- m. It was also noted that whilst most of the facilities which Local Authorities had a statutory obligation to provide under Part 4 of the Act, for children deemed to be "in need", were already provided in the Island by the Children's Service, they were provided by means of Committee Policy and not Law, which meant that they were vulnerable to budgetary sanctions in times of financial constraint.

⁸⁸ Meeting notes of Meeting of Working Party - New Children's Law, dated 27th June 1994 [RW68]

- n. Similarly, in relation to Part 7, which covered persons and organisations providing residential care for children, it was noted that whilst Jersey had similar legislation in this regard, it was not as comprehensive or as clearly prescriptive as the equivalent UK legislation, which gave a local authority power to involve itself in issues of voluntary home appointments, management and record keeping.
- o. The Working Party also agreed that the brief to be provided should not only cover the areas of the new Act, but should also look at the local situation to ensure that all the law considered necessary to protect and promote the care of children in the Island was covered, for example juvenile employment legislation. To this end the Children's Officer informed the group that he was in communication with a number of UK local authorities to ascertain views on the problems of implementing the Act and perceived gaps in provision for children which the Act might be failing to cover.
- p. A second meeting of the Working Group was held in October 1994, where each sub-group presented the findings of their papers. The main topic for this meeting was the resource implications of introducing the proposed new provisions. The Children's Officer informed the group that "*if the Law had resource implications it would be necessary for the Education Committee to take the proposed Law to the States for approval in principle prior to more detailed briefing work and submission to the Law drafting schedule.*"⁸⁹. The consequence of this scenario is that it could miss the time already allocated in the Law Drafting schedule.
- q. One immediate outcome of the review was the recommendation by the sub-group working on the section of "*General Principles and Orders with Respect to Children in Family Proceedings*" to create a Family Division of the Royal Court. This recommendation was endorsed by the Deputy Bailiff⁹⁰. The sub-group concluded that all of the principles of the main provisions of this Part of the Act were appropriate for local adaptation and dovetailed into the recent work and recommendations of the Working Party on Matrimonial Causes, however, would not be put into effective operation unless the recommendations of the latter were put into effect. This included the creation of a Family Division of the Royal Court, which would also

⁸⁹ Minutes of the Meeting of the Working Party - New Children's Law, dated 3rd October 1994 [RW69]

⁹⁰ Letter dated 21st December 1994 from Deputy Bailiff to Deputy Judicial Greffier [RW70]

provide one place where matters concerning children could be heard and thereby rectify the current unsatisfactory position where children's matters were held in a number of different courts.

- r. The Working Party held a third and final meeting in January 1995 (the minutes of which are missing from the Law Officers' Department files), from which the Children's Officer developed a report with recommendations which were approved by the Education Committee in February 1995⁹¹. The recommendations included:
- (i) Amendments of the Children (Jersey) Law 1969 should be brought in as a new Law;
 - (ii) A new child custody law should be given priority (and put in the 1995/96 Law Drafting Programme);
 - (iii) The introduction of the new concept of parental responsibility, which impacts on the provisions of the 1969 Law dealing with care proceedings and the rights and duties of the Committee as a "legal parent" should be contained within the proposed new Law;
 - (iv) Any proposals that do proceed in a new Law should operate in tandem with the old 1969 Law;
 - (v) There should be a review of the remaining provisions of the 1969 Law and proposals submitted for a new Law (at some point in the future, in recognition of limited drafting resources);
 - (vi) The Committee should support the creation of a Family Division of the Royal Court within the creation of the Child Custody Law.
- s. As a result of the agreed recommendations, the Solicitor General and Children's Officer were tasked with putting together a brief for the new Child Custody Law. It appears that there was very little progress on moving forward with this throughout 1995. The blockage appears to have been the availability of law drafting time, as confirmed by a letter from the Children's Officer to the Solicitor General in November 1995, in which he stated "*there appears to be no immediate urgency for work to commence on*

⁹¹ Letter dated 23rd February 1995 from Children's Officer to Solicitor General with Report attached (page 2 missing) [RW71]

a more detailed child law brief as it is unlikely to surface on a draftsman's desk until late next year."⁹².

- t. The Children's Officer and Solicitor General worked on the brief throughout in 1996, with an initial draft produced in October 1996 followed by a General Statement and Detailed Law Drafting Instructions produced by the Solicitor General in consultation with the Children's Officer in February 1997.
- u. During this time, the Solicitor General also received requests or revived historic requests to include provision for the following:
 - (i) UN Convention on the Rights of the Child;
 - (ii) Hague Convention on the Civil Aspects of International Child Abduction;
 - (iii) Council of Europe Convention on Recognition and Enforcement of Decisions relating to Custody of Children;
 - (iv) Overseas Adoptions⁹³;
 - (v) European Convention on the Legal Status of Children born out of Wedlock⁹⁴.
- v. At its meeting of 7th May 1997 the Health and Social Services Committee considered a report from the Children's Officer together with a draft brief explanatory note dated 29th April 1997 prepared by the Solicitor General, regarding the proposed Child Custody Law. The paper identified for the Committee those provisions in the Draft Detailed Instructions which were not covered by any previous Committee approval and asked the Committee to decide whether or not it wished those provisions to be included in the brief to the Law Draftsman.
- w. The Committee agreed with all of the recommendations put forward in the report with the exception of the provision that a child should have the right to make an application to the Court or those provisions for the services for families. The Committee further agreed that the relevant bodies should be

⁹² Letter dated 20th November 1995 from Children's Officer to Solicitor General [RW72]

⁹³ Exchange of letters between Children's Officer and Solicitor General, dated 20th November 1995 and 4th December 1995 [RW73]

⁹⁴ Legislation Committee Act, 14th March 1997 [RW74]

given an opportunity to consider and comment upon the Detailed Instructions at an early stage.

- x. Following on from the meeting the Solicitor General amended the draft Detailed Instructions in two respects: firstly, to ensure that the new statute would completely replace the customary law position with regard to the custody of children; secondly, in relation to the question of guardianship, to add a section to provide that where circumstances specified in section 5(1) of the 1989 Act exist (*i.e.* the appointment of guardians) a person may apply to the Court for parental responsibility for the child, and also that a parent who has responsibility for his child may appoint another individual to assume parental responsibility for the child in the event of the parent's death. The way the law as to *tuteurs*, which dealt with legal responsibility for a child's financial affairs, remain unchanged.

3.3.2 Children (Jersey) Law 2002 (plus associated orders, regulations and rules)

(i) Introduction

- a. The Children (Jersey) Law 2002 incorporates many of the concepts of the United Kingdom Children Act 1989, adapted to suit the needs of Jersey.
- b. The draft Children (Jersey) Law 200- was lodged au Greffe on 18th December 2001 by the Health and Social Services Committee. The Report⁹⁵ that accompanied the draft Law opened with the following paragraph -

“The purpose of this draft Law is to replace the Children (Jersey) Law 1969 with new provisions governing all aspects of the care of, and responsibilities towards, children. The original intention was to revise only those aspects relating to the rights and responsibilities of parents with respect to their children, but it became apparent that it was impracticable to graft new concepts onto a Law that is now over thirty years old and based on even older United Kingdom legislation which had long since been repealed. It was therefore considered preferable to produce a comprehensive new Law, based on the United Kingdom Children Act 1989,

⁹⁵ Report on the Draft Children (Jersey) Law 200-, Lodged au Greffe on 18th December 2001 by the Health and Social Services Committee [RW75]

that could address the deficiencies in the existing Law and create a legal framework capable of responding to the wide variety of child care arrangements that exist today.”.

- c. Two other new Laws that dealt with child-related matters were introduced at the same time, although these fell outside the responsibility of the Health and Social Services Committee. Firstly, the Day Care of Children (Jersey) Law 2002, which covered those aspects of the 1969 Law administered by the Education Committee, to regulate the care of children during the day in nurseries, playgroups and by child-minders. Secondly, the Criminal Justice (Evidence of Children) (Jersey) Law 2002 which contained the provisions of the 1969 Law dealing with the presence in court of, and the giving of evidence by, children. The new concepts contained within the 1989 Act also required amendments to the Adoption (Jersey) Law 1961, which were provided for in the Adoption (Amendment No. 5) (Jersey) Law 2002.

(ii) *Delay in bringing in the Children (Jersey) Law 2002*

- a. The Law was adopted by the States on 26th February 2002 and came into force on 1st August 2005. This delay of 3½ years from passing to coming into force was the source of concern for some Politicians including the President of the Health and Social Services Committee at the time⁹⁶. However, before it could be brought into force, considerable subordinate legislation was required; two sets of Regulations, two Orders and three sets of Rules of Court, listed below, were needed in order for the Law to become fully operational.

- (i) Children (Contact in Care) Regulations 2005
- (ii) Children (Placement) (Jersey) Regulations 2005
- (iii) Children (Secure Accommodation) (Jersey) Order 2005
- (iv) Children (Voluntary Homes) (Jersey) Order 2005
- (v) Children Rules 2005

⁹⁶ Email correspondence between Senator S Syvret (President of the Health and Social Services Committee), Attorney General, Solicitor General, Senator T Le Sueur and Anton Skinner (Children’s Officer) dated between April and July 2004 [RW76]

(vi) Children (Prescribed Classes of Applicant to Vary Directions) Rules 2005

(vii) Children (Parental Responsibility Agreement) Rules 2005

- b. This constituted a considerable input of time and effort on the part of the Law Draftsman's Office and the Law Officers' Department which is responsible for drafting Rules of Court. As the Health and Social Services Department explained "*the original delays were caused by a series of personnel issues (staff departures and long term sickness) involving the persons assigned the tasks, which placed a great strain on the resources of both the Crown Officers and the Law Draftsman's department.*". He also informed the Minister "*As you know the UK Children's Act 1989 - despite large teams of lawyers and administrators in the Lord Chancellor's Department and Department of Health being devoted to the task full time - did not come into force until October 1991, over 2 years from the date it received Royal Assent. Despite the limited resources we have available locally the timescale will be no longer.*"⁹⁷. First drafts of the Regulations and Orders were produced for comment and consultation in June 2004⁹⁸; the Regulations were made by the States in July 2005 and came into force on 1st August 2005 at the same time as the Children (Jersey) Law 2005, the Orders mentioned above and the Day Care of Children (Jersey) Law 2002, the Criminal Justice (Evidence of Children) (Jersey) Law 2002 and the Adoption (Amendment No. 5) (Jersey) Law 2002.
- c. Brief explanations of the regulations, orders and rules are provided below -

(iii) Children (Contact in Care) Regulations 2005

- a. The Regulations brought into force the provision regarding the steps to be taken by the Health and Social Services Minister in relation to contact (formerly known as access) between a child in care and his or her parents, or other relevant parties. The Children Law introduced a new court order, the Contact Order (Article 27 of the Children Law), which dealt with arrangements for children living apart from their family to have continuing contact with their parents and other significant parties. These Regulations

⁹⁷ Email correspondence from Anton Skinner to Stuart Syvret (Minister for Health and Social Services) dated 2nd June 2004. [RW77]

⁹⁸ Memorandum dated 4th June 2004 from L. Marsh-Smith, Assistant Law Draftsman to Danny Wherry, Children's Department, Health and Social Services [RW78]

set out the steps to be taken when contact for a child in care is being arranged. The aim is to ensure that, except in exceptional circumstances, the views of parents and others are taken into account and they are kept properly informed of the arrangements made for contact whilst the child remains in care.

(iv) *Children (Placement) (Jersey) Regulations 2005*

- a. These Regulations provide a framework of provisions governing the provision of accommodation and maintenance by the Minister for Health and Social Services for children it is under a duty to look after under Article 22 of the Children Law⁹⁹. They govern placement with family and others as well as foster parents.
- b. The Regulations combine, with some drafting changes, the relevant provisions of the UK's Arrangements of Children (General) Regulations SI 1991/890 (as amended by SI 2002/546), the Placement of Children with Parents *etc.* Regulations SI 1991/893 and the Foster Placement (Children) Regulations SI 1991/910. Even though the Foster Placement Regulations had been repealed and replaced with the Fostering Services Regulations SI 2002/57, it was decided that the 2002 Regulations were too detailed and relied too much on powers from other UK legislation and therefore the earlier Regulations were more appropriate to Jersey with the services provided by one authority.

(v) *Children (Secure Accommodation) (Jersey) Order 2005*

- a. The purpose of this Order was to make further provision with respect to the keeping of children in secure accommodation under Article 22 of the Children Law. It is based, in part, on UK SI 1991/1505 (as amended by SI 1992/2117).

(vi) *Children (Voluntary Homes) (Jersey) Order 2005*

- a. The purpose of this Order was to prescribe standards for the running of voluntary homes and regulate the placement of children in them under Articles 56 and 81 of the Children Law. The aim was to ensure that children cared for in such settings received care of a sufficiently high

⁹⁹ Act of the Health and Social Services Committee, dated 4th July 2005 [RW79]

standard so as to meet their needs and protect their welfare¹⁰⁰. The majority of this Order was taken from the Children's Homes Regulations, UK SI 1991/1506.

(vii) *Children Rules 2005*

- a. These Rules of Court were brought into force by the Superior Number of the Royal Court in pursuance of Article 67 of the Children Law. The Rules provide a comprehensive guide as to the procedures to be followed in any relevant proceedings, including the timing and manner in which any application is to be made. They also set out the persons entitled to participate in any relevant proceedings and in what capacity, the documentation required and the form that such documentation must take.

(viii) *Children (Parental Responsibility Agreement) Rules 2005*

- a. These Rules of Court were brought into force by the Superior Number of the Royal Court in order to set out the steps to be taken to secure a parental responsibility agreement under Article 5(3) of the Children Law. The Schedule to these Rules provides a form that applicants must use to make an application to the court for a parental responsibility agreement.

(ix) *Children (Prescribed Class of Applicant to Vary Directions) Rules 2005*

- a. These Rules of Court provide the persons who may apply to the Court to vary directions made on making an interim care or supervision order: they also make similar provisions as to the variation of directions given when an emergency probation order is made.

3.3.3 Day Care of Children (Jersey) Law 2002

- a. This Law re-enacts with some amendments Part VI of the Children (Jersey) Law 1969 as part of the process of updating the 1969 Law. As this part of the 1969 Law was administered by the Education Committee, a decision was taken to regulate the provision of day care of children by means of a separate Law administered by the Education Committee. It was presented to the States as part of a package with the Children (Jersey) Law 2002 and the Criminal Justice (Evidence of Children) (Jersey) Law 2002. Whilst the fundamental principles of the 1969 Law remained the same, the new Law

¹⁰⁰ Act of the Health and Social Services Committee, dated 21st July 2005 [RW80]

provided the opportunity to make some changes to the arrangements in childcare provision at that time and incorporate some of the provisions of the UK Children Act 1989.

- b. The new Law sought to introduce more clarity to the requirements of and definitions for the existing scheme of registration and, where appropriate, to improve child safety by bringing certain areas of the 1969 Law in line with current local and UK good practice. The Law also introduced an increased upper age limit of twelve years, in relation to both day care providers and provisions, bringing both the Law and the registration scheme in line with the principles approved by the States when it agreed the establishment of the Child Care Trust and the introduction of child care allowance and tax relief schemes which were also introduced shortly before this Law was put before the States.
- c. Article 3 was particularly significant as it introduced a new provision prohibiting a person from being involved with day care accommodation or acting as a day carer if he is disqualified under the Children (Jersey) Law 2002 from being involved with a voluntary home or acting as a foster parent.
- d. Article 10 of the Law included a new provision enabling the Royal Court to order a Committee decision to have immediate effect where it is satisfied that a child who is being, or may be, looked after in day care accommodation or by a day carer is suffering, or is likely to suffer, significant harm.

3.3.4 Adoption (Amendment No. 5) (Jersey) 2002

- a. This Law amended the Adoption (Jersey) Law 1961. As well as updating the principal Law with the relevant new concepts of the Children (Jersey) Law 2002, one of the main matters that this Law sought to address was to facilitate adoptive applicants' access to overseas adoption opportunities, as well as adoption placements under UK law in other parts of the British Isles. In so doing, this addressed a local problem as the number of children becoming available locally for adoption had diminished sharply in the years prior to this amendment being brought into force and couples wanting to adopt had begun exploring the possibility of adopting children from overseas. The amendment also resolved a problem of local domicile that existed in Jersey at that time which facilitated adoption by people resident

in Jersey who remained UK-domiciled because they were on temporary employment contracts.

- b. The Hague Convention on Inter-country Adoption¹⁰¹ provided an international framework setting out standards and requirements in respect of the process of adopting a child resident in a different country. The UK signed up to this Convention in 1995 and asked Jersey whether it wished the UK ratification of the Convention extended to the Island. After a considerable amount of discussion and correspondence between the Law Officers' Department and other relevant States Departments it was decided to implement the framework by means of domestic legislation. These amendments to the Adoption (Jersey) Law 1961 enabled Jersey to satisfy the requirements and participate in the Convention arrangements¹⁰². The Convention has not yet been extended in full to Jersey, but work is currently in hand to put in place the enabling legislation for that to occur.

3.3.5 Child Custody (Jurisdiction) (Jersey) Law 2005

- a. The Report¹⁰³ that accompanied this Law when it was lodged au Greffe, comprehensively described its provisions and purpose and the impact of bringing it into effect. An edited version of this report is produced below -
- b. This Law is a private international law measure. Its provisions are similar to those of the Family Law Act 1986 of the United Kingdom which set out a new statutory code laying down the jurisdictional bases for the granting of custody orders in England and Wales, Scotland and Northern Ireland to provide an established procedure for reciprocal recognition and enforcement of custody orders in each part of the United Kingdom, regardless of where made.
- c. One of the main purposes of this Law is to make Jersey's legislation consistent with this statutory framework for reciprocal recognition and enforcement of custody orders. In relation to Guernsey, the Isle of Man or any British Overseas Territory, the States would be empowered by Regulations to amend or supplement the Law as necessary to enable there to

¹⁰¹ Hague Convention on Protection of Children and Co-Operation in respect of Intercountry Adoption (full title)

¹⁰² Report accompanying the Draft Adoption (Amendment No. 5) (Jersey) Law 200- [RW81]

¹⁰³ Report accompanying the Draft Child Custody (Jurisdiction) (Jersey) Law 2000-, lodged au Greffe on 7th June 2005 by the Legislation Committee [RW82]

be such reciprocal recognition and enforcement of custody orders as between Jersey and those jurisdictions.

- d. In line with the UK Family Law Act 1986, Articles 17 and 18 of the Law conferred wider powers on the Royal Court to order disclosure of a child's whereabouts or to order the recovery of a child. The Royal Court is also able to give direct effect to orders made by a court in the United Kingdom prohibiting the removal of a child from the jurisdiction. This enables the removal of the anomaly whereby a restriction imposed by a court in another part of the British Islands on taking a child abroad is of no effect in Jersey.
- e. As part of its enforcement powers, the Royal Court is able to require a person to surrender any British passport issued to or containing particulars of the child.
- f. The Law also makes provision for a child who moved outside Jersey to be treated in certain circumstances as though he or she was still habitually resident in Jersey. This is designed to deter the unauthorised removal of a child from one jurisdiction to another for the purpose of delaying enforcement of a custody order, or initiating or re-opening custody proceedings in a forum which the person removing the child thinks would be more favourable to him or her.
- g. This Law was lodged at the same time as the Child Abduction and Custody (Jersey) Law 2005 and the Criminal Law (Child Abduction) (Jersey) Law 2005. Taken together they completed a statutory framework for the better safeguarding of children against the harm and disruption caused to them by abduction or by arbitrary removal from one jurisdiction to another.
- h. Until the enactment of this legislation, Jersey's statutory framework in this area had been somewhat insular. With the bringing into force of the Children (Jersey) Law 2002 and the enactment of this subsequent legislation, the legal structures of the Island in matters concerning the welfare of children were reformed in such a way that the Jersey courts and child welfare bodies are able to operate fully and effectively at the international level.

3.3.6 Child Abduction and Custody (Jersey) Law 2005

- a. The Report¹⁰⁴ that accompanied this Law when it was lodged au Greffe, comprehensively described its provisions and purpose and the impact of bringing it into effect. An edited version of this report is produced below -
- b. In response to the increased number of child abductions, this Law was brought in to help parents and others with custody rights to obtain the return of abducted children. This is achieved by enabling the United Kingdom, on the Island's behalf, to ratify and the Island to implement two international Conventions:
 - i. The Hague Convention which requires the summary return of an abducted child to its country of habitual residence so that issues of custody can be decided there; and
 - ii. The European Convention which enables custody decisions that have already been made to be recognised and enforced.
- c. The Hague Convention prevails should both Conventions apply to the case of an abducted child.
- d. This Law supplemented the criminal sanctions for child abduction in the Criminal Law (Child Abduction) (Jersey) Law 2005 against people who take children abroad without permission by providing a civil procedure for securing the return of those children.
- e. The Law marked a significant departure from the reliance of the Royal Court on the customary law in this field. It enabled Jersey to co-operate with all contracting States and enabled Jersey in turn to secure co-operation from those States. The procedures are clearly set out along with the criteria according to which applications are determined. The Law would help to curtail the potential for protracted litigation resulting in a reduction in the cost and above all the delay and uncertainty associated with the restoration of abducted children to their custodial parent.
- f. When the Law was placed before the States it was acknowledged that this fundamental reform, which finally enabled the Island to take its place in the

¹⁰⁴ Report accompanying the Draft Child Abduction and Custody (Jersey) Law 2000-, lodged au Greffe on 7th June 2005 by the Legislation Committee [RW83]

wider international community, played a full part in combating cross-border abduction of children, was long overdue.

PART 4: VARIOUS SPECIFIC QUESTIONS ADDRESSED

Before making this statement, I was asked by Counsel to the Inquiry to address various specific issues which Counsel thought might be relevant to the task of the Inquiry. These (and my answers, so far as I am able to provide them), are as follows -

4.1 The process of legislative change in Jersey

*[explanation of the **process** for introducing legislation in Jersey since 1945 and how that process has evolved through to today's date - how a law gets into the books - development of policy - as at 2014 : green paper □ white paper □ consultation (extent of)]*

4.1.1 1945 - 2005

- a. Since 1771, the States Assembly has been the sole legislative body in the Island with full plenary powers. Until 2005, (except for a period during the Occupation) the administration of Jersey was in the hands of delegations of the States Assembly called Committees. From 1946, they comprised solely elected members of the States and mostly consisted of a President and 6 other members. Each Committee had responsibility for an area of administration, broadly reflected in its name or title - in recent times some of these were the Public Services Committee, Education Sport and Culture Committee or Health and Social Services Committee, for instance. They had both statutory responsibilities and powers and a variety of other duties and responsibilities which were non-statutory.
- b. Though I cannot speak with direct experience of the period before 1989, I believe it is accurate to say that, as a general rule, each Committee was responsible for making sure that it had legislative powers which were adequate and up to date so as to enable it to perform its functions. If new legislation was felt to be needed, either by the Officers of the Committee or by the Committee itself, the Officers would put a paper to the Committee, asking the Committee to approve the preparation by the Law Draftsman of a draft of the legislation, on the instructions of the Officers. The Law Draftsman's office at that time was a part of the States Greffe. Until the

1980s the same person was both Greffier (Clerk to the States Assembly) and Law Draftsman.

- c. Sometimes the Committee might be asked to approve the drafting brief itself; it would always be asked to approve the draft legislation for lodging “*au Greffe*” in the form of a *Projet de Loi*. Each Committee would therefore bring forward a proposal for new legislation to the States in respect of its own area of responsibility.
- d. An example of this in practice is the correspondence between 1952 and 1956 between the Elizabeth House Committee, the Public Instruction Committee and the Law Officers about two potential additional amendments to the *Loi appliquant à cette Île certaines des dispositions de l’Acte de Parlement intitulé “Children and Young Person’s Act, 1933”* (23 Geo. 5, ch 12): firstly, whether to allow the Royal Court to send female offenders to Elizabeth House as an alternative to sending them to an “Approved School”, and secondly, whether to extend the age limit that the Royal Court was empowered to order a child to remain in an institution to from 18 to 21. As can be seen from the correspondence, both of these proposed amendments were subsequently rescinded¹⁰⁵.
- e. It is difficult to judge how often and to what extent there was a process of public consultation in the early post war period on proposed new legislation. My general impression is that the frequency and effectiveness of consultation has grown over the years.
- f. Unlike the situation in the UK Parliament, in theory, any States Member could, and indeed still can, bring his or her own Proposition to the States asking for new legislation to be introduced, with a reasonable prospect of success. If such a proposition was adopted, a Committee would be charged with responsibility for bringing forward the draft of the legislation to the States. There was also a Legislation Committee, which had responsibility for legislation which was not within the remit of a particular Committee.
- g. It is not known to me to what extent, if any, there was a co-ordinated government plan for new legislation in the 1950s and 60s but I believe things began to change during the 1970s when the first Policy Advisory

¹⁰⁵ See correspondence from 1952 to 1956 between the Elizabeth House Committee, the Public Instruction Committee and the Law Officers [RW84]

Committee was appointed, (see Appendix II) and developed further with the creation of the Policy and Resources Committee in 1989. Fairly shortly thereafter (probably 1991 or 1992) the first legislation programme was drawn up. This certainly assisted with prioritisation of new legislative proposals and with planning the use of the law drafting resources.

4.1.2 Post 2005 - Ministerial Government

- a. In 2005, following the coming into force of the States of Jersey Law of that year, Jersey moved to a form of Ministerial government, with a Chief Minister and nine other Ministers forming a Council of Ministers. One of the specific responsibilities of the Council is the prioritisation of executive and legislative proposals (Article 18(2)(d) of the States of Jersey Law 2005). The Council's function in this area is to decide on the priorities of the legislative proposals put forward by the various Ministers. These are then submitted to Scrutiny Panels and to the States for consideration and approval as a part of the Council's policy proposals. The Legislation Committee has survived in the form of the Legislation Advisory Panel, which is chaired by an Assistant Minister in the Chief Minister's Department and reports to the Chief Minister.
- b. In addition to and in support of this more formalised and organised political structure, a committee of Chief Officers in the various Departments has also been created - the Corporate Management Board - under the Chief Executive Officer which considers and approves proposals of various kinds, including for new legislation, before they are considered by the Council of Ministers.
- c. Consultation with the public and/or with interested parties on proposals for new legislation is carried out on most new legislation and on all of the major projects. It may take the form of consultation on a policy proposal or on the draft of the legislation itself, or, on occasions, on both. New legislation is also often referred to the appropriate Scrutiny Panel either before it is lodged or, if not, during the course of its passage through the States (on Scrutiny Panels, see generally Part 7 of the Standing Orders of the States of Jersey). Scrutiny Panels are specifically charged with responsibility for scrutinizing draft Laws and subordinate legislation (see Standing Order 136).

4.2 The extent to which, if at all, English/UK legislation has provided a trigger for legislative change in Jersey

[generally; does Jersey “cherry pick” legislative changes from the UK, having seen how the legislation operates in practice : is there a process of consultation?]

- a. There are many examples showing that Jersey closely follows UK legislation where appropriate. In some cases, changes to UK legislation provide a specific trigger for changes in Jersey legislation, in other cases there has been a general recognition that Jersey legislation requires updating. Correspondence within the files between the Home Office, Whitehall and the Attorney General shows evidence of a consultative approach to amendments to legislation and the introduction of new legislation. Examples are provided below -

4.2.1 *Children and Young Persons Act 1933*

- a. In a letter dated 5th September 1934, from the Attorney General to the President of the Committee of Legislation in relation to the “*coming into force in England of the Children and Young Persons Act, 1933 (23 Geo.5 ch.12)*”, the Attorney General stated: “*It is, in my opinion, clear that the coming into force of [the Children and Young Persons Act 1933] makes it essential that the “Loi (1896) sur la détention de jeunes enfants &ca.” should be repealed and replaced by a new local law the provisions of which should be in harmony with the material provisions of the English law.*”¹⁰⁶.

4.2.2 *Children (Jersey) Law 1969*

- a. The trigger for this law was a general recognition that Jersey’s child care legislation required updating. See, for example the report referred to in Section 3.2.2, reference RW25 entitled “Suggested new children’s legislation” which listed the legislation that Jersey’s new children’s legislation should be built on. The tables referred to in RW26 listed these laws and showed how the provisions of each were adapted to suits Jersey’s own legislative requirements.

¹⁰⁶ See RW1

4.3 Is Jersey alerted to legislative changes taking place in the UK?

[and if so what is the process or does Jersey maintain a constant review of UK legislative changes : in effect, does Jersey both initiate and react?]

- a. As discussed already above, correspondence between the Home Office, Whitehall and the Attorney General within historic files shows evidence of extensive consultation between the Jersey and UK authorities when developing new legislation, for example the Children's Department of the Home Office provided substantial comments and feedback during the development of the Children (Jersey) Law 1969 (see references RW30 - RW51).
- b. In relation to whether Jersey was alerted to legislative changes taking place in the UK, it appears that the Law Officers' Department was only alerted by the Home Office to such changes that would require a consequent change locally to legislation and / or procedures.
- c. An example of this has already been mentioned above in Section 3.1.1(i)(d) in relation to the Adoption of Children (Amendment No. 2) (Jersey) Law 1959, when the definition of "abroad" was amended to mean 'outside the British Isles' to reflect the amendment of the adoption law in England and Wales that Jersey would no longer be regarded as "abroad" for the purposes of the Adoption Act 1950¹⁰⁷. Similarly, as discussed in Section 3.2.2 and 3.2.3, the Home Office alerted the Jersey authorities very early in the process of its plans to abolish Approved Schools in England and Wales, as it clearly recognised that Jersey would need to bring about both administrative and legislative changes locally.
- d. As the process for legislative change in Jersey is such that, up until 2005, each Committee brought and, since 2005, each Minister brings, forward proposals for new legislation to the States in respect of its own area of responsibility, it is likely that the relevant Departments keep under review prospective changes in UK law, as a matter of good practice. Indeed there is regular contact between Jersey Departments and UK equivalents about their common areas of responsibility and I would expect that this contact

¹⁰⁷ Exchange of letters between A.D. Gordon-Brown, Home Office and C.S. Harrison, Attorney General, dated 28th June, 1957 [RW10], 6th August, 1957 [RW11] and 26th August, 1957 [RW12].

would include information about changes in UK legislation at an early stage.

- e. I think that it is also worth mentioning that improvements in information technology have made a vast difference to the ease with which proposed changes in UK law come to attention.
- f. One recent major change in the way the relationship between Jersey and the UK works should be noted. The UK Ministry with responsibility for the Crown Dependencies is no longer the Home Office. Since 2007 it has been, first, the Department for Constitutional Affairs and more recently the Ministry for Justice. The point of contact in the Islands has also changed and nowadays, instead of using the Official Channel for correspondence, which went to and from the UK via the Lt Governor and the Bailiff's Chambers, much of the communication between MoJ and the Insular authorities is now less formal and is either through the Chief Minister's Department or direct with Jersey Departments. These arrangements are described in more detail in the Justice Select Committee Report on the Crown dependencies of 30th March 2010 (HC56-1).
- g. On occasions, where an Act of Parliament has been extended partly or wholly to Jersey by Order in Council, the Chief Minister's Department, in its co-ordinating role for contact with UK Government Departments, will be notified by the UK officials of the prospective changes and asked whether Jersey wishes to have a permissive extent provision in relation to them.

4.4 Specifically, since 1945 the extent to which UK child care legislation has been mirrored by Jersey law

- a. Almost all child care legislation in Jersey mirrors UK child care legislation to some extent, although it incorporates only those provisions relevant to Jersey to reflect far fewer administrative layers within a much smaller jurisdiction. However, without carrying out a comprehensive review of UK child care legislation since 1945 it is not possible to say whether Jersey law mirrors all UK child care legislation; in fact I believe that other witnesses in the Inquiry may give evidence on this topic.

- 4.5 Consider, by reference to child statutory legislation and regulations since 1945 those instances where legislative change in relation to child care has been triggered by circumstances specific to Jersey (e.g. adoption immediately after the war) and those instances where legislative change in Jersey has been prompted by legislative change in the UK (e.g. UK Children Act 1989/Children (Jersey) Law 2002)**

4.5.1 Legislative change triggered by circumstances specific to Jersey

- a. *Adoption of Children (Jersey) Law 1947* - the documents found in relation to this Law¹⁰⁸, set out the reasons for introducing this Law, which was to provide persons who bring up children who are not their own, with “assurance that the care, expense and attention which they give to the adopted child will not be lost and that the natural parent will not step in whenever it suits him to do so.” It acknowledged in those documents that the attempts at that time to afford this security by placing the child under the guardianship of adopters was not effective as the father and widowed mother still retained the right to custody unless a court decided otherwise. It is also acknowledged further that “It should be stated that some persons, in order to adopt children, have obtained adoption orders in England, and it is absolutely wrong that any person domiciled in Jersey should have to set up a fictitious domicile in order to obtain a remedy which should be obtained under the control of the Jersey court”.
- b. Specifically, this related to the post-war situation, where families had taken in illegitimate children and lived in fear that the purported father might return and try to re-claim the child.
- c. Jersey has also, at times, maintained differences in legislation between the UK and Jersey, for example in relation to the age of eligibility to adopt under the Adoption (Jersey) Law 1961. At a meeting of the Health and Social Services Committee on 5th June 1996, it was agreed that the definition of “infant” in Article 1 of the Law would be amended to reflect the reduction of the age of majority in Jersey from 20 to 18 years, however, the Committee, having satisfied itself that the current adoption requirements relating to the age of adopting individuals were satisfactory, decided not to

108 Undated notes entitled “Notes on Adoption of Infants Bill” [RW85]

mirror the lower age of eligibility to adopt in the UK Adoption Bill at that time¹⁰⁹.

4.5.2 *Legislative change in Jersey prompted by legislative change in the UK*

See answer to 4.3 above.

The introduction of the Children Act 1989 prompted the Attorney General to request Crown Advocate, Stéphanie Nicolle and Children's Officer, Anton Skinner to prepare a review of Jersey's Children's Law¹¹⁰. This is explained in detail in Section 3.3.1 above.

4.6 Consider, if there has been mirror legislation, the lead time between the UK legislation and the Jersey law: what accounts for the time span

- a. The Children (Jersey) Law 1969 was largely based on the Children Act 1958. As discussed in Sections 3.2.2 and 3.2.3 above, the first draft of Jersey's 1969 law was sent for comment to the Home Office in 1965, but did not come into force until 1st September 1970. The main reason for this delay was the need to reflect in Jersey law the complete overhaul of the UK criminal justice system for young offenders and the fact that the Children's Department of the Home Office, who were providing comments on the draft Jersey Children's Bill was occupied with bringing in the UK's own changes to child care legislation at that time. In the end Jersey brought in its own legislation in full knowledge that an amendment would be required immediately in relation to Approved Schools, rather than delay the full Law any further.
- b. Similarly, the Children (Jersey) Law 2002 was largely based on the Children Act 1989 with adaptations considered appropriate for Jersey. Whilst it is difficult to generalise about the reasons why there is a time lag, in some instances, between the passage of UK legislation and its being mirrored in Jersey, amongst the likely factors might be the need to consider the extent of any adaptations, the fit of the new legislation with existing legislation in Jersey and the effect on the customary law. It may also be that for various reasons, some of the complexities found in the UK model will be unnecessary in a smaller jurisdiction such as Jersey. There may also

¹⁰⁹ Act of the Health and Social Services Committee, dated 5th June 1996 [RW86]

¹¹⁰ Letter dated 3rd July 1989 from Children's Officer to Deputy Law Draftsman [RW87]

sometimes be an element of the lack of local resources to address issues but it not easy to be specific about this.

4.7 Consider the contrast in regulatory provision in child care and the role of ministerial guidance in UK (Home Office guidance in 1940s-1970s; orange book guidance with the Children Act 1989) and its equivalent in Jersey

a. I am afraid that I cannot answer this question as I have not seen the Home Office guidance referred to and I am unaware of whether such guidance was made available to Jersey. Likewise, I have not seen any Jersey equivalent guidance. I would expect that those working in the Education and Health Departments dealing with child care matters would be better placed to answer this than I am. I can say that a review of the Law Officers' Department, States Greffe and Law Draftsman's Department files relating to the child care legislation did not bring to light any information on this; but of course there is a possibility that there could be information in other files not relating to the legislation, which were not reviewed for the purpose of proving my evidence.

4.8 Comment on whether where there is delay in implementing legislative change in Jersey this is a reflection of societal attitudes

a. I have already provided what evidence can be located in the files on the reasons for the delays in legislative changes. Unfortunately, I do not think that I am qualified to comment further on this question; it seems that it would be more appropriately addressed to a social historian of both Jersey and the UK.

Statement of Truth

I believe the facts stated in this witness statement are true.

Signed *Richard William Whitehead*
.....
Richard William Whitehead

Dated *2. 9. 2014*
.....

Appendix I - List of legislation

Doc No	Document Description	Date
1.	The 'Loi appliquant à cette Ile certaines des dispositions de l'Acte de Parlement intitulé 'Children and Young Persons Act 1933', confirmed by Order of His Majesty in Council of the twenty-first day of February 1935	1935
2.	"Brig-Y-Don Children's Convalescent and Holiday Home" Incorporation Law – in French	1939
3.	Loi autorisant le transfert au Public de cette Ile des immeubles appartenant à L'Asile dit : 'The Jersey Female Orphans' Home' <i>(Acte-Rapport du Comité d'Instruction Publique recommandant, conditionnellement, d'accepter le transfert aux Etats de l'Institution dite : 'Jersey Female Orphans' Home,' aux termes et conditions y énoncés)</i>	1939
4.	The 'Loi (1940) concernant les témoignages d'enfants dans les poursuites criminelles'	1940
5.	The 'Loi (1940) sur la Protection de l'Enfance' <i>(repealed by Children (Jersey) Law 1969)</i>	1940
6.	The 'Loi pour investir le Comité d'Instruction Publique des droits paternels à l'égard des personnes qui ont été trouvées par la Cour Royale en besoin de protection et qui ont été envoyées à une Institution dans cette Ile', confirmed by Order of the tenth day of March 1947 of the Counsellors of State in Council on behalf of His Majesty	1947
7.	Adoption of Children (Jersey) Law	1947
8.	Public Instruction Committee Act 1953 (Conditions for the reception of children into the care of the Public Instruction Committee)	1953
9.	Public Instruction Committee (Change of Name) (Jersey) Act (changed to Education Committee, also ref to Westaway Creche)	1955
10.	Children (Criminal Proceedings) (Jersey) Law 1956	1956
11.	Criminal Justice (Jersey) Law 1957 – Art 2 and para 2 of Art 8	1957
12.	'Loi pour modifier la Loi (1935) appliquant à cette Ile certaines des dispositions de l'Acte de Parlement intitulé 'Children and Young Persons Act 1933', confirmed by Order of Her Majesty in Council of the twentieth day of December 1957	1957

Doc No	Document Description	Date
13.	Adoption of Children (Amendment) (Jersey) Law	1957
14.	Adoption of Children (Amendment No.2) (Jersey) Law	1959
15.	Jersey House of Help (Transfer to Public) (Jersey) Law	1960
16.	Haut de la Garenne Act	1960
17.	Jersey Female Orphans' Home Law	1961
18.	Adoption (Jersey) Law	1961
19.	Adoption Rules	1962
20.	Adoption (Amendment) (Jersey) law	1963
21.	Adoption (Jersey) Law	1965
22.	Adoption (Amendment) (Jersey) Rules	1965
23.	Adoption (No.2) (Jersey) Law	1966
24.	Westaway Trust (Amendment No.2) (Jersey) Law	1966
25.	Children (Jersey) Law	1969
26.	Children's Benefit Funds (Jersey) Law	1969
27.	Children (Jersey) Law, 1969 (Commencement) Act	1969
28.	Children (Jersey) Law, 1969 (Commencement) (No. 2) (Jersey) Act	1970
29.	Children's (Boarding-Out) (Jersey) Order	1970

Doc No	Document Description	Date
30.	Children (Amendment) (Jersey) Law	1972
31.	Children and Young Persons (Designation of Jersey Order) Order	1972
32.	Children (Contribution Orders) (Jersey) Rules	1972
33.	Adoption (Amendment No.2) (Jersey) Rules	1974
34.	Children (Amendment No.2) (Jersey) Law	1974
35.	Children (Amendment No.3) (Jersey) Law	1978
36.	Children (Amendment No.4) (Jersey) Law	1986
37.	Westaway Trust (Amendment No.3) (Jersey) Law	1990
38.	Protection of Children (Jersey) Law	1994
39.	Adoption (Amendment No.3) (Jersey) Law	1995
40.	Transfer of Functions (Health and Social Services Committee) (Jersey) Act	1995
41.	Children (Amendment No. 5) (Jersey) Law	1996
42.	Protection of Children (Amendment) (Jersey) Law	1997
43.	Protection of Children (Amendment No.2) (Jersey) Law	1999
44.	Adoption (Amendment No.4) (Jersey) Law	1999
45.	Day Care of Children (Jersey) Law	2002
46.	Children (Jersey) Law	2002

Doc No	Document Description	Date
47.	Adoption (Amendment No.5) (Jersey) Law	2002
48.	Protection of Children (Amendment No.3) Jersey Law	2004
49.	Day Care of Children (Jersey) Law 2002 (Appointed Day) Act	2005
50.	Children (Jersey) Law 2002 (Appointed Day) Act	2005
51.	Children (Contact in Care) (Jersey) Regulations	2005
52.	Children (Parental Responsibility Agreement) Rules	2005
53.	Children (Placement) (Jersey) Regulations	2005
54.	Children (Prescribed Classes of Applicant to Vary Directions) Rules	2005
55.	Children (Secure Accommodation) (Jersey) Order	2005
56.	Children Rules	2005
57.	Children (Amendment) Rules	2005
58.	Children (Voluntary Homes) (Jersey) Order	2005
59.	Child Custody (Jurisdiction) Rules	2005
60.	Child Custody (Jurisdiction) (Jersey) Law	2005
61.	Child Abduction and Custody (Jersey) Law	2005
62.	Children and Day Care (Amendment) (Jersey) Law	2005
63.	Children (Regulation of Employment) (Jersey) Order	2011

Doc No	Document Description	Date
64.	Adoption (Amendment No.3) Rules	2012
65.	Children (Amendment No.2) Rules	2013
66.	Adoption (Amendment No.6) (Jersey) Law	2013

Appendix II

Policy Committee Presidents 1973 - 2005 *Chief Ministers of Jersey 2005 - present*

Policy Advisory Committee (1973 - 1987)

Prior to the establishment of the Policy and Resources Committee, the closest that the States of Jersey had to a “senior” committee was the Policy Advisory Committee (PAC), which was a non-executive Committee established in 1973. PAC’s function was primarily to bring forward a five year plan particularly relating to economic policy, but PAC’s purpose was also to co-ordinate policy objectives that were cross-committee. The Committee continued to meet until 1987. Attached is P20/1973 which provides background to the establishment of the Policy Advisory Committee. The Presidents were -

- Senator C Le Marquand (Mar 1973 - Dec 1978)
- Deputy Sir R Marett K.C.M.G., O.B.E. (Dec 1978 - Nov 1981)
- Senator J Le Marquand (Nov 1981 - Dec 1981)
- Senator P F Horsfall (Dec 1981 -Dec 1984)
- Senator R Vibert (Dec 1984 - Dec 1987)

When new Committees were elected in December 1987, the election of the President and members of the Policy Advisory Committee were deferred and the Policy Advisory Committee was never re-constituted. The Policy and Resources Committee came into being in 1989.

Policy and Resources Committee (1989 - 2005)

The Policy and Resources Committee was set up in 1989. Its Presidents were as follows:

- Senator R.R. Jeune (Appointed 07.02.89)
- Senator P.F. Horsfall (Appointed 17.12.96)
- Senator F.H. Walker (Appointed 12.12.02)

Chief Minister's Office (2005 to present)

The Chief Minister's Office was set up in 2005, following the move to ministerial government following the machinery of government reforms. Chief Ministers to date have been as follows:

- Senator F.H. Walker (Appointed 05.12.05)
- Senator T.A. Le Sueur (Appointed 08.12.08)
- Senator I.J. Gorst (Appointed 14.11.11)

Appendix III - Bailiffs of Jersey

Les Baillis de de Jersey		
1	1277-90	Messire Philippe Levesque
2	1290-94	Pierre d'Arcis
3	1294-99	Jean de Carteret
4	1299-1309	Philippe Levesque
5	1309-1331	<i>les Jure-Justiciers suivants furent Baillis à tour de role -</i>
		Nicolas Hasteyn; Henri de St. Martin;
		Guillaume Longynnour; Pierre Hugon;
		Lucas de Espyard; Pierre de la Haye;
		Philippe de Vincheleys; Guillaume Brasdefer;
		Mathieu Le Loreour; Geoffroi de la Hougue;
		Philippe Levesque; Guillaume le Petit;
6	1332	Raoul Tourgis
7	1348	Guillaume Hastein
8	1357	Raoul Lempriere
9	1367-8	Richard de St. Martin
10	1368-70	Richard le Petit
11	1370	Jean de St. Martin
12	1373	Thomas Brasdefer
13	1373-4	Jean de St. Martin
14	1378-91	Thomas Brasdefer
15	1386-93	Thomas de Bethom
16	1395-1401	Geoffroi Brasdefer
17	1402-3	Colin le Petit
18	1405-6	Guillaume de Lecq
19	1406-25	Thomas Dunyer
20	1432-33	Messire John Bernard
21	1435	Thomas de la Cour
22	1434-6	Jean Lempriere
23	1436-42	Messire John Bernard
24	1439	Jean Lempriere
25	1444-46	Jean Payn

26	1446-51	Regnauld de Carteret
27	1452-6	Jean Poingdestre
28	1459-62)	Nicolas Morin
	1464-67)	
29	1467-76	Jean Poingdestre
30	1477	Nicolas Morin
31	1479-85	Guillaume Hareby
32	1486-93	Clement Le Hardy
33	1494	Jean Nicolle
34	1494-1513	Thomas Lempriere
35	1513-23	Helier de Carteret
36	1524	Helier de la Rocque
37	1528	Jasper Penn
38	1529-61	Helier de Carteret
39	1561-64	Hostes Nicolle
40	1566-83	Jean Dumaresq
41	1583-86	George Paulett
42	1586-87	Jean Dumaresq
43	1587-91	George Paulett
44	1591-95	Jean Dumaresq
45	1595-1614	George Paulett
46	1615-21	Jean Herault
47	1622-24	Messire William Parkhurst
48	1624-26	Jean Herault
49	1626-43	Messire Philippe de Carteret
50	1643	Michel Lempriere
51	1643-51	Messire George de Carteret
52	1651-60	Michel Lempriere
53	1660-61	Messire George de Carteret (Baronnet)
54	1661-62	Messire Philippe de Carteret
55	1662-65	Philippe de Carteret
56	1665-82	Messire Edouard de Carteret
57	1682-93	Messire Philippe de Carteret (Baronnet)

58	1694-1703	L'Honorable Edouard de Carteret
59	1703-15	Messire Charles de Carteret (Baronnet)
60	1715-63	John, Lord Carteret
61	1763-76	Robert, Lord Carteret
62	1776-1826	Henry Frederick, Lord Carteret
63	1826-31	Messire Thomas Le Breton
64	1831-48	Messire Jean de Veulle
65	1848-57	Messire Thomas Le Breton
66	1858-80	Jean Hammond
67	1880-84	Messire Robert Pipon Maret
68	1884-99	Messire George Clement Bertram
69	1899-1931	Messire William Henry Venables Vernon, KBE
70	1931-35	Charles Edward Malet de Carteret
71	1935-61	Lord Coutanche
72	1962	Cecile Stanley Harrison, CMG, OBE (died 1962)
73	1962-74	Messire Robert Hugh Le Masurier (died 1996)
74	1974-85	Messire Herbert Frank Cobbold Ereaut (died 1998)
75	1986-95	Peter Leslie Crill, KBE (died 3 rd October 2005)
76	1995- 2009	Messire Philip Martin Bailhache
77	2009 -	Michael Cameron St John Birt

Depuis 1277 les fonctions de Gardien et de Bailli devenaient distinctes, et qu'on nommait deux Baillis l'un pour Jersey et l'autre pour Guernsey.