



Jersey

CHILDREN'S PROPERTY AND TUTEURS (JERSEY) LAW 2016

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Jersey

CHILDREN'S PROPERTY AND TUTEURS (JERSEY) LAW 2016

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

Commencement [[see endnotes](#)]

1 Interpretation

In this Law –

“delegate” means a person appointed as such under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016;

“guardian” means, in relation to a minor, the person (if any) appointed as the minor’s guardian under Article 7 of the Children (Jersey) Law 2002;

“Minister” means the Chief Minister;

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

“property” means –

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

“relative” means, in relation to a minor –

- (a) a grand-parent;
- (b) a brother or sister (whether of the full blood or half blood);
- (c) an uncle or aunt (including a person who is an uncle or aunt by marriage or civil partnership);
- (d) a first cousin (including a person who is a first cousin).¹

2 Appointment of *tuteur*

- (1) A *tuteur* must be appointed in relation to property owned by or due to a minor if the property is or includes –

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

3 Powers and duties of *tuteur*

- (1) A *tuteur* is responsible for the administration of the property in relation to which he or she is appointed, and for no other matter.
- (2) The Code of 1771 makes provision as to the manner in which a *tuteur* must discharge his or her responsibility and the liability of a *tuteur* who does not discharge his or her responsibility in that manner.
- (3) Subject to any restriction imposed by the Royal Court, a *tuteur* acting in the discharge of his or her duties shall have the same powers in relation to the property as the minor would have, if the minor was of full age.
- (4) Without prejudice to the generality of paragraph (3), the powers referred to in that paragraph include the same powers of delegation and to employ other persons as a trustee has under Article 25(2) and (4) of the Trusts (Jersey) Law 1984.

4 Expenses and remuneration of *tuteur*

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

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

5 Discharge of *tuteur*

- (1) The Royal Court may discharge an individual from the office of *tuteur* at any time.
- (2) An application for a person to be discharged from the office of *tuteur* may be made to the Royal Court by –
 - (a) the *tuteur*;
 - (b) the Attorney General; or
 - (c) with the leave of the Royal Court, any other person.
- (3) When discharging an individual from the office of *tuteur* the Royal Court –
 - (a) must, where Article 2(1) applies, appoint one or more individuals as *tuteur* in his or her place, if there would otherwise be no-one appointed as *tuteur* in relation to the minor's property; and
 - (b) may, in any other case, appoint one or more individuals as *tuteur* in his or her place.
- (4) When discharging an individual from the office of *tuteur*, the Royal Court may give directions under Article 7.

6 Cessation of appointment of *tuteur*

- (1) An individual shall cease to hold the office of *tuteur* upon the minor attaining full age or dying.

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

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

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

8 Inventories, accounts and papers

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

9 Offences

- (1) A person (other than the *tuteur*) who administers the property of a minor in relation to which a *tuteur* is appointed commits an offence.
- (2) Paragraph (1) does not apply to a person who takes action concerning property in relation to which a *tuteur* is appointed if the person –
 - (a) takes the action in accordance with a direction given by the *tuteur*; and
 - (b) reasonably believes that the direction is lawfully given by the *tuteur*.
- (3) Paragraph (1) does not apply to a person who takes action concerning property in relation to which a *tuteur* is appointed if the person –
 - (a) is the delegate of the *tuteur*;
 - (b) acts in accordance with the terms of the delegation; and
 - (c) reasonably believes that the delegation is lawfully made by the *tuteur*.
- (4) Paragraph (1) does not apply to a person who takes action concerning property in relation to which a *tuteur* is appointed if the person –
 - (a) is employed by the *tuteur*;
 - (b) acts in accordance with the terms of the employment; and
 - (c) reasonably believes that his or her employment by the *tuteur* is lawful.
- (5) A person who administers the property of a minor in relation to which a *tuteur* is required by Article 2(1) to be appointed but for which no *tuteur* is appointed commits an offence.
- (6) Paragraph (5) does not apply to a person who administers the property –
 - (a) only for the purpose of preserving it; and
 - (b) only to the extent necessary for that purpose.
- (7) Paragraphs (1) and (5) do not apply to a person who administers the property of a minor in accordance with directions given by the Royal Court under Article 7.
- (8) The penalty for an offence under paragraph (1) or (5) is imprisonment for a term of 12 months and a fine.
- (9) A *tuteur* or former *tuteur* who fails, without reasonable excuse, to comply with any requirement in Schedule 2 commits an offence and is liable to a fine of level 3 on the standard scale.

10 General provisions as to offences

- (1) Where an offence under this Law committed by a body corporate, limited liability partnership or separate limited partnership, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
 - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the company; or
 - (b) any person purporting to act in any such capacity,

the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to acts and defaults of a member in connection with his or her functions of management as if the member were a director of the body corporate.

11 Rules of court

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

12 Abolition of customary law rules

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

13 Regulations

The States may, by Regulations, amend this Law.

14 Application, transitional provisions and saving

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

15 Citation

This Law may be cited as the Children's Property and Tuteurs (Jersey) Law 2016.

SCHEDULE 1

(Article 2(14))

OATH OF TUTEUR

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

SCHEDULE 2

(Article 8(1))

INVENTORIES, ACCOUNTS AND PAPERS

1 Interpretation of Schedule 2

In this Schedule –

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

“cessation date” means –

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

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

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

2 Delivery of inventory

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

3 Preparation and delivery of annual accounts

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

4 Discharge or cessation of appointment of *tuteur*

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

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

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement	◦Projet No (where applicable)
Children's Property and Tuteurs (Jersey) Law 2016	L.13/2016	22 August 2016	P.156/2015
Mental Health and Capacity (Consequential Amendment and Transitional Provision) (Jersey) Regulations 2018	R&O.49/2018	1 October 2018 (R&O.51/2018)	P.48/2018

◦Projets available at www.statesassembly.gov.je

Table of Renumbered Provisions

Original	Current
13	spent, omitted
14	13
15	14
16	15

Table of Endnote References

¹ Article 1 *amended by R&O.49/2018*

² Article 6(2) *amended by R&O.49/2018*