

A guide to the Children's Property and Tuteurs (Jersey) Law 2016

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Date / [October 2016](#)

On 12 April 2016 the States of Jersey voted to update the Island's customary law and statutory rules governing the administration of property belonging to children.

This reform is long overdue, the current Tutelle regime and procedure can be traced back to the early thirteenth century and have developed little over time, the last significant update occurring in 1862. In 2002 the Jersey Law Commission proposed a complete overhaul of the law of tutelles and called for the 1862 statute to be repealed and replaced by new legislation. The new law entitled "Children's Property and Tuteurs (Jersey) Law 2016" (the 'Law') came into force on 22 August 2016.

[Details of the Law are described in greater detail below. What is a Tutelle](#)

Historically, under Jersey law, a minor (a person not yet 18 years of age) who has inherited, or has been gifted or has otherwise acquired movable property (for example cash, stocks, shares and other securities, jewellery) or immovable property (for example real estate) has not been legally competent to deal with such property and has required a tuteur to deal with the property.

Prior to the introduction of the Law, a tuteur was nominated by seven people, individually known as electeurs and collectively as a tutelle.

This system had a number of drawbacks, namely that:

- many electeurs did not understand the extent of their potential liability (they were liable for any defaults of the tuteur but had no real control over the tuteur)

- convening seven electeurs was an administratively cumbersome process
- there was no clear mechanism for a tuteur to resign or be removed from office
- there was no investigation as to the suitability of the tuteur and
- the consent of the Royal Court to the appointment was only required where the tuteur was dealing with the minor's immovable property, and not where the tuteur was only dealing with movable property.

The Law retains the office of the tuteur but streamlines, simplifies and clarifies the appointment of the tuteur and the administration of the minor's property, so as to make the process better suited to modern family arrangements.

[The Law](#)

The Law abolished the role of the electeurs. From 22 August 2016 onwards the tuteur will be appointed by the Royal Court only.

[Appointment](#)

A tuteur must be appointed:

- for immovable property that is owned by or due to a minor, irrespective of value and
- for movable property owned by the minor if the value exceeds £25,000.

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A tuteur need not be, but may be, appointed if the movable property is worth less than £25,000 or if the minor's property is already administered by an administrator, executor or trustee.

The Royal Court also retains a general power to appoint a tuteur in any case where it sees fit to do so.

Who

Only an individual (a natural person) may be appointed as a tuteur, corporate bodies may not be appointed. A parent and/or guardian may be appointed. The Court may also appoint more than one person to act as tuteur.

How

An application for the appointment of a tuteur must be made in the Royal Court. Such application can be made by:

- a parent or relative of the minor a guardian of the minor
- a creditor of the minor
- the Attorney General
- any other person with leave of the Court.

Upon the application being made the Royal Court will appoint a tuteur (the "Appointment").

The Appointment takes effect upon the appointed individual taking an oath in the form prescribed in schedule 1 of the Law.

Duration

The position of tuteur will cease when the minor attains the age of his/her majority (18 years under Jersey law), dies or the tuteur is discharged from office by the Royal Court. When the position ceases as a result of the minor attaining the age of majority or dying the tuteur must take all necessary steps to transfer the administration of the property to the former minor, or the executor of the minor's estate, as applicable, or to any curator for the minor. The Royal Court may also give directions in relation to various matters including the transfer of the administration of the property from a tuteur to another person. The powers, duties, responsibilities and liability of the tuteur

A tuteur is responsible for the administration of the property in relation to which he or she has been appointed and for no other matter.

Subject to any restriction imposed by the Royal Court the tuteur will have the same powers in relation to the property as the minor would have at full age.

A tuteur's duties include (the "Duties"):

- the delivery to the Judicial Greffier (an officer of the Royal Court) within 90 days of the tuteur's appointment an inventory of the minor's property
- the preparation and submission to the Judicial Greffier of annual accounts in connection with the administration of the property and
- delivery of all accounts to the Judicial Greffier and other relevant persons on the cessation of the tuteur's position.

Failure to comply with any of the Duties without reasonable excuse is an offence and may result in a fine of up to £2,000.

It is an offence for a person to administer a minor's property in circumstances where the Law requires that a tuteur should be, but has not been, appointed. If a tuteur has been appointed it is an offence for another person other than a person employed by the tuteur to administer the minor's property. The penalty for these offences is an unlimited fine and/or imprisonment for up to 12 months.

A tuteur will be entitled to remuneration (at a rate specified in rules of court) and reimbursement for his or her expenses reasonably incurred in the discharge of his/her duties.

The role of the Royal Court

The Law gives the Royal Court a supervisory function and the power to give directions in relation to:

- the extent of the tuteur's responsibility for the minor's property
- imposing restrictions on the tuteur's powers as it sees fit
- the administration of the minor's property regardless of whether a tuteur has been appointed
- the removal of the tuteur from office and
- the transfer of the administration of the minor's property from one tuteur to another or to the minor when he/she has attained full age.

A tuteur has the ability to apply to the Court for directions, as does the Attorney General, and with the leave of the court, any other person.

Conclusion

The Law represents a long overdue change to Jersey's legal landscape and has been warmly welcomed by lawyers and clients alike. It provides better supervision for the management of a minor's property, thus protecting the minor, and gives tuteurs additional flexibility and certainty.

Continued



FIND US

Carey Olsen Jersey LLP
47 Esplanade
St Helier
Jersey JE1 0BD
Channel Islands

T +44 (0)1534 888900
E jerseyco@careyolsen.com



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Visit our trusts and private wealth team at careyolsen.com



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