



CHIEF PLEAS CONSULTATION

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DEFINING A RESIDENT and DIVISIBILITY & CHARGING

Chief Pleas want to know your views on issues that were first prioritised in the cross committee policy - *Securing Sark's Future* - as adopted at the Christmas meeting of Chief Pleas on 22nd January 2014. (available on www.gov.sark.gg) (Minute Ref: 26.9 - 22/01/14).

This policy sets out priority actions for 2014 to contribute to achieving the *Vision for Sark*. The *Vision for Sark* (available on www.gov.sark.gg – click on “Reports”) is the guiding document for government policy. It came about in 2012 by asking the community what is important for the future of Sark.

There are some basic issues and policies that the Chief Pleas believe are in need of clarification, definition or redefinition if progress is to be made in achieving some of the aspirations contained within the *Vision for Sark*.

Those issues and policies include -

- **Deciding who is to be regarded as a resident of Sark;**
- **Determining how changes in the Law would permit real property to be divisible and allow the charging of property to be made (i.e. that property can potentially be used to guarantee a loan or mortgage);**
- Evolving a tax regime that is as fair as possible;
- Providing a long term, reliable supply of electricity at an economically viable price;
- Ensuring that we have suitable broadband delivery.

Chief Pleas believe that reaching agreement on these fundamentally issues and policies and implementing the agreed policies will contribute to making Sark economically viable with greater stability for the longer term. All these issues and policies will be brought to the public for consultation over the next two to three years which will ensure that public opinion and views are taken into account when deciding what to do to achieve the *Vision for Sark*.

This consultation invites comments on the first **two** (*in bold above*) of these which are deciding who is to be regarded as a Sark Resident for certain purposes and determining how the Law should be amended to permit Divisibility and Charging of freeholds.

Defining a Sark Resident

The concept of residence in Sark is something that is of material significance for a number of purposes. For example, in order to be entitled to vote, under the Reform (Sark) Law, 2008 a person must be ordinarily resident in Sark for a period of 2 years immediately preceding that person's application to have their name inscribed on the Register of Electors. There is no statutory definition of what it means to be ordinarily resident for the purpose of the Reform Law although there has been at least one judicial determination of the phrase. Following a recent amendment, under the Housing (Control of Occupation) (Sark) Law, 2011 a person is regarded as ordinarily resident in Sark in any year if he is in the Island for an aggregate of not less than 273 days during that year, subject to certain exceptions as set out in the Law as indicated below.

The Government believes that the meaning of what it is to be ordinarily resident as set out in the Housing (Control of Occupation) (Sark) Law should be the standard meaning to be adopted in all circumstances where ordinary residence needs to be defined, except where there are good reasons not to use the definition.

Adoption of a standard definition as indicated above and set out in full below has a number of advantages. It will in particular provide for greater certainty and clarity as to who is and who is not to be regarded as ordinarily resident. In addition it should result in the following specific advantages or benefits:-

- Conseillers will be individuals with clear links to the Island based on length of physical residence in the Island, except where any exemptions apply;
- Conseillers will be elected by electors with similar clear links;
- No-one will be able to abuse what the Island offers by claiming to be resident simply by virtue of association without also demonstrating material physical residence over specified periods. Legal Aid, Procureur, Professor Saint Fund, Tax status being possible examples;

In future, it will enable policies to be better targeted to the needs of residents by having a clear and legal definition. These could include fairer taxation, targeted shipping discounts, work permits etc.

The definition now used in the Housing (Control of Occupation) Law is set out below:-

a) A person shall be regarded as ordinarily resident in Sark in any year if and only if he is in the Island for an aggregate of not less than 273 days during that year,

Notwithstanding the provisions of paragraph (a), a person does not cease to be ordinarily resident in Sark during any period by reason only of the fact that during that period -

- he is engaged, elsewhere than in Sark, in full-time education or training at an establishment which is, or which is comparable to, a university, college or school,*
- he is undergoing treatment or care, elsewhere than in Sark, for a medical condition which cannot practicably or reasonably be treated in Sark,*
- he is serving, elsewhere than in Sark, a sentence of imprisonment or youth detention, and (for the avoidance of doubt) this sub-paragraph shall apply to any period during which a person is required to reside, elsewhere than in Sark, for the purposes of compliance with any conditions attached to any parole license or any comparable post- custodial conditions,*
- he is serving, elsewhere than in Sark, in the armed forces of the Crown or in the Merchant Navy.*

The Government of Sark believes that it is vitally important that it is elected by, representative of, answerable to and makes policies with, due regard to the genuine residents of the Island.

We welcome any comments you might wish to make by the **6th June 2014** on this issue of ordinary residence so that they may be considered along with other information before making a proposal to Mid-Summer Chief Pleas 2014. (*see below for ways to respond*).

Divisibility & Charging

The Letters Patent of 1611 issued by King James I in respect of Sark contain a number of provisions relating to land tenure. Some of those provisions, such as those which declared that tenements and hereditaments must pass on death to the eldest son of the deceased, have ceased to have effect. Others, such as those which prohibit the divisibility of tenements and freeholds and the creation of charges on those tenements and freeholds remain in place.

The Government believes that the time may have come to amend the law in order that the prohibitions on divisibility and the creation of charges under the Letters Patents should be terminated. This would enable owners of freehold property to dispose of part only of the property that they own (Divisibility). It would also enable loans to be secured over freehold property by way of mortgage or bond (Charging). The Cross Committee Report as adopted by Chief Pleas earlier this year states that "*modifying the effects of the letters patent of 1611 to allow land to be divided would bring flexibility to the land ownership market which, combined with the ability to charge property, should ensure a fairer and more dynamic economic future for Sark.*"

There are certain safeguards and procedures that it is considered will need to be put in place before Divisibility and Charging is made permissible. These could include the following:-

- A Land Use Plan that contributes to the 'Vision for Sark' and allows public involvement; (this is currently being developed and will be brought to the public for their input);
- No compulsion to divide land – the land owner will have to agree;
- The ability to identify property – the current adoption and updating of Digi-map through the good offices of the Société Sercquaise and Chief Pleas will enable this to be further improved;
- A register of charges (loans or mortgages using the property as security) including rules governing the priority of such charges;
- That if a borrower fails to make repayments then a process that appoints an independent person (a receiver) to ensure the best possible sale of the property for the benefit of all concerned, not to have the property simply revert to the lender for his own benefit.

Changing the law in relation to Divisibility and Charging is not a simple or quick process, but the Government believes it to be vitally important for the economic future of the Island and all who want to live and do business here. It will require preparation and approval of a suitable Projet de Loi comprising provisions which will need to have been carefully thought through.

Any comments you may wish to make at this stage on the possibility of changing the law to facilitate Divisibility and Charging as set out above would be welcomed. They will be considered along with other information before bringing proposals to Midsummer Chief Pleas 2014 to set out the mechanism for changing the laws.

Comments no later than 6th JUNE 2014 please –

by letter to - **The Committee Secretary (cp1).
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or by e-mail to – **cp1.consultation@gov.sark.gg**