

## AIDE MEMOIRE FOR PUBLIC MEETING TO DISCUSS SARK PROPERTY LAW ISSUES

### Summary of Existing Legislation

- **1565 Letters Patent: the establishment of the 40 tenements.** Queen Elizabeth I granted the Fief of Sark to Hélier de Carteret, Seigneur of St. Ouen in Jersey. It was made a strict condition of the grant that the Island must be "*continually inhabited, dwelt in or occupied by 40 men at least*". The Seigneur, after reserving certain lands for his own use and occupation, divided the remainder of the Island into 40 individual land holdings ("*tenements*").
- **1611 Letters Patent: the introduction of protectionist measures.** James I modified the original grant, making it a requirement that all estates must pass by primo-geniture, that tenement lands must be kept whole and entire and that no charge or incumbrance shall be laid upon the land.
- **Order in Council registered 16 July 1927 ("Aliénation de terres dans l'île de Sercq").** Created made some important exceptions to the legal rule that real property was indivisible (as established in the Letters Patent of 1611) by making it lawful to alienate and acquire land forming part of any tenement or other building in Sark for religious, charitable, educational or other purpose for the benefit of the community (but for no other purpose) and established the steps required to be taken for such a conveyance to be valid.
- **The Real Property (Succession) (Sark) Law, 1999.** Abolished some of the principles of succession established by the Letters Patent in 1611, whilst re-confirming the indivisibility of tenements and freeholds.
- **The Real Property (Transfer Tax, Charging and Related Provisions) (Sark) Law, 2007.** Abolished the congé and the treizième, introduced a property transfer tax and prospectively amended the law in respect of the charging of interests in relation to real property.

### Outline of Consequences of Current Legal Position

- **Freehold land.** In addition to the tenements, a number of small freehold parcels of land have been created through sub-divisions. Those freeholds continue to exist and have the status of "ownership interest" under the 2007 Law.
- **Indivisible Nature of Tenements and freeholds.** Tenements and freeholds are impartable and undivided, except in certain circumstances as set out in the 1927 Law.
- **Retrait Lignager.** The customary law right of retrait lignager has not been abolished in Sark.
- **Leases.** Further to recent case law (*de Carteret v Surcouf* (1999)), it has generally been established that long leases are not viewed as incumbrances and are therefore permitted.
- **Servitudes.** Although used in practice, the legal position of servitudes is not entirely clear.
- **No Mortgages.** No charge can be laid upon the land other than such charges, payments, services or duties as landowners are bound to perform by their tenures of their lands to the Seigneur or for the defence or preservation of the Island. Mortgages are therefore currently not permitted in Sark. A solution exists under the 2007 Law which permits the Chief Pleas by way of Ordinance to set out the circumstances in which ownership interests or long leasehold interests (20 years or longer) may be charged.

- **No Company Legislation in Sark.** Sark does not currently have any company legislation. Companies able to have any interest in Sark land are incorporated elsewhere.
- **Succession.** Succession laws now allow inheritance by women and illegitimate and adopted children and permit the owner of a tenement or freehold to give the property by will to one person, either within a class of descendants or generally, including by way of a trust for sale.
- **Escheat.** In Sark, there continues to be a customary right of escheat whereby property owned by a deceased person without ascertainable heirs becomes the property of the Seigneur.
- **Taxes.** The Seigneur's congé and corresponding treizième have been abolished. Property transfer tax (currently 4%) has been introduced.

### **Some Issues for Consideration**

Full consultation with Sark residents and other interested parties will be essential in order to identify any issues where reform of real property legislation is needed or desirable. Some key legal issues to consider probably include -

- **Principle of Indivisibility of Tenements and Freeholds.** Should this longstanding principle of Sark law remain?
- **Charges.** Should the creation of charges (ie, mortgages) over all tenements, freehold and leasehold land be permitted in Sark?
- **Leases.** Should any forms of lease be regarded as estates in property or remain contractual?
- **Leasehold Enfranchisement.** Should the right to buy freehold land for holders of long term leasehold interests be created? Should there be corresponding rights for landlords?
- **Land development.** Would an Island Plan and more robust planning controls assist?
- **Registered Land System.** Would the introduction of a registered land system be a solution?
- **Right to Retrait Lignager.** What is the future of this right?

There may well be many other issues to address, which is precisely why we are recommending input through consultation. It will not be practicable to offer any legal solutions until Islanders' wishes are identified, analysed and balanced. Many of the decisions to be taken will flow from each other meaning that some modelling of the consequences of different choices may be a worthwhile exercise. In terms of the process to follow, one option could be to hold a series of workshops through the winter designed to involve as many Islanders as possible. By the middle of 2011, a clearer picture of the best way forward should emerge and consultation on a set of proposals may be feasible.

**4 October 2010**  
**Law Officers of the Crown**