



The Government of Sark

POLICY AND PERFORMANCE COMMITTEE

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CONSULTATION ON THE CREATION OF A STATUTORY AFFILIATION JURISDICTION IN SARK

INTRODUCTION

The Policy and Performance Committee wants to know your views. A customary power to make orders for the maintenance of illegitimate children exists but in Sark, unlike in Guernsey and Alderney, no modern statutory provision has been made. The Law relating to maintenance for illegitimate children in Sark is therefore unclear and unsatisfactory. It is proposed that a clear statutory regime be introduced in order to give the mother of illegitimate children a means of applying to the Court for support for their children as they would be able to do in respect of their legitimate children.

HOW THE LAW WOULD WORK

These Affiliation proceedings provide a means by which a mother can obtain a contribution towards the support of her illegitimate child from its father. Please see the Explanatory note below.

BENEFIT TO HAVING THIS LAW IN SARK

The benefit of such a jurisdiction is primarily that the child, whose welfare will be the paramount consideration of the Court, will be adequately supported in his childhood and that consequently any reliance on welfare support is reduced. In reaching its decision, the Court will take into account the financial needs and resources of the child, any relevant physical or mental disabilities, and the financial resources and responsibilities of the father and the mother or other person making the application.

LAW OFFICER'S EXPLANATORY NOTE

The Affiliation Proceedings (Sark) Law, 2017

It is proposed that a woman who is pregnant or who has given birth may apply to the Court of the Seneschal (a) for a declaration as to the paternity of the child and (b) for an order that the father be required to make payments to the child's mother in support of the child. The application must first be served on the alleged father who will have opportunity to give evidence, first as to whether or not he is the father of the child and second, as to his financial means and ability to pay maintenance. Such an application may also be made by a person other than the mother who has parental responsibility for a child.

The paramount consideration of the Court, as always, will be the welfare of the child, but the Court will also be obliged to take into account the financial needs and resources of the child, any physical or mental disabilities which might affect the child's needs, and the earning capacity and financial resources and other financial responsibilities of both the applicant and the father of the child.

The Court may, subject to these considerations, order the father to make periodical payments and/or a lump sum in respect of the child's maintenance and birth expenses. An interim order for periodical payments may be made pending a final decision.

Generally speaking an order will be valid, subject to any variation (or even revocation) subsequently made on the application of either parent, until the child reaches the age of 18; but the Court may extend this period if the child remains in education or vocational training after that age. Any application for a variation will require further evidence to be heard.

The Court has wide powers to order payments by instalments or to allow time for payment, and has power, where arrears of payments have accumulated, to reduce or waive the obligation to pay the arrears, if this appears just in all the circumstances.

The Court may order an arrest of wages if it thinks fit for the purpose of enforcing the order, having regard to the father's means.

Proceedings may be heard in private and separately from other Court business.

There is a right of appeal from the Court of the Seneschal to the Matrimonial Causes Division of the Royal Court against any order or refusal to make an order.

End

Please let us have your views in writing to the Committee Office or by e-mail to cp3.consultation@gov.sark.gg no later than Friday, 14th August 2017.

N.B. Your responses will be held confidentially and any, if used in public reports, will be anonymised.