

MINUTES of the EXTRAORDINARY MEETING of CHIEF PLEAS

Held in the Assembly Room, Sark on 21st February 2008 at 7.00 pm.

Present: J.M.Beaumont OBE, Seigneur; Lt.Col. R.J. Guille MBE, Seneschal; A.W.J. Adams, Prévôt; T.J. Hamon, Greffier; Mrs. W. Kiernan, Treasurer; and the Constables.

Members were present as follows: **28 Tenants and 12 Deputies**

Apologies: Sir Peter Miller, Mdm. Magell and Sieur Perrée.

Medical Certificates had been received from Sir David Barclay, Sir Frederick Barclay and Sieur G. Steinmetz and nominated representatives have been accepted for this meeting.

The Seneschal welcomed Sir Frederick Barclay who has become the Tenant of La Rondellerie.

1 Minutes of the Christmas Meeting on 16th January 2008

- 01 Seneschal Asked for any factual corrections and none were offered.
He pointed out that the version of the minutes sent out with Chief Pleas papers was inadvertently entitled *Decisions of...* rather than *Minutes of the Christmas Meeting of Chief Pleas*.

Acceptance of the minutes as amended was proposed and seconded and **APPROVED** by the House.

- 02 Seneschal Asked if there were any matters arising from the minutes and raised the following -
Page 10 Item 15.20 – Confirmed that the humble petition and The Reform (Sark) Law, 2007 had been recalled from the Privy Council as requested by the Lord Chancellor and approved by Chief Pleas.
- 03 Sieur Curtis **Page 22 Item 20.01** – Provided an update on the recruitment of a new Headteacher.
Mrs. Sarah Cottle has verbally accepted the position and will be starting in September 2008. Parents of those attending Sark School have been informed and a full report will be submitted to Chief Pleas at the Easter Meeting.
- 04 Dep. R. Dewe **Page 2 Item 1.04** – The papers for the former Brecqhou Sub-Committee have still not been passed on to the GP&A Committee by the last Chairman, Sieur Donnelly.
- 05 Sieur Donnelly Former members of the Sub-Committee have been on holiday and he has been unable to obtain their signatures to verify the papers.
- 06 Seneschal The Sub-Committee was disbanded in October 2007 and it is time these papers were handed over and the matter concluded.
- 07 Dep. Olsen **Page 19 Item 13.16** – Announced that only half the budget allocated for the recruitment of the new doctor (just over £2k) has been spent and that the interview process has been successful.
A contract has been offered, signed and accepted by Dr. Peter Counsell who will take up the post from 1st June 2008. Dr. Counsell is currently in general practice in the Salisbury area.

2 Questions not related to the business of the day

- 01 Seneschal No questions had been submitted.

3 Constitution 2007 Committee (C07C) Projet de Loi – The Reform (Sark) Law, 2008

- 01 Dep. Armorgie Introduced the Projet and its supporting report confirming that, as mandated by Chief Pleas at the Christmas Meeting, the Projet had been redrafted to include “Option A” – a fully elected assembly of 28 Conseillers with no reserved seats. The Projet had been edited in time to take to London when the deputation from C07C, together with the Seneschal and HM Comptroller (HMC), Mr. Howard Roberts, met with the Minister of State with responsibilities for the Crown Dependencies. Both then and during the subsequent visit to Sark the Minister and his team were able to listen to all the views put forward and the opportunity was taken to ask questions about the content of the Projet and the way forward.
Whilst verbal exchanges are useful, C07C followed up with written questions to both HMC and to Mr. Mark Hughes at the Ministry of Justice (MoJ). Responses from both have now been received and copies showing questions and responses were circulated at the meeting to Chief Pleas Members. The full texts of both outgoing and incoming letters are now attached to these minutes as **APPENDICES 1a & b and 2a & b**. A timeline of events is shown at **APPENDIX 3**.

The Constables then distributed a copy of each five-page document to all Members and the Seneschal allowed a ten minute period for the documents to be read.

- 02 Sieur Rang Requested that the Rules of Procedure should be suspended whilst this item was discussed. The request was rejected by a show of hands but Sieur Rang called for a named vote.

Suspension of the Rules of Procedure was LOST on a named vote – 16 Pour & 24 contre

- 03 Seneschal Confirmed that the Rules of Procedure remained in place.
- 04 Dep. Armorgie Stressed that the redrafted Projet, as attached to this report was presented to the Minister and his officials in London. Responses to the written questions, sent on 8th February, were received back from HMC on 11th February and from the MoJ on 20th February. Also distributed were three propositions given to C07C by Members of this House with the request that the Committee support them by putting them forward at tonight's meeting. C07C had considered these propositions but were not unanimous in accepting the content. The propositions are therefore presented by only a majority of the Committee.
- 05 Seneschal Quoted the Rules of Procedure Section 11.9 –
Where a Member proposes to move an amendment to a Projet de Loi or a draft Ordinance he shall send the amendment to the Committee bringing the legislation forward no later than ten working days before the Chief Pleas Meeting. No such restriction shall apply to an amendment proposed on behalf of the Committee submitting the original legislation.
The Seneschal explained that two Members had requested their propositions to be included on the agenda on the 11th February but were too late as the papers were despatched that morning. He had advised them to approach C07C for support of their propositions. It is important that the supporting Committee has time to require the Law Officers to check any such propositions are vires. These propositions have not been seen by the Law Officers.
- 06 Dep. Armorgie The issues raised in the propositions were all discussed by C07C and are considered relevant and it is important to air them to test the resolve of the House. The first two propositions, submitted by Sieurs Rang and Curtis, were read out; the first dealt with staggered elections, the second with the trigger for by-elections. The Seneschal called for debate.
- 07 Dep. S. Williams Although a Member of C07C, she had only seen the propositions today and she would like to seek advice on the legality and the implications of introducing the proposal into the Projet. She would be voting against the propositions tonight.
- 08 Dep. Olsen Was not against staggered election but would be voting against tonight. It would be best for this to be discussed by a fully elected assembly. Non-residents representing Tenants here tonight should not vote on this.
- 09 Sieur Gomoll Referred to the response from HMC on the issue in which it was suggested that amendment to include staggered elections would need careful consideration before any appropriate wording could be included. The MoJ indicate that staggered election, although domestic details, could only be introduced as an amending law and not as an Ordinance.
- 10 Mlle Perrée It will be a disaster if the whole of Chief Pleas changes together on one day every four years.
- 11 Sieur Rang Everyone needs to know what they are standing for; at the end of a four year term the elections could become controversial.
- 12 Seneschal How do you envisage identifying the split between the 14 for two years and the 14 for four years?
- 13 Sieur Rang As simple as possible – 1,3,5 etc. on the final results list would be for four years, 2,4,6 etc. would be for two only. In the event of a tie age takes precedence.
- 14 Sieur Gomoll It is up to Chief Pleas to decide how a split is done. The 14 with the most votes would stay for four years the 14 with the fewer votes for two. It would only happen at the first election; from then on 14 seats would come up for election every two years with those elected sitting for four years.
- 15 Sieur Curtis Supported Sieur Rang. There would be a saving on by-elections and it would keep the interest in Island politics alive.
- 16 Sieur Baker Will introducing this idea delay the progress of the Reform Law?
- 17 Seneschal Yes it would; the Law as currently drafted would have to go back to the Law Officers for re-drafting before being returned to another meeting of Chief Pleas for ratification and despatch. Took the proposition to the vote -

Sieurs Rang & Curtis Proposition 1 – LOST on a count of hands - 18 Pour & 20 Contre

That 28 Conseillers shall be elected at the first election after commencement of the Reform Law, with 14 Conseillers being elected for 2 years and 14 Conseillers being elected for 4 years. Thereafter there shall be an election held every two years for 14 Conseillers to be elected for a term of 4 years each.

- 18 Seneschal Asked Sieurs Rang & Curtis whether their second proposition was linked to the first and, if so, did they wish to proceed now that the first proposition was lost?
- 19 Sieur Rang Agreed it was linked and would be withdrawn.

Sieurs Rang & Curtis Proposition 2 – WITHDRAWN

That a Bye-election shall only be called if the number of Conseillers falls below 26.

- 20 Dep. Armorgie Introduced the Mlle. Perree and Sieur Curtis proposition which as in the previous case did not have the full support of C07C. It is again a subject discussed in Committee and whilst being told that the ballot box will decide, there is a concern that minority groups will not be taken account of in the new Assembly.
- 21 Seneschal How do you intend to amend the Reform Law? There does not appear to be a definition of how this might be achieved. He referred to the MoJ response in which it too questions how it would be amended and that no proposals had been forthcoming.
- 22 Mr Dawes Suggested this was a request for constituencies and could be a way of safeguarding minority groups.
(representing Sir David Barclay)

Mlle. Perrée & Sieur Curtis Proposition – LOST on a count of hands - 17 Pour & 22 Contre

That Chief Pleas directs the C07C to ensure that there are reasonable safeguards for minority groups and that allowance is provided for the less populated region of Little Sark to be represented adequately.

- 23 Seneschal Requested that C07C now return to the main proposition.
- 24 Mdm. Baker Was sure we will hear lots of reasons why we should not vote for this Reform Law today but we have considered this for a long time and I cannot think of any new argument as to why it should not go forward. We have spent seven years talking about different aspects of this law and that is not rushing into it. We presented our first choice of “Option B” and our second choice of “Option D” to the Privy Council; each time, a petition stopped the Reform law going through. Time has moved on and many in the community have got thoroughly fed up with tenants going on about their rights when we should in all honesty all be equal. More than 50% of this community want a fully elected assembly and that alone should be enough for us all to vote this through. No new law will please everyone no matter how hard we try and I am sure there will be a need to address some areas such as the role of the Seigneur or Seneschal but I would like to remind you all that we have debated those roles very well. The Seigneur will no longer have a vote and it was the House’s wish that he retain his veto. We want the role of Seneschal to remain as it is. If we are to reconsider these two roles the new fully elected assembly will be more than capable of dealing with this so why should anyone here feel they can do a better job than those who will come after us? The MoJ agree these two roles need looking at but the recipe for disaster that Mr. Dawes writes about comes not from dragging our feet but from challenges that keep stopping us. Mlle. Perrée repeatedly asks the question why must we change when this has worked so well for so long; the truth is it is no longer working. There are some Tenants who are looking after their own interests instead of what is best for the community. Because of human rights legislation and challenges from within, we are forced into change and an empty seat in Chief Pleas is far more intimidating than the Seigneur or Seneschal sitting in front of us. I feel bullied but not by people I know or trust. Mr. Dawes tells us we should not feel constrained to only present “Option A”. I don’t feel constrained I think “Option A” is the way forward and whatever problems arise let the new assembly deal with them.
Let this community have a fully elected assembly; let us work together and let us make any further changes after a new assembly is sworn in.
APPLAUSE
- 25 Dep. S. Williams Was surprised that nobody else has said it but she felt it had to be said that, as Deputies of the People of Sark, we would like to voice our displeasure at the fact that two or more highly qualified lawyers are here taking the seats of Tenants who have never previously shown any interest in taking their seats in this House before today. They have parachuted representatives in at the eleventh hour to try to sabotage our Reform Law at the most important time in Sark’s life. We must move forward and must not be bullied into changing our minds.
Eight Deputies have signed this statement to show our displeasure.
APPLAUSE.
- 26 Dep. P. Williams I would like to give the reasons why I have put my name to a paper from Dep. Sandra Williams. I have lived on Sark all my life. I know Sark and its people very well so I therefore think I am fairly qualified to speak.
I have served the Island as Vingtenier and Constable; as Constable twice in fact; as Deputy Procureur for six years and Senior Procureur for two years. I am an Assistant Constable, one of the Fire & Rescue Service personnel and obviously, a People’s Deputy serving on various Committees. I have done and continue to do these things, not because I want to blow some kind of personal trumpet but because I want to give something back to the Island and the community I love. I don’t want to live anywhere else, I am happy here, but I, along with many other locals, are becoming increasingly concerned about pressures put on this Island. I am fed up with the constant drip-feeding of propaganda and threats to the population of Sark and the way we want to live our lives, when all we want to do is to be left in peace and quiet.

- 26 Dep. P. Williams
continued
- As long as I have served in Chief Pleas, I have found that most of the decisions that have been thought out carefully, through debate and common sense, have worked out pretty well so far. However, it is time to move on. We don't need droves of lawyers to tell us what to do, we are quite capable of knowing what is good for our Island or not. We are the People, leave us alone to make our own decisions; if we need help we will ask for it. This evening, in one foul swoop what have we got? Possibly paid politicians and party politics. That's not the way forward, no more procrastination, no more nonsense, make the right decisions, let's get on, don't be afraid of bully boy tactics and vote with your head and not your heart.
- If someone wants to invest huge amounts of money on the Island, whoever they may be, that's great, thank you very much, I am very pleased for Sark and its community as it can only do us good. BUT don't give with one hand and take away with the other by constantly undermining the community with letters, newspapers and e-mails. If investors truly want to do things for Sark, come on, join in, speak to the people, have a pint in the pub, ask us what we really want, don't do it from afar, don't push us into corners where we don't want to go. Come and live here for a while and love the Island like we do!
APPLAUSE.
- 27 Mr. Dawes
- Addressed his remarks through the chair and referred to the C07C letter of the 8th February written to Minister Michael Wills and the mention of the Lord Chancellor's "serious concerns about the provision made in the Law for the dual role of the Seneschal and some aspects of the role of the Seigneur". The MoJ are requiring that Sark deal with this issue.
- 28 Dep. Armorgie
- Accepted that this followed through from the letter sent by the Lord Chancellor to the Seigneur in the first instance.
- 29 Mr. Dawes
- Again through the chair did Deputy Armorgie see this as pressure being exerted on C07C?
- 30 Dep. Armorgie
- There is much pressure on the Seigneur and on C07C. There has been much to cram into a 6-7 week time frame which is far from ideal. C07C do not want to step into a very rocky boat.
- 31 Mr Dawes
- Does C07C believe that this "Option A" is the best option?
- 32 Seneschal
- Reminded Mr Dawes that at the Christmas Chief Pleas Meeting in January 2008, the support for "Option A" as an all elected assembly without reserved seats, was overwhelming. Chief Pleas was firm in its decision.
- 33 Dep. Armorgie
- That is perfectly true but at what time does the birth take place? He was hoping to celebrate the introduction of this Law which would stand Sark in good stead for 40-50 years. It is not perfect and could be improved. He remained committed to full open elections in December 2008 but there was still need for fine tuning and work was still in progress. When do we actually step onto the elevator?
- 34 Mr. Hart
(representing
Sieur Steinmetz)
- Has been advising the Island for eight years as an independent constitutional lawyer. Having seen these documents tonight there are issues that need to be addressed. Most of them will require minimal edits to the drafting and could be done in time for consideration at Easter Chief Pleas on 26th March. He was more than prepared to work on the amendments and tidy up some loose ends. The whole Projet could be made stronger and less open to challenge.
- 35 Seneschal
- Reminded all those here representing Tenants today that they are not members of Chief Pleas and are here for this meeting only.
- 36 Sieur Baker
- Referred to a letter dated 20th December 2005 from Addleshaw Goddard, acting for Sir David and Sir Frederick Barclay, addressed to Lord Falconer, the then Secretary of State for Constitutional Affairs and Lord Chancellor. Sieur Baker quoted from the letter –
Our clients' principal concern then was that Sark should not proceed with elections on 7th December 2005 under its unreformed Constitution, which everyone, including Sark, recognised was in flagrant breach of international human rights laws. Having received no response to our urgent letters from either Sark or UK authorities, including your DCA, our clients lodged a Petition to Her Majesty in Council asking Her Majesty to require Sark to adopt a new constitution which complies with international human rights laws – simply done by adopting universal suffrage – and not to allow Sark's general election to take place until this had been done.
- 37 Sieur Donnelly
- HMC supports getting this Projet through on 21st February without amendment to avoid further delay. We should nonetheless get it right and it is not right. There are fundamental legal problems and it is not properly drafted.....
- 38 Seneschal
- Resolutions from Chief Pleas have been the instructions for the Law Officers and is drafted to Chief Pleas requirements
- 39 Sieur Donnelly
- It has gaping holes in it. It must contain some additional safeguards. Deputy Sandra Williams is not happy with it and she has intimated as such yet she is pushing for it to go forward. He referred to notices at the Island Hall but was told by the Seneschal not to raise that petty issue as it had no bearing on the matter in hand. He felt the Projet was taking off in one direction and needed greater openness and drafting as a properly set up Constitution.
- 40 Seneschal
- It is properly drafted in accordance with the wishes of this House.
- 41 Mr. Dawes
- If there are loose ends why not use the services of Mr Hart?

- 42 Ms. McDermott (representing Sir Frederick Barclay) Admitted to writing the letter in 2005 referred to by Sieur Baker as Addleshaw Goddard employed her at that time. Indeed a petition was sent but she had also written letters since 1993 about the position of the Seigneur and the dual role of the Seneschal neither being human rights compliant.
- 43 Dep. S. Williams Confirmed that she was not 100% convinced that this version of the Reform Law was without flaws but she suggested that Sieur Donnelly should go out into the community and speak with the people who want an end to this continuing deliberation.
- 44 Dep. Olsen Called for the House to go forward with this version but to continue with the consultation. He called for a named vote.
- 45 Mr. Hart Directed attention to section 24 (4) (Times of elections and tenure of office) and pointed out that these arrangements can be handled by Ordinance. There needs to be a $\frac{2}{3}$ majority clause introduced here.
- 46 Sieur Gomoll Both the letters to HMC and MoJ requested confirmation that, apart from the composition of Chief Pleas, the remainder of the Reform Law was Human Rights Compliant (HRC). In the UK any Law has to have a cover sheet saying that it is HRC. The response from HMC ducks the issue delegating responsibility to MoJ, whilst in turn, MoJ declare in their reply on 20th February that they haven't seen the redrafted Reform Law that was handed to them at the London meeting on 24th January. In other words they too have avoided the question. MoJ say in their response that it is the UK Government take responsibility for the international obligations of Sark but when asked if Sark would be liable for any costs relating to challenges for non-compliance with the European Court of Human Rights (ECHR), it is made clear that if a Crown Dependency were to be found to be in breach of an international obligation, the UK would expect it to take steps to remedy the breach and to pay any damages awarded and costs necessarily incurred. He felt this point needed to be highlighted.
- 47 Sieur Rang The Tenants have taken a bashing but tonight 95% are likely to vote for "Option A" but we must get it right. Should we jump in now or spend a little longer getting it right?
- 48 Sieur Harris Considered it was time to bring matters to a conclusion tonight. He referred to Page 5 of the Reform Law showing the preamble and quoted all the recent dates at which the Law had been considered and refined. There is no need for further delay; the problems are trivial. The Minister has said that the Seigneur and Seneschal problems are not urgent. The UK Government has made it clear we have their support. Delay would weaken Sark.
- 49 Mdm. Baker There have been differences of opinion within the C07C. To clarify the issues, she had spoken with Mark Hughes late this afternoon about the issue of the UK being liable for costs. Check the letter - if the Law is approved by the Privy Council, the UK takes the responsibility.
- 50 Sieur Gomoll UK is party to the litigation but the letter from the MoJ could not be clearer. He went on to refer to Page 12, Section 13 (1) & (2) of the Reform Law where the introduction in Law of direct access to the Royal Court could result in the Sark Court becoming obsolete.
- 51 Seneschal It will not give any greater powers than already exist and continues to recognise a Lay Judge in Sark. There have been cases where, in the first instance, they have been referred direct to the Royal Court in Guernsey.
- 52 Sieur Gomoll This issue was brought up during the London visit. There is no Law stating this clause at present and HMC commented on that. Now this possibility is enshrined into Law. It is laid down here that one can by-pass the Sark Court and he was very strongly against this clause.
- 53 Sieur Donnelly Was worried about the financial aspects and the implications of costs ending up with Sark. He admired the eloquence of Sieur Harris but last time he spoke it cost Sark financially.
- 54 Mr. Dawes Referred Members to the letter dated yesterday, 20th February, from Sir David and Sir Frederick Barclay.....
- 55 Seneschal Reminded Mr Dawes that, under the Rules of Procedure, the letter may have been circulated to Chief Pleas Members but it was not a Chief Pleas document.
- 56 Mr. Dawes There is a suggestion that the draft Reform Law is deeply flawed because it has not addressed the issues of the Seigneur and Seneschal. The Speaker should be elected by this House and the Seneschal's two roles should be separated; he remained concerned about this draft. Mr. Hart, Deputy Armorgie, Sieur Gomoll and even Deputy Sandra Williams have expressed doubts about the draft Law. There are fundamental matters that need to be addressed but they needn't incur delay and could be dealt with and brought to the Easter meeting of Chief Pleas in a matter of weeks. You lose nothing but gain a great deal. Go away with this draft and amend it and he urged the House to vote against the proposition tonight.
- 57 Dep. Armorgie Had no further comments and asked for a two minute recess so that C07C could meet outside to confer before the proposition was put to the vote.
- 58 Seneschal Whilst initially refusing the break, following further requests from Deputy Armorgie and Sieur Gomoll, he agreed to a five-minute recess.

A five minute recess was given to allow C07C to confer

- 59 Dep. Armorgie Reported that C07C remained split but there was one issue that needed addressing tonight - the removal of Clause 13. This could be done without any other implication to the Reform Law.
- 60 Sieur Gomoll If we give this initiative to the Royal Court in Guernsey, Sark will never get it back. It cannot be re-introduced at a later date.
- 61 Seneschal Is C07C writing a formal amendment as required under the Rules of Procedure Clause 11 (9)?
- 62 Dep. Armorgie Affirmed it was.
- 63 Mdm. Baker It is a simple question – do you, Chief Pleas, want Section 13 removed from the Reform Law.
- 64 Seneschal In which case we need a proposition giving the House’s authority to remove Section 13.
- 65 Mlle. Bull Asked if its removal would penalise the poor and was told that it would have no such effect.
- 66 Dep. Plummer Asked if it would cause the passage of the Reform Law to be delayed.
- 67 Seneschal Yes but let’s vote on removing Section 13 then change the C07C existing proposition to allow the Seneschal to send it forward with the clause removed, without returning to Chief Pleas.
- 68 Dep. Le Lievre We must forget the delay.
- 69 Sieur Rang This is about Sark’s independence.
- 70 Dep. Le Lievre Asked for clarification, that the House can let the Seneschal clear the change reducing the delay and not require the Law to be considered again by the House. The Seneschal agreed this was correct and had been done of two previous occasions with the Reform Law.

C07C (new) Proposition 1 – CARRIED on a named vote – 22 Pour, 17 Contre and 1 No vote
That Clause 13 be deleted from The Reform (Sark) Law, 2008.

- 71 Seneschal Prepared a new form of words for the original proposition and read these out for comment.
- 72 Dep. Melling Questioned the involvement of C07C into the chain of approval; was this an opportunity for more changes and delay.
- 72 Seneschal No other changes will be made only those agreed and the necessary renumbering of Sections.
- 73 Mlle. Perrée Sark’s finances are not great so should we not check against further challenges.
- 74 Seneschal You have heard the debate.

C07C (original) Proposition 2 – CARRIED as amended on a named vote - 24 Pour & 16 Contre
That Chief Pleas approve “The Reform (Sark) Law, 2008” as amended. The amended Law to be returned to the Constitution 2007 Committee for its approval prior to the Seneschal forwarding it to the Privy Council for Royal Assent.

4 General Purposes and Advisory Committee
Projet de Loi – The Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey)(Amendment) Law, 2008

- 01 Dep. Dewe This is a small amendment to an existing Law.

Proposition - CARRIED
That Chief Pleas approve the Projet de Loi entitled “The Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey)(Amendment) Law, 2008”

5 General Purposes and Advisory Committee
Projet de Loi – The Banking Supervision (Bailiwick of Guernsey)(Amendment) Law, 2008

- 01 Dep. Dewe This is a slightly larger amendment to an existing Law.

Proposition – CARRIED
That Chief Pleas approve the Projet de Loi entitled “The Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008”

6 General Purposes and Advisory Committee
Projet de Loi – The Financial Services (Enforcement Powers)(Bailiwick of Guernsey) Law, 2008

- 01 Dep. Dewe This strengthens the powers of the Commission. Chief Pleas has approved all the previous amendments and Chief Pleas will be consulted on any future changes.

Proposition – CARRIED
That Chief Pleas approve the Projet de Loi entitled “The Financial Services (Enforcement Powers) (Bailiwick of Guernsey) Law, 2008”

7 General Purposes and Advisory Committee

Projet de Loi – The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008

- 01 Dep. Dewe This is a new Projet. Non-regulated financial businesses will be registered which will be of benefit to the whole Bailiwick. Sark is not directly affected.
- 02 Mr. Dawes Referred to Section 30 and the issue of Ordinance making provision with Sub-section 6 (b) yet again offering Sark “opt-out” rather than “opt-in” arrangements. This style of drafting legislation has been discussed before and should be rejected.
- 03 Dep. Dewe This is an accepted format that GP&A Committee has negotiated. This wording has been approved by Chief Pleas on many occasions. There would be serious problems redrafting it and the legislation has already been cleared by the States and GP&A was consulted prior to that. It gives a quick-fix approach by Ordinance if a problem comes up. The “opt-out” procedure can be dealt with in Sark as it allows four months grace and under the new Reform Law, Chief Pleas will be meeting on a regular three monthly basis. Remember that the States meet monthly.
- 04 Seneschal Reminded Members that there was a lengthy debate at Christmas Chief Pleas in January when other Laws contained this clause.
- 05 Sieur Gomoll Pointed out that in Section 31 (a), no “opt-out” was offered only consultation with GP&A Committee which was not consistent with the wording of Section 31 (b) - (b) has the correct wording and (a) is not the same.
- 06 Seneschal That is because regulations do not come to Chief Pleas and are approved by Committee.
- 07 Sieur Baker Thanked Sieur Gomoll for pointing that out and GP&A Committee will take it on board.
- 08 Dep. Dewe Remarkd that this was similar to Statutory Instruments – Road Traffic Committee for example do not have to report back to Chief Pleas.

Proposition – CARRIED

That Chief Pleas approve the Projet de Loi entitled “The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008”

8 Shipping Committee

Freight Movements between Guernsey and Sark

- 01 Dep. Le Lievre Had nothing further to report but confirmed that discussions were continuing between the Committee, Isle of Sark Shipping Company (IoSS) and Sark Estate Management (a private company).
He announced that an IoSS Shareholder’s Annual General Meeting would be held on Thursday 6th March when the audited accounts for 2006 would be available for discussion.
- 02 Sieur Donnelly Asked if some indication could be given as to when the 2007 accounts would be available, even if they are not yet audited.
- 03 Dep. Le Lievre The 2007 accounts are not available for scrutiny yet.
- 04 Seneschal That point is taken on board and we will wait until the AGM when you can ask the question again.
- 05 Sieur Donnelly Is the Cruise Liner business secure with IoSS. He had heard rumours.
- 06 Dep. Le Lievre Said he would investigate.

9 General Purposes and Advisory Committee

Ordinance – The Control of Dogs (Amendment)(Sark) Ordinance, 2008

- 01 Dep. R. Dewe This is the small amendment following Chief Pleas approval at the Christmas meeting in January.

Proposition – CARRIED

That Chief Pleas approve the Ordinance entitled “The Control of Dogs (Amendment)(Sark) Ordinance, 2008”

Forthcoming meetings for Chief Pleas’ Members

EASTER MEETING – Wednesday 26th March 2008 at 10.00am

Agenda closes on - Friday 29th February 2008 at 3.00pm

Papers distributed to Members by Wednesday 5th March 2008.

This meeting closed at 9.35pm.

Brian Garrard (Sark Committee Secretary) 22nd -24th February 2008

24th February 2008

Seneschal

Greffier



CONSTITUTION 2007 COMMITTEE

Friday, 8th February 2008

Howard Roberts, QC Esq.
HM Comptroller
St James Chambers
St Peter Port
Guernsey
GY1

Dear Howard,

THE REFORM (SARK) LAW, 2008

To be presented to the extraordinary meeting of Chief Pleas on Thursday, 21st February 2008

We refer to and thank you for your attendance at the meetings, which have recently taken place in London (on 24 January 2008) and in Sark (on 5 February 2008).

The public meeting and the questions asked on this occasion show you the diverse views this Committee is obliged to consider when making recommendations to Chief Pleas relating to the Reform Law 2008.

As a preparation for the extraordinary meeting on 21 February 2008, could you and your team please advise us on the following matters?

- 1) If possible, please provide us with a summary of each section of the Reform Law. I understand that you already have prepared a similar cover letter when previous versions of the Projet were sent for Royal Assent. We accept that you may want to delete or re-word various parts of such cover letter but believe that Chief Pleas would greatly benefit from such a summary.
- 2) Please confirm that all sections of the Reform Law 2008 (the "Projet") as currently drafted are fully human rights compliant.
- 3) Please highlight any sections, which might be non-compliant and make recommendations as how their HR compliance can be improved (now or later). Please highlight any sections which in your considered opinion could lead to a challenge (Petition, Judicial review or otherwise) for non-compliance with the ECHR.
- 4) Please confirm whether or not Sark could directly or indirectly (e.g. via the UK) be held liable for any costs relating to such challenges?
- 5) Please highlight any section of the Projet which could give rise to any liability of Chief Pleas, e.g. the appointment of the Seneschal (and others?) for life (while the current appointment is for a period of 3 years only) notwithstanding the fact that the Lord Chancellors and certain Petitioners have raised serious concerns about his dual role and that the MoJ has told us during our meeting in London that Chief Pleas must deal with this no later than 2009.
- 6) Please highlight any sections of the Projet which may affect the relationship between Sark and Guernsey (including but not limited to the relationship between Chief Pleas and the States of Guernsey or the relationship of the Seneschal's Court to the Guernsey Courts).
By way of example, we are concerned (and have during our trip to London discussed with you) that Section 13 could be seen to establish (or at least confirm in primary law a disputed opinion) an "original, concurrent" and/ or supervisory jurisdiction of the Royal Court. The current drafting of Section 13 could be interpreted to suggest a jurisdiction of the Royal Court in all (also civil) Sark matters (which the Committee understands is not your interpretation of the current situation). What exactly is the current original (or concurrent) jurisdiction of the Royal Court in civil matters?
- 7) Please highlight any sections, which restrict the powers of Chief Pleas and / or the Seneschal's court.
- 8) Please let us have your opinion relating to the following specific points:

- a) Section 3: Can “alien within the meaning of the law in force in the United Kingdom” can be expressed without reference to the laws of the United Kingdom. Some members of Chief Pleas asked whether this includes certain Commonwealth and /or EU nationals.
- b) Section 4: Why did you feel the need to include section 4(3)?
- c) Section 8(1): Why are the Lieutenant Seneschals appointed differently from the Seneschal and Deputy Seneschal?
- d) Section 11(3): Could this Clause simply refer to a “suitable prison facility within the British Isles” rather than the “States of Guernsey Prison”?
- e) Section 14: Is there any specific reason why the parties to the action are not listed in 14(a) – can they be wilfully insulted?
- f) Section 15: Can you please set out the procedure how Sark officials can request (if not institute) criminal proceedings within the jurisdiction of the Seneschal's court.
- g) Section 16 and 19 (2): why do the rules of procedure in the Seneschal's court (which has unlimited jurisdiction in civil matters) need to be approved by the Royal Court? Is and / or should the Seneschals' court not be master of its own procedure?
- h) Section 22: Is there any duty on the Seigneur to attend Chief Pleas? Is the Greffier (as clerk to the Court to the Chief Pleas) to take the Minutes or why his presence mandatory while that of all other Island Officials do not seem to be.
- i) Section 29(5): We understand that there is no restriction on the acquisition of leasehold interests by foreign nationals and that (provided that no sublease or other right of exclusive possession is granted to a third party) the leaseholder is to be entered on the Cadastre. Could you please confirm whether or not a non-EU national so registered on the Cadastre would have the right to be included in the electoral roll. Would this be dependent on whether such an alien has the right to reside (or at least visit) Sark?
- j) Which sections need to be amended if chief Pleas would like EU nationals to be allowed to stand for election?
- k) Section 33 (c): why is the consent of the Seneschal required and is his right to give or withhold consent (un-) fettered?
- l) Section 35(2): we note the 2/3 majority required, can this concept be used in other procedural or substantive matters (e.g. leasehold enfranchisement or a fundamental change of our relationship with Guernsey).
- m) Section 38: Do all Ordinances regulating the election of Members to Chief Pleas under this Section (if not contravening any other section of the Law)?
- n) Sections 40 and 42: Why is this authority of the Royal Court required and could it ever be used in case Sark wanted to “opt out” of any legislation the States of Guernsey passed on or on behalf of the Sark Chief Pleas? Could opt-out (after deemed opt-in) ever be held to be ultra vires?
- o) Section 42: How does this change the current provisions in force and why is it required?
- p) Section 59: Can the President of the relevant Committee be authorised in the Projet to sign such contracts? Once Chief Pleas will have legal personality do we still need the unelected Trustees?

Could you please let us have suggested wording for the implementation of sections enabling us to legislate by Ordinance for the following matters (in case you consider this to be necessary and not already covered by section 38 or any other section of the Projet:

- the term of their appointment (subject to a minimum of 2 and a maximum of 5 years);
- Whether or not all members should always retire and be elected at once or there shall be “staggered” elections (allowing for more continuity while ensuring a fully elected house);
- That EU nationals (not only British subjects) shall in future be allowed to be elected as members;
- The prescription of one or more constituencies to elect all or a certain percentage of members (the remaining percentage (if any) elected island wide)

Can you please inform us of all dates the Privy Council meets between now and December 2008?

An extraordinary meeting of Chief Pleas has been called for 21 February 2008 and we would appreciate a comprehensive reply at your earliest convenience in order for the Committee to consider your reply when making recommendations to Chief Pleas at the Extraordinary Meeting.

We kindly ask you to address any communication regarding the Reform Law directly and exclusively to the undersigned President of the Constitution 2007 Committee (such Committee being accordingly mandated by Chief Pleas).

Yours sincerely

Deputy Paul Armorgie
President, Constitution 2007 Committee

To Paul Armorgie by e-mail

From: Roberts, Howard [mailto:Howard.Roberts@gov.gg]
Sent: 11 February 2008 17:29
To: Paul Armorgie
Cc: Tweedale, Janet; Ogier, Victoria
Subject: RE: The Reform (Sark) Law 2008

Paul

I'm sure we're all agreed that the important point is to get the Projet through Chief Pleas on 21st February without any amendments which could lead to further delay, and that of course is the proposal you have lodged. I recall that the Minister agreed to address any issues that you wanted to raise in writing, however, so can see the point in your writing to him, which I assume you have done in similar terms to your letter addressed to me. You do ask a lot of questions; I do not immediately have all of the answers; some of the questions are better addressed to MoJ, whilst others are more appropriate to me. In order to perhaps attenuate the scope of what you are asking the MoJ to consider, and to deal with those matters I can deal with, I respond to those I feel appropriate for me, as best I presently can, below:

1. I think you probably mean the Report to HE, which goes with the Projet. Personally I don't have a problem with you having a copy of that in advance if it has been prepared in advance, which would be unusual but a good idea in the present case. The only problem (and this also has implications for some of my responses below) is that Vicky Ogier is the person who knows most about the Projet here, and would definitely be the right person to do the report, but I believe she is not in the office this week.
2. - 5. These are issues about which I think you would like to have a response from MoJ.
6. You draw attention to clause 13. I have stated (including in the Royal Court) that I am not sure the law as to the claimed original concurrent jurisdiction of the Royal Court in civil matters has to date been authoritatively stated. I don't think many people share my reservations, but in any event I understand that clause 13 is designed to lay them to rest. There is no question about the Royal Court's original criminal jurisdiction or its supervisory jurisdiction. Unless you can point something else out to me I am not immediately aware of any other provision which this question may have in contemplation (although this is a matter on which I'd appreciate Vicky's confirmation or otherwise)
7. There are limitations, of course, on the Chief Pleas' powers to make ordinances, and on the jurisdiction of the Seneschal's Court; I don't think any of these is new (although this is a matter on which I'd appreciate Vicky's confirmation or otherwise).
8. (a) the reference to the law of the UK is obviously intended to clarify what is there at present; I think it means any person who is not a British or Commonwealth citizen, a British protected person or a citizen of the Republic of Ireland, but don't think that's a material change from the present.
 - (b) Just for the avoidance of doubt; it's been the same since time immemorial.
 - (c) They will only have judicial functions
 - (d) No; this underpins an arrangement between Sark and Guernsey (and indeed there is an arrangement underpinned by statute between Guernsey and the UK)
 - (e) I think this is much the same as any other contempt provision
 - (f) Report to the Law Officers
 - (g) Because the Royal Court has a supervisory role.
 - (h) The Greffier (or Deputy Greffier) has to be there, as you note, as Clerk of the States, as in Guernsey. I'm not sure whether the Seigneur (or a Deputy Seigneur) has to be present under the coutume (although this is a matter on which I'd appreciate Vicky's confirmation or otherwise)

- (i) I believe that this is what the Chief Pleas agreed. If he's registered as possessor he will have a right to occupy the dwelling.
- (j) 29(3)(b), and possibly 3(1).
- (k) Because he's the presiding officer; he would be expected to act reasonably.
- (l) Maybe; in Guernsey a resolution to amend the Reform Law can be delayed if not passed by a 2/3 majority.
- (m) An ordinance under 38 mustn't be repugnant to an order in council, and clearly therefore can't amend the Law, which I think is what you're asking here.
- (n) These provisions are about Ordinances; 40 represents a restriction on the present power of the Royal Court.
- (o) To all intents and purposes it's more or less the same as 8A of the present Law. It's used in urgent cases.
- (p) Perhaps not; that's a matter to be considered in due course.

Enabling powers wording: Sorry, no. I could do the third point easily enough but the others would require a great deal of careful consideration.

The text thereafter: I take it this is directed towards MoJ rather than me. MoJ must, however, be free to consult me about their responses, and I'm sure your final para is not purporting to request otherwise.

Howard



CONSTITUTION 2007 COMMITTEE

8th February 2008

Mark Hughes Esq.
Ministry of Justice
Department of Constitutional Affairs
6th Floor, Selborne House
Victoria Street
London
SW1E 6QW

Dear Mark,

THE REFORM (SARK) LAW, 2008

To be presented to the extraordinary meeting of Chief Pleas on Thursday, 21st February 2008

We refer to and thank you for the meetings, which have recently taken, place in London (on 24 January 2008) and in Sark (on 5 February 2008).

We furthermore refer to the letter from The Right Honourable Jack Straw MP to the Seneschal of Sark dated 13 January 2008 and informing us of the meeting between himself, Michael Wills MP and the Seigneur of Sark, (accompanied by the HE Lieutenant Governor and the Bailiff).

We understand that you are happy to share the minutes relating to the London meetings with this Committee once the Lord Chancellor has approved them.

In his letter the Lord Chancellor stated that he could not endorse the Reform Law with a transitional period and "would much prefer to see a composition along the lines of what was previously known as "Option A" - no reserved seats". The Lord Chancellor further stated that he would "also have serious concerns about the provision made in the Law for the dual role of the Seneschal and some aspects of the role of the Seigneur".

During our meeting with Michael Wills MP we were told that the role of the Seigneur and the Seneschal "need not change in 2008 but must change in 2009".

Chief Pleas and the members of this Committee originally welcomed the Transitional Period and this Committee was repeatedly implement important democratic safeguards during such transitional period. The Committee understands that there now will not be any transitional period and also feel considerable pressure to implement The Reform Law at an extraordinary meeting of Chief Pleas which did not allow sufficient time for even the drafting of a written report or even reading the Minutes of Chief Pleas January Meeting which have not been published as of today).

Based on the opinion poll in 2006 we believe that there is a small minority of residents who prefer a fully democratic Chief Pleas with no reserved seats. In our opinion, this small majority (of say 56%) does however split into 3 further groups:

- 1) Those who want an Option A style election of Chief Pleas as soon as possible and who are not concerned about the finer detail or the consequences;
- 2) Those who want an Option A style election of Chief Pleas as soon as practicably possible but are seriously concerned about the hasty implementation of Option A without due consideration and debate to issues like checks & balances, representation for minorities and entrenched laws or certain formalities for fundamental matters like land reform, leasehold enfranchisement and the treatment of EU nationals (such debate having been scheduled for the 4 year transitional period); and
- 3) Those who want an Option A style election of Chief Pleas as soon as practicable but consider it unacceptable that the role of the Seigneur and the Seneschal are not reformed at the same time leaving Sark with a semi-feudal and semi-democratic constitution which is still open to challenge and must be amended within a matter of months rather than evolving in its own time (without any outside pressure).

The Seigneur's public confirmation that he has given notice to his tenants and employees at La Seigneurie and that he is about to sell (a long lease of) La Seigneurie has also caused further uncertainty and concern amongst residents and members of Chief Pleas.

While the Committee confirms that it will not suggest to Chief Pleas any option other than a fully elected Chief Pleas (with no reserved seats for landowners) it is important that we do understand exactly the extent of your role and the ability of Chief Pleas (before and after the next election) to work on the details of our new fully democratic local parliament.

We understand that HM Government is responsible for the international obligations of Sark including Sark's compliance with the European Convention of Human Rights (being the High Contracting Party to the Convention).

The Committee accepts that you will only support a fully elected Chief Pleas with no reserved seats and understands now (from your letter dated 13 January 2008) that – unlike prior to the Lord Chancellor's appointment – you do not and will support any transitional period.

The Committee and Chief Pleas need to fully understand and be assured that you are solely concerned with any potential breach of Sark's international obligations and that, for example the following domestic details are solely for Sark to determine by Ordinance (always understood that Chief Pleas is fully elected with no reserved seats):

- The number of Chief Pleas Members (subject to a minimum of 10);
- The term of their appointment (subject to a minimum of 2 and a maximum of 5 years);
- Whether or not all members should always retire and be elected at once or there shall be "staggered" elections (allowing for more continuity while ensuring a fully elected house);
- That EU nationals (not only British subjects) shall in future be allowed to be elected as members;
- The prescription of one or more constituencies to elect all or a certain percentage of members (the remaining percentage (if any) elected island wide)

We consider the above necessary to protect Sark and/or HM Government from future challenges flowing directly (e.g. in case of EU nationals) or indirectly (in case a fully elected Chief Pleas immediately implements a leasehold enfranchisement after 450 years of prohibition to divide the feudal landholdings (in accordance with the Letters Patent of James I. in 1611)?

Could you please confirm that the Reform Law (as currently drafted) is fully HR compliant (notwithstanding your serious concerns about the role of Seneschal and the Seigneur)? Please highlight any sections, which in your considered opinion could lead to a challenge (Petition, Judicial review or otherwise) for non-compliance with the ECHR?

Are you in a position to confirm that Sark would not be liable for any costs relating to such challenges?

Is anything contained in the Reform Law likely to give rise to any liability of Chief Pleas, e.g. the appointment of the Seneschal for life (while the current appointment is for a period of 3 years only) notwithstanding the fact that you have raised serious concerns about his dual role and have told us during our meeting in London that Chief Pleas must deal with this no later than 2009.

Can you please inform us of all dates the Privy Council meets between now and December 2008?

An extraordinary meeting of Chief Pleas has been called for 21 February 2008 and we would appreciate a comprehensive reply at your earliest convenience in order for the Committee to consider your reply when making recommendations to Chief Pleas at the Extraordinary Meeting. We presume that the Lord Chancellor and Minister for State will endorse this response ?

We kindly ask you to address any communication regarding the Reform Law directly and exclusively to the undersigned President of the Constitution 2007 Committee (such Committee being accordingly mandated by Chief Pleas).

Yours sincerely

Deputy Paul Armorgie
President, Constitution 2007 Committee



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Paul Armorgie Esq
President, Constitution 2007 Committee
Chief Pleas Office
La Chasse Murette
SARK
GY9 0SF

20 February 2008

Dear Paul

Subject: The Reform (Sark) Law

Thank you for your letter of 8 February 2008. We are grateful to you and your Committee for your continued work on the Reform Law, and in particular for your attendance and assistance at the recent meetings in London and in Sark. I will attempt to answer the points you have raised in your letter in the order in which you have raised them.

We are indeed happy to share with you a note of the meeting with Michael Wills MP at the House of Commons on 24 January. The note was sent to you by e-mail on 15 February, and it is also being shared with the Seneschal and HM Comptroller as they were also present at the meeting. No note was kept of the pre-meeting with officials which took place immediately beforehand.

Towards the end of the first page of your letter, I assume that “we believe that there is a small minority of residents who prefer a fully democratic Chief Pleas with no reserved seats” should in fact read “we believe that there is a small *majority* of residents...”.

In response to the third complete paragraph on page 2, we can confirm that the United Kingdom Government is responsible for the international obligations of Sark, including Sark’s compliance with the European Convention on Human Rights.

With regard to your next paragraph, we can confirm that a transitional period will not be supported. I would also add that no absolute commitments were made, by the present Lord Chancellor or by his predecessor, about supporting a transitional period. When the compromise proposals were put forward we said that it would be premature for the Ministry of Justice to take any decision on the legislation until we had sight of the Law as passed by Chief Pleas, together with the advice of the Guernsey Law Officers and UK Government lawyers.

In response to the points raised in the penultimate paragraph on page 2 of your letter – about what you describe as domestic details - the UK is concerned with the Islands’ international obligations but not solely so concerned. As he explained in his letter of 13 January to the Seneschal, the Lord

Chancellor is also concerned that constitutional arrangements should be consistent with modern democratic principles. So far as the making and use of Ordinances are concerned, however, we would emphasise that an Ordinance under section 38 must be read as subject to any Order in Council having the force of law in Sark. Consequently, such an Ordinance cannot be used to amend this Law. Further amendment to the Reform Law would require an amending Law. We have not received any proposals for amendment to the Law that would allow it to be amended in the ways suggested and we would consider them if we did.

You ask us at the top of your final page to confirm that the Reform Law (as currently drafted) is fully human rights compliant, notwithstanding our serious concerns about the roles of Seneschal and Seigneur. We assume that you are referring here to the Law which has been drafted for the 21 February meeting, and if so we are unable to give any assurances in respect of a Law which we have not yet seen. However, the Lord Chancellor has already indicated that if a Projet were to be submitted which provided for an Option A type composition for Chief Pleas, leaving the roles of Seigneur and Seneschal to be dealt with further down the constitutional road, he would not see any problem in recommending that it receive Royal Assent.

In the paragraph which follows you ask us to highlight any sections of the Law which might be open to challenges of various kinds. I hope you will appreciate that we cannot make such an assessment of a Law we have not yet seen.

Your next paragraph raises the question of costs. The position in this regard is that the UK is liable, but if a Crown Dependency were to be found to be in breach of an international obligation the UK would expect it to take steps to remedy the breach and to pay any damages awarded and costs necessarily incurred.

In response to the paragraph that follows, I can only reiterate what I have said above about the Law.

We understand that the next meeting of the Privy Council is due to take place on 12 March. The exact dates of further meetings for this year are not currently available, but meetings are generally held monthly with the exception of January, August and September.

Finally, while I am pleased to be able to address communications about the Reform Law to you, you will understand that we do also need to communicate with others in Sark, Guernsey and possibly elsewhere on this subject, and I am therefore unable to make the commitment requested in the concluding paragraph of your letter.

Yours sincerely,

Mark Hughes
(by e-mail)

Crown Dependencies Policy Branch



CONSTITUTION 2007 COMMITTEE

THE REFORM (SARK) LAW, 2008

Chronological timeline of events -

January 2008

- 13th: Letter from the Lord Chancellor to the Seneschal.
- 16th: Christmas meeting of Chief Pleas.
Withdrawal of previously approved Projet and instructions to incorporate an “Option A” style composition of Chief Pleas in a new Projet.
- 24th: Meetings in London with the Ministry of Justice representatives and Michael Wills MP. Receipt of hard copies of the “Option A Projet” (as drafted by the Guernsey Crown Officers) by the Committee and the Ministry of Justice.

February 2008

- 5th: Meetings in Sark with Michael Wills MP and representatives from the Ministry of Justice.
- 8th: Letters sent, via email, to the Ministry of Justice and HM Comptroller in Guernsey seeking assurances and clarification of points resulting from the meetings in London and Sark. Copies of letters attached herewith.
- 11th: Response, via email, from HM Comptroller in Guernsey.
Copy attached herewith.
- 20th: Response, via email, from the Ministry of Justice.
Copy attached herewith.
- 21st: Extraordinary meeting of Chief Pleas to present and approve The Reform (Sark) Law, 2008.

Deputy Paul Armorgie
President, Constitution 2007 Committee

21st February 2008