

ISLAND OF SARK

**EXTRAORDINARY MEETING of the CHIEF PLEAS to be held on
WEDNESDAY 10th NOVEMBER 2010 at 7.00Pm in the ASSEMBLY ROOM**

AGENDA

1. To APPROVE the MINUTES of the MICHAELMAS MEETING held on the 6th October 2010.
2. QUESTIONS Not Related to the Business of the Day.
3. To CONSIDER a Report from the GENERAL PURPOSES and ADVISORY COMMITTEE entitled "The Reform (Sark) (Amendment) (No. 2) Law, 2010" and to APPROVE the Projet de Loi entitled – "The Reform (Sark) (Amendment) (No. 2) Law, 2010".

21st October 2010

**Lt Col RJ Guille MBE
Seneschal and President
of Chief Pleas**

NOTES:

Anyone wishing to see any of the Reports may do so at the Committee Offices, Monday – Friday, between 2.30pm and 5.00pm and at other times when the offices are open. Copies may be purchased at a cost of 15p per sheet.

GENERAL PURPOSES & ADVISORY COMMITTEE
Report with proposition to Extraordinary Chief Pleas, 10th November 2010

THE REFORM (SARK) (AMENDMENT) (NO.2) LAW, 2010

At the Michaelmas 2010 meeting of the Chief Pleas (ref: 14.17), the Committee's proposals for the division of the dual role of the Seneschal through the creation of a new, separate office of President of the Chief Pleas were approved. The arrangements for the 2010 General Election were also discussed and decided. The Committee is therefore taking the opportunity, as explained in this report, to propose further amendments to the Reform (Sark) Law, 2008 in relation to when by-elections are to be held and how to combine filling vacancies amongst the Conseillers at the same time as a General Election, to the compilation of the Register of Electors and other small matters that can properly be tidied up in this exercise.

The Law Officers have drafted The Reform (Sark) (Amendment) (No.2) Law, 2010, and a copy of the draft is attached.

Rather than Conseillers being ineligible to stand for election to the office of President, which would involve a Conseiller having to resign prior to seeking election as President with no guarantee of success, the Projet de Loi enables sitting Conseillers who wish to do so to seek election as President and, if unsuccessful, to continue as Conseillers but, if successful, their new President is deemed to have resigned office as Conseiller with immediate effect, thereby enabling him or her to be sworn into office as President and creating a casual vacancy as Conseiller (see inserted section 22A(4)). This puts the Conseillers in the same position of the Island officers and means that only the Seigneur and the Seneschal are barred from seeking election as the President.

In addition to the detailed proposals set out in its previous report about dividing the dual role, the Projet de Loi contains a number of consequential changes. The Committee has been advised that there is a possibility that a vacancy in the office of President might occur, or for some other reason the President may be unable or unwilling to convene a meeting of the Chief Pleas as required by section 32 of the 2008 Law. In those exceptional circumstances, the Committee suggests that the Seigneur should formally convene such a meeting (see inserted section 32(1A)). If the purpose of the meeting is to elect a new President, the Seneschal would preside at the meeting (see inserted section 22A(2)) and in any other case the Chief Pleas would first elect one of the members present to preside over the meeting in accordance with substituted section 35(1).

When casual vacancies amongst the Conseillers occur between general elections, the 2008 Law currently provides that it is not until a third such vacancy arises that a by-election is triggered. The Committee considers that there should be greater flexibility in relation to by-elections and also that the opportunity should be taken at each general election to fill all casual vacancies that have arisen prior to the closing of nominations for the general election. Accordingly, clauses 16 and 17 of the accompanying Projet substitute provisions in section 23 and 25 of the Law to achieve those ends.

Should a single casual vacancy amongst the Conseillers arise, no by-election is required. However, if a second vacancy arises, there should in future be an option for the Chief Pleas to resolve to hold a by-election on a date fixed by Ordinance to fill both seats. If that option is not taken, but a third vacancy arises, then there would automatically be a by-election to fill the

vacancies unless that third vacancy only arose after 30 June in the year of a general election, in which case the President would have the discretion to defer filling those vacancies until the general election. Such a discretion broadly replicates the discretion currently given to the Seneschal in section 23(8).

At a general election which also involves filling one or more casual vacancies, the fourteen candidates securing the largest number of votes will be declared returned for the full four-year term and the other successful candidates will be returned to complete the remaining two years of the terms of office of Conseillers they are replacing. If two or more candidates are tied for the 14th place, lots would be drawn to determine which of them is elected for four years and which for two years (see substituted section 25(2)). Similarly, if a by-election were to take place at which the Conseillers being replaced had different terms of office, adopting the procedure when the Conseillers were first elected in December 2008, the successful candidates would then draw lots to determine their terms of office (see substituted section 23(10)).

In relation to the Register of Electors, the Committee proposes that, rather than having the annual preparation of the Register, which is then available for inspection for a short period and challenges to be made, it will be more appropriate to compile and maintain the Register on an ongoing basis, permitting public inspection at the Greffe Office during normal working hours, but then closing the Register to new applicants at a date to be specified in an Ordinance prior to each general election and any by-election. The Committee believes that these changes will improve democracy through achieving a more up-to-date Register of Electors before each election of Conseillers. The Committee will give further thought as to how best to encourage residents eligible to vote to apply for inscription in the Register.

Finally, the Projet de Loi contains three further minor amendments. The first reflects changes to the terminology used in respect of the English courts system that were introduced last year. The second clarifies that the prohibition on the President speaking is not absolute and instead relates only to entering into political debate. The final change (see substituted section 49(5)) makes similar provision in relation to the remuneration of the Prévôt and Greffier, and their deputies, as for the judicial offices. In future, it will be determined by the Chief Pleas, which is accountable for public expenditure, rather than His Excellency the Lieutenant Governor.

Proposition –

That Chief Pleas approves the Projet de Loi entitled “The Reform (Sark) (Amendment) (No. 2) Law, 2010”.

**Conseiller Charles Maitland
Chairman, General Purposes & Advisory Committee**

PROJET DE LOI

ENTITLED

The Reform (Sark) (Amendment) (No. 2) Law, 2010

THE CHIEF PLEAS OF SARK, in pursuance of their Resolutions of the 6th October, 2010 and the 10th November, 2010, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Sark.

Amendments to 2008 Law.

1. The Reform (Sark) Law, 2008, as amended^a ("the Law"), is further amended as follows.

Division of role of Seneschal

2. In the Arrangement of Sections -

(a) after "5. Constitution of the Court", insert "5A. Appointments Committee.", and

(b) after "22. Deputy Seigneur", insert the following heading and entry -

^a Order in Council No. V of 2008; Nos. VI and XXVII of 2008; No. XIV of 2010.

"President of the Chief Pleas

22A. President of the Chief Pleas."

3. After section 5 of the Law, insert the following section -

"Appointments Committee.

5A. (1) The Seigneur shall from time to time appoint a committee ("the Appointments Committee") for the purposes of appointing the Seneschal and the Deputy Seneschal.

(2) No person who is a Conseiller may be a member of the Appointments Committee.

(3) The Appointments Committee shall comprise two members in addition to the Seigneur, who shall be the chairman of that Committee."

4. For section 6 of the Law, substitute -

"Seneschal.

6. (1) The Seneschal, who -

(a) shall be a person of full age and ordinarily resident in Sark, and

(b) shall not be a Conseiller, nor the holder of any of the offices mentioned in sections 49 to 55,

shall be appointed by the Appointments Committee, with the approval of the

Lieutenant Governor.

(2) The Seneschal shall retire from office upon attaining the age of 65 but he may be re-appointed by the Appointments Committee for a period or periods not exceeding five years at any one time provided that any such further term of office shall end not later than the date on which he attains the age of 75.

(3) The Seneschal shall not be removable from office prior to his retirement in accordance with subsection (2) except at his own request in writing addressed to the Seigneur or, for good cause, by the direction of the Lieutenant Governor upon the recommendation of the Seigneur.

(4) The other terms and conditions of the office of Seneschal, including the payment of remuneration out of public funds, shall be determined by the Chief Pleas upon the recommendation of the General Purposes and Advisory Committee in consultation with the Finance and Commerce Committee."

5. In section 7 of the Law -

- (a) in subsection (1), for "Seigneur" substitute "Appointments Committee" and for "of full age who is ordinarily resident in Sark" substitute "who satisfies the conditions in section 6(1)(a) and (b)",
- (b) in subsection (2), the words ", subject to subsection (3)" are repealed,
- (c) in subsection (2)(b), for the words from "in and in

connection with" to the end, substitute "in connection with the election of the President of the Chief Pleas under section 22A",

(d) subsections (3), (4) and (5) are repealed, and

(e) after subsection (2), insert

" (3) The provisions of section 6(2), (3) and (4) apply to the office of Deputy Seneschal as they apply to the office of Seneschal."

6. For section 8(5) of the Law, substitute -

" (5) The terms and conditions of the office of Lieutenant Seneschal, including the payment of remuneration out of public funds, shall be determined by the Chief Pleas upon the recommendation of the General Purposes and Advisory Committee in consultation with the Finance and Commerce Committee."

7. In section 21(1)(b) of the Law, for "the Seneschal" substitute "the President, elected in accordance with section 22A".

8. After section 22 of the Law, insert the following heading and section -

"President of the Chief Pleas

President of the Chief Pleas.

22A. (1) Subject to subsection (11), the President of the Chief Pleas ("the President") shall be appointed for a four-year term of office by

resolution of the Chief Pleas.

(2) The Seneschal shall preside over the Chief Pleas for the purpose only of the election of the President.

(3) A person shall be eligible for election as President if he is not the Seigneur or the Seneschal and he fulfils the conditions for eligibility for election as a Conseiller set out in paragraphs (a) and (b) of section 28(3).

(4) Should a person who is elected as the President be a Conseiller or the holder of any of the offices mentioned in sections 49 to 55, his resignation as Conseiller, or from such office, as the case may be, shall be deemed to take effect immediately upon his election.

(5) The first election for the office of President shall take place on a date to be appointed by Ordinance; and subsequent elections, except for any held under subsection (10), shall be held in every fourth year thereafter, in each case on a date to be appointed by Ordinance.

(6) The Chief Pleas shall by Ordinance make provision for the procedure to be followed at an election for the office of President including, without limitation -

(a) prescribing the form and manner in which a nomination is to be made;

(b) prescribing the manner in which the voting is to be counted;

(c) the procedure to be followed where there is only

one candidate at such an election; and

- (d) the procedure to be followed where there is an equality of votes for two or more candidates at such an election.

(7) The President shall be required to vacate his office before the expiration of his term of office if -

- (a) he ceases to possess the qualifications required by subsection (3) for eligibility for election as the President; or
- (b) a vote of no confidence in him is passed by the Chief Pleas.

(8) It is hereby declared for the avoidance of doubt that no act of a person as the President shall be deemed to be, or ever to have been, invalid by reason only of -

- (a) any lack of qualification on his part to be elected in accordance with subsection (3), or
- (b) the existence of any circumstances requiring him to vacate his office in accordance with this section.

(9) Notwithstanding any other provision of this Law, the President may at any time resign his office by a letter addressed to the Lieutenant Governor.

(10) Should the office of President fall vacant, an election to fill the vacancy shall be held at a meeting of the Chief Pleas within thirty days of the vacancy arising.

(11) A President elected at an election held under subsection (10) shall hold office until the date when that term of office would have expired had it not become vacant.

(12) Subject to section 3(2), before entering on his office, a person appointed as the President shall take the oath of office before the Court of the Seneschal, in such form as may be prescribed by Ordinance, and shall not be required to take an oath in any other form.

(13) At the expiration of his term of office, but not otherwise, the President shall be eligible for re-election in accordance with the provisions of this section."

9. In section 24 of the Law -

- (a) in subsections (1) and (2), for "Seneschal", substitute "President",
- (b) in subsection (1), after "elections", insert ", other than the election of the President," and
- (c) in subsection (2), the words "held under this Law" are repealed.

10. In section 31 of the Law -

- (a) in subsections (2) and (4), for "Seneschal" substitute "President",
- (b) in subsection (2), for the words from "Royal Court" to "civil matter", substitute "Court of the Seneschal", and
- (c) after subsection (2), insert -

" (2A) A person aggrieved by a decision of the Court of the Seneschal under subsection (2) may further appeal on a point of law to the Royal Court sitting as an Ordinary Court, whose decision shall be final."

11. In section 32 of the Law -

- (a) in subsection (1), after the words "Every meeting of the Chief Pleas" insert ", except for a meeting convened for the purpose of electing the President",
- (b) in subsection (1) and in subsection (2)(b) and (c), for "Seneschal" substitute "President", and
- (c) after subsection (1), insert the following subsection -

" (1A) During a vacancy in the office of President, or if the President shall, for any reason, be unable or unwilling to act, or in the absence or incapacity of the President, the functions of the President under subsection (1) may be exercised by the Seigneur."

12. In section 35 of the Law -

(a) for subsection (1), substitute -

" (1) If, at any meeting of the Chief Pleas, the President is absent, except where the Seneschal is presiding under section 22A(2), the Chief Pleas may appoint any member of the Chief Pleas to preside over that meeting.", and

(b) in subsection (4), for the words "Seneschal and Deputy Seneschal" substitute "President".

13. In sections 34(2) and (4), 45(1), 53(7), 55(4) and 56(1) of the Law, for "Seneschal" wherever it appears substitute "President"; and in sections 50(4) and 51(4) of the Law, for "Seneschal" in the second place where it appears substitute "President".

14. In sections 45(3), 50(2) and 51(2) of the Law, after "Seigneur,", insert "the President,".

15. In section 65(1) of the Law -

(a) before the definition of "**Assistant Constable**", insert

""**Appointments Committee**" means the committee appointed by the Seigneur under section 5A;"

(b) in the definition of "**Deputy Seneschal**", for "Seigneur" substitute "Appointments Committee",

(c) after the definition of "**meeting of the Chief Pleas**", insert -

""**the President**" means the President of the Chief Pleas elected in accordance with section 22A;",
and

(d) after the definition of "**Sark**", insert -

""**Seneschal**" means a person appointed by the Appointments Committee to act as Seneschal pursuant to section 6;".

Elections

16. In section 23 of the Law -

(a) in subsection (7), the word "fourteen" is repealed,

(b) for subsections (8), (9) and (10), substitute the following -

(8) Subject to subsections (9) and (10), upon the occurrence of a casual vacancy amongst the Conseillers which results in the number of such vacancies amounting to two or more, the Chief Pleas -

(a) may, in the event that there are two such vacancies, and

(b) shall, in the event that there are three or more such vacancies,

by Ordinance appoint a day on which there shall be held a by-election to elect such number of Conseillers as is necessary to replace the Conseillers whose offices have become vacant; and in the case of an election held pursuant to paragraph (b), such day shall be not later than six months after the occurrence of the vacancy giving rise to the election.

(9) Where a casual vacancy giving rise to an election under subsection (8)(b) occurs after 30th June in any year in which a general election is to be held pursuant to subsection (7), it shall be in the discretion of the President whether or not a by-election shall be held to fill the vacant offices before that general election.

(10) A Conseiller elected at a by-election shall, subject to the provisions of this Law, hold office until the date when that term of office would have expired had it not been vacant; and where more than one Conseiller is so elected, and the periods of office remaining are different, the period of office to be served by each elected Candidate shall be determined by lots drawn by the elected Candidates under the supervision of the returning officer immediately after the declaration

of the result of the by-election.

(11) Where, at the date of publication of nominations prior to a general election, there exist any vacancies amongst the Conseillers, such vacancies shall be added to the number of vacancies available to be filled at that election; and in such a case, the period of office to be served by each elected Candidate shall be determined in accordance with section 25(2)."

17. In section 25 of the Law -

(a) for subsections (1) and (2), substitute -

"(1) At a general election or a by-election, the returning officer shall, subject to subsection (3), declare to be elected as Conseillers the candidates who have received the largest number of votes, up to the number of vacancies to be filled.

(2) Where, at a general election, there are one or more existing vacancies to be filled pursuant to section 23(11), the successful candidates who receive the largest number of votes shall be declared elected to replace those Conseillers whose terms of office are due to expire, and the existing vacancies shall be filled by the remaining successful candidates; and if, at such an election, there is an equal number of votes for two or more successful candidates such that their respective terms of office cannot otherwise be determined, those

respective terms of office shall be determined by lots drawn by the relevant candidates under the supervision of the returning officer immediately after the declaration of the result of the election.",

- (b) in subsection (3), after the words "nomination and, where" insert ", at a general election,", and
- (c) in subsections (3) and (5), the words "held under this Law" are repealed.

18. In section 65(1) -

- (a) in the definition of "**by-election**", for "23(5)", substitute "23(8)", and
- (b) in the definition of "**general election**", for ", (3) or (4)", substitute "or (7)".

Register of Electors

19. In section 28 of the Law -

- (a) in subsection (1), for the words "Subject to subsection (2), a", substitute "A",
- (b) subsection (2) is repealed, and
- (c) in subsection 4(c), for the words "the date appointed for the purpose of section 29(1) of the year in which he

applies", substitute "his application".

20. In section 29 of the Law -

(a) for subsections (1), (2) and (3), substitute -

"(1) The Greffier shall compile and maintain a register containing the names and addresses of all persons entitled to have their names inscribed in that register, which register shall be the Register of Electors.

(2) The Register of Electors in force shall be open for public inspection at the Greffe Office during normal office hours.

(3) No challenge shall be made to a decision of the Greffier concerning the inclusion or correction of a name in the Register of Electors or the exclusion of a name from the Register of Electors unless made by petition to the Court of the Seneschal within 28 days after the date of such decision; and if upon hearing such a petition the Court so directs, the Greffier shall forthwith amend the Register of Electors.",

(b) after subsection (4), insert -

" (5) For the avoidance of doubt, the duty of the Greffier under subsection (1) to maintain the Register of Electors shall (without limitation) include a duty to remove from that register the name of any

person who is no longer entitled to have his name inscribed in that register.

(6) Notwithstanding the provisions of this section, the Register of Electors shall be closed on such date, prior to a general election or by-election, as the Chief Pleas may by Ordinance appoint, and, during the period beginning on the date of closure and ending on the date of the election, no entry in the Register shall be made or amended except as a result of a challenge to a decision of the Greffier under subsection (3)."

Miscellaneous amendments

21. In section 8(1)(c) of the Law, for the words "Supreme Court" where they first occur, substitute "Senior Courts", and for those words in the second place where they occur, substitute "Court".

22. In section 17 -

(a) for the heading, substitute "**Expenses and accounts.**",
and

(b) for the words in subsection (1) from "The salary of the Greffier" to "servant of the Court, and all", substitute "All".

23. In section 35(4) of the Law, after the words "right to speak" in each place where they occur, insert "in debate".

24. In section 49(5), for the words "approved by the Lieutenant Governor", substitute "determined by the Chief Pleas upon the recommendation of the General Purposes and Advisory Committee in consultation with the Finance and Commerce Committee".

Interpretation.

25. (1) In this Law, unless the context otherwise requires, "**the Law**" means the Reform (Sark) Law, 2008, as amended.

(2) The Interpretation (Guernsey) Law, 1948^b applies to the interpretation of this Law as it applies to the interpretation of an enactment in force in the Island of Guernsey.

Transitional provisions.

26. (1) A person who, immediately before the commencement of sections 2 to 15 of this Law, was, under the Law -

- (a) the Seneschal of Sark, or
- (b) the Deputy Seneschal of Sark,

shall, upon such commencement, be deemed to have resigned his office with immediate effect.

(2) A person who is deemed to have resigned his office in accordance with subsection (1) shall be eligible to be re-appointed to that office under section 6(1) or 7(1), as the case may be, of the Law, as amended by this Law, notwithstanding that he has attained the age of 65; and, if he is so re-appointed, the

provisions of section 6(2) of the Law insofar as they concern the term of such re-appointment, and the provisions of sections 6(3) and (4), shall apply.

(3) The Register of Electors in force under the Law immediately before the commencement of sections 18 and 19 shall continue to be the Register of Electors to be maintained by the Greffier under section 29 of the Law.

Citation.

27. This Law may be cited as the Reform (Sark) (Amendment) (No. 2) Law, 2010.

Commencement.

28. This Law shall come into force on a date to be appointed by Ordinance of the Chief Pleas, and different dates may be appointed for different provisions of this Law and for different purposes.