

ADDENDUM

Additional Item for the Easter Meeting of Chief Pleas 1st May 2019

Under the Provisions of the Rules of Procedure of the Chief Pleas of Sark the Speaker of Chief Pleas has accepted the following item and added it to the Agenda. This Addendum complies with the notice required under Rule 12(11).

19. To CONSIDER a Report with Proposition from the POLICY and FINANCE COMMITTEE entitled "**Evidence in Civil Proceedings**" (copy enclosed).

20th April 2019

Arthur Rolfe
Speaker of Chief Pleas

NOTES:

Anyone wishing to see any of the Reports and Supporting Papers may do so at the Committee Offices, Monday to Friday, 10.30 - 12.30 and 2 - 4.30 and at other times when the offices are open; copies may be obtained from the Committee Office. The Agenda, Reports and Supporting Papers may also be seen on the Sark Government Website at www.gov.sark.gg

POLICY & FINANCE COMMITTEE
Report with proposition to Easter Chief Pleas, 1st May 2019

EVIDENCE IN CIVIL PROCEEDINGS

The Policy & Finance Committee has been approached by the Seneschal of Sark asking for consideration to be given to amending current legislation in respect of evidence in civil proceedings before the Court of the Seneschal and the consequent lack of compatibility with the rest of the Bailiwick.

Under The Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009, (“the 2009 Law”), amended, with effect from 28th April, 2011, the rules of evidence in civil proceedings, principally the rule in respect of hearsay evidence, brought Guernsey and Alderney law in line with developments in English law.

The Prôjet de Loi was originally drafted as a Bailiwick Law but, by a resolution dated 16th January 2007, Chief Pleas declined to approve it due to concern about the wording of the Ordinance-making provision. It therefore proceeded to be enacted as a Guernsey and Alderney Law.

Subordinate legislation made under that Law includes the Live-Link in Civil Proceedings (Guernsey and Alderney) Ordinance, 2011, which enables evidence in civil proceedings to be given from a location other than the court room in certain circumstances, and the Evidence in Civil Proceedings (Guernsey and Alderney) Rules, 2011, which provides rules of procedure in relation to hearsay evidence, expert evidence and other miscellaneous matters.

In consequence, the decision of Chief Pleas not to approve the 2007 Prôjet de Loi means that Sark is out of step with the other islands and with England and the rules of evidence in civil proceedings are out of date and inadequate. For example, the Law, if extended to Sark, would have made provision (inter alia) for:-

- The admissibility of convictions and findings of paternity and adultery as evidence in civil proceedings, and the conclusiveness of convictions for the purposes of defamation actions and in relation to privilege.
- The admissibility of expert evidence and proof of foreign law.
- The admissibility of hearsay evidence, proof of statements contained in documents, and proof of records of a business or public authority.
- The power to make Ordinances and Rules of Court concerning the rules of evidence in civil proceedings.

The Policy & Finance Committee is of the opinion that to draft a Prôjet de Loi as outlined would be of great benefit to the smooth operating of the Court of the Seneschal and requests Chief Pleas to approve its proposition for permission to instruct the Law Officers to draft the necessary legislation.

Proposition –

That Chief Pleas directs the Policy & Finance Committee to instruct the Law Officers to draft the necessary legislation in similar terms to The Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009 and subsequent subordinate legislation, Live-Link in Civil Proceedings (Guernsey and Alderney) Ordinance, 2011 and the Evidence in Civil Proceedings (Guernsey and Alderney) Rules, 2011.

**Conseiller Peter La Trobe-Bateman
Chairman, Policy & Finance Committee**