

Sark: the introduction of an ECHR compliant electoral system

Summary

- **The UK is responsible for the international relations of Sark, as it is for all Crown Dependencies.**
- **Sark's electoral system is at present non compliant with the European Convention on Human Rights. The UK would have to remedy that situation were the electoral system to be challenged.**
- **Once Sark's electoral system is ECHR compliant, it can look forward to a future without further DCA interference. The future role of the Seigneur is a matter for the people of Sark.**
- **The opinion poll has shown that option "A" is the will of the people. This only strengthens the case for reform. All other options are now indefensible in ECHR terms.**

Detail

1. **The main features of the constitutional relationship between the Crown Dependencies and the UK are that the United Kingdom Government is responsible in international law for the international relations of the Crown Dependencies and is responsible for their defence. The Crown, which acts through its Privy Council, is ultimately responsible for the good government of the Crown Dependencies.**
2. **As a UK Government department, the Department for Constitutional Affairs (DCA) respects and seeks to protect the status of the Crown Dependencies as internally self-governing dependencies of the Crown.**
3. **At the same time it seeks to protect the UK from the consequences of any breach of the UK's international obligations arising from situations or events in the Crown Dependencies. Any action we take in respect of the Islands has to reflect and respect that inherent balance of interests.**
4. **As the UK is responsible for the international relations of all the Crown Dependencies, including international agreements and obligations, any breach of any international obligation, such as may be created by Sark's constitution not being human rights compliant, would fall on the UK to defend and to remedy.**
5. **Sark is bound by the European Convention on Human Rights (ECHR), but it is the UK that is answerable for Sark's compliance. It is the UK that has to answer to the European Court of Human Rights (ECtHR) and it is the UK that will be obliged to remedy the breach.**
6. **When Sark's electoral system is human rights compliant, it can look forward to a future without further DCA interference. DCA has no need or desire to be involved in the government of Sark unless the responsibilities of the UK or the Crown are engaged, in particular this means where there is a risk of breach of an international obligation or agreement.**

7. DCA looks forward to offering Sark whatever support and assistance it can to protect and defend its autonomy and its right to shape its own future as a Crown Dependency; but it cannot defend a non-ECHR compliant legislature.
8. At present, the sole concern of the Lord Chancellor and of the UK Government is that the existing composition of Chief Pleas does not comply with Article 3 of the First Protocol to the European Convention on Human Rights.
9. DCA cannot support breaches that deny each of you the guarantee of elections under conditions which will ensure the free expression of your opinion in the choice of your legislature.
10. The reservation of significant proportions of seats in Chief Pleas for *tenants* does not afford the people of Sark that freedom of expression, and there is a very high risk that a challenge in the ECtHR will succeed and the UK will be found to be in breach.
11. Put starkly, at that point the UK will be required to remedy the breach. The UK does not want to intervene in how Sark governs itself but will if it is obliged to do so. ~~Sark still has control of how it shapes its future~~ constitution to ensure that its electoral system is ECHR compliant. The wish of the people of Sark has been expressed through an opinion poll and the implementation of that wish will see the end of the UK's concern over how Chief Pleas is constituted.
12. DCA is only interested in Sark's electoral system being ECHR compliant and it not putting the UK in breach of its international obligations. 'Option A' is the only option indisputably compliant with the human rights convention. 'Option A' has majority support borne out by an opinion poll and the case for its rapid implementation is irrefutable.
13. DCA's only concern is how the Chief Pleas legislature is elected. It matters not to the UK whether Chief Pleas is made up of 28 tenants, 28 deputies or a mixture of both; what matters is that they found themselves there by way of a ECHR compliant electoral process.
14. The land reform issue is a domestic one for Sark and as such will be treated by the UK in the same way as any other domestic legislation passed by a legislature of a Crown Dependency. The same applies to all other domestic legislation passed by the Chief Pleas.
15. The Lord Chancellor will not contemplate putting forward for Royal Assent a piece of legislation which is at risk of breaching the ECHR. It is extremely important that those on Sark who are responsible for taking the decision about the constitutional future of the island (not only, nor even primarily, the Seigneur) are fully apprised of the possible consequences of adopting each of the options open to them.
16. The question of the surviving powers of the Seigneur does not present us with the same order of difficulty. It is DCA's view that the proposed functions of the Seigneur (set out in the Projet submitted to us for Royal Assent in April 2005) are such that, viewed individually or as a package, they do not undermine the role of the democratically-elected members of Chief Pleas and do not infringe Article 3 of Protocol 1.

17. We therefore consider that the decision on the Seigneur's future role should be left to the democratically elected Chief Pleas.

18. The poll has shown that there is no other option than "A" and to go against that would be indefensible. Chief Pleas is strongly encouraged to avoid the further delay that will inevitably flow if it is distracted by other elements of reform. Other elements of reform need not become enmeshed with the basic requirement to reform the electoral system.



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