

STATES OF JERSEY

OFFICIAL REPORT

TUESDAY, 10th DECEMBER 2013

COMMUNICATIONS BY THE PRESIDING OFFICER	7
1. Message of sympathy – Nelson Mandela, former President of South Africa.....	7
The Deputy Bailiff:.....	7
QUESTIONS.....	7
2. Written Questions	7
2.1 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE IMPACT OF R&O.75/2012:.....	7
2.2 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR EDUCATION, SPORT AND CULTURE REGARDING ENGAGEMENT WITH YOUNG VOTERS IN 2014:	8
2.3 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE CHAIRMAN OF PRIVILEGES AND PROCEDURES COMMITTEE REGARDING ENGAGEMENT WITH YOUNG VOTERS IN 2014:	9
2.4 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE CHIEF MINISTER REGARDING THE INTRODUCTION OF A HARMONISED MATERNITY POLICY:	10
3. Oral Questions.....	17
3.1 Connétable P.J. Rondel of St. John of the Minister for Economic Development regarding the use of the former La Folie Inn building to train emergency services:	17
Senator A.J.H. Maclean (The Minister for Economic Development):.....	17
3.1.1 The Connétable of St. John:	18
3.1.2 Deputy S. Power of St. Brelade:	18
3.2 The Connétable of St. John of the Minister for Treasury and Resources regarding tenders for the financial Quarter of the Esplanade:	18
Deputy E.J. Noel of St. Lawrence (Assistant Minister for Treasury and Resources - rapporteur):.....	18
3.2.1 The Connétable of St. John:.....	19
3.2.2 The Connétable of St. John:.....	19
3.2.3 Deputy S. Power:.....	19
3.2.4 Deputy M.R. Higgins:.....	19
3.2.5 Deputy M.R. Higgins:.....	20
3.2.6 Senator S.C. Ferguson:	20
3.2.7 Senator S.C. Ferguson:	20
3.2.8 The Connétable of St. John:.....	20
3.3 Deputy M.R. Higgins of the Chief Minister regarding the compensation scheme for Historic Child Abuse victims and the number of claims settled, disputed, rejected and pending:	21
Senator I.J. Gorst (The Chief Minister):.....	21

3.3.1 Deputy M.R. Higgins:.....	21
3.3.2 Deputy T.M. Pitman of St. Helier:	21
3.3.3 Deputy M. Tadier of St. Brelade:	21
3.3.4 Deputy M. Tadier:	22
3.3.5 Deputy J.A. Hilton of St. Helier:.....	22
3.3.6 Deputy M.R. Higgins:.....	23
3.4 Deputy G.C.L. Baudains of St. Clement of the Minister for Transport and Technical Services regarding repairs to the Bellozanne Chimney:.....	23
Deputy K.C. Lewis of St. Saviour (The Minister for Transport and Technical Services):	23
3.4.1 Deputy G.C.L. Baudains:.....	23
3.5 Deputy T.M. Pitman of the Chief Minister regarding the use of the Data Protection (Jersey) Law 2005 to prosecute former Senator S. Syvret:	24
Senator I.J. Gorst (The Chief Minister):	24
3.5.1 Deputy T.M. Pitman:	24
3.5.2 Deputy T.A. Vallois of St. Saviour:	25
3.5.3 Deputy T.A. Vallois:	26
3.5.4 Deputy C.F. Labey of Grouville:.....	26
3.5.5 Deputy M.R. Higgins:.....	26
3.5.6 Deputy M. Tadier:	26
3.5.7 Deputy M. Tadier:	27
3.5.8 Deputy R.G. Le Hérisier of St. Saviour:	27
3.5.9 Deputy J.A. Martin of St. Helier:	27
3.5.10 Deputy T.M. Pitman:.....	28
3.6 Deputy R.G. Le Hérisier of the Minister for Economic Development regarding the steps taken by his Department to encourage Play.com to remain in Jersey:.....	28
Senator A.J.H. Maclean (The Minister for Economic Development):.....	28
3.6.1 Deputy R.G. Le Hérisier:	29
3.6.2 Deputy M.R. Higgins:.....	29
3.6.3 Deputy R.G. Le Hérisier:	29
3.7 Senator A. Breckon of the Minister for Housing regarding the need for more homes for States rental:	30
Deputy A.K.F. Green of St. Helier (The Minister for Housing):.....	30
3.7.1 Senator A. Breckon:	30
3.7.2 Deputy R.G. Le Hérisier:	30
3.7.3 Deputy G.P. Southern of St. Helier:.....	31
3.7.4 Deputy J.A. Martin:	31
3.7.5 Deputy G.C.L. Baudains:.....	31
3.7.6 Deputy R.G. Le Hérisier:	32
3.7.7 Senator A. Breckon:	32
3.8 Deputy M.R. Higgins of the Minister for Home Affairs regarding the arrest and detention of H.G. on 26th September 2010:.....	32
Senator B.I. Le Marquand (The Minister for Home Affairs):	32
3.8.1 Deputy M.R. Higgins:.....	32
3.8.2 Deputy M.R. Higgins:.....	33
3.8.3 Deputy T.M. Pitman:	33
3.8.4 Deputy T.M. Pitman:	33
3.8.5 Deputy M.R. Higgins:.....	33
3.8.6 Deputy M.R. Higgins:.....	34
3.9 Deputy T.M. Pitman of the Minister for Home Affairs regarding cyber-bullying complaints:	34

Senator B.I. Le Marquand (The Minister for Home Affairs):	34
3.9.1 Deputy T.M. Pitman:	34
3.9.2 Deputy M.R. Higgins:.....	35
3.9.3 Deputy T.M. Pitman:	35
3.10 Deputy R.G. Le Hérissier of the Minister for Treasury and Resources regarding the use of J.T. funds, and those of the Jersey Competition Regulatory Authority on Court costs: 35	
Deputy E.J. Noel (Assistant Minister for Treasury and Resources - rapporteur):	35
3.10.1 Deputy R.G. Le Hérissier:	36
3.10.2 Deputy T.A. Vallois:	36
3.10.3 Deputy T.A. Vallois:	36
3.10.4 Deputy R.G. Le Hérissier:	36
3.11 Deputy G.C.L. Baudains of the Minister for Economic Development regarding the sanctions available to the Jersey Competition Regulatory Authority:	36
Senator A.J.H. Maclean (The Minister for Economic Development):.....	37
3.11.1 Deputy G.C.L. Baudains:	37
3.11.2 Deputy R.G. Le Hérissier:	37
3.11.3 Senator S.C. Ferguson:.....	37
3.11.4 Deputy G.C.L. Baudains:	38
3.12 Deputy G.P. Southern of the Minister for Social Security regarding the coverage of financial support for up to 10,000 unpaid carers:.....	38
Senator F. du H. Le Gresley (The Minister for Social Security):	38
3.12.1 Deputy G.P. Southern:	39
3.12.2 Senator S.C. Ferguson:.....	39
3.12.3 Senator S.C. Ferguson:.....	39
3.12.4 Deputy G.P. Southern:	40
3.13 Deputy G.P. Southern of the Minister for Social Security regarding breaches of employment law by Jersey employers using zero-hours contracts:	40
Senator F. du H. Le Gresley (The Minister for Social Security):	40
3.13.1 Deputy G.P. Southern:	41
3.13.2 Deputy G.P. Southern:	41
3.13.3 Deputy G.P. Southern:	41
3.13.4 Deputy M. Tadier:.....	41
3.13.5 Deputy M. Tadier:.....	42
3.13.6 Deputy G.P. Southern:	42
3.14 Deputy M. Tadier of the Minister for Treasury and Resources regarding plans for the use or disposal of the St. Saviour's Hospital buildings:	42
Deputy E.J. Noel (Assistant Minister for Treasury and Resources - rapporteur):	42
3.14.1 Deputy M. Tadier:.....	42
3.14.2 Deputy S.G. Luce of St. Martin:	43
3.14.3 Deputy R.G. Le Hérissier:	43
3.14.4 Deputy R.G. Le Hérissier:	43
3.14.5 The Deputy of St. Ouen:.....	44
3.15 Deputy T.A. Vallois of the Minister for Treasury and Resources regarding the delegation of Ministerial powers under the Public Finances (Jersey) Law 2005:	44
Deputy E.J. Noel (Assistant Minister for Treasury and Resources - rapporteur):	44
3.15.1 Deputy T.A. Vallois:	44
3.15.2 Deputy T.A. Vallois:	45
3.15.3 Senator S.C. Ferguson:.....	45
3.15.4 Senator S.C. Ferguson:.....	45

3.15.5	Senator S.C. Ferguson:	45
3.15.6	Deputy T.A. Vallois:	45
4.	Questions to Ministers without notice - The Minister for Home Affairs	46
4.1	Deputy S. Pitman of St. Helier:	46
	Senator B.I. Le Marquand (The Minister for Home Affairs):	46
4.2	Deputy T.M. Pitman:	46
4.3	Connétable M.P.S. Le Troquer of St. Martin:	47
4.4	Deputy M. Tadier:	47
4.5	Deputy T.M. Pitman:	47
4.6	The Deputy of St. Martin:	48
4.7	Deputy M.R. Higgins:	48
4.8	Deputy J.A. Hilton:	48
4.8.1	Deputy J.A. Hilton:	48
4.9	Deputy M.R. Higgins:	49
4.10	Connétable D.W. Mezbourian of St. Lawrence:	49
4.10.1	The Connétable of St. Lawrence:	49
4.11	Deputy M. Tadier:	50
5.	Questions to Ministers without notice - The Minister for Transport and Technical Services	50
5.1	The Connétable of St. Lawrence:	50
	Deputy K.C. Lewis (The Minister for Transport and Technical Services):	50
5.2	The Connétable of St. Lawrence:	51
5.3	Connétable M.J. Paddock of St. Ouen:	51
5.4	Deputy M. Tadier:	51
5.4.1	Deputy M. Tadier:	52
5.5	Connétable A.S. Crowcroft of St. Helier:	52
5.6	The Connétable of St. Helier:	52
5.7	Senator L.J. Farnham:	52
5.8	Deputy J.H. Young of St. Brelade:	52
5.9	Deputy T.M. Pitman:	53
5.10	The Deputy of St. Martin:	53
5.10.1	The Deputy of St. Martin:	53
5.11	Connétable J.E. Le Maistre of Grouville:	53
5.12	Deputy R.G. Le Hérissier:	53
5.12.1	Deputy R.G. Le Hérissier:	54
5.13	Deputy G.P. Southern:	54
5.14	Deputy J.A. Hilton:	54
5.15	Deputy M. Tadier:	54
5.16	Senator S.C. Ferguson:	55
PUBLIC BUSINESS		55
7.	Minimum Wage: Amendment (P.135/2013) - resumption	56
7.1	Senator F. du H. Le Gresley:	56
7.1.1	The Connétable of St. Martin:	57
7.1.2	Deputy M. Tadier:	58
7.1.3	Deputy M.R. Higgins:	59
7.1.4	Senator A. Breckon:	60
7.1.5	Senator S.C. Ferguson:	60

7.1.6 Senator P.F. Routier:	61
7.1.7 The Connétable of Grouville:.....	61
7.1.8 Deputy G.P. Southern:.....	62
LUNCHEON ADJOURNMENT PROPOSED.....	65
LUNCHEON ADJOURNMENT.....	65
8. Draft Employment (Minimum Wage) (Amendment No. 10) (Jersey) Regulations (P.131/2013).....	65
8.1 Deputy S. Pinel of St. Clement (Assistant Minister for Social Security - rapporteur):....	65
8.2 Deputy S. Pinel:.....	66
8.2.1 Deputy G.C.L. Baudains:.....	66
8.2.2 Deputy S. Pinel:.....	66
9. Long-Term Care Scheme (P.99/2013)	67
9.1 Senator F. du H. Le Gresley (The Minister for Social Security):	67
9.2 Long-Term Care Scheme (P.99/2013): amendment (P.99/2013 Amd.)	74
9.2.1 Deputy J.H. Young:.....	74
9.2.2 Senator F. du H. Le Gresley:.....	78
9.2.3 The Deputy of St. Martin:.....	79
9.2.4 Deputy M.R. Higgins:.....	80
9.2.5 Senator I.J. Gorst:.....	80
9.2.6 Senator L.J. Farnham:.....	81
9.2.7 Deputy M. Tadier:	81
9.2.8 The Deputy of St. Ouen:.....	82
9.2.9 Deputy R.G. Le Hérisssier:	83
9.2.10 Senator P.F. Routier:.....	83
9.2.11 Senator S.C. Ferguson:.....	84
9.2.12 Deputy G.P. Southern:	84
9.2.13 Deputy A.K.F. Green:	85
9.2.14 Deputy S. Pinel:	85
9.2.15 Deputy J.H. Young:	86
9.3 Long-Term Care Scheme (P.99/2013): third amendment (P.99/2013 Amd.(3))	88
9.3.1 Deputy M. Tadier:	88
9.3.2 Senator F. du H. Le Gresley:.....	91
9.3.3 Deputy M. Tadier:	92
9.4 Long-Term Care Scheme (P.99/2013): second amendment (P.99/2013 Amd.(2)).....	93
9.4.1 Senator A. Breckon:	93
9.4.2 Senator F. Du H. Le Gresley:.....	95
9.4.3 Deputy G.P. Southern:.....	96
9.4.4 The Deputy of St. Ouen:.....	97
9.4.5 Deputy R.G. Le Hérisssier:	98
9.4.6 Deputy T.A. Vallois:	98
9.4.7 Senator A. Breckon:	98
9.5 Long-Term Care Scheme (P.99/2013) - resumption	99
9.5.1 Senator P.F. Routier:	99

ADJOURNMENT.....99

[9:30]

The Roll was called and the Dean led the Assembly in Prayer.

COMMUNICATIONS BY THE PRESIDING OFFICER

1. Message of sympathy – Nelson Mandela, former President of South Africa

The Deputy Bailiff:

Very well. We come then to the Consolidated Order Paper. Under A I just give notice to Members that the memorial service is taking place in South Africa today in relation to the death of former President, Nelson Mandela, that I wrote in the absence of the Bailiff to the High Commission in London to say this: "I write on behalf of the States and the people of Jersey to express our deep sadness on hearing the news of the death of former South African President, Nelson Mandela, yesterday evening. Mr. Mandela was a formidable man and will be remembered with great affection as one of the all-time great leaders this generation will ever see. Most of us will in some way wish to reflect on his passing. He had global influence and was admired for his iconic stand against apartheid. He was a man of great courage and tolerance and remained true to his beliefs throughout his political career. His humanity touched many people, not just the people of South Africa, some of whom live and work in Jersey. It was perhaps his ability to bridge the reconciliation process that will be his defining quality. He will, I am sure, remain a source of inspiration for generations to come. Our thoughts and sympathy extend to his family and more widely to the people of South Africa at this sad time."

QUESTIONS

2. Written Questions

2.1 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE IMPACT OF R&O.75/2012:

Question

Will the Minister confirm that R&O.75/2012 reduced the sum payable for a child with severe disability, who was in receipt of Attendance Allowance prior to 2008, to 60% of the original award as of 1st July 2012?

Answer

I can confirm that R&O.75/2012 did **not** reduce the sum payable for a child with a severe disability who was in receipt of Attendance Allowance prior to the introduction of the Income Support scheme in January 2008.

In April 2011 the previous Minister for Social Security amended the Income Support Transitional Order to create a separate category of transitional protection in respect of families that included a child previously receiving Attendance Allowance.

I reviewed this position in June 2012 and further amended the Transitional Order so that 100% protection continues to be available to these families, regardless of the income of the household, and continues until each child reaches compulsory school leaving age and are eligible to make a claim to Income Support in their own right.

In early 2014 I will be lodging proposals to formalise the ongoing support that is available to a child below compulsory school leaving age who has a severe disability.

2.2 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR EDUCATION, SPORT AND CULTURE REGARDING ENGAGEMENT WITH YOUNG VOTERS IN 2014:

Question

What measures, if any, does the Minister have under consideration, in conjunction with the Privileges and Procedures Committee or otherwise, given that 2014 is an election year and that all those over 16 on election day will have the right to register and to vote, to improve:

- (a) the numbers of 16 to 19 year olds who register to vote;
- (b) access to politicians in schools and colleges through hustings, PSHE lessons or otherwise; and,
- (c) awareness of current election issues with the aim to significantly increase turnout of 16 to 19 year olds in the forthcoming elections?

Answer

The Education, Sport and Culture Department, through States' schools, has an ongoing role in teaching young people about the democratic process. This continues during election year in line with the Jersey Curriculum, which requires students in Key Stage 4 to develop knowledge and understanding of their roles and responsibilities as citizens. The significance of active participation in democratic and electoral process is included in this.

It is a well-recognised principle that students should be able to learn about the democratic process in schools in a neutral environment. Teachers and lessons are expected to be unbiased and apolitical. They give students the background and context necessary for them to make informed decisions about political issues themselves.

The responsibility for promoting the election and organisation of hustings for candidates rests with the Privilege and Procedures Committee with assistance from the States Greffe. The ESC Department liaises with the States Greffe and supports its work to raise awareness about the election.

It is understood that the States Greffe are currently developing a plan for 2014. During the previous election period the following steps were taken and can be repeated next year:

- Voter registration forms were made available in schools and students were advised;
- Public information leaflets and posters, produced by the States Greffe on behalf of the Privilege and Procedures Committee, were made available in schools. These were specifically aimed at encouraging younger voters to register and explained the process;
- Specific areas were set aside in schools for candidates to display manifestos/posters if they wish;
- School premises were made available outside school hours for candidates to arrange hustings or meetings with prospective voters. This enables candidates to arrange times and venues that are especially convenient for younger voters.

Voting and attendance at hustings are not currently compulsory for any section of the population so it is appropriate to maintain the democratic principle of free choice in relation to younger voters.

As well as the above, ESC is investigating options for a new Youth Council which would aim to increase awareness of the political process and encourage greater participation among a range of young people.

2.3 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE CHAIRMAN OF PRIVILEGES AND PROCEDURES COMMITTEE REGARDING ENGAGEMENT WITH YOUNG VOTERS IN 2014:

Question

What measures, if any, does the Chairman have under consideration, in conjunction with the Minister for Education, Sport and Culture or otherwise, given that 2014 is an election year and that all those over 16 on election day will have the right to register and to vote, to improve:

- (a) the numbers of 16 to 19 year olds who register to vote;
- (b) access to politicians in schools and colleges through hustings, PSHE lessons or otherwise; and,
- (c) awareness of current election issues with the aim to significantly increase turnout of 16 to 19 year olds in the forthcoming elections?

Answer

The Privileges and Procedures Committee is committed to raising awareness among Islanders of their right to register to vote and to vote on election day. The Committee has commenced preparatory work on its voter registration and turn-out campaign for the 2014 elections and hopes to see an increased turnout among all Islanders in the forthcoming elections.

The Committee was interested to read the Jersey Annual Social Survey 2013, which showed that just 16% of Islanders aged between 16 and 34 years voted in the October 2011 elections, compared with 74% of those aged 65 years or over and 39% of 35 to 44 year olds. We are keenly aware that there is significant capacity to improve voter registration and turn-out among the younger generations.

The Committee will be liaising with the Education, Sport and Culture Department to assist in raising awareness of the forthcoming elections in our schools. The Committee will be preparing information packs for students and posters will be distributed to schools aimed at encouraging younger voters to register to vote and explaining the voting process. Areas will be set aside in schools for candidates to display their manifestos and posters, and school premises will be made available outside of school hours for hustings meetings to be arranged, should candidates wish to take advantage of this opportunity. The Committee is also keen for voter registration forms to be made available in schools for students to complete, should they wish to do so.

The Committee will also continue its work with the Youth Service to raise awareness among young Islanders. Voter information, voter registration forms and candidates' manifestos will be made available online and social media will be used to engage with Islanders. The campaign in respect of the 2011 elections focused upon election issues, such as the provision of housing and education, and the Committee will consider its approach in respect of the forthcoming campaign early in the new year. The Committee also intends to discuss whether consideration should be given to the provision of pre-poll voting facilities in schools.

The Committee wishes to emphasise that its campaign will not just focus on 16 to 19 year olds but will encourage **everyone** who is entitled to register and vote to do so. While it is important that the Committee does all it can to increase awareness among young people we must not forget that 16 to 19 year olds represent a small proportion of the total number of voters. The Committee will therefore be working to encourage Islanders of all age groups to register to vote, and to cast their vote in the October elections.

2.4 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE CHIEF MINISTER REGARDING THE INTRODUCTION OF A HARMONISED MATERNITY POLICY:

Question

Further to his statement of the 19th November 2013 on public sector pay in which he referred to “a harmonised maternity policy”, will the Chief Minister inform members what the terms of this policy are, which employee groups are affected and how it compares with UK equivalents?

Answer

The current Maternity Policy, which was re-drafted and agreed in consultation with Trades Union representatives, applies to all employees of the States of Jersey.

Before this policy was agreed there were a number of maternity policies applicable to different pay groups. This meant women in different areas were treated differently, which was inequitable. The new policy has ensured a consistent approach across the organisation.

You can read the full Maternity Policy below.

Under the UK’s maternity legislation a qualifying employee is entitled to 90% pay for the first 6 weeks (offset against Statutory Maternity Pay, SMP), then for up to a further 12 weeks they can be paid their SMP and half pay. Between 19 weeks and 39 weeks, they are paid their SMP entitlement, then from week 40 to 52 any further leave is unpaid. It is compulsory for an employee to take 2 weeks leave after the birth of the baby. An employee becomes eligible for maternity benefits after 26 weeks continuous employment in the UK.



MATERNITY LEAVE

Policy Reference	ER/ Maternity
Version	v 1.0
Author	Employment Relations
Effective Date	01 May 2013
Review Date	01 May 2015
Policy Status	Contractual
Application	All Pay Groups
This policy supersedes all previous policies, circulars and agreements connected with Maternity within the States of Jersey and applies to all Pay Groups	

Contents	Page
1. Policy Statement	3
2. Policy Aims	3
3. Who does this Policy apply to	3
4. Key Principles	3
5. Links to Other Policies	4
6. Roles and Responsibilities	4
7. Policy Provisions	5
8. Glossary of Terms	10

This policy should be read in conjunction with the Management and Employee Guidelines on Maternity Leave.

1 Policy Statement for Maternity Leave

- 1.1 It is the aim of the States of Jersey to ensure that as far as possible all employees are able to combine their career and family responsibilities.
- 1.2 The States of Jersey values the contributions of all its employees and every effort will be made to support female employees throughout the maternity period and to encourage them to return to work from their Maternity Leave.
- 1.3 The States of Jersey aims ensure equality and consistency in terms and conditions which relate to the management of employees who are entitled to Maternity Leave and related pay.

2 Policy Aims

- 2.1 The purpose and aim of this policy is to:
 - Provide clear guidance to managers and employees about Maternity Leave and related pay entitlements.

3 Who does this Policy apply to?

- 3.1 This policy applies to all pregnant female employees¹ of the States of Jersey on permanent and non-permanent contracts of employment.
- 3.2 It does not apply to:
 - Workers who are engaged on zero-hours agreements
 - Workers who are engaged on UK training contracts
 - Workers who work for the States of Jersey through a contract for services on an interim, locum, self-employed, or agency basis;

¹ Throughout this policy the term ‘employee’ is used to include all employees and all office holders of the States of Jersey.

- Voluntary staff or those on honorary contracts where there is no implied contract of employment.

4 Key Principles

- 4.1 A standard set of underpinning principles has been developed for this Policy and will apply to all States of Jersey Human Resources Policies, and terms and condition of service. These principles can be found under Policies on the States intranet.

In addition the following principles also apply:

- No female employee will suffer detriment of any kind as a result of being pregnant or taking Maternity Leave;
- A female employee may not be dismissed for reasons of pregnancy or for taking Maternity Leave irrespective of their length of employment.

5 Links to other Policies

- 5.1 Other policies and documents which may be helpful when considering this policy are:

- Equality & Diversity
- Flexible Working
- Career Break
- Parental Leave
- Adoption leave
- Health & Safety & Wellbeing
- Sickness Entitlement & Leave
- Redeployment

6 Roles and Responsibilities under this Policy

In addition to the generic policy responsibilities which can be found on the Policy intranet page, specific to this policy:

- 6.1 **Employees** are responsible for:

- Providing written notification of their Maternity Leave to their Line Manager in line with the timescales in this policy.

- 6.2 **Line Managers** are responsible for ensuring that:

- They maintain regular contact with the employee during their Maternity Leave, and that they are kept informed of any changes within the department and any vacancies which arise as a result of organisational change which may affect them;
- They consider any requests from the employee if they want to return to work on a part-time, job share or other flexible working arrangements, in line with the States Flexible Working Policy;
- They inform the Payroll Officer, Treasury & Resources, of the date that the employee will return to work;
- Ensuring that a health and safety risk assessment is carried out where the employee's work activity could put the health of her and her baby at risk.

6.3 **Human Resources (HR)** are responsible for:

- Together with Line Managers and Payroll ensuring that employees are properly recompensed during the period of their Maternity Leave.

7 Maternity Leave Provisions

7.1 Entitlement (See also 7.3)

	ENTITLEMENT			
	Ordinary Maternity Leave	Maternity Leave	Extended Maternity Leave	Maternity Leave
WHO	2 weeks paid at 100% ³	10 weeks paid at 90% ^{2,3}	Further 6 weeks unpaid	18 weeks up to 26 weeks unpaid ¹
All pregnant employees see 7.1.1	√	-	-	-
Employees who have completed 1 years' service, including a satisfactory probation period (or if the probationary period is longer than 1 year completed it successfully so far) at the end of their qualifying week (i.e the end of the 15 th week before her expected week of childbirth) and are still employed during that week can apply for 18 weeks Maternity Leave.	√	√	√	√
Pregnant employees on a fixed term contract, with over 1 years' service	√	√ ⁴	√ ⁴	√ ⁴
Table Foot Notes				
<p>1. After a total of 18 weeks, a further extension up to 26 weeks is at the employee's request.</p> <p>2. Subject to the employee returning to work for at least 13 weeks following Maternity Leave. If they subsequently choose not to return to work for all of the 13 weeks, then the 10 weeks of 90% pay will be recovered proportionally to the amount of weeks actually worked following Maternity Leave.</p> <p>3. Less Social Security Maternity Allowance.</p> <p>4. Subject to a minimum of 1 year remaining on their contract at the <i>end</i> of the Maternity Leave period.</p>				

7.1.1 All pregnant employees are required to take 2 weeks Maternity Leave following the birth of their baby regardless of length of service.

7.2 Notification of Maternity Leave

- 7.2.1 The employee must decide, following medical advice, when she will start her Maternity Leave. She must notify her Line Manager, in writing as soon as possible but no later than the end of the 15th week (the 'qualifying' week) before her expected week of childbirth (EWC).
- 7.2.2 The employee must also state in writing her intention to return to work on the same number of hours as she worked prior to taking Maternity Leave. (See also section 7.8.5)
- 7.2.3 As far as possible, at least 28 days (4 weeks) written notice must be given if the employee wishes to change the start of her Maternity Leave.

7.3 Maternity Pay

- 7.3.1 Regardless of length of service the employee will be paid 100% of their normal pensionable pay (non-pensionable pay is excluded) for the first 2 weeks of her Maternity Leave.
- 7.3.2 If the employee has worked for the States of Jersey for over a year on a permanent contract or is on a fixed term contract with at least one year remaining at the end of the period of Maternity Leave, they will be paid 90% of their normal pensionable pay (this does not include standby, call-out and allowances which are not pensionable) for a further 10 weeks of their Maternity Leave.
- 7.3.3 The Social Security Maternity Allowance will be offset against maternity payments regardless of whether the employee is receiving the allowance.

7.4 Pensions

- 7.4.1 The full period of Maternity Leave will only count as pensionable service under the Public Employees Contributory Retirement Scheme (PECRS) or Jersey Teachers Superannuation Fund (J.TSF) if the employee is a member of the scheme and opts to continue her contributions as if her pay had not been interrupted for the period of unpaid leave. The Employer will continue to pay its percentage of contributions in this case. The whole period of Maternity Leave will then count as pensionable service.
- 7.4.2 The first 12 weeks of paid maternity leave are subject to deductions for pension contributions.
- 7.4.3 An employee who has opted to continue paying pension contributions into either the PECRS or J.TSF scheme during the period of paid leave could be disadvantaged if she discontinues these payments during the same period of unpaid leave.
- 7.4.4 If an employee opts to discontinue her contributions to the relevant scheme, the period of Maternity Leave will not count as pensionable service. However, the period will still count towards qualifying service.

7.5 Time off for Ante-natal Care

- 7.5.1 Expectant mothers will be given paid time off to attend ante-natal appointments.
- 7.5.2 The Employer may require the employee to show evidence of their appointment to their Line Manager and give reasonable notice of such appointments.

7.6 Annual Leave

- 7.6.1 Annual leave will accrue during the paid weeks of Maternity Leave.
- 7.6.2 The remaining 6 unpaid weeks (or 14 weeks if the employee extends their Maternity Leave to a total of 26 weeks) will count as continuous service for employment purposes, but does not attract annual leave.

7.7 Employee Benefits

7.7.1 During paid Maternity Leave the employee has a right to continue to benefit from the terms and conditions of employment which would have applied had they been at work instead of on leave, except for the terms of providing for the employee's salary.

7.7.2 Whilst on Maternity Leave employees are still obliged to follow the Code of Conduct applicable to them.

7.8 Returning to work

7.8.1 It is expected that the employee will normally return to work within 1 month of the notified date of return. (For Teachers the return to work would be expected to be the start of the next full or half term.) If this is not possible the employee must discuss this with her Line Manager and HR and agree an alternative date.

7.8.2 Except during the first 2 weeks from the day of childbirth, all employees who take Maternity Leave have the right to return to work at any time during either Ordinary Maternity Leave (first 12 weeks) or Additional Maternity Leave (up to 26 weeks), subject to her following the correct notification process.

7.8.3 Where it is not possible for the employee to return to her former post, every effort will be made to appoint them to another post in the same grade in the same department. Failing this, employment will be at the same grade elsewhere in the States of Jersey.

7.8.4 If an employee wants to return to work earlier than the date agreed when notifying Maternity Leave (7.2.2), she must put her request in writing to her Line Manager, giving 28 days (or 4 weeks) notice of her return to work. Where possible the new date will be accommodated.

7.8.5 An employee may apply to work reduced hours on returning to work subject to the agreement of her Line Manager depending on business and operational need.

7.8.6 Any further period of unpaid leave is not deemed to be Maternity Leave and will be considered under the relevant policy (see section 5).

7.9 Not returning to work

7.9.1 If the employee chooses not to return to work at the end of her Maternity Leave, she should submit the requisite contractual notice to terminate her contract.

7.9.2 In such circumstances then the employee must repay 10 weeks of 90% pay (less any Maternity Allowance received).

7.10 Sickness & Maternity Leave

The following provisions (7.10.1 and 7.10.3) are subject to the usual certification requirements when an employee is absent for reasons of sickness.

7.10.1 Sickness before commencement of Maternity leave

If an employee is absent for a pregnancy related reason in the 4 weeks before their EWC and does not return, her Maternity Leave is automatically triggered. This applies even if she has already notified a later Maternity Leave start date.

If the employee is absent for a non-pregnancy related reason her original Maternity Leave start date still applies and normal entitlement to sick pay applies, until her EWC.

7.10.2 Sickness during Maternity Leave

Illness whilst on paid or unpaid Maternity Leave does not entitle the employee to contractual sick pay.

7.10.3 **Sickness on return from Maternity Leave**

If an employee is ill and unable to return to work on a date previously notified, she must provide a doctor's medical certificate to cover any period of sickness absence. An employee will be required to return to work before entitlement to sick pay can be triggered. If there are exceptional circumstances which affect this, they will be looked at on a case by case basis.

7.11 **Keeping in Touch ('KIT') Days**

7.11.1 If the employee wishes, they may after the first 2 weeks of their Maternity Leave, come into their department for an agreed period of time. This work is unpaid and the employee is expected to make appropriate childcare arrangements for this visit. The employee's Line Manager is also expected to keep in regular contact with them during their Maternity Leave.

7.12 **Health & Safety**

7.12.1 The employer is required to protect the health and safety at work of all employees and others, including new and expectant mothers, by carrying out a risk assessment. It is the responsibility of the Line Manager to arrange this where the work activity of the pregnant employee could put her and her baby at risk.

7.12.2 If a risk is identified that could jeopardise the health and safety of a new or expectant mother or her baby, first consideration will be given to removing the hazards or preventing exposure to the risk. If the risk still cannot be avoided, further steps to protect the health and safety of the pregnant employee must be taken - changes in her working conditions or hours or offers of suitable alternative work should be considered as options.

7.13 **Early Birth**

7.13.1 Employees who give birth before their Maternity Leave start date or their EWC are still entitled to the same number of weeks' Maternity Leave, but this will commence automatically from the date of the baby's birth.

7.14 **Miscarriage or Stillbirth**

7.14.1 A miscarriage or stillbirth earlier than the 24th week of pregnancy does not qualify the employee for Maternity leave, Maternity pay or Maternity Allowance. Any sickness absence from work following such an event will be treated as normal sickness.

7.14.2 A stillbirth during or after the 25th week of pregnancy qualifies an employee for Maternity Leave and pay in the usual way.

7.15 **Breastfeeding**

7.15.1 A mother who is breastfeeding may request short-term flexible arrangements with her Line Manager to accommodate this. Any such request should be discussed prior to return from Maternity Leave and will be looked at alongside operational demands and available facilities. Any breaks away from the workplace are without pay.

8 **Glossary of Terms used in this Policy**

Term	Meaning
Expected week of	EWC means the week, starting on a Sunday during which the doctor or midwife expects the employee to

Term	Meaning
childbirth (EWC)	give birth
Qualifying week	the 15 th week before the expected week of childbirth
Ordinary Maternity Leave	The period of Maternity Leave taken up to and including the 12th week which may be paid.
Extended Maternity Leave	The period of Maternity Leave taken between 18 and 26 weeks which is unpaid.
Normal pensionable pay	The amount of an employee's remuneration which is pensionable.
PECRS	Public Employees Contributory Retirement Scheme
J.TSF	Jersey Teachers Superannuation Fund
Pensionable service	The length of Scheme membership measured in years and days. It can also include extra service credited to an employee under a transfer from another pension arrangement, and extra years purchased if you pay additional voluntary contributions.
Qualifying service for pensions	This is the length of Scheme membership measured in years and days including service as a member of other pension schemes from which a transfer value has been received.

3. Oral Questions

The Deputy Bailiff:

We now come to Oral Questions. As indicated, I am going to call first on the Connétable of St. John to ask a question of the Minister for Economic Development.

3.1 Connétable P.J. Rondel of St. John of the Minister for Economic Development regarding the use of the former La Folie Inn building to train emergency services:

Will the Minister advise who gave permission for the former La Folie Inn building, which is a proposed B.L.I./S.S.I. (Building of Local Interest/Site of Special Interest), to be used to train emergency services and why was this building chosen when the States have many former housing properties which are to be demolished and have no historic value that could have been used?

Senator A.J.H. Maclean (The Minister for Economic Development):

Permission was given by Ports of Jersey to the States of Jersey Fire and Rescue Service to use La Folie site earlier this year for an exercise, which involved the use of breathing apparatus as part of a search and rescue training, on the proviso that those activities would not cause permanent damage to the fabric of the building. Although I cannot comment on behalf of other departments, I understand different States buildings are identified and permission sought to use them based on specific challenges presented. La Folie in particular was popular as it is in a central location, has easy parking and the internal layout is compact and challenging for such exercises. I am assured that recent activities undertaken by the States Fire and Rescue Services have not caused any damage to the property, which is regularly checked by officers and remains wind and watertight. Thank you.

3.1.1 The Connétable of St. John:

Will the Minister review the answer he has given, given that he says there has been no damage done to the building? Will he review through his officers to make sure that the building had not previously been used on other exercises by other emergency services, because I am reliably informed that there is considerable damage on the inside of that building?

Senator A.J.H. Maclean:

As I say, I am assured that that is not the case, but indeed if there is evidence to the contrary I would be interested to receive it from the Connétable. I am very happy to look into the matter and, using his terms, review what I have been informed to date.

The Connétable of St. John:

I would be more than happy to meet the Minister on site. Thank you.

3.1.2 Deputy S. Power of St. Brelade:

Could the Minister give an indication to the Assembly if the building is going to be continued to be used for training exercises? Could he give an indication as to whether the building will remain essentially unoccupied and not in commercial usage for the next 10 years?

Senator A.J.H. Maclean:

Part A of the question, it is not my understanding that there are regular exercises held at that particular building. In fact, I think the Fire and Rescue Services have used 8 different premises during the course of the last year or so. This is the only occasion that this particular one has been used. As far as further uses, yes, there have been a number of occasions when uses have been considered. Obviously La Folie has to be considered to the overall Ports of States. That is a matter together with Property Holdings and the States of Jersey Development Company that we are continuing to review. I am hopeful that announcements will be made in the not too distant future of progress for redevelopment.

The Deputy Bailiff:

We come on to the Connétable's second question because he was so brief with the first.

3.2 The Connétable of St. John of the Minister for Treasury and Resources regarding tenders for the financial Quarter of the Esplanade:

Following the announcement that Camerons and a U.K. (United Kingdom) company are to work with the States of Jersey Development Company on the financial quarter of the Esplanade, can the Minister give details of all the companies who tendered and prices quoted for the work?

Deputy E.J. Noel of St. Lawrence (Assistant Minister for Treasury and Resources - rapporteur):

S.o.J.D.C. (States of Jersey Development Company) undertook a pre-qualification exercise in June 2013, which led to a formal tendering process being undertaken in September 2013. The procurement of the first phase of the Jersey International Finance Centre was the subject of a Ministerial decision that the Minister for Treasury and Resources took on 30th October 2013. This decision approved a 2-stage design and build procurement route to be followed. This means that at this point in time the joint venture between Camerons and Sir Robert McAlpine Limited has been appointed as the preferred contractor. Under the terms of the pre-contract service agreement they will undertake a certain role up and until the main contract is let. No sub-contractors have been

appointed at this stage. These packages will be tendered by the joint venture body during the course of the first stage on an open-book basis.

[9:45]

On 5th December 2013 the Camerons and Sir Robert McAlpine Limited joint venture held a meet the buyer event to provide local businesses with the opportunity to find out more about the scene and to present their businesses to the preferred contractor. The Social Security Department and Jersey Business also attended the event and more than 80 local companies registered to take part. This project has the potential to be a major stimulus for the local construction industry and the appointment of Camerons will ensure that local companies will have an opportunity to tender to undertake the construction work with the target of delivering as much as possible on Island.

3.2.1 The Connétable of St. John:

Could the Minister answer the question? I will read it again. Following the announcement that Camerons and a U.K. company are to work with the Jersey Development Company on the financial quarter of the Esplanade, can the Minister give details of all the companies who tendered and prices quoted for the work?

Deputy E.J. Noel:

To take the last point first, I cannot give the financial details, but what I can give is that there are currently 3 local contractors with experience of delivering such large construction projects. The first of which is Dandara, which were not invited to tender as they have a competing office scheme. The other 2 are Camerons and AC Major. Both submitted expressions of interest and pre-qualified. Tender documentation was sent to both. Given the size of the project both companies were joint venturing with U.K. contractors and Camerons with Sir Robert McAlpine Limited and AC Major with Kea. In the event AC Major did not submit a tender as its partner, Kea, withdrew due to the upturn in the workload in the U.K.

3.2.2 The Connétable of St. John:

Yet again, the Minister has been spending public money and will not tell Members. Will we please be told how much the price was quoted on, if they have received a tender and it has been given out? We are entitled to know that figure.

Deputy E.J. Noel:

It is quite interesting because I had a conversation with the Constable just before this sitting commenced and he agreed that it would not be in the interest of Islanders for this information to go into the public domain. It is confidential information and I cannot disclose it.

3.2.3 Deputy S. Power:

Would the Assistant Minister not agree with me, that it is hardly an acceptable position to have one company tender for works on the financial quarter, because it gives the department no benchmark as to how competitive that tender might be?

Deputy E.J. Noel:

That is exactly why S.o.J.D.C. are using cost consultants, EC Harris, to ensure that they receive good value for the contract.

3.2.4 Deputy M.R. Higgins:

I ask the Assistant Minister for Treasury and Resources, we are being told repeatedly that you cannot provide information because it is confidential. I have been looking at a number of contracts, including managed print contracts in the United Kingdom, which are being released. Many local

authorities are now giving all the rates that are being provided by the people who have tended for the contracts. More and more local authorities are going for more openness. When is the Minister's department going to be far more open and provide details of contracts, including things like the incinerator contract, which is 5 years old, and any information would no longer be confidential and should be in the public domain?

Deputy E.J. Noel:

We are as transparent as we can be. S.o.J.D.C. in its remit, as I have already pointed out, there were only 3 contractors on the Island that could carry out the scheme. To put such financial information into the market place would be unfair.

3.2.5 Deputy M.R. Higgins:

The Assistant Minister has not explained why it is that other local authorities in the United Kingdom are now publishing contracts, especially when they have taken place say 4 or 5 years ago and the information could no longer be considered commercially sensitive. Will he review his policy?

Deputy E.J. Noel:

We always review our policies. In fact we have recently reviewed that policy on grants being made by the States. We have reduced the limit down from £100,000 to £75,000. That means that all grants given at £75,000 or above, those recipients will have to publish those accounts via the States. So, we are being more transparent and open with the public where we can.

3.2.6 Senator S.C. Ferguson:

We seem to have regressed a little. This information was always available 30 or 40 years ago. Why has it changed?

Deputy E.J. Noel:

Unfortunately I was not around some 40 or 50 years ago, so I could not possibly comment on what was the States policy then. But now we work in very competitive times. We cannot give a competitive advantage over one body against another.

3.2.7 Senator S.C. Ferguson:

Yes, but this particular tender has now been awarded, so there is no commercial confidentiality to worry about.

Deputy E.J. Noel:

What has been awarded is a pre-contract service agreement. The actual final contract has not been let yet. This is a pre-contract service agreement not the final contract.

3.2.8 The Connétable of St. John:

Can I correct the Assistant Minister? Yes, I agree confidentiality does pay a major part, but not when a contract or service contract has already been awarded. Assistant Minister, will you please give the Members of this House, who are responsible for money being spent, the actual figure that was quoted and accepted for the work that is being carried out by Camerons and Sir Robert McAlpine Limited, please?

Deputy E.J. Noel:

Unfortunately, no, I am not able to.

The Connétable of St. John:

Are we going to be running a government that is going to be doing its business behind closed doors? Are we going to allow a Minister to get away with not answering questions?

The Deputy Bailiff:

This is entirely a political matter Connétable and it requires no intervention on that score from the Chair at all. We now go back to the first question which Deputy Higgins will ask of the Chief Minister.

3.3 Deputy M.R. Higgins of the Chief Minister regarding the compensation scheme for Historic Child Abuse victims and the number of claims settled, disputed, rejected and pending:

Will the Chief Minister update Members on the compensation scheme for Historic Child Abuse Victims and in particular the numbers of claims settled, disputed, rejected and pending, the number of claimants undergoing additional psychiatric or other assessments and the progress in extending the scheme to those in foster care?

Senator I.J. Gorst (The Chief Minister):

I understand in my absence the questioner was discourteous towards my Assistant Minister. I can assure the House that my Assistant Minister is fully briefed and completely capable of answering any questions which might be sent to the department. If I may now start the answer, 131 claims have been received. Of those 84 claims, 64 per cent have agreed a settlement. 47 cases are still being considered. No claims have been rejected and no claimants have disputed the settlement offered to them. No one has asked for their offer to be reviewed. 61 claimants - that is 46 per cent - have had or have agreed to have a report from a scheme psychiatrist. A paper will be taken to the Council of Ministers in the New Year detailing the options for foster care.

3.3.1 Deputy M.R. Higgins:

Of the people who have gone for psychiatric assessment, how many have had to see more than one psychiatrist?

Senator I.J. Gorst:

There are currently 2 claimants that have agreed following consultation, as I understand it, with their legal adviser to undergo a second form of assessment with regard to psychiatric report.

3.3.2 Deputy T.M. Pitman of St. Helier:

The Chief Minister said that no claims had been rejected. Could he enlighten the Assembly as to my information that at least one individual was being pressured to withdraw his application or he would be prosecuted? This is an individual who made statements to the police in the 1980s, but they conveniently disappeared. Is the Minister quite confident of his statement?

Senator I.J. Gorst:

I am confident of the information that I have been given by the lawyers administering the scheme on our behalf. If there are particular circumstances that the Deputy has been approached about from those who might claim then of course he can either contact me or contact the scheme's lawyers or the individual claimant's lawyers to consider that with them. But, I am not aware of the information, as I do not believe you would expect me to be, around individual claimants.

3.3.3 Deputy M. Tadier of St. Brelade:

Will the Chief Minister confirm whether he is aware that some of the victims have been advised that if they did not accept the compensation given to them, which they may have thought was a

paltry sum, that they would have to pay their own legal fees? Does the Chief Minister think that kind of ultimatum is appropriate?

Senator I.J. Gorst:

As I said, I am not aware of individual cases in that regard. We should remember the reason that the Council of Ministers set up this scheme in the first place was so that claimants did not have to go through a lengthy and often difficult court process, notwithstanding the fact that many of those claims would be out of time. Therefore, the Council of Ministers came up with this particular scheme, which is far easier. It does not incur the costs associated with going to court and is more helpful in giving compensation than perhaps would have been claims taken through the court.

3.3.4 Deputy M. Tadier:

If it turns out to be correct, which I believe is the case, that some individuals have been told: “Accept this otherwise you will have to pay your own legal fees, i.e. the work that I have done for you as a lawyer”, is that acceptable in the Chief Minister’s opinion?

Senator I.J. Gorst:

Once again I am being asked to give an opinion with regard to what lawyers are telling claimants. Lawyers should be supporting claimants in accessing the scheme and helping them in that regard. You would not expect me to be party to what individual lawyers would be saying to their claimants.

Deputy M. Tadier:

May I have a point of order? The Chief Minister is implying that this question is out of order, that it does not fall under his responsibility, but it is a States-run scheme, which has been set up by the States of Jersey for his department. Therefore, does the Chief Minister accept that if the scheme is being run inappropriately it is up to him to be answerable for that?

The Deputy Bailiff:

You cannot expect him to comment on what lawyers have been saying. But you can be asked the question as to what your opinion is if they have concerns. That is really what Deputy Tadier is asking.

Senator I.J. Gorst:

In that case I could be asked my opinion on any number of issues which are completely outside of my remit. I do not think it is appropriate. I am not sure ...

The Deputy Bailiff:

It is part of the pleasure of being Chief Minister.

Senator I.J. Gorst:

Thank you, Sir. That is why I enjoy the job so much. It would not seem appropriate to me, as an individual, that lawyers should be treating what are vulnerable claimants in this manner. It would depend, of course, on what sort of contract the lawyer would have with the claimant before they were representing them. My understanding was that claims like this elsewhere and perhaps some lawyers in relation to claims in these instances would be offering more of a no-win no-fee basis. Therefore, I think that if claimants are being told that by their lawyers they should go back and challenge it.

3.3.5 Deputy J.A. Hilton of St. Helier:

Can the Chief Minister tell the Assembly with regard to the psychiatrics assessments that take place, do they employ off-Island psychiatrists to do these and whether there have been any delays around these assessments taking place?

Senator I.J. Gorst:

As far as I am aware they are employing off-Island psychiatrists. One of the important things with regard to all these issues around historic abuse is trying to build confidence and bring independence, because some of the individuals have lost confidence in the service that was provided on-Island to them over a number of years. Therefore we have to acknowledge that and try and help them, because that is an issue which they need to deal with and the scheme needs to deal with as well. With regard to the delays, I am trying to think whether I am aware. I am aware of one case where perhaps there has been a delay, but I am not aware of the reasons why.

3.3.6 Deputy M.R. Higgins:

Is the Chief Minister aware that at least one person has been having trouble with the States lawyers who claim that the person was not at Haut de la Garenne and yet other survivors of the regime at Haut de la Garenne have confirmed that that person was present? Is the Chief Minister also aware that many of the States' records regarding Haut de la Garenne have conveniently disappeared or been destroyed.

[10:00]

Senator I.J. Gorst:

I am not aware of records having conveniently disappeared or being destroyed. I am aware that there have been some difficulties with some records for those who wish to make claims under the scheme. I am also aware that in those cases officers and departments have tried to recover information in any way that they could and tried to patch together information and records. I would have thought - again I am not aware of individual cases - that where individual's records are not able to ascertain whether individuals were resident at Haut de la Garenne and yet other third parties are able to verify it that would be part of the evidence used in determining a claim.

3.4 Deputy G.C.L. Baudains of St. Clement of the Minister for Transport and Technical Services regarding repairs to the Bellozanne Chimney:

Would the Minister explain why he finds it necessary to repair the Bellozanne chimney immediately prior to demolishing it and how much this exercise is going to cost?

Deputy K.C. Lewis of St. Saviour (The Minister for Transport and Technical Services):

A structure such as the Bellozanne chimney requires regular maintenance inspections right up until the time it is fully decommissioned and finally demolished. A recent inspection identified small but significant defects which required the steel flues that protrude from the top of the chimney and pieces of loose concrete around the very top of the chimney to be removed. As the chimney sits within an operationally active area, it is close to the road, these defects had to be fixed as soon as possible. The works cost in the region of £39,500 and I am informed they are now complete.

3.4.1 Deputy G.C.L. Baudains:

I thank the Minister for the clarification. Could he advise then that the report that remedial work was required was inaccurate and what is being done is the start of the demolition? If material is being removed then surely that is part of the demolition.

Deputy K.C. Lewis:

It was the steel flues that protrude from the top of the Bellozanne Chimney and the surrounding concrete area that was unstable. I believe part of it has been removed and the concrete has just been remediated until such time as the whole chimney will be demolished, which I believe will be early part of next year.

Deputy J.G. Reed of St. Ouen:

The Minister has just answered my question.

3.5 Deputy T.M. Pitman of the Chief Minister regarding the use of the Data Protection (Jersey) Law 2005 to prosecute former Senator S. Syvret:

Will the Chief Minister clarify why the Data Protection Commissioner was able to utilise the Data Protection (Jersey) Law 2005 to prosecute former Senator S. Syvret as a data controller and why no similar actions have yet been brought against others who run hate sites such as forums and blogs under the same provisions and in doing so would he clarify precisely which Article of the Law was utilised?

Senator I.J. Gorst (The Chief Minister):

A data controller is a person who determines the purpose for which and the manner in which any personal data is processed. In the case of the former Senator the court judged that the Data Protection Law did apply to the way personal data acquired in his capacity as data controller was published. Each complaint to the Data Protection Commissioner's office is assessed on its own merits. A regulatory offence is dealt with by the Data Protection Commissioner's office. In the case of a criminal offence a file is submitted to H.M. Attorney General for consideration. If the Data Protection Commissioner does not comply with the law when bringing a case the court will dismiss the case. The Articles of the Data Protection (Jersey) Law 2005 used in the prosecution in question were Articles 21 and 55.

3.5.1 Deputy T.M. Pitman:

The manner in which the Data Protection Law has been interpreted, I would argue manipulated, in truth means that everyone who owns an iPhone, tablet or laptop could be classed as a data controller. So, what I would like the Minister to answer me is this: the former Senator was in fact no more a data controller than the individual who runs the Haut de la Garenne murder files hate site on which emails stolen from Deputy Martin by Deputy Power appeared and on a current site run by the same convicted criminal. Could the Minister please clarify why that person who is clearly a data controller has not been prosecuted, given that there have been complaints made to the authorities?

The Deputy Bailiff:

Deputy Trevor Pitman, it was, in my view, quite unnecessary to add the gratuitous attack on Deputy Power in the course of that question. I would ask you to withdraw the offending words, which will then be withdrawn from Hansard.

Deputy T.M. Pitman:

No, I certainly will not withdraw it, Sir, because I am just stating the truth, which I believe the Chair is fully aware of.

Deputy M.R. Higgins:

Sir, can I just ask a question, if I may, on this particular issue. It is a fact that Deputy Power was dealt with by this House with for basically taking documents that were not his and sending them out. Surely it is a matter of record that that took place.

The Deputy Bailiff:

With that I am not taking issue. What I am taking issue with was the gratuitous attack on a Member which is irrelevant to the question which was being put. That is the issue I was inviting Deputy Trevor Pitman to address and withdraw.

Deputy T.M. Pitman:

It is not gratuitous. The Deputy has admitted it. Deputy Martin, who was the victim, can clarify. I find the foot-stomping very worrying. I am stating a simple fact. There is nothing gratuitous, it is just fact.

The Deputy Bailiff:

Deputy Pitman, would you please explain why the reference to Deputy Power is relevant to the question which you were putting, which as I understood it was a question as to whether everyone who held an iPhone or an iPad was a data controller? I cannot for the moment see the relevance of the reference to Deputy Power.

Deputy T.M. Pitman:

With due respect, I think it is very relevant, because I am highlighting a very obviously and very worrying inconsistency within the law. We have clear breaches arising from the perfect example of data which was stolen. That has been acknowledged. It has gone on to a site where complaints have been made. Clearly that site, the person behind it is a data protection controller, yet no prosecution. So, I think it is entirely relevant. I maintain that, Sir. I am stating a simple fact.

The Deputy Bailiff:

Very well. Ultimately I think this is probably a matter for Members if they think it appropriate later on. Chief Minister.

Senator I.J. Gorst:

Sorry, Sir, I could not hear what your ruling was.

The Deputy Bailiff:

Sorry. The ruling is that your question will stand. I think it is a matter for Members to take further with the Privileges and Procedures Committee if they wish.

Senator I.J. Gorst:

I am not sure the question is a question for me. The question is why is a particular site or individual or action not being prosecuted, so that does not in any way, shape or form fall, I believe, within any of my responsibilities. Prosecution decisions are made appropriately by the prosecuting authority. They are balanced and difficult decisions. It is not a question that I can answer. If the Deputy feels that a particular website warrants investigation or is in breach or committing a criminal offence with regard to what is being published on it that would fall foul of the Data Protection Law then he should approach either the Data Protection Commissioner or the police with those concerns. That seems to be the appropriate course of action.

Deputy T.M. Pitman:

I have already done both.

3.5.2 Deputy T.A. Vallois of St. Saviour:

In 2010 the Corporate Services Scrutiny Panel carried out a review on data protection amendments. In particular the European Communities Implementation of Council Directive on Privacy and Electronic Communications Ordinance that was carried out in Guernsey in 2004. A

recommendation was stated as accepted by the then Minister for Treasury and Resources. I was wondering whether the Chief Minister could advise whether anything has been carried out further in this respect in terms of looking at consistency with the Data Protection Law?

Senator I.J. Gorst:

I am not aware of whether that recommendation has now been enacted, but the Data Protection Commissioner, I think, since then is now working across both jurisdictions. So, if changes are being made or have been made to Guernsey legislation I would expect that proposals, if not already made, would be coming forward in due course for Jersey legislation as well.

3.5.3 Deputy T.A. Vallois:

Supplementary? Could I ask the Chief Minister that he looks over the responses that were given to that report and report back as to what will be updated or not, because I would imagine there needs to be regulations to come forward?

Senator I.J. Gorst:

I would be pleased to do that because, as Members will perhaps now realise from the number of questions that have been raised in this Assembly on these issues and with the advent of digital technology and social media, these issues have become far more complex.

3.5.4 Deputy C.F. Labey of Grouville:

Would the Chief Minister confirm that the said Deputy lost his seat as Minister for Housing because of those same breaches and because he no longer enjoyed the trust of his colleagues and the Council of Ministers?

The Deputy Bailiff:

No. That question does not arise out of the question which has been put. Deputy Higgins?

3.5.5 Deputy M.R. Higgins:

Does the Chief Minister think it is appropriate that a person who has been convicted of hate campaigns is invited by the Data Protection Commissioner to join in what was effectively a secret action against former Senator Stuart Syvret? In other words, a person who has abused the law is invited by the Data Protection Commissioner to join in an action. Does he think that is an appropriate use of the law?

Senator I.J. Gorst:

I am not aware of the facts which the Deputy raises. Therefore, I cannot say whether it is appropriate or not.

3.5.6 Deputy M. Tadier:

Article 10 of the European Court Convention on Human Rights says that everyone has the right to freedom of expression and the right shall include freedom to hold opinions and to receive and impart information and ideas, without interference by the public authority. This is a qualified right. Will the Chief Minister explain where he thinks the balance lies between the defence of Article 10 and the ability of an individual to make a complaint and use the Data Protection Law for published comments which he or she feels are distressing, but which may nonetheless be true?

Senator I.J. Gorst:

There are other Members of this Assembly who are far more qualified to deal with the legal interpretation of where the juxtaposition between European Human Rights and the interplay with the Data Protection Law. The Data Protection Law is there to protect individuals against

inappropriate use by data controllers of their personal information. It is, I believe, a fundamental right. It is even more so in the digital age in which we live as I have just said. But, these issues are complex.

3.5.7 Deputy M. Tadier:

Does the right to ask for information on yourself to be taken down because one finds it distressing, even though one does not have to prove that it is incorrect, override the basic Article 10 right to freedom of expression?

The Deputy Bailiff:

Deputy, the Chief Minister is often expected to answer questions with his opinions on almost everything. That is the nature of the job. But that particular question is really a legal question, which also does not really arise out of the question which has been put by Deputy Trevor Pitman, which was the utilisation of the Data Protection Law to prosecute a former Senator and why similar actions have not been brought against others.

[10:15]

Deputy M. Tadier:

Sir, may I rephrase? The reason I ask is that both the Data Protection Law and human rights legislation falls under the Chief Minister, I believe. Therefore it is his area to answer questions on this and its application of those 2 laws. The issue here is about getting the balance of those 2 laws. If the Data Protection Law seems to be being used to ... it has opened the door to be used indiscriminately. So just because an individual does not like what has been written about him or herself does that pose a political issue in the Chief Minister also enforcing human rights, which are also an issue for all individuals in our society?

Senator I.J. Gorst:

I cannot and do not wish to be drawn on the complexities of where human rights relate to data protection. However, I am quite willing to ask for legal advice on that matter if that is what particular Members would require. Equally those Members can ask themselves as well.

3.5.8 Deputy R.G. Le Hérissier of St. Saviour:

Would the Chief Minister not acknowledge, given the issues raised in the question, that now may be the time for an independent inquiry to be held into the workings of the law, given some of its apparent perversion of anomalous consequences?

Senator I.J. Gorst:

I have said on many occasions in this Assembly when answering questions on this particular issue, if Members of this Assembly feel that the law is not working in the way that it was intended when it was introduced or feel that the other place in this building when interpreting and making decisions in the courts on this law then this Assembly has a responsibility to bring forward amendments and discuss it in this Assembly. That is the right and proper process. We do not need to have an independent review of it. If we do not think it is working, bring forward amendments to it. That is what our job is.

3.5.9 Deputy J.A. Martin of St. Helier:

The question asked about the 2005 law and prosecuting a former Senator, he was prosecuted after he was a Senator, so I will call him Mr. Syvret. Is the Chief Minister certain that the law at the moment is not in favour of sitting States Members above former States Members and ordinary Members of the public? Is he absolutely sure that law is carried out equally for everybody?

Senator I.J. Gorst:

I have no reason to suspect anything other than that the Data Protection Commissioner is acting in an appropriate manner. The particular issue that seems to be on some Members' minds with regard to an existing States Members, I answered that question in October of this year. It was quite straightforward. That breach was a regulatory breach of the data protection principles which is covered in Schedule 1 Part 1 of the Law. The particular breach that this question relates to was a criminal breach and it refers to those Articles in the law which carry a criminal sanction. At the end of the day the court agreed with the Data Protection Commissioner in that regard.

3.5.10 Deputy T.M. Pitman:

These are my last questions in the States for now. I would hope that I might get an answer. It is quite simple. The Data Protection Commissioner uses the term to justify non-prosecution of others if they are, in her words, kitchen table bloggers. So, could the Chief Minister enlighten me as to what is the difference between a kitchen table blogger and a data controller? I am happy if he refers to H.M. Solicitor General, because I know it might be a bit complex.

The Deputy Bailiff:

Frankly I do not understand how the Chief Minister can be expected to explain an expression which has been used, you say, by the Data Protection Commissioner.

Deputy T.M. Pitman:

It goes to the fundamental part of the law. As I was trying to highlight before, these inconsistencies mean we cannot say that someone who is not employed by a magazine, a newspaper, for example, is a data controller, but someone else who is also not employed by anyone is a kitchen table blogger. I am just trying to understand, as many of the public are, why Senator Syvret could be prosecuted and others cannot. I think it is relevant, with due respect.

The Deputy Bailiff:

I understood the last question. Could you answer that, Chief Minister?

Senator I.J. Gorst:

I have answered the question with regard to the prosecution that the question alludes to. With regard to the term "kitchen table blogger" it is not a term that I am familiar with. I am not party to the correspondence where the Deputy says that the Data Protection Commissioner has used it. I would have thought the simplest follow-up would have been to ask indeed the Data Protection Commissioner what was meant by that term.

Deputy T.M. Pitman:

I have already done that.

3.6 Deputy R.G. Le Hérissier of the Minister for Economic Development regarding the steps taken by his Department to encourage Play.com to remain in Jersey:

Would the Minister outline the steps taken by his department to encourage Play.com to remain in Jersey and state whether he is aware of the reasons why ultimately they decided to move?

Senator A.J.H. Maclean (The Minister for Economic Development):

My department was regularly in contact with the senior management at Play.com and provided every assistance possible, including taking action in the High Court in an attempt to preserve L.V.C.R. (Low Value Consignment Relief). This assistance continued when the company was

acquired by Rakuten, a Japanese company with global operations. Three principle factors impacted Rakuten's decision to consolidate their operations out of Jersey and into the U.K. Firstly, as a Japanese company, the fiscal treatment of profits that arise in low-tax jurisdiction by the Japanese tax authority system meant that it was not a viable option for Rakuten to retain the headquarters operation in Jersey. Secondary, H.M. (Her Majesty's) Treasury changes to L.V.C.R. for consignments from the Channel Islands changed the competitive landscape within which Play.com operated. As we made clear in our submission to the U.K. courts, the consequences of the proposed changes included significant job losses, which regrettably have arisen. Finally, as part of its global expansion Rakuten changed their business model from the Play.com fulfilment model wherein Play.com sold their own stock to that of market place, where a web platform developed by Rakuten is used by other retailers as an internet shop window. Members will, of course, be familiar with Amazon who operates a similar model. Thank you.

3.6.1 Deputy R.G. Le Hérissier:

All the factors appear to have been out of the control of the local authorities. Could the Minister absolutely assure the House that the push and pull factors which he outlined in no way reflected adversely on the lack of incentives offered by various authorities on the Island.

Senator A.J.H. Maclean:

No, I cannot. What I said in my answer were the principle reasons. I outlined 3 principle reasons. However, there are other factors that were relevant to Play.com. Those come under the heading and title of competitiveness. They are issues around data costs, data transfer costs, post costs and freight costs. We worked at quite considerable lengths with Play in order to address some of those issues of competitiveness. I should add though that their particular business model was the overriding factor. We have many other companies similar to the old model of Play.com still operating, developing and flourishing in Jersey despite competitive issues.

3.6.2 Deputy M.R. Higgins:

Would the Minister accept that the policy of the fulfilment industry or the policy that is pursued which enable some very large companies to come in and make an awful lot of money has worked to the disadvantage of most citizens of this Island? In the sense that now because of restrictions brought in by the U.K. Government, people are being made to pay V.A.T. (Value Added Tax) on goods they are sending to the U.K., including gifts in some cases, over a certain value and the U.K. authorities are being far more draconian on goods going into the U.K. Therefore, the policy is flawed. It has benefited some, created employment for a number for a short period of time, but then in the long-term has been detrimental to the Island.

Senator A.J.H. Maclean:

The issue is that it was not a Jersey policy. This low value consignment relief was an E.U. (European Union) Directive from the 1980s. Simply, businesses were innovative in Jersey and Guernsey. They saw opportunities, they developed their businesses to take advantage of that and they were very successful. It is as simple as that. It was an opportunity that was always going to have a limited shelf-life as electronic downloads ensured that it was not going to last forever, regardless of the fact that the U.K. took action, unreasonably we thought, which is why we took our court action to the High Court.

3.6.3 Deputy R.G. Le Hérissier:

Would the Minister clearly outline the competitive issues which were not resolved in negotiations between himself and Play.com? Would he say whether those situations have improved in terms of enticing other companies to remain on Island?

Senator A.J.H. Maclean:

Taking the last point first, no, I do not believe it has had an impact on other companies. We do still see the ability to attract online businesses to Jersey. We have had several in the last few years and existing businesses have redeveloped their business model and remain here. We lost Play.com, it is regrettable, but their model changed dramatically due to the acquisition by Rakuten, as I have laid out. The principle area of competitiveness where we were unable to bridge the gap, it was not directly our government, it was as a result of Jersey Post's requirements placed on them by Rakuten to reduce their cost to such an extent that it was going to be unviable. We are talking about millions of pounds of impaired revenues for Jersey Post if they had acceded to the offer, which frankly was not viable at all.

3.7 Senator A. Breckon of the Minister for Housing regarding the need for more homes for States rental:

Does the Housing Department still need more homes for States rental?

Deputy A.K.F. Green of St. Helier (The Minister for Housing):

Yes.

3.7.1 Senator A. Breckon:

I can go a supplementary on that, I think. In the Budget debate last week, the Minister for Housing said in regard to building more State rental homes: "The only limiting factor is site availability." In that case, can he say why he is willing to sell Ann Court?

Deputy A.K.F. Green:

It is said that you cannot have your cake and eat it, but sometimes you can. The Ann Court site is one of these cases. We can have our cake and eat it. At the moment we have a site that is having a shaft put in it by T.T.S. (Transport and Technical Services) to prevent flooding to the north of town, we are going to have 200 underground much needed public parking spaces, we are going to have parking for residents and possibly up to 200 units of social housing. My job as Minister for Housing is to get the best out of a site that I can. This site is a slow-burn site, because all that other work has to happen first. The Housing Trust has substantial funding that they wish to invest in social housing. I am using my responsibility as Minister for Housing to make sure I maximise all the resources available in Jersey.

3.7.2 Deputy R.G. Le Hérissier:

Would the Minister not acknowledge that once the housing authority is on its way, once the new site he or the Minister for Planning and Environment are bringing forward is approved, we will at last have reached a solution to the housing problem? Would he not acknowledge this is utterly naïve, given that it is intimately linked to the population issue and no solution seems in sight?

Deputy A.K.F. Green:

I do not think it is utterly naïve to have a long-term plan over 30 years to solve the housing problem. Supply is the problem. The availability of funding has been a problem over the last 10 years, as has the availability of land. We solved the funding problem with the Budget last week. The draft Island Plan Review will give me a short-term solution if the Assembly accepts it and that will then give me time to work on sites in town. This morning, I cannot disclose where, I signed an exclusivity agreement with a landowner in town, which will allow us to develop a site in town if we can agree a price and we can get the planning permission. But I need short-term work. I have 700 families on the waiting list and we can realise some of those sites more quickly than Ann Court.

3.7.3 Deputy G.P. Southern of St. Helier:

Does the Minister accept that the greatest demand is for social rental housing and can he assure the House that he will not repeat what happened some years ago when housing allocated as social rental got converted into affordable first-time buyer homes? Can he assure the House that he will not be pulling that sort of trick again?

Deputy A.K.F. Green:

I do not know about pulling of tricks but I do know that is why I formed the Strategic Housing Unit; we do need affordable housing across all the different tenures. I will ensure that there is suitable social housing and I will ensure that people who find their circumstances better will be able to leave subsidised sheltered housing and get into their own affordable homes. That is all part of the Strategic Housing plans.

3.7.4 Deputy J.A. Martin:

In the first answer the Minister gave, I found it quite contradictory because he said that Ann Court, because of the shaft being put down there and the parking on top, was a slow-burn project, but the Jersey Homes Trust are rearing to go and have lots of money.

[10:30]

Which is true? They have 700 people waiting on the list but will the Minister also admit that the policy of all the trusts regarding who can stay is who can pay? I know of people living in 3-bedroomed houses just with 2 adults and because they are in a trust house they are staying put and it is causing a jam in the middle. The answer to Ann Court really does not add up. Is it a slow-burn or a quick win or is someone being shafted?

Deputy A.K.F. Green:

If my fellow Deputy of St. Helier can tell me how to drill a shaft quicker, how to build 200-odd much-needed underground public car park spaces, how to get car parking underground on top of that for the residents and then be able to build the flats quicker, I would be very pleased to hear from her.

Deputy J.A. Martin:

We have just approved £150 million for the housing development company to borrow; I am sure that is where he could get it from.

Deputy A.K.F. Green:

No amount of money is going to get that shaft dug quicker, no amount of money is going to get the car parking spaces built quicker. Money is not the problem, it is engineering that needs to be carried out properly. I find it quite silly.

3.7.5 Deputy G.C.L. Baudains:

Maybe I can help the Minister out with the last problem he is facing. Building on the question that Deputy Southern asked, would the Minister agree that the previous policy of selling off rental houses to first-time buyers was a mistake, given that he has just said that he now has 700 families on the waiting list? Could he give us an indication of how many rental houses were sold to first-time buyers over the last, say, 2 or 3 years?

Deputy A.K.F. Green:

I cannot answer the latter question but no, I would not say it was a mistake, it depends on the circumstances. Very often if somebody's circumstances have changed, they no longer need social housing but it is too late for them to get out into the open market. Very often when you sell that

house to them they remain there, as they would have done in rental anyway and the capital from that develops 2 more homes for people on the waiting list.

3.7.6 Deputy R.G. Le Hérissier:

Notwithstanding the excellent service which I have found from the Housing Department, I am very worried about housing for larger families. Has the Minister for Housing not considered selective purchasing, as there are people who are years on the list because of family size or inability to fit into an estate environment, *et cetera*? Has he not considered selective purchasing?

Deputy A.K.F. Green:

In a very - how do I put it - restricted way, and so far I have to say I have found nothing that works. I have looked at different opportunities at houses for sale that I thought might fit the social housing needs, but I regret to say that for a number of different reasons, and if the Deputy would like to know the sites I will tell him afterwards, they just did not fit the criteria.

3.7.7 Senator A. Breckon:

Back to the original question about whether the Housing Department still needs more homes for States rental, the Minister said in answer that there are over 700 families waiting, so the question is: would not 200 homes at Ann Court be of benefit for the Housing Department and States rental?

Deputy A.K.F. Green:

Absolutely. That is why the Housing Trust and the Housing Department now take their tenants from the Affordable Gateway so those 200 homes are going where they are needed.

3.8 Deputy M.R. Higgins of the Minister for Home Affairs regarding the arrest and detention of H.G. on 26th September 2010:

With reference to the arrest and detention of H.G. on 26th September 2010, will the Minister explain the number of examinations made by the police force medical examiner on this lady and the total time spent on and the costs of these visits and also why statements made by the Dean, his wife and the Bishop were not taken for at least 6 hours after H.G.'s arrest?

The Deputy Bailiff:

You managed to get 4 questions past the Greffier.

Senator B.I. Le Marquand (The Minister for Home Affairs):

H.G. was subject to 4 short examinations while in custody on 26th and 27th of September 2010, primarily in order to assess her fitness for detention. The cost was approximately £524. Following confirmation of formal complaint from the victims in this case, their statements were simply taken at the most appropriate and convenient time in order to support the charge of harassment.

3.8.1 Deputy M.R. Higgins:

The timeline shows that the doctor visited H.G, as we have just been told, 4 times and the psychiatrist once. Would the Minister for Home Affairs not agree that given the nature of the offence and that the church service H.G. was supposed to be disrupting ended at lunchtime on the Sunday, that her detention was completely inappropriate and caused her unnecessary distress, unnecessary time and expense incurred by paying for the medical attention and the arresting officer's overtime, and that the police bent over backwards to allow the Dean, his wife and the Bishop to enjoy their Sunday lunch when they should have been at the police station making their statements?

Senator B.I. Le Marquand:

No and no.

3.8.2 Deputy M.R. Higgins:

Is the Minister for Home Affairs saying they did not wait till after the Dean had his lunch before they asked him to make a statement? If someone makes a complaint, would you not normally take down the nature of the complaint and perhaps get the evidence before arresting a person?

Senator B.I. Le Marquand:

The police were aware of the nature of the complaints in this from previous complaints that had been made at earlier stages, in addition to the events which occurred on that day. For statements to be taken, first of all, it has to be convenient to people who are going to make the statements and, secondly, it has to be communicated to a police officer, there has to be a police officer who is in place and has the time to do the work. The 3 statements were taken consecutively, from which I assume they were taken by the same police officer or police officers. I am not able to comment on the domestic arrangements of the Dean or the Bishop.

3.8.3 Deputy T.M. Pitman:

In the Minister for Home Affairs's timeline it records that the final statement from the arresting officer was taken at 19.30 hours and completed at 19.45 hours and that H.G. was charged 2 minutes later at 19.47. Would the Minister for Home Affairs inform Members whether this timeline is correct and, if it is, why did it take a further 2 hours, until 21.43 hours for P.A.C.E. (Police and Criminal Evidence Act) to non-P.A.C.E.? Was this because the Centenier refused bail to prevent H.G. from committing further offences?

Senator B.I. Le Marquand:

It is apparent from the timeline, which is the information which I have been given, that a decision to draw up charges must have been made much earlier and it would appear that coincidentally a statement was taken from the arresting officer quite late on, but it would be clear from the timeline that the statement of the arresting officer would have not been essential in order to draw up the charges. In relation to the change of categorisation of P.A.C.E. to non-P.A.C.E., that of course as the note on the timeline indicates, was because the Centenier has refused bail in order to prevent further offences.

3.8.4 Deputy T.M. Pitman:

Could the Minister for Home Affairs clarify for us how and why would a Centenier have any idea of whether the lady in question, H.G, was about to commit other offences in the reality of that 2-hour delay? Is the Minister for Home Affairs not concerned what impact that might have had on a young woman who was already deeply distressed?

Senator B.I. Le Marquand:

It is not clear to me exactly within the timeline as to what time the Centenier made the decision to refuse bail. It may have been at 21.43 but because I am working off notes which were made, sometimes the decision may have been made slightly earlier than the time at which it is recorded. It is a normal matter for a prosecutor, indeed subsequently for a court, to have to make an assessment as to whether or not they consider if there is a serious risk of further offending. That is based upon the information which they have before them in relation to what has happened in the past, current situation and so on. It is an assessment which has to be made by a prosecutor in every case. There is nothing unusual about that.

3.8.5 Deputy M.R. Higgins:

The Centenier refused bail on a case that normally would not merit bail not being given. Does the Centenier have to give a reason? Is it recorded anywhere his reasons for not granting bail? Also, can the Minister for Home Affairs tell us why the arresting officer could not have made his statement much earlier in the day, considering he arrested her in the morning, and why he had to come back that much later and also delay things later on and keep her still in the cells?

Senator B.I. Le Marquand:

To the latter question, I have no idea as to why the statement of the arresting officer was made so late because, as I have already said, it is not in my view relevant to the issue of the decision to make the charges. Unfortunately, I have now forgotten the first half the question.

The Deputy Bailiff:

Did the Centenier make a record of why he refused bail?

Senator B.I. Le Marquand:

There is a record, which I assume is the record of the duty sergeant, which says: "Centenier has refused bail in order to prevent further offences", that is down on the timeline which I gave last time under 21.43.

3.8.6 Deputy M.R. Higgins:

Is there any requirement on the part of the Centenier to explain his reasoning for that or has he just got the ability to say: "I do not like a person, I am going to not grant bail"; does he have to have formal reasons, or record his thought process in coming to his conclusion?

Senator B.I. Le Marquand:

I do not know the answer to that question, I have never come across a situation in which I have seen a document formally recording reasons. Of course, that is a matter for the practice of Centeniers, I have to say, and not within my knowledge either as Minister for Home Affairs or as Magistrate.

3.9 Deputy T.M. Pitman of the Minister for Home Affairs regarding cyber-bullying complaints:

Since the appointment of a specialist officer to investigate cyber-bullying, how many complaints, if any, have been passed to that officer for investigation and how many cases, if any, have resulted in charges being brought?

Senator B.I. Le Marquand (The Minister for Home Affairs):

The new internet investigator has not yet commenced employment, they will commence employment on 31st January 2014 but, to give to the Assembly some idea of the size of the issue here, I am able to say that in the last 6 months the States of Jersey Police have recorded 7 criminal reports of either harassment or bullying over the internet. Of the 7 allegations, in one case it was cited that an offence was not established, in 3 the alleged offender received words of advice from the police, in 2 others harassment notices were served and one offender was subsequently charged with the offence of harassment. I give that just by way of flavour over the last 6 months.

3.9.1 Deputy T.M. Pitman:

Yesterday evening I took the unusual step of writing to the Chief of Police about a death threat sent to my own website. I have not been invited on BBC to complain about it, but my question to the Minister for Home Affairs is this: many individuals have made complaints to the police about the same individual again and again and again; yesterday I was contacted by a young woman who is being harassed by this individual, the same individual I referred to earlier. Can the Minister for

Home Affairs give us assurances that in fact some individuals are not protected by someone within the police because the individual in question claims that he is protected? Can he give us some assurances that that is not happening?

Senator B.I. Le Marquand:

It would be quite wrong for an individual to be protected in some way by the police, that would be totally and utterly inappropriate and contrary to policy and I would be very disturbed if that were so, in fact, if it were so, I would consider that to be a disciplinary matter.

3.9.2 Deputy M.R. Higgins:

Would the Minister for Home Affairs be surprised to hear that this particular individual is bragging about his protection from the police and the authorities over the internet and, if that is the case and he is bragging he is sure about it, will the Minister for Home Affairs not look into the matter?

Senator B.I. Le Marquand:

No, it is not a matter for the Minister for Home Affairs to look into because we are talking about operational matters, but if the Deputy would furnish me with information and details, I will pass that on to the Chief Officer to be looked at appropriately.

3.9.3 Deputy T.M. Pitman:

I will be very careful what I say because I do not want to be accused of making a gratuitous attack, so no names, but does it not concern the Minister for Home Affairs?

[10:45]

Will he look into it when I pass it on to the police that this particular individual in the last week has been bragging that he receives confidential information to attack a member of the public, directly from a sitting Member of this Assembly?

Senator B.I. Le Marquand:

If that information will be provided to me in a form that I can pass on to the police, I will most certainly do so.

3.10 Deputy R.G. Le Hérissier of the Minister for Treasury and Resources regarding the use of J.T. funds, and those of the Jersey Competition Regulatory Authority on Court costs:

Given the recent comments made in the Royal Court, would the Minister for Home Affairs in his role as sole shareholder in J.T. (Jersey Telecom) consider issuing a Ministerial directive so that J.T. funds and those of the Jersey Competition Regulatory Authority, are not unnecessarily expended on expensive court cases?

Deputy E.J. Noel (Assistant Minister for Treasury and Resources - rapporteur):

In the post-script to the Royal Court judgment, the court commented on how unfortunate it was that the parties had not been able to resolve matters between them. Indeed, the Treasury and Resources Department asked J.T. in advance of the court proceedings whether it was possible for J.T. and C.I.C.R.A. (Channel Islands Competition Regulatory Authority) to resolve their differences without legal proceedings so as to avoid unnecessary costs. The Treasury and Resources Department was advised that J.T. felt that its representations had not been taken into account by C.I.C.R.A.; J.T. further felt that it had little choice but to take the action that it did. The judgment may be regarded as bringing clarity to 2 fundamental important aspects of C.I.C.R.A.'s decision-making: firstly, the high threshold that C.I.C.R.A. must clear if its decisions are to withstand any legal challenges, and secondly, confirmation that C.I.C.R.A. must properly consider J.T.'s plans and representations as

part of its decision-making process. The States has put in place the machinery to liberalise and regulate the telecommunications market; we need to allow this machinery to function. It is not appropriate for a shareholder to become involved in issuing Ministerial directives to J.T. on such matters. J.T. has an independent board that is charged with making such decisions.

3.10.1 Deputy R.G. Le Hérissier:

In the light of this episode and the number portability episode, both cases resulted in very extensive legal costs. Does the rapporteur not think it utterly strange that the taxpayer is paying for the Jersey Competition Regulatory Authority, the telephone user is paying for the Jersey Competition Regulatory Authority, the user of J.T. is paying for them; in other words, we are all paying for fairly pointless legal cases which with, for example, the proper application of mediation or the intervention of the Minister for Treasury and Resources, should have been avoided? Would the rapporteur not agree?

Deputy E.J. Noel:

I will agree that it is unfortunate that we have found ourselves in such a situation but hopefully, with the clear guidance of the court, such a situation will not arise in future.

3.10.2 Deputy T.A. Vallois:

Can the Assistant Minister advise whether he believes C.I.C.R.A. is sufficiently funded in order to carry out their role, which is an extremely important role within Jersey?

Deputy E.J. Noel:

That is not really a matter for the Treasury and Resources Department. As the good Deputy knows, C.I.C.R.A. comes under the Minister for Economic Development and that question is more appropriate for that particular Minister. I have no knowledge of whether or not C.I.C.R.A. is adequately funded or not.

3.10.3 Deputy T.A. Vallois:

Does the Assistant Minister not produce the Medium-Term Financial Plan for this Assembly to approve and therefore would he not be aware of the funding?

Deputy E.J. Noel:

As far as I am aware, C.I.C.R.A. has more than one source of funding, it does have direct funding from the Government but it also has funding from the people that it regulates.

3.10.4 Deputy R.G. Le Hérissier:

Would the rapporteur outline the situation under which Ministerial directives would be issued, or is he content for Ministerial abdication to continue?

Deputy E.J. Noel:

The Minister for Treasury and Resources will hold the independent board of directors of J.T, or indeed any public-owned corporate body, accountable; it is not the role of the Minister for Treasury and Resources to do their job for them.

3.11 Deputy G.C.L. Baudains of the Minister for Economic Development regarding the sanctions available to the Jersey Competition Regulatory Authority:

Would the Minister for Economic Development advise whether he considers if the sanctions available to the Jersey Competition Regulatory Authority regarding telecommunication providers

are adequate and whether the Minister for Economic Development has any plans to amend or revise them?

Senator A.J.H. Maclean (The Minister for Economic Development):

Yes. The J.C.R.A. had the sanctions at its disposal increased in June of 2012 to include the ability to impose financial penalties on telecom licensees for breaches of their licences. Prior to this, the only sanction that was available to the regulator was the ability to revoke a party's licence, which was not a realistic option, especially in the case of Jersey Telecom. I am satisfied that the sanctions available are appropriate and have no current plans to amend them. I have also been assured by both the J.C.R.A. Chairman and Chief Executive that they are also satisfied with the current arrangements.

3.11.1 Deputy G.C.L. Baudains:

If the arrangements are as satisfactory as the Minister for Economic Development suggests, I wonder why we had the problem which we had recently, where Jersey Telecom and the J.C.R.A. were spending a considerable amount of money in court. Interestingly, as far as I know, it is the telephone users that pay the J.C.R.A. via J.T. anyway. Does the Minister for Economic Development have any thoughts as to how J.C.R.A. may behave in future to avoid these misunderstandings, which is unfortunate for everybody?

Senator A.J.H. Maclean:

I entirely agree with the court's conclusion in this matter that it should never have reached court. It is disappointing that it did and that it could not have been settled prior to that, for all the reasons already stated. Having said that, I have spoken to the regulator and it is understandable that they have to take a strong line; the matter of wholesale line rental is one that has been publicised. It is clear this market needs to open up. It was also made clear by the court that the regulator, the J.C.R.A., won the substantive arguments, the substantive points. They effectively lost on a technicality. Nevertheless, what this has done is set back the opening up of the wholesale line rental market by probably a year or so, which is clearly to be regretted.

3.11.2 Deputy R.G. Le Hérissier:

Would the Minister for Economic Development not agree that to prevent the spectacle of one branch of the government suing another branch, all with money essentially provided by the long-suffering public, that it would have been much better if there was something in the J.C.R.A.'s protocols which first ensured mediation was applied to the problem?

Senator A.J.H. Maclean:

I think it is a fair point but every effort, I can assure the Deputy and Members, was made by the regulator. The regulator's last option is to go to court, it clearly does not want to do that; of course, it needs to have the necessary armoury - and sanctions form part of that - otherwise it cannot effectively discharge its role. It made every effort to try and reach an agreement, and thought it had as early as 2 weeks or a week before the court case. We will continue to liaise with the regulator to see if there are amendments necessary that may help to remove such a situation in the future.

3.11.3 Senator S.C. Ferguson:

Does the Minister for Economic Development not think that the J.C.R.A. should have more sanctions so that situations such as J.T. putting wholesale prices up by over 20 per cent should be obviated and eliminated?

Senator A.J.H. Maclean:

As I was saying earlier today, I am very much of the opinion that we need a competitive economy and clearly ensuring that both on-Island and off-Island telecommunication costs are competitive is very important. Again, that is why we have got a regulator and I made the point a moment ago that the sanctions do appear to be appropriate, I am satisfied and certainly the Chairman and Chief Executive are satisfied in that regard. But, quite rightly, there has to be a high bar in order to satisfy that and that is correct that businesses need to be protected as well, there has to be the right balance in place, and that is something we believe is the case at the moment.

3.11.4 Deputy G.C.L. Baudains:

Is the Minister for Economic Development satisfied that the Jersey Competition Regulatory Authority is being robust enough, because there is a feeling outside that Jersey Telecom is frustrating competition for other providers to access the network?

Senator A.J.H. Maclean:

I think the Deputy is perhaps arguing both sides of the point ...

The Deputy Bailiff:

Thank you, Minister. Minister, I am sorry, would you please wait? Unfortunately, the States have become inquorate. Can I invite all Members outside the Chamber to return? We are now quorate, but can I still invite Members outside the Chamber to return because we are, and have been on the minimum for the last 5 minutes? Yes, Minister.

Senator A.J.H. Maclean:

I was saying that the Deputy is perhaps arguing both sides of the coin. Are we being robust enough, not “we” but the regulator. The regulator went to court to try and challenge the telecoms operator in the matter of wholesale line rental. The argument came down to a matter of a few months, at the end of the day, which was not really the issue. As I have already made the point, the regulator won all the substantive points in the case. There is no question of doubt that the wholesale line rental market does need to open up; it is just a matter of time, and it is frustrating that it has been delayed.

3.12 Deputy G.P. Southern of the Minister for Social Security regarding the coverage of financial support for up to 10,000 unpaid carers:

What measures does the Minister for Social Security in conjunction with the Minister for Health and Social Services have under consideration to increase the coverage of financial support for the up to 10,000 unpaid carers reported in J.A.S.S. (Jersey Annual Social Survey) 2009 and 2013 and referred to in a written answer on 2nd December 2013 from the Minister for Health and Social Services and, if not, why not?

Senator F. du H. Le Gresley (The Minister for Social Security):

The Deputy asked an oral question on this subject on 19th November and a written question was submitted by Deputy Higgins on 2nd December. A considerable amount of information regarding support for carers has already been provided in response to both those questions. As previously confirmed, there are 2 specific financial benefits available from the Social Security Department to support carers: Home Carer’s Allowance, that is available principally to working-age carers who give up employment to become a carer, and the Income Support Carer’s Allowance which supports low income carers of any age. The carers’ strategy developed by the Health and Social Services Department in 2009 has recently been refreshed and the Minister for Health and Social Services has previously confirmed that her department has received additional dedicated funding from the

Medium-Term Financial Plan as part of the overall health strategy to be used to achieve improved services and support for carers. As part of the carers' strategy, questions had been included in the last 2 Jersey Annual Social Surveys. The 2009 report identified that the support provided to friends and family members by the thousands of carers in Jersey ranged from one hour per week to many hours per day. The areas where carers would appreciate more support was explored in the 2013 survey and the Health and Social Services Department is now developing additional services for carers based on these results. Later today, we will start to debate the details of the new Long-Term Care Scheme; one of the key drivers for this project has been to improve support for people who wish to be cared for at home. For people with high-level care needs, in many cases the new scheme will mean that a carer who wishes to continue to look after their family member at home will be able to use the new benefit to pay for a care package to complement the unpaid care that they provide. I can confirm that I am working very closely with the Minister for Health and Social Services on this vital project.

3.12.1 Deputy G.P. Southern:

The Minister for Social Security is obviously aware of the numbers in receipt of invalid care allowance being a mere 192 in the last annual report, and also only 133 Income Support claims, which include a carer's component as of 31st December 2012. Does the Minister for Social Security have specific targets to improve and increase the number of carers who find some funding from his department and does he have specific targets as to how to increase that?

Senator F. du H. Le Gresley:

We do not set targets for how many people we would like to receive a benefit; the benefit system is there for people to take advantage of if they fall into the qualifying conditions. It is correct that the invalid care allowance, which of course is now called Home Carer's Allowance, is now a statutory benefit paid out of the Social Security Fund.

[11:00]

There is information on the States website, but also the Association of Jersey Carers and social workers are well aware of the benefits and would advise people who are providing up to 35 hours' a week care to apply for this benefit, in the same way we have had the carer's component of Income Support for over 5 years now, and people are aware of it.

3.12.2 Senator S.C. Ferguson:

After the social survey the Statistics Department have come up with an estimate of 10,000 unofficial-type carers in the Island. Does the Minister for Social Security have a real idea of the total number? Has his department done any investigation of numbers?

Senator F. du H. Le Gresley:

Further work has been done by the Health and Social Services Department in producing their carers' strategy, 2013/2015. It has identified that approximately 2,000 carers provide support to an individual for 4 hours or more per day. In developing services for carers, concentration will be on better information and advice, including advice on how to claim the benefits that I referred to earlier, but in particular access to more respite care. It has not been specified, particularly in the social survey or any further meetings that financial issues are of a particular concern to the majority of carers. I do not intend at my department to do any further work because, really, this is a Health and Social Services Department-led project.

3.12.3 Senator S.C. Ferguson:

The Minister for Social Security talks of the Health and Social Services Department talking about 2,000 carers, but the Statistics Department are talking about 10,000. Has nobody any idea how many there are?

Senator F. du H. Le Gresley:

What I was pointing out to the Senator was that the 10,000 carers can range from doing 4 hours a week to 4 hours per day. Obviously, a social survey is sent to a limited number of people; one would have to do a questionnaire to every single person in the Island to get more detailed information, but clearly, some people do a very limited amount of caring, perhaps by doing some shopping or popping in and seeing a relative to perhaps help them with their hair or something like that, whereas others are full-on carers who do more than 4 hours per day.

3.12.4 Deputy G.P. Southern:

A specific question: the Minister for Social Security has said that he is not prepared to do any more work on this area. Would he consider contacting the 411 recipients of Personal Component Care Level 3 under Income Support, only one third of whom receive the Carer's Component, to ask if they had thought of applying for the Carer's Component and therefore getting some recompense for the hours that they spend as a carer?

Senator F. du H. Le Gresley:

I think the Deputy is mixing the role of the Personal Care Component Level 3, which is to award somebody who has a medical condition which is so serious that they need to have a considerable amount of assistance with day-to-day living. The purpose of the award, which is about £145 extra per week, is to be able to buy in services, not necessarily to have somebody come in as a carer and therefore be receiving a Carer's Component. However, he has made a valid point and I will discuss this with officers.

3.13 Deputy G.P. Southern of the Minister for Social Security regarding breaches of employment law by Jersey employers using zero-hours contracts:

I do smile sometimes ... What mechanisms, if any, does the Minister for Social Security have at his disposal to pursue a third-party complaint on breaches of employment law by Jersey employers who use zero-hours contracts to cover what, in reality, is permanent full-time employment?

Senator F. du H. Le Gresley (The Minister for Social Security):

Part 10 of the Employment (Jersey) Law 2003 provides that the Minister for Social Security may appoint officers or assign responsibility to officers to act for the purposes of the law. The powers of the assigned officers of the Social Security Department's Contributions and Enforcement team include the power to visit premises to inspect and require an explanation of records kept in relation to the Employment Law, and to require the production of any other information that might reasonably be required in order to establish whether the law has been complied with. These powers apply to reported breaches of the Employment Law in relation to employees on any type of employment contract, not just zero-hour contracts. The exercise of these powers may be triggered by a third party advising the Social Security Department of a suspected breach of the Employment Law. Officers would take into account any information provided and consider whether to undertake an inspection of that business, but would not report their conclusions to the third party. While some employers may employ staff on zero-hour contracts with the intention of avoiding their obligations under the Employment Law, enforcement officers and officers of J.A.C.S. (Jersey Advisory and Conciliation Service) routinely advise employers that the use of zero-hour contracts is unlikely to enable them to avoid their obligations under the Employment Law, including the

payment of minimum wage, annual leave and protection against unfair dismissal. J.A.C.S. is actively ensuring that employers have a better understanding of the appropriate use of zero-hour contracts through its new Outreach Advisory Service.

3.13.1 Deputy G.P. Southern:

The Minister for Social Security specifically said that the officers in the Social Security Department would not report their findings to the complainant, should it be a third-party complaint. In what way would they publicise or announce their findings?

Senator F. du H. Le Gresley:

The only powers of enforcement that the officers have, which fall under the Employment Law, relate to dealing with non-payment of the minimum wage, therefore any inquiry, as I alluded to earlier, would be a matter of discussion between the employer and the department and would not be made public.

3.13.2 Deputy G.P. Southern:

Would the Minister for Social Security consider changing the law in order that his officers can publicise and announce serious breaches of the law, should they find them?

Senator F. du H. Le Gresley:

The role of the department in respect of the Employment Law relates, as I said, to carrying out investigations. If an employee believes that the employer is in breach of the Employment Law, they can obviously go through the process of a claim to the Employment Tribunal. If the complaint reaches a stage where a hearing is taking place, the records at the Social Security Department of any investigation could be requested by the Chairman of the Employment Tribunal and presented in a public forum.

3.13.3 Deputy G.P. Southern:

Does the Minister for Social Security accept that in reverting to the Employment Tribunal and the powers of J.A.C.S., he refers to individual cases brought by an employee, as a result of which they often end up sacked, so they do not bring individual cases? What we need and what the Minister for Social Security I think needs, is some powers in order to enforce third-party complaints about what I believe to be the widespread and extensive misuse of zero-hours contracts and employment through agencies that is taking place on this Island now.

Senator F. du H. Le Gresley:

I think that was more a statement than a question.

Deputy G.P. Southern:

Does he not agree that he needs some more powers?

Senator F. du H. Le Gresley:

No. I have already explained that the role of officers at the Social Security Department under delegation from the Minister for Social Security is to carry out investigations. If there is a serious breach and the employer fails to make amends and change their contracts, the issue arises that an employee who is affected by these failings will bring a claim to the Employment Tribunal.

3.13.4 Deputy M. Tadier:

I do not think this question has been asked, but would the Minister for Social Security state whether or not a zero-hour contract being used for what is demonstrably and essentially a permanent full-time position, constitutes a contravention of the law?

Senator F. du H. Le Gresley:

I would not go so far as to say “contravention” because zero-hour contracts are not defined in the law, but clearly it would be inadvisable for an employer to continue to issue zero-hour contracts where there is regular work being offered, and that is why J.A.C.S. and also our officers encourage employers to change those to fixed-term contracts or fulltime contracts.

3.13.5 Deputy M. Tadier:

Given the fact that these zero-hour contracts are being used widespread for positions which are otherwise permanent and full-time, and may even be being used by States departments, does the Minister for Social Security agree that his encouragement and that of J.A.C.S. is not sufficient to coerce employers to abide by the spirit and intention of what the Minister for Social Security is saying?

Senator F. du H. Le Gresley:

I would remind the Deputy that as a result of a proposition of Deputy Southern some 10 weeks ago, the review of the use of zero-hour contracts is being carried out by the Statistics Office and, once we have firm data by the end of 2014, we will decide whether further tightening up or changes to the Employment Law are required. Until we have more detailed information we are relying on hearsay and we cannot change policy on hearsay.

3.13.6 Deputy G.P. Southern:

Does the Minister for Social Security not accept that the fact that only an individual affected by these employment practices can take a case to J.A.C.S. which is likely to result in them being sacked, is a serious inhibiting factor in allowing his department to enforce a law that this body has passed?

Senator F. du H. Le Gresley:

I have already explained to the Deputy and the Assembly that the only enforcement powers of the department is in respect of the payment of minimum wage.

3.14 Deputy M. Tadier of the Minister for Treasury and Resources regarding plans for the use or disposal of the St. Saviour’s Hospital buildings:

Will the Assistant Minister advise what plans there are for the use or disposal of the St. Saviour’s Hospital building?

Deputy E.J. Noel (Assistant Minister for Treasury and Resources - rapporteur):

The southern part of St. Saviour’s Hospital site comprises of Queen’s House and a number of older detached buildings associated with the former Queen’s Farm which occupied the site before the construction of St. Saviour’s Hospital. Queen’s House is currently used for storage and houses the telephonic and data equipment for the whole of the St. Saviour’s site. Two other buildings on the site, Orchard House and Maison du Lac, provide services to patients. The former nursing home and the building known as the Dolls House are used for storage materials and records. The future use of St. Saviour’s Hospital forms part of a wider ongoing asset management plan being progressed by Jersey Property Holdings for the Health and Social Services Department. This work will identify what, if any, future operational uses would be suitable for the properties and how best to provide for the Health and Social Services Department’s current and future needs. Until the asset plan has been completed, it is not possible to be definitive with regards to the future use of these sites. Should the operational uses be relocated, the site would be available for disposal or redevelopment.

3.14.1 Deputy M. Tadier:

With specific reference to Queen's House, which I think we all agree is a unique and, I think, very attractive building, does he agree that use for storage of such a building is not an effective use for that particular edifice?

Deputy E.J. Noel:

As I said, it is being temporarily used for storage and some training facilities there, but it also occupies the telecommunications and the data equipment for the whole of the site. Until operational uses are removed from the whole of the site, unfortunately, we have to maintain ownership and use of the Queen's House building.

Deputy M. Tadier:

It may have been implicit, but I did ask whether it was an efficient use of that building.

Deputy E.J. Noel:

No, that building could be used in many ways, but until we have defined what the other operational uses of the Health and Social Services Department are, we are not able to progress matters with regard to that particular building.

3.14.2 Deputy S.G. Luce of St. Martin:

This is the second building that we have discussed this morning during question time, along with La Folie and St. Saviour's Hospital.

[11:15]

We have a number of States-owned properties that are remaining empty, generating no income; costing us money to maintain and insure. Is the Assistant Minister satisfied with this policy? Does he not think it is unacceptable to have these high-value States-owned properties doing absolutely nothing for long periods of time?

Deputy E.J. Noel:

I am afraid I have to agree with the Deputy of St. Martin, it is unacceptable and that is why Property Holdings has been working tirelessly over the last few years to ensure that we make progress on these sites; there are too many and they need to be resolved.

3.14.3 Deputy R.G. Le Hérisier:

I know in another incarnation the rapporteur was very concerned about the state of staff housing on the St. Saviour's site. I wonder, can he confirm that the long-trumpeted move of this housing to the housing authority is underway and can he tell us when it will take place?

Deputy E.J. Noel:

Unfortunately, that is not really a property question *per se*, the stumbling block is really an H.R. (human resources) issue and we need to deal with that issue, which is a Health and Social Services Department problem, and then the property will follow suit.

3.14.4 Deputy R.G. Le Hérisier:

I wonder if the rapporteur could define what he means by an "H.R." issue?"

Deputy E.J. Noel:

The property that is currently in the Health and Social Services Department's housing stock is not best placed there, and I think we all agree with that. It is at subsidised or well-below market rents, and that is due to its condition. That needs to be reflected in the remuneration packages of those

individuals that are occupying those premises, and that is why it is an H.R. issue not a property issue.

3.14.5 The Deputy of St. Ouen:

The Assistant Minister, in answer to a previous question, spoke about an asset plan that was currently being undertaken. Could he inform this Assembly when it is going to be completed?

Deputy E.J. Noel:

We aim to have that completed with our colleagues at the Health and Social Services Department by the third quarter of 2014.

3.15 Deputy T.A. Vallois of the Minister for Treasury and Resources regarding the delegation of Ministerial powers under the Public Finances (Jersey) Law 2005:

Could the Minister for Treasury and Resources explain how Ministerial decision M.D.T.R. 20130106 dated 25th November 2013 concerning the delegation of Ministerial powers under the Public Finances (Jersey) Law 2005 and subordinate regulations, will enable the efficient and effective management of public finances?

The Deputy Bailiff:

Deputy, no doubt it was for short-hand that you did not use up too many words to get the question approved, but I wonder, for members of the public, if you would explain what the Ministerial decision is that is the subject of that question?

Deputy T.A. Vallois:

Yes, Sir. The Minister for Treasury and Resources is given the power under the Public Finance Law to delegate powers to his Assistant Minister or the Treasurer in order to carry out functions within the Treasury Department that this Assembly gives him the ability to do.

Deputy E.J. Noel (Assistant Minister for Treasury and Resources - rapporteur):

The States of Jersey Law enables all Ministers to delegate functions to either an Assistant Minister or an officer of the States. The Minister for Treasury and Resources has delegated responsibility for decisions relating to property matters to myself as his Assistant Minister and had delegated certain other functions to the Treasurer. These often relate to technical accounting matters, which rightly sit with the Treasurer's expertise and thus ensures that they are dealt with in an efficient manner. The ability of the Ministers to delegate ensures that more time is available to them to undertake matters relating to policy and strategy, which I am sure the States Assembly will accept that the Minister for Treasury and Resources is currently doing.

3.15.1 Deputy T.A. Vallois:

In particular in Ministerial decisions, there is an area which reflects on borrowing and authority is delegated to the Treasurer of the States with respect to this. Can the Assistant Minister advise where we could obtain the details openly, particularly in respect of the fact that they can borrow up to £20 million with a maximum repayment period of 10 years?

Deputy E.J. Noel:

I am just trying to find in the actual delegated powers, the area relating to borrowing.

Deputy T.A. Vallois:

Section 5 of the Ministerial Decision.

Deputy E.J. Noel:

The amount that the Treasurer is authorised to borrow is limited to £100,000 in any one financial year up to a maximum of £500,000. These are outlined in Sections 1.5 of the delegated powers, and I am happy to circulate these powers again - because obviously they are in the public domain already - to Members so they can read them themselves.

3.15.2 Deputy T.A. Vallois:

In terms of openness and transparency, if the Treasurer is being enabled to borrow money on behalf of the States, will that be reported in the accounts on an annual basis or will we have a 6-monthly report, or how will we be able to be aware of how much the States is borrowing, as agreed by the Treasurer?

Deputy E.J. Noel:

All delegated decisions are recorded and, where required, they are reported to the States in the 6-monthly financial updates which are presented to Members. In terms of the individual borrowing amounts, I must add that these are short-term borrowings, such as short-term overdraft facilities, which is the normal course of business for the States Treasurer.

3.15.3 Senator S.C. Ferguson:

I think the clear words are “where required” they will be reported. Does the Assistant Minister not realise that the Assembly is aware that the increased flexibility under Amendment 4 to the Public Finance Law, together with these delegations, which may be reported where required to the Assembly, that these matters will take control and accountability totally away from the Assembly?

Deputy E.J. Noel:

I do not agree with the sentiments from the Senator there. These delegated powers are available in the public domain, as is the Finance Law, and we operate within those laws and within these delegated powers.

3.15.4 Senator S.C. Ferguson:

Some of the items which are being looked at: contracts, no limit, blanket approval to increases in groups of charges, not necessarily taking into account the inflation policy. These are all coming away from States accountability and control. Does the Assistant Minister really think this is the way to run a government?

Deputy E.J. Noel:

They are not being taken out of accountability, the Minister is still accountable. You cannot delegate responsibility, the Minister is still responsible for all matters that he delegates to either myself or to the Treasurer. The mere fact that the Senator can quote extracts from the delegated powers and from the Finance Law is because they are already in the public domain.

3.15.5 Senator S.C. Ferguson:

But the Assistant Minister has already said they will be reported “where required”; it is not mandatory that they should be reported, the Minister can decide that he does not need to report. Does the Assistant Minister not understand this?

Deputy E.J. Noel:

I understand it perfectly well. If the Senator is unhappy that not all matters are reported then she is quite at will to bring a proposition to amend the law.

3.15.6 Deputy T.A. Vallois:

Another area of the Ministerial Decision I need to ask the Assistant Minister about is with regards to appointment of accounting officers. This was an amendment to the Public Finance Law in September of this year by this Assembly and it has been delegated to the Treasurer of the States. As Chair of P.A.C. (Public Accounts Committee) and endorsing the principles of accountability and transparency, could the Assistant Minister advise whether in the future P.A.C. will be expected to hold accounting officers, rather than just Chief Officers, to account for public financial management?

Deputy E.J. Noel:

I would imagine that P.A.C. should hold all States employees that are accounting officers accountable; where an individual has that power, then I would expect P.A.C. to be able to ask questions of those individuals.

4. Questions to Ministers without notice - The Minister for Home Affairs

The Deputy Bailiff:

We come now to questions without notice. The first question here is to the Minister for Home Affairs from Deputy Shona Pitman.

4.1 Deputy S. Pitman of St. Helier:

We heard this morning that the Chief Minister was not aware of any records going missing with regards to those abused at care homes ...

Senator I.J. Gorst:

Sir, sorry. I do not know if the Deputy would give way. I did not say I was not aware of records going missing, I said I was aware of the gaps in records that were not available.

The Deputy Bailiff:

I think that is factually correct.

Deputy S. Pitman:

I apologise, Sir, but I still have a question to ask. Is the Minister for Home Affairs not concerned that records that were held at Jersey Archives with regard to those on committees at Haut de la Garenne, the Jersey Library and photos and *J.E.P. (Jersey Evening Post)* articles that were held there no longer are there? The *Jersey Evening Post* had a binder of photos and articles about Haut de la Garenne and those who were at the care homes in 2008, they no longer recall records being in this binder. Further, there were 5 boxes found at Property Holdings containing complaints from lawyers of children complaining of abuse at States care homes. Is the Minister for Home Affairs concerned at these revelations?

Senator B.I. Le Marquand (The Minister for Home Affairs):

I would need more time to consider precisely what the Deputy is saying. In general terms, I am not at all surprised if records from the past have gone missing because my general impression of the state of the records kept by the States of Jersey over the years is that the recordkeeping has been very poor. So I would not be surprised in general terms, but I would have to consider in more detail specific matters.

4.2 Deputy T.M. Pitman:

A few months ago H.M. Solicitor General, I think it was, kindly confirmed that lawyers could be prosecuted for fraud. Given that I have been approached by a number of people, and I have got

evidence from my own case, of lawyers attempting to overcharge by more than £40,000, just around 40 per cent of a bill; if that evidence is given to the police can the Minister for Home Affairs confirm that that will be pursued rather than allowing it to go off into the hands of the Law Society where, really, nothing will happen?

Senator B.I. Le Marquand:

If a criminal complaint is made to the police then obviously they will consider that in the normal way. On the wider issue, which is not strictly within my remit, of disputes in relation to the fees payable by clients to their lawyers, I have long been of the opinion that we should be following the U.K. system whereby there is a procedure for taxation, that is assessment of what is the appropriate level of fees as between client and lawyer. It is not strictly within my area, but I think that that is a way forward which should be looked at.

4.3 Connétable M.P.S. Le Troquer of St. Martin:

Could the Minister for Home Affairs suggest what he believes would be a better and more productive way forward to see how to put to rest once and for all and to save valuable time: his valuable time, this Assembly's time and officers', regarding the arrest and detention and prosecution of H.G, because we seem to get at every sitting a different instalment, a conflicting instalment?

Senator B.I. Le Marquand:

I do not particularly live in hope on this one but, of course, I would remind the Connétable that the Chief Minister has requested that there be a review in relation to the way in which H.G. was dealt with, which is to be conducted by the lady whose office title I cannot remember but who has responsibilities as the independent chair of the organisation, which deals with issues of vulnerable adults. I am quite happy for that to happen but I am afraid that I am quite used to having questions of this nature. I have fielded such questions over 5 years and I suspect, if I remain Minister for Home Affairs, I will continue to field them for the remainder of my term.

4.4 Deputy M. Tadier:

Will the Minister for Home Affairs advise whether he thinks the current electoral college system for electing certain members of the Royal Court, namely the Jurats, is appropriate and can he also say which other jurisdiction allows their parliamentarians and advocates to choose these kind of members of their courts?

[11:30]

The Deputy Bailiff:

I am not clear, Deputy, that is within the remit of the Minister for Home Affairs; it is the Chief Minister who is responsible for justice issues.

Deputy M. Tadier:

I thought that may be the case.

4.5 Deputy T.M. Pitman:

Just to enlarge on the question that Deputy S. Pitman asked earlier; would I be right in suspecting that when 5 boxes of letters, from parents and from lawyers complaining about treatment of children being abused at Haut de la Garenne, were discovered up at the Education, Sport and Culture Department building at Highlands and the member of staff who found them said they were taken down to Property Holdings and signed for, would you know if those 5 boxes were then forwarded to the police, as they surely should have been, or has he got no knowledge of those 5 boxes, which I think you would agree could be pretty crucial?

Senator B.I. Le Marquand:

I have no knowledge whatsoever of this. If it is a matter that should go to the police then somebody should make an appropriate complaint and ask the police to consider it.

4.6 The Deputy of St. Martin:

I have asked the Minister for Home Affairs on previous occasions about proposed changes to the retirement age for operational fire fighters. Can you update the Assembly if there has been any progress in this direction?

Senator B.I. Le Marquand:

No, I have not heard anything further on it. I am still of similar opinion to the opinion I expressed before, which is that although it would be quite proper for the age to move to 60, I believe some special arrangements in relation to pensions would need to be made for officers who might, through no fault of their own, be unable to retain the necessary fitness for that age.

4.7 Deputy M.R. Higgins:

I hope you will allow me to do this, I am going to ask 2 questions: one is clarification of an answer from the Minister for Home Affairs earlier because I think he inadvertently misled the House. The Minister said there were 4 visits by the Force Medical Examiner and, just checking the records, there were 5. Will he confirm that he made a mistake there? Secondly, can he confirm on that clarification whether the figure he gave us for costs for the Force Medical Examiner's visits included the cost of the psychiatric visit as well, which was an extra visit? If I could ask that and if I can ask my second one, please?

Senator B.I. Le Marquand:

The Force's figure I have been given today. Obviously I will have to produce a detailed timeline which, if that includes 5 then it includes 5, but I was given 4 today. In relation to the cost of the psychiatric visit, I have assumed that that was provided within the hospital services by way of an extension and that there was no specific charge for that. But I cannot categorically say that.

4.8 Deputy J.A. Hilton:

I was reading through some old papers over the weekend and I remember I recalled at the time there was a lot of disquiet around the disciplinary code for the previous Chief Officer of States Police. My question is could the Minister for Home Affairs tell the Assembly whether the disciplinary code for the Deputy Chief Officer and Chief Officer has been updated and is now fit for purpose, because I could not recall? I know the work was in play but I am not sure whether it was ever completed.

Senator B.I. Le Marquand:

Work is ongoing on that. A great deal of progress has been made and I certainly am very optimistic that I will be able to lodge before this Assembly a proposition in order to pass regulations to deal with the processes for disciplinary matters. Quite a lot of detail work has been done on that and we are at a fairly advanced stage but I cannot give a precise date for that because of human rights considerations of assessment and so on. But I do believe that we do need amendments here and, particularly, I believe that it is not right that so much emphasis under the present system lies with the Minister having to make decisions at all stages.

4.8.1 Deputy J.A. Hilton:

Sorry, can I just ask a supplementary? This piece of work has obviously taken quite a long time. Is the Minister for Home Affairs confirming that he going to bring this back for debate prior to the end of this current session?

Senator B.I. Le Marquand:

Well, not this session prior to going to the States. Yes, that is a very high priority; it is one of my highest priorities.

4.9 Deputy M.R. Higgins:

One of the things that concerns me about the arrest and detention of H.G. was the fact that the allegation was made on the Saturday evening that she was going to disrupt the church service, or may have said that she was going to disrupt a church service, whereas she was going to a charity event. But it was not reported to the police until Sunday morning and this lady was arrested at 9.30 in the morning. I find it strange that it was not reported to the police until the Sunday so it could not have been that important. If it was considered that serious I would have imagined it would have been reported on the Saturday night after it was made. Why was it necessary to arrest this woman at 9.30 in the morning, when it is obvious that if it was not reported immediately it could not have been considered that serious? Then she is detained for the whole of that day for an inordinate period of time. I just find it so strange that the police acted in the way they did and the method of detention. Would the Minister for Home Affairs like to elaborate on that?

Senator B.I. Le Marquand:

That is simply not within my knowledge. These are details of an operational matter. I have already said complaints have been made previously in relation to H.G. but this has not proceeded to formal charges. What I can say, in relation to this decision to arrest and the decision to detain, is that there is remarkable consistency here. Obviously she was initially arrested, she was looked at by the duty sergeant, who had responsibility for custody at that time, and he decided it was appropriate that she remain in detention for the reasons set out in his notes. Subsequently, the issue after charging was looked at by the Centenier and he decided it was appropriate she remain in custody. Subsequently the next day she is presented by the court, which thought very carefully about it and finally the court decided she should remain in custody. These are individual decisions made by various individuals at different times. There appears to me to be a remarkable consistency.

4.10 Connétable D.W. Mezbourian of St. Lawrence:

We heard during the Budget debate that the high cost of tobacco and alcohol is driving the public to import more duty-free items. What is the Minister for Home Affairs doing to ensure that large quantities are not being imported undetected through our ports?

Senator B.I. Le Marquand:

This is part of the general operations of the Customs and Immigration Service but I did say during the debate that indeed we now have plans to have additional staff at the ports and the airport during the summer period. This will need to be financed by the Treasury, but we have plans to have additional staff who will not be fully trained staff but who will be sufficiently trained to be able to exercise the function of looking particularly for larger numbers of cigarettes. When I say larger numbers, I mean the packs of 600s or 1,000s that sometimes come in, so we are able to respond to it.

4.10.1 The Connétable of St. Lawrence:

These new members of staff are going to be employed from next year, is the Minister for Home Affairs satisfied with them not having been in place in previous years?

Senator B.I. Le Marquand:

My staff have been reporting to me over the last 12 months or so an increasing difficulty in relation to amounts of cigarettes being brought in in larger units and not always having the time to

effectively deal with that. But the Home Affairs Department are still in the process of trying to find its C.S.R. (Comprehensive Spending Review) savings; we still have not had the stock there and so it was difficult to see how it could give additional staff. The problem identified really is for summer months. In the winter time where there are less movements for immigration purposes there is no difficulty, but the pressure comes on in the summer and we are now, with the Minister for Treasury and Resources, seeking to address this. Perhaps we could have done it earlier but that was not in fact suggested by anyone.

4.11 Deputy M. Tadier:

Would the Minister for Home Affairs advise the Assembly whether he thinks the Island's drug policy is working effectively and would he agree that it is time for it to be reviewed?

Senator B.I. Le Marquand:

As I understand the Island's drugs policy, it is hard reduction based and it is also based upon causing significant disruption to routes of supply, and so on and so forth. As far as those aims are concerned, I think it is quite successful. I think it is also fair to say that there is now evidence of reduced use of drugs such as heroin and that is also a positive sign, although whether that is a result of policy or because of changing habits and patterns. Inevitably policies such as this will need to be reviewed from time to time and, to date, it is my understanding there is a piece of work that is being looked at. I am trying to recall who is doing it, whether it is in my department or with the Alcohol and Drugs Service, to assess the size of the issue. There has not been a definitive work to try to assess the size of the issue in relation to heroin addicts, and so on, for some years. I believe there is currently an initiative to do something there, although the details escape me.

5. Questions to Ministers without notice - The Minister for Transport and Technical Services

The Deputy Bailiff:

Thank you, Minister. We must bring you to a close. That completes the 15 minutes for the Minister for Home Affairs and now it is question time for 15 minutes for the Minister for Transport and Technical Services. The Connétable of St. Lawrence

5.1 The Connétable of St. Lawrence:

I am sure all Members and the public will be pleased to learn today that Mount Bingham is due to open to 2-way traffic on Thursday. In the Minister for Transport and Technical Services' press release he has said that all parties concerned worked together to get the required work completed as soon as possible. I do not want to keep going on about Mont Felard but I am being, quite rightly, questioned by my parishioners and I would like the Minister for Transport and Technical Services to tell me how much work his officers did for the Parish of St. Helier as landowner on Mount Bingham and whether the same amount of advice and service has been offered to the landowner in St. Lawrence?

Deputy K.C. Lewis (The Minister for Transport and Technical Services):

Regarding Mont Felard, according to the law, as Minister for Transport and Technical Services I represent the Highway Authority which in Jersey law is the lower landowner. If somebody uphill, as it were, who would be the upper landowner, their land falls on to the highway, I can, in fact, take them to court to compel them to remediate it as soon as possible. As the upper landowner, as was, are trying to fix the land as soon as possible, that would be a pointless exercise. I have spoken to the landowner in question personally and impressed upon him the urgency to remediate this as soon as possible. I have asked the landowner to contact the good Constable of St. Lawrence directly to

familiarise her with the exact problems there. But the assistance given to the Parish of St. Helier was predominantly advisory. We did work closely together with the Parish of St. Helier because of re-routing traffic. We had to use several Parish roads and the Parish was very co-operative with this. We had to close Mount Bingham as a safety precaution because quite a bit of rock came down and it would be completely unsafe and unwise to allow that to have remained open. As I say, this is a matter for the Parish of St. Helier but I would like to congratulate the Geomarine road access team who did an absolutely sterling job in removing the loose rock and debris and pinning the existing rocks back in the most extremely appalling weather, wind and rain, people hanging off ropes to do this work. I take my hat off ...

The Connétable of St. Lawrence:

Sorry to interrupt the Minister, but I would like a supplementary and I am sure other Members want to question him as well. I am assuming he has finished that answer.

Deputy K.C. Lewis:

I have now.

The Deputy Bailiff:

I was about to stop you myself.

5.2 The Connétable of St. Lawrence:

Yes, sorry, Sir. I am getting quite impatient with the responses that I am getting from the Minister for Transport and Technical Services and I beg your pardon, I am not trying to do your job for you, although it may have seemed like it. I want an assurance from the Minister for the other 11 Connétables that his department will give as much advice as possible in instances such as this and that St. Helier is not being given any preferential treatment from his department.

Deputy K.C. Lewis:

Well, I do hope the good Constable of St. Helier has noted that remark that I give him preferential treatment. I dare say he would beg to differ. But I do my best to look after 12 Parishes of the Island and I like to think I work well with all 12 Constables.

[11:45]

I am not quite sure what the Constable of St. Lawrence wants me to do. We have done as much as we can; we cannot physically open that road on safety grounds at Mont Felard until such time as that structure is secure. If the Constable would like to go up to Mount Bingham and see the work that has been done up there, which is phenomenal with concrete buttresses all finished off in granite. It is quite a structure gone up there. I am not quite sure what else the Constable would like me to do. I cannot compel people to do things more than I have already done.

5.3 Connétable M.J. Paddock of St. Ouen:

Can the Minister for Transport and Technical Services give the Assembly an update on the current situation with regards to the previous tenants of Bellozanne Scrapyard? Who is paying the legal costs recently reported in the local press or any other costs associated with this change of operator?

Deputy K.C. Lewis:

It is my information that the lawyers are still in discussions at the moment. I can only assume - I will need to get back to the Constable on this - that both parties are paying their own costs.

5.4 Deputy M. Tadier:

Would the Minister for Transport and Technical Services advise the Assembly to what extent bullying is endemic in certain parts of his department?

Deputy K.C. Lewis:

I am not aware of any bullying whatsoever in my department but should it arise then I would like it stamped out as soon as possible.

5.4.1 Deputy M. Tadier:

Would the Minister for Transport and Technical Services advise whether it is common practice or is it acceptable for manual workers to be sworn at by their bosses and for ritual humiliation to take place on a regular basis? If it is not, will the Minister for Transport and Technical Services make inquiries that this kind of behaviour is not happening and that if it is it is shown to be unacceptable?

Deputy K.C. Lewis:

As I say, I am not aware of any such instances, but if the Deputy would like to furnish me with details I will make sure that is looked into.

5.5 Connétable A.S. Crowcroft of St. Helier:

While wanting to congratulate the Minister for Transport and Technical Services on his team's performance on Mount Bingham and indeed his performance in getting the street lights up so well in St. Helier, I would like to ask him what has happened to the Pedestrian and Cycling Strategy that was approved as part of the Sustainable Transport Policy several years ago and we still have not seen it. Would he give us an indication of when the strategic approach to cycling and walking in this Island is going to come from his department?

Deputy K.C. Lewis:

Indeed, all in favour of cycling and walking. As the Constable knows, there were quite a few objections to the work that was going to be carried out in French Harbour and English Harbour that would link up that part of the system. The rest of the Cycling Strategy is ongoing.

5.6 The Connétable of St. Helier:

Can I press the Minister for Transport and Technical Services, of course the reason that particular scheme failed was it was not part of the strategic look at cycling on the Island. Could the Minister for Transport and Technical Services tell us when the Draft Cycling Strategy is to be presented for consultation?

Deputy K.C. Lewis:

As I say often in this Assembly, safety is paramount and that was a safety matter. The Cycling Strategy, I do not have a date for that yet but I am more than happy to get back to the Constable when that is available.

5.7 Senator L.J. Farnham:

Would the Minister for Transport and Technical Services confirm that the work that is going into the production of the Road Safety Strategy is on target and still on time to be produced in the first half of next year?

Deputy K.C. Lewis:

My information is that is the case, yes.

5.8 Deputy J.H. Young of St. Brelade:

Will the Minister for Transport and Technical Services confirm that the recent very successful auction of vehicle number plates, which raised £267,000, was originally budgeted to generate £100,000 under the Medium-Term Financial Plan? What were the expenses paid by his department and will he be prepared to discuss with the Minister for Treasury and Resources how this windfall amount will be spent and including whether he will include charitable purposes, as was previously on the last auction?

Deputy K.C. Lewis:

Yes. The previous system was abolished under the Comprehensive Spending Review, so the money got from the auction now goes back into general revenue. I cannot, under the law as it stands, give away States money but it will go back into the economy; it will go back into good works done by T.T.S.

5.9 Deputy T.M. Pitman:

With the couple of accidents reported this morning on icy roads, is the Minister for Transport and Technical Services confident that his department has everything it needs to ensure that we do not have the problems of the past couple of years with regard to iciness, gritting and even flooding which was a problem?

Deputy K.C. Lewis:

Yes, the department is very well equipped. We have taken possession of 2 extra snowploughs which fit on the front of trucks for next winter should snow arise, and we are well stocked with grit.

5.10 The Deputy of St. Martin:

On the Consolidated Order Paper today under Tabling of Subordinate Enactments, we see that the Minister for Transport and Technical Services is proposing to increase the administration charges at D.V.S. (Driver and Vehicle Standards). I would like to ask the Minister for Transport and Technical Services why he is happy to increase the compulsory basic training charge by 1.2 per cent but he feels it necessary to increase all the other charges by 2.5 per cent?

Deputy K.C. Lewis:

I do not believe they have gone up for a while, it is just a fact of life, I am afraid.

5.10.1 The Deputy of St. Martin:

Sorry, I just come back to the Minister for Transport and Technical Services on that. It says here the fees were last increased on 1st January 2013.

Deputy K.C. Lewis:

It was a recommendation from the department. The fees charged were not enough.

5.11 Connétable J.E. Le Maistre of Grouville:

On a similar subject to the Constable of St. Lawrence: is the Minister for Transport and Technical Services aware that we also had a road collapse in Grouville on La Route des Cotils, which is the road that approaches Fauvic crossroads. I think it collapsed well over a year ago and I wonder if you could tell us why it is taking so long for that to be resolved.

Deputy K.C. Lewis:

I am aware of the collapse and I need to get back to the Constable regarding details why.

5.12 Deputy R.G. Le Hérissier:

A few weeks ago the Minister for Transport and Technical Services seemed to have acknowledged slippage in the Sustainable Transport Plan. What is his plan B, given that the numbers moving, for example, to the use of buses and cycling are not as great as were anticipated in the plan? What is his plan B?

Deputy K.C. Lewis:

I would dispute that. In fact buses are up approximately 13 per cent, which is excellent. Traffic, obviously through Mount Bingham, and other reasons, has exacerbated many people but I think we are pretty much on target for that. I would like to encourage more cycling. We are going to make more cycling racks available. As soon as money is available we are putting up more and more bus shelters to make the bus ridership more comfortable for the bus riders.

5.12.1 Deputy R.G. Le Hérisier:

It is very easy to use the word “average”. Could the Minister for Transport and Technical Services say whether this growth is confined to certain routes or it spreads across the network, in an average sense?

Deputy K.C. Lewis:

I would say predominantly on the southern routes east and west, but everything is up.

5.13 Deputy G.P. Southern:

Just in time to continue with the theme. Disabled Transport, when are we likely to see a Hoppa bus around town or its equivalent? Not just words, but are there any plans in hand?

Deputy K.C. Lewis:

I would like to see it too; I think Deputy Southern and I share a wish there. I cannot give a date at the moment, but as soon as the accounts are done with Liberty Bus and we see what the percentage is shared then I think things will start to move forward in that direction.

Deputy G.P. Southern:

Could he say when that is likely?

Deputy K.C. Lewis:

Before the end of the year, I believe.

5.14 Deputy J.A. Hilton:

Would the Minister for Transport and Technical Services support the installation of some form of pedestrian crossing on the roads which intersect with King Street? I am talking about New Street and Halkett Place?

Deputy K.C. Lewis:

Yes, it is what we call a shared area. I would not have a problem with that but with the shared areas people do drive very slowly and, on the whole, traffic are giving way to pedestrians crossing. But that is something I am more than happy to review.

5.15 Deputy M. Tadier:

What plans does the Minister for Transport and Technical Services have in order to find funding to remediate the asbestos material stored at La Collette?

Deputy K.C. Lewis:

Sorry, was that “what funding”?

Deputy M. Tadier:

That is correct.

Deputy K.C. Lewis:

Yes. We have funding for this remediation plus if we are not digging extra pits then that money can be used for remediation. We are in contact with several companies who are keen to do this but we have a very strict protocol in place for the tendering process and that is ongoing.

The Deputy Bailiff:

You have 30 seconds, Senator Ferguson, question and answer.

5.16 Senator S.C. Ferguson:

Given the militant approach by the lycra-clad cyclists, will the Minister for Transport and Technical Services consider bringing back registration for cyclists?

Deputy K.C. Lewis:

I take it the Senator is not including herself in that.

Senator S.C. Ferguson:

Not this time.

Deputy K.C. Lewis:

I would encourage more and more people to cycle for health benefits and obviously it helps with the traffic flow. I think cycle registration would not really be feasible. I would advise that all bikes are marked in case of theft where they are registered. But cycle registration I do not think will be practical.

PUBLIC BUSINESS

The Deputy Bailiff:

That brings Question Time to an end. There is nothing under J, there is nothing under K; we therefore go to Public Business and we are resuming debate - if Members can hopefully remember what they said last time or what was said last time - on P.135, the Minimum Wage: Amendment.

Deputy M. Tadier:

Just to advise, I have spoken to the Minister for Social Security and we have agreed it would be mutually beneficial if we could move my P.86 to do with transferable vote to the end of the order paper, given the important issue of long-term care.

The Deputy Bailiff:

I thought we were going to return to the debate of the minimum wage.

Deputy M. Tadier:

It is just to give Members notice so we know where we stand.

The Deputy Bailiff:

That needs the Assembly's approval to do that. Do Members agree we should move P.86? Minister?

Senator F. du H. Le Gresley:

I was hoping to speak in the debate.

The Deputy Bailiff:

I am sorry for the confusion caused entirely by Deputy Tadier's intervention and my failure to stop him from intervening. Would Members agree that P.86 should be deferred to the last item on today's agenda?

Senator I.J. Gorst:

Sorry, I know we are mid debate but I was going to ask the same thing for Draft Wills and Succession. So if we could just deal with that now; if we could take that after Long-Term Care but prior to the Public Elections.

The Deputy Bailiff:

Do Members agree that we should do that? Very well, P.146 and P.86 will be moved together, in that order, down to the bottom of the agenda. Senator Le Gresley, Minister.

7. Minimum Wage: Amendment (P.135/2013) - resumption

7.1 Senator F. du H. Le Gresley:

Members will not be surprised to hear that I am very disappointed. For the fourth time since 2010 we are debating a proposition to increase the minimum wage in excess of the increase recommended by the Employment Forum. In 2007 the States showed strong support for the current method of setting the minimum wage by order by voting against the proposition that would have required the States to approve the minimum wage each year. Since then the States has opposed 3 separate propositions brought by Deputy Southern to set a higher minimum wage rate than that recommended by the Forum. In 2010 the States agreed that the minimum wage should be equivalent to 45 per cent of average earnings within a 5 to 15-year period. Today the Deputy is suggesting that the number of weekly working hours used to calculate 45 per cent of average earnings should be decreased to match the figure of 39.2 hours provided in the latest census. However, his 2010 proposition did not require a specific calculation method or give any indication that he did not consider a 40-hour week to be an appropriate figure. At the time of the 2010 proposition the 2001 census reported that the average working hours per week was 39.5. The Forum has consistently based the calculation on a 40-hour week to provide a proportionate comparison each year. According to the 2011 census, the average hours worked in agriculture was 45.4 per cent and in hospitality 43.5 per cent. These industries account for about two-thirds of all minimum wage earners. We could decide to make a different calculation, for example, based on a 45-hour week; the £6.63 minimum wage that I have already set for April 2014 would then be equivalent to 45.2 per cent of average earnings.

[12:00]

My comment on the proposition describes some of the information that was taken into account by the Employment Forum in making their decision this year, noting, as always, the difficult balance between protecting earnings as well as competitiveness and jobs for the lower paid. Since the Employment Forum made the recommendation, we have heard that economic activity fell by 4 per cent in 2012. This is the fifth consecutive year that the economy has declined on an annual basis. In addition, the Fiscal Policy Panel recently reported that global growth slowed by more than forecast in 2012 and 2013 is expected to see the slowest growth in world output since 2009. Jersey's minimum wage continues to be higher than the minimum wages in the U.K., Guernsey and the Isle of Man. This has an impact on the competitiveness of the main minimum wage-paying sectors, i.e. hospitality and agriculture. Employers in these industries have already set their prices,

based upon my proposed minimum wage rate. The Employment Forum's consultation showed that employers were concerned about uncertainty and so I made the order setting the new minimum wage rate on 25th October. By increasing employment costs at short notice, as proposed by Deputy Southern, we risk further job losses in the private sector. Deputy Southern is proposing that the minimum wage should in future increase by no less than the R.P.I. (Retail Price Index) low income index. He suggested this inflation index is the most appropriate for those on the minimum wage. However, if the Employment Forum was to be fixing the minimum wage rate by reference to any particular indices, the R.P.I. low income is unlikely to be the most appropriate because of the greater weight given in this index to domestic energy costs and to public and private sector rents. We know that half of minimum wage earners work in industries where accommodation is often provided as part of the employment package and the regulations that we will be debating next fix a maximum value to the cost of that accommodation. Deputy Southern suggested in his speech that adding 24 pence to the hourly minimum wage will bring the Income Support bill down. However, we do not know how many minimum wage earners receive Income Support benefits, nor how many Income Support claimants receive the minimum wage because we do not record the number of hours worked. However, last year we noted that for the 1,865 Income Support claims that included one or more working-age adults, the total annual earnings was estimated at £32 million. If we were to assume that for each claim the household includes one adult working 40 hours per week, Income Support claimants were earning, on average, £8.25 per hour. I would like to assure Members that the recent cautious increases in the minimum wage are a reflection of the economic climate and do not reflect a decision of mine, nor the Employment Forum, to move away from the States aspiration to increase the minimum wage to 45 per cent of average earnings. I urge Members to reject this proposition and to support the recommendations of the independent Employment Forum for a 10 pence increase in the minimum wage which, as always, are based on sound research and consultation.

7.1.1 The Connétable of St. Martin:

This is the third such debate on the minimum wage - I know we have heard there were 4 - that I have listened to in my short period in the office and originating all from Deputy Southern. I must admire the Deputy for his persistence in this matter. Likewise, I have the 3 letters, like all other Members of the Assembly, that have been received from a large farming union opposing the proposition. It is the pleasures and wonders of Hansard, of our States Government website in my filing system at the public hall of St. Martin's, we are able to look back on the topics, how they progressed annually and I still have all the letters from the farming union. Senator Bailhache beat me to the button last Thursday afternoon when we opened this debate and, indeed, spoke about the proposition in debate or, I should say, lack of a debate, regarding States Members' pay and the importance of the role undertaken by an independent remuneration review body. I think the previous comments made by Deputy Southern regarding that independent panel was that they should not be interfered with. Members will know my frustration regarding those restrictions that prevent us from debating issues about remuneration and I can understand the issue regarding the lifting of Standing Orders. But, of course, the other issue also raised during such pre-debate relates to the important matter, that of such bodies working conscientiously and, more importantly, independently, in putting together a well-informed review document and recommendations and that is what they have done. The Employment Forum have done it again in R.116 that was presented to us in September. The report of the Employment Forum clearly states they have consulted with people who might be affected by the minimum wage, the employers and the employees. They have considered statistics; they have considered advice about the economy. The Forum have produced a 39-page detailed and comprehensive report and the Remuneration Board report that I had consisted of 3 pages in R.125. The Employment Forum have put recommendations. I am not sure if Deputy Southern was able to address the Employment Forum or whether he has to wait for the proposition

to be brought before he could raise his proposition. The States, as we have heard, agreed in 2010 that the minimum wage should be set at 45 per cent of average earnings and within a period of 5 to 15 years and we have not reached there yet, despite some recovery. But with 2 important additional issues attached to that objective, subject to consideration of the economic conditions and the impact of competitiveness and employment of the low paid in Jersey, I believe the Employment Forum have tried to balance the responses of employers and employees while trying to ensure no jobs are lost by increasing the minimum wage. There remains 11 years to fulfil the will of the States to increase from 40 to 45 per cent of the level mean weekly earnings. The Employment Forum are fully aware of that objective. It is difficult to compare minimum wages with other jurisdictions like, say, teachers or police officers in the U.K. or in Jersey; they have totally different economies, as we all know. However, the proposed increase compares favourably and higher to the U.K., the Isle of Man and Guernsey. The Deputy concludes on his proposal that there are no direct financial or manpower implications for the States arising from this proposition. But those are 3 important words for the States; I am not quite sure the Deputy might think that right but they certainly will be for the employers. Of course, it might not be quite right in our case, the employer ceasing to trade in this difficult time because of the wage increases is likely to have more employees may be losing their jobs and seeking Income Support. In conclusion, I regard the 2 debates that I have sat through, this being the third, and voted on the subject, both have been comprehensively defeated after debate. I just wonder, because of the success rate and the time it takes this whole Assembly, if the hard-working Deputy believes there is a need for change in the way the Minister for Social Security brings forward recommendations for the minimum wage for the year to follow and that we go about it in a different way rather than continuing with this annual impasse; with the Deputy working very hard to put something together for an annual proposition for a different and always higher figure and losing unless, of course, I am judging the view of the Assembly today and getting it wrong. I just put those ideas into the Deputy if you might want to bring that forward next time.

7.1.2 Deputy M. Tadier:

We do find ourselves in this situation again and I for one am glad that Deputy Southern keeps on fighting the fight for those most impoverished in our society. Let us scotch one argument straightaway. I was not here, I was *malade* on Thursday last but I did listen to all of it from my bed, and I listened to the speech of Senator Bailhache and others who say what is the point in having this body to make a recommendation if we only go on to ignore it. It was compared spuriously to the fact that we have our own States remuneration body which recommends and we could not possibly debate that so we should not be debating this, which is of course a *non sequitur*. It is nonsense. The reason that we have an independent body to work out our own pay recommendations are twofold but essentially it is because Standing Orders prohibit us from debating our own pay and we do not lift Standing Orders now so that we can do that, therefore we must have a mechanism by which our pay can be judged independently. That does not stop it from being controversial or being perceived as a political issue in the wider society and by the media, but nonetheless it is the only way that we have to resolve that issue. Compare that with the minimum wage, which is completely different. It is absolutely correct that this Assembly sets the minimum wage. We can certainly take advice from individuals in the department and they use a body to make recommendations in the same way that we might seek legal advice on a certain issue, but that does not mean that it is infallible. It means that we take that into consideration and the decision is essentially a political one. The decision was made to meet the 45 per cent target within 15 years, although 15 years is not the ... it seems to be becoming the target that we must not do this before 15 years but that is the upper limit. It is between 5 and 15 years. We should be doing it quicker and that is the States Assembly's decision, yet we seem constantly to fall behind and we are told: "In these economic times we cannot necessarily make the progress that we would like towards that 45 per cent target." But there is always an excuse and I am sure when times are very good we will be

told: “We cannot do this at the moment because it will be inflationary and we want to bring inflation down.” So when is it a good time to do this? Let us scotch the argument Deputy Southern should not be bringing this. Absolutely, he should be bringing this. We have just had a Budget which was pitched at being very good for middle Jersey. Indeed that was the political message that was set to go out even though not everyone is a taxpayer. We are often told it does not matter about the minimum wage not going up by what Deputy Southern wants it to go up or not keeping up with the rest of the figures because it is just immigrants who work for that anyway. What I would ask Members is would they be prepared to work for the minimum wage of £6.63 an hour, which is being recommended by the Employment Forum? Would young Jersey people be willing to work for that wage or even a lesser wage if we have a trainee rate? I suspect not. The argument has not been put forward that if the minimum wage rate is too low it prevents people from working for that because the incentive is not perceived to be there. Why should young Jersey people go out and look for jobs if those jobs are being offered at the minimum wage, and there is nothing to say that those jobs would not be being offered at the minimum wage when they can live at home and, albeit, claim a small amount but it is much better so they can spend their time reading philosophy and playing music at home rather than going out working in the fields. That is really the issue. But of course there is a bigger issue which I know is being dealt with, and I would encourage Members to look at, is the living wage. Quite correctly, Deputy Southern has asked for the analysis to be done in this because frankly one cannot live in Jersey on the minimum wage. If one thinks that you can live on the minimum wage I suggest that somebody tries it. It would be a nice experiment perhaps for the Minister for Social Security to do that for a month, live on the minimum wage somewhere in the private sector and see if he can afford to do that without resorting to Income Support to subsidise his landlord, his heating bills, *et cetera*. It might make a nice programme that could be featured on BBC, maybe on the *One Show*. Deputy Southern is to be commended. He is doing something which helps those lowest paid in our society. He is giving extra incentives for those to go out there and work. The idea, quite frankly, we get lobbied every year by the Jersey Farmers Union and they are quite entitled to do that. But the lobbyists always come from the same direction. Would they fold really if this was not there? I doubt it. We were told similar things about the tourism industry, the hospitality, a few pence extra is not going to put people off but these few pence extra that Deputy Southern is proposing would be very much appreciated by the lowest earners in our society, and I am quite happy to support this proposition.

7.1.3 Deputy M.R. Higgins:

I will just be very brief because I have not prepared a speech for this but I am concerned, and I have mentioned it in previous States sittings.

[12:15]

We all tend to think of Jersey as an affluent society. That is what we are told. Per capita income is so high and how well we are doing. Even though there is a recession we are still doing much better than most other people. But the reality is for a large number of people who live in this Island it is far from the truth. I mentioned in a previous debate how food banks are being active in Jersey. We know that St. Thomas’ Church have one. There are people who cannot live on what they are getting on Income Support and are having to go down and get money from these charities. I think it is scandalous that we are supporting a system that means the people have to rely on charity or starve because we are not ensuring that workers, who are working, whatever hours they are on, maybe a 40-hour week or whatever, are not earning sufficient to feed themselves and their families and meet their basic essentials. I think it is absolutely scandalous. We have perpetuated this. We had the debate earlier about zero-hour contracts. Zero-hour contracts benefit one person only and that is the employer because the employer is getting people with no holiday entitlement, no sick pay, really low hours but they cannot even guarantee that they are going to work 20 years, let alone

40 hours a week. It may only be 5 hours. It is whenever the employer wants them. What does this do? It means those people cannot get bank loans, cannot get a mortgage, cannot probably even rent a property because they have no guaranteed source of income. We perpetuate this and it is absolutely sickening. We get the letters from the Jersey Farmers Union, as we all do, and it is funny how the employers groups can afford to send out the mail shots and do the campaigns. Why? It is in their vested interest to make sure that workers are paid low income. I do not see many farmers - I am talking about the rich farmers - driving old bangers. They are all driving modern cars and everything else, and Range Rovers. The point is that I do believe that it is an excuse very often to say we would have to wrap up our operations, we have to close, all these people will be redundant. I think it is time that this Island started addressing these issues properly. I am not saying people should not earn a living but we are not providing the jobs and we are not providing well-paid jobs. The other point too that Deputy Southern has made time and time again in this debate, and I think it is very valid, and that is we are subsidising the employer. Look at the money that is going through the Social Security system to employers. If they were paying a decent wage we would not have to do that. We keep on talking about taxes and people say: "Oh, the taxes. We cannot put taxes up or they are too high already." If we are subsidising them, and if the employers paid their way and paid a decent wage, maybe we would not have some of the taxes we have. As I say, it is a bit of ramble this. It was not a planned speech but I can tell you something: I feel absolutely disgusted sometimes at this Island and how we treat the workforce. I might add, it is not only just here. In the U.K. they found out, I think it is a quarter of all public sector workers are not earning sufficient money to live in the U.K. If we are using zero-hour contracts I wonder how many of our employees cannot afford to survive on what they are getting. What I would say is, it is time we address these issues. I am fed up with this constant mantra: "Oh, we cannot afford it. Firms are going to go out of business." Let us treat people properly for a change.

7.1.4 Senator A. Breckon:

I think it is generally accepted that low pay and no pay costs the States in benefits and if people have no pay because of age, infirmity or temporary circumstances then it is generally accepted there will be a funder of last resort, as it were. When we look in monetary terms at what we mean here, the current minimum pay based on the old 40 hours comes to £261.20 a week. The recommendation from the Employment Forum through the Minister for Social Security is to pay another £4 a week to bring that up to £265.20. Deputy Southern's proposal would mean that somebody working 40 hours would get £270.80. The reason I say those sums is to ask Members to ask themselves what does this buy. What could somebody do at the end of the week with £260 or £270 a week? Although this is between what it is now and what Deputy Southern's proposing there is a difference, but having said that it does give people maybe a comfort factor in getting that amount. I ask Members to remember as well, but of course these sums are subject to 6 per cent deduction for Social Security and if people do have other income then perhaps they might be paying I.T.I.S. (Income Tax Instalment Scheme) as well, but they certainly will not be paying much tax on these amounts and that is what it is about. I think that is why for now I could support Deputy Southern's amendment because it is a move in that direction and although there are economic issues affecting the general economy, they are having a very real effect on people on low pay because their base costs are food and utilities and maybe the cost of a vehicle to get to some remote places to do jobs. I think, in this instance, I would ask Members to consider whether or not they support this amendment and for me it is worth some support.

7.1.5 Senator S.C. Ferguson:

I do get really quite angry when people start saying what a terrible Island this is and how badly we are treating people. I think you need to go and look at a few other countries first. The simplest argument against this particular proposition, which is very well-intentioned and well-thought out

but mistaken. The simplest argument against it is basic economics. If you make a resource too expensive people will stop using it. Not only that, has no one made the connection between a minimum wage and youth unemployment? It may not be the entire story but it is a major contributory factor to people not wanting to employ youngsters. Senator Breckon mentions taxation. The Minister for Treasury and Resources is apparently looking at the overall tax policy and I would suggest to the Council of Ministers and the Assistant Minister for Treasury and Resources that they need to get that study moving and done because that is one of the problems we have. But the argument against this whole proposition about minimum wage, the economic argument refers to something called monopsony, but it is a bit technical so I will leave it alone. It is basic economics. If we make labour too expensive then employers will not employ as many people. If we make labour too expensive, particularly in the agricultural industry, we shall be putting up the price of food, and then we have another cry that the Government should be subsidising food. I am sorry, this is well-intentioned but not today.

7.1.6 Senator P.F. Routier:

A number of speakers have tried to imply that this Assembly is to blame for a lot of things in this Island, and I think we should think back to where we have come from. A number of years ago I was responsible for bringing forward the Employment Law, which included the minimum wage, and since that time we have gradually increased the minimum wage using the mechanism of asking the Employment Forum to ask different sections of our community to review what level of minimum wage is appropriate for our Island. It is open at that time, when the Employment Forum is doing their piece of work, to invite anyone who has a view on this matter to make submissions to them to help them come to a reasoned decision. I do wonder whether Deputy Southern took the opportunity this time to put forward his views to the Employment Forum for this particular year. I know he has done in previous years but I wonder in this year whether he did do that. I raise that as a question. The Employment Forum is very important. It is a body which is established in law. I think Deputy Tadier was trying to make a difference between the bodies that are established for reviewing Members' salaries because Standing Orders does not allow Members to debate our salaries, but he was trying to devalue the Employment Forum. The Employment Forum is established in law and the Employment Forum comes forward with the recommendations, and it is only if the Minister for Social Security wants to go against their recommendations he has to write to them formally to explain very clearly what it is that is wrong with their recommendation. It is a real big decision to go against what the Employment Forum does recommend. The Minister for Social Security should not be criticised for coming forward with what the Employment Forum is suggesting because he is doing what is the process. That is the usual process. But the time for discussions and recommendations should be submitted to the Employment Forum before they come out with their recommendation. There was another point which interestingly Deputy Tadier was making about increasing ... what would effectively be, in supporting Deputy Southern's proposition, is increasing the cost of business. It was only last week he was, I believe, wanting to control the cost of impôts duty for businesses because there was going to increase their cost of business. So one week he is wanting to control the cost of business for the hospitality industry and this week he is suggesting that it be increased. I think Members should take note of that. The Employment Forum have done their work. These are very difficult economic times for businesses and I would urge Members to reject this proposition because I certainly would not want to be party to putting extra pressure on businesses and to possibly increase any unemployment in this Island. I urge Members to reject this proposition.

7.1.7 The Connétable of Grouville:

I was not going to take part in this debate because I agreed with Senator Bailhache when he first spoke, but I have to put a few things right with regard to the farming community. First of all,

Deputy Higgins has not seen my car. But seriously, our staff that are on the minimum wage are seasonal workers, they come mostly from Poland now. But I have to point out that they can go and work anywhere in Europe and they choose to come to Jersey because the pay and conditions are right, or certainly better than they can get anywhere else. The second myth that people somehow come up with is they do not pay tax, and I can assure Members that on the wages that they are on that from day one they are registered for I.T.I.S. and they are registered for Social Security, so they are contributing. The agricultural workers that I know of are not a drain on the society. We should be jolly pleased they come to Jersey. It was mentioned that perhaps if we put the wage up local workers might take up that job. I do not see it. It is jolly hard work and those of us in industry know that that is the case. So I do not think we are going to replace our seasonal workers with local workers if you put the wage up by £2 or £3 an hour. That is all I have to say.

The Deputy Bailiff:

Does any other Member wish to speak? Then I call on Deputy Southern to reply.

7.1.8 Deputy G.P. Southern:

For the sake of clarity, let me make it certain that I have no intention of devaluing the work of the Employment Forum. I much admire the hours that they put in and the depth of their research. What I am saying, however, is this year I think they have made a mistake. Despite all their efforts I think they have made a mistake by sticking over the last decade to this concept of the 40-hour week. The fact is that comparators with other countries have to take the fact that the working week in most places is reducing, and that includes Jersey, now at 39.2 hours on average.

[12:30]

In the U.K. it is 39 hours. In France it is 35 hours. So when you make the comparison with other jurisdictions you must be very careful. That sounds like a small difference but it makes an important difference when you do the comparison in terms of our competitiveness. That is clear, I hope. I look forward to the Constable of St. Martin, working with him to come up with a mechanism which avoids this debate every year because while I thoroughly enjoy it, not everybody does perhaps, maybe there is a better method we can find and maybe together we can come up with it. I look forward to his or even my amendment to the way we do things. It is always open to us. But I have to start with the argument proposed by Senator Bailhache last week and it is always fascinating to me to see the mind of a lawyer and its acuity in picking particular arguments. I think obviously a lawyer is paid to either defend or to prosecute a particular case and in doing so looks at the facts and selectively uses the ones that suit either defence or prosecution. I think the Senator did exactly that last week when he said: "Of course, Deputy Southern is totally in favour and would not overturn the recommendation on his own pay but is quite happy to attempt to overturn the recommendation from a similar body, but not identical body, on the minimum wage." I stand by that because what the Senator missed out was the fundamental difference between the 2 bodies. The Employment Forum has been given a political steer in addition to its economic overview; a political steer, which says: "And we would like you to in a period of between 5 and 15 years raise the minimum wage to 45 per cent of the average wage" and so far, in the last 4 debates, it has not done that. The body which supervises our pay does not have that similar political overview. It has not been told to bring our pay up to a factor of 1.4 times the average wage over a period of 15 years. There is no political steer on them. They are completely independent. There is a political steer on the Employment Forum, which we have taken on. That is a thing that we must remind ourselves of from time to time, and I use a debate on the minimum wage to enforce that. The fact is, and we heard it today, the minimum wage is the only piece of employee protection that we can enforce. All the rules and all the regulations that we have, the minimum wage, says the Minister for Social Security, is the only thing we can enforce and act on. We took a political decision ...

Senator F. du H. Le Gresley:

Would the Deputy give way?

Deputy G.P. Southern:

No, I will not give way.

Senator F. du H. Le Gresley:

Well, he is misinforming the House.

Deputy G.P. Southern:

You have had your speech, through the Chair. But it works every time, you lose your thread. **[Members: Oh!]** Here we go. We took a political decision years ago under Senator Routier, we said: "We are going to have a minimum wage. We have to protect our low paid workers." To the second decision when the House agreed with me that we should intend to raise the condition of the lowest paid in our society by moving from 40 per cent to 45 per cent over a long period of time. The fact is that a 1.5 per cent award this year already reduces the relative earning of the lowest paid compared to the average because the average wage, last year, went up by 2.4 per cent in the private sector and 2.2 per cent overall. So it is already falling behind the average for every other worker. Not only that but by using the R.P.I. as it stands, I believe, and not the R.P.I. low earning marker, the figures show that this body of people have already fallen behind in terms of R.P.I. as well as average earnings. But even worse, I think they made a mistake in doing their calculation by ignoring the fact that the working week is coming down. That artificially skews the comparison on the minimum wage. We saw the argument from Senator Le Gresley, this was a very interesting argument, that said if we calculate on the average working wage for the people who are getting the minimum wage in agriculture and in tourism, hospitality industry, then we get a completely different figure. It seems to me that he is arguing that we should go back to long hours in a working week, let us reinstate the 60-hour week. While we are at it can we send some 10 year-olds up chimneys? I am sure there are still some that need cleaning. We should not be going backwards. That is ridiculous. He also made the argument that this is late notice. The figures have already been set for last year. The fact is that it may be late but this is the time scale which the Minister for Social Security always sticks to, and in fact about 3 years ago we missed the boat there, we did not discuss this until January. Being late is not particularly a difficult thing to cope with. As Deputy Tadier said, yes, we take advice, we have a recommendation, we do not have to accept it. We could, if we wanted, overturn that advice and increase the wage should we wish. It is not a difficult thing to do. The benefit of that, there is a statement there that says no financial manpower cost to the States themselves because when I last looked we only employed one person who was a 16 year-old trainee earning less than the minimum wage in the States themselves. But there is a cost to the minimum wage to the States because, as I pointed out in my opening speech, every penny that goes on the minimum wage comes off the supplementation bill. Every penny that goes on the minimum wage goes to Social Security contributions. Every penny that goes on the minimum wage, not quite every penny ... some of the pennies that go to minimum wage end up as taxation. Our itinerant workers come here, they still come here because the conditions are good, we could make them better. They still come here and they sign on and pay Social Security and tax where appropriate. Let us increase their wage and get a little more Social Security contributions and tax from them, and the benefit will be seen for the Island as a whole because every time we look at minimum wage we are talking about putting some extra money in the pockets of the least well-off. What do the least well-off do? As Senator Ferguson says, it is a simple economic law, the poorest spend every penny. So if we really want this 2012, 2013, we are in for it worldwide, poor times, we could make a small contribution to improving our economy by giving our lowest paid workers a little more to spend. And it is a little more. We are talking about, as Senator

Breckon said, £265.20 versus £270.80. That is a relatively small amount. Once you have taken Social Security off that you are earning £250 or thereabouts a week. It is not just agriculture, and it is not just the hospitality industry. Minimum wage, there or thereabouts, is the marker for everybody working in a shop. It is minimum wage plus a little. If you put up the minimum wage, yes, costs will go up, but those workers will spend more. If you really want to revive your economy you should allow people to earn more. On that point, I will cease except to plead with Members to defend the position of minimum wage workers on this Island. We, as an Assembly, have committed to do that. If we do not accept this amendment then little by little what we are doing is we are chipping away the protection that we built in for those particular workers. I would say vote with your conscience. There is a political act we need to do, not just an economic act. I maintain the proposition.

The Deputy Bailiff:

The appel is called for. I ask Members to return to their seats. The vote is on Deputy Southern's proposition, P.135, and I ask the Greffier to open the voting.

POUR: 8		CONTRE: 32		ABSTAIN: 0
Senator A. Breckon		Senator P.F. Routier		
Connétable of St. John		Senator S.C. Ferguson		
Deputy G.P. Southern (H)		Senator B.I. Le Marquand		
Deputy S. Pitman (H)		Senator F.du H. Le Gresley		
Deputy M. Tadier (B)		Senator I.J. Gorst		
Deputy T.M. Pitman (H)		Senator L.J. Farnham		
Deputy M.R. Higgins (H)		Connétable of St. Helier		
Deputy G.C.L. Baudains (C)		Connétable of Trinity		
		Connétable of St. Peter		
		Connétable of St. Lawrence		
		Connétable of St. Ouen		
		Connétable of St. Brelade		
		Connétable of St. Martin		
		Connétable of Grouville		
		Deputy R.C. Duhamel (S)		
		Deputy R.G. Le Hérisssier (S)		
		Deputy J.A. Martin (H)		
		Deputy of St. Ouen		
		Deputy of Grouville		
		Deputy J.A. Hilton (H)		
		Deputy of Trinity		
		Deputy K.C. Lewis (S)		
		Deputy E.J. Noel (L)		
		Deputy T.A. Vallois (S)		
		Deputy A.K.F. Green (H)		
		Deputy of St. John		
		Deputy J.H. Young (B)		
		Deputy S.J. Pinel (C)		
		Deputy of St. Mary		
		Deputy of St. Martin		
		Deputy R.G. Bryans (H)		
		Deputy R.J. Rondel (H)		

The Deputy Bailiff:

We will shortly be reaching the point where we might be looking to adjourn until this afternoon, but, Deputy Tadier, I see that you have on the Order Paper, P.145, the Legal Aid Reform and Access to Justice Working Group, which calls on the Chief Minister to lodge a proposition. As he has now done that, presumably you will be seeking to withdraw that, will you?

Deputy M. Tadier:

I think that would be sensible. It has been superseded and it may not even be in order, but I would like to acknowledge the Chief Minister's action. It renders this unnecessary and I look forward to that debate.

The Deputy Bailiff:

Thank you very much. It will be withdrawn then.

LUNCHEON ADJOURNMENT PROPOSED

The Deputy Bailiff:

The adjournment is proposed. The States stand adjourned until 2.15 p.m. this afternoon.

[12:42]

LUNCHEON ADJOURNMENT

[14:14]

8. Draft Employment (Minimum Wage) (Amendment No. 10) (Jersey) Regulations (P.131/2013)

The Deputy Bailiff:

I invite Members to return to the Chamber please. We resume Public Business. The first item of Public Business to tackle this afternoon is the Draft Employment (Minimum Wage) (Amendment No. 10) (Jersey) Regulations, P.131, lodged by the Minister for Social Security. I invite the Greffier to read the citation of the draft.

The Greffier of the States:

Draft Employment (Minimum Wage) (Amendment No. 10) (Jersey) Regulations. The States, in pursuance of Articles 17, 18 and 104 of the Employment (Jersey) Law 2003, have made the following Regulations.

Senator F. Du H. Le Gresley (The Minister for Social Security)

I have asked my Assistant Minister, Deputy Pinel, to present the Regulations to the Assembly.

8.1 Deputy S. Pinel of St. Clement (Assistant Minister for Social Security - rapporteur):

The Minimum Wage Regulations ensure that only benefits in kind or offsets that may be counted towards minimum wage pay are living accommodation and living accommodation with 3 meals each day. The Regulations set a maximum value for those benefits in kind for the purpose of calculating whether the appropriate minimum wage or trainee rates have been paid. The proposed amendment to the Regulations would increase the maximum values that may be attributed to the 2 benefits in kind from 1st April 2014. As in previous years, the values are increased relative to the proposed increase in the minimum wage. The Minister for Social Security made an Order on 25th October that will increase the minimum wage and the trainee rate from 1st April, including a 1.5 increase to the minimum wage. This proposition reflects the recommendations of the Employment Forum, which the Minister for Social Security accepted in September. The Employment Forum

members serve on an honorary basis and I would like to record my appreciation for the work they do, the task of reviewing and recommending a minimum wage is often underestimated. I propose the principles.

The Deputy Bailiff:

Are the principles seconded? **[Seconded]** Does any Member wish to speak? All Members in favour of adopting the principles kindly show. Those against. The principles are adopted. Do you wish to propose the Regulations *en bloc*?

Deputy S. Pinel:

Yes, please.

The Deputy Bailiff:

I am sorry, Assistant Minister. I have jumped the gun. Deputy Hilton, does your panel wish to scrutinise these Regulations?

Deputy J.A. Hilton (Vice-Chairman, Health, Social Security and Housing Scrutiny Panel):

No, thank you, Sir.

The Deputy Bailiff:

Assistant Minister, do you wish to propose the Regulations *en bloc*?

8.2 Deputy S. Pinel:

Yes, please, Sir.

The Deputy Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak? Deputy Baudains.

8.2.1 Deputy G.C.L. Baudains:

It has been a concern for me for some time that some employers may be abusing the trainee rate when they should be paying the minimum wage. Is the department able to monitor this?

The Deputy Bailiff:

That sounds rather more like a question on the principles, Deputy, than on the detail of the legislation. Is there a problem with the legislation? Can you refer that somehow or other to the Regulations themselves? We have already had the debate about the principles and you may be too late for that particular question. Does any Member wish to speak about the Regulations? Do you wish to reply, Assistant Minister?

8.2.2 Deputy S. Pinel:

The amendment to the Regulations increases the maximum values that may be attributed to the 2 benefits in kind, as stipulated in Regulation 1 of the amended Regulation. The figures are there, if I can refer people back to the Regulations. I would like to propose the proposition in Third Reading and call for the appel please.

The Deputy Bailiff:

I think we ought to find out whether Members wish to approve the Regulations themselves first. Do Members approve Regulations 1 and 2? Those in favour kindly show. Those against. The Regulations are adopted. Do you wish to propose them in Third Reading? Seconded? **[Seconded]** Does any Member wish to speak in Third Reading? All those in favour of adopting the Regulations in Third Reading kindly show. Those against. The Regulations are adopted.

9. Long-Term Care Scheme (P.99/2013)

The Deputy Bailiff:

We now come to P.99, the Long-Term Care Scheme lodged by the Minister for Social Security and I ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether of opinion to refer to their Act dated 21st July 2011 in which they approved the draft Long-Term Care (Jersey) Law 2012 and to approve the details of the Long-Term Care Scheme as outlined in Section 1 of the report of the Minister for Social Security dated 22nd August 2013.

9.1 Senator F. du H. Le Gresley (The Minister for Social Security):

This proposition is intended to provide a clear comprehensive guide to the policy issues behind the Long-Term Care Scheme. The changes to the Law and the Regulations set out in P.136 to P.142 that are also on the agenda today formalise the policy and therefore I propose in this speech to cover the main points of these legislative changes. As a consequence, Members may be relieved to hear that subject to P.99 being approved, when I come to propose the associated propositions I do not intend to deliver a further series of extended speeches. At the outset, let me thank the Chief Minister and my Ministerial colleagues and their Assistant Ministers on the Political Steering Group whose input to the policy development of this Long-Term Care Scheme has been invaluable. The contribution from colleagues at the Health and Social Services Department has made sure that policy in this important area is aligned, while the strong support from the Minister for Treasury and Resources and his team has ensured that the scheme we propose today is financially sound and robust. I would also like to record my thanks to the members of the Health, Social Security and Housing Scrutiny Panel who, with the help of their expert adviser, have subjected my proposals to close inspection and in a number of meetings have challenged me and my officers to explain the finer points of the scheme. I hope they see it as fitting that, just as it was a report by a previous Scrutiny Committee that helped to get the Long-Term Care Scheme process moving, so their successors on the panel today have played a key role in finally bringing my proposition to the States. In doing so I am sure Members will join with me in wishing the Chair of the panel, the Deputy of St. Peter, a speedy recovery. **[Approbation]** And I am sure she is listening to this debate today. In July 2011, this Assembly unanimously agreed a proposition put forward by my predecessor, now Chief Minister, establishing primary legislation to create a new Long-Term Care Scheme. This was itself the culmination of a number of years' work that was prompted by the publication of the Scrutiny Report on the long-term care of the elderly at the end of 2008, and the commitment in the 2009-2014 Strategic Plan to introduce an Island-wide scheme to meet the costs of individuals' residential care needs. At the time, the Assembly was told that approving the framework Long-Term Care Law was but a first step on the road to reforming the current system of funding long-term care. In passing the law, the Assembly recognised the need for a new Long-Term Care Scheme. Firstly, to remove the financial uncertainty and worry that Islanders face as they or a close family member moves into care; to share the costs of such care more widely and fairly across the community; to allow people to choose whether they wanted to receive care in their own home or in an approved care home. Finally, to address the rising cost of long-term care as a consequence of Jersey's ageing population. The approval of this law followed a comprehensive consultation exercise looking at how long-term care should be funded on the Island. This was prompted by a growing awareness of the funding challenges posed by an ageing population. Estimates in 2009 were that care costs would double in real terms by 2026, rising from £55 million to at least £110 million. However, the situation is further exacerbated by the fact that while, on the

one hand we face a doubling of the number and proportion of older residents over the next 30 years, on the other hand there will be a smaller proportion of working-age people to help fund the increase in care costs. Responses to the Long-Term Care Green and White Papers showed overwhelming support from the public for a new approach to Long-Term Care Funding, one that pooled risk across the community and relieved the costs burden placed on those unfortunate enough to find themselves needing to pay for expensive long-term care. We know that today families often find themselves bearing the full costs of long-term care which can literally run into hundreds of thousands of pounds. I hope Members would agree with me that now the legal foundations of the new scheme have been laid, we need to move forward and complete the job by approving the detail of this scheme that I am presenting to you today. The main features of the Long-Term Care Scheme are the creation of a new ring-fenced fund under the control of the Minister for Social Security to be used only, and I stress only for the benefit of the Constable of St. John, to provide long-term care benefits. Funding for the scheme to be based on compulsory contributions based on income tax principles and collected by the Taxes Office on behalf of the Social Security Department from employees, self-employed and pensioners alike as well as an annual contribution from the States. A residency requirement. That means that Islanders are likely to have made a reasonable contribution to the Long-Term Care Fund. Support for care packages delivered in people's own homes as well as in care homes. Both short-term and long-term costs have been carefully considered and my proposals are designed to create an effective balance between the 4 elements of the scheme. Firstly, a new care costs cap to limit an individual's exposure to care costs. Secondly, a new universal long-term care benefit that is paid once the costs cap has been reached. A generous asset disregard in respect of both property and non-property assets and finally the liability of individuals to make a co-payment towards their total care costs to make sure that people in all situations would be able to take advantage of the new scheme. It also includes means-tested support for those who cannot meet the costs of care themselves and, very importantly, a new form of property bond to assist property owners who are known as asset rich/cash poor. My proposals represent a major step forward from the arrangements we have today where people unlucky enough to find themselves requiring long-term care run the risk of losing much of their assets. The scheme I am proposing allows me to provide direct support to those potentially facing the highest care costs bills. My principal goal is to remove the worry and uncertainty that can blight people's later years as they contemplate how they would fund an extended period in long-term care. In England, it is estimated that around one in 10 people aged 65 face future lifetime care costs of more than £100,000 and with care costs here in Jersey generally higher than on the mainland, more people here are likely to run this risk. While it is not unreasonable to expect people to pay something towards their long-term care costs, and under this scheme they will, Islanders and their families who are unlucky enough to face extensive care costs should not face the prospect of running down all of their savings or losing much of the value tied up in their home to pay for them. My proposals strike a balance. They pool the risk across the community and alleviate the heaviest costs burden on individuals. The combined effects of the new care costs cap that I am proposing and the proposed level of asset disregards should help to make the twilight years of our older members of society and their families a little more secure and free from financial worries.

[14:30]

In order to explain how the new scheme will work to protect people from very high care costs, it is helpful to start by considering the makeup of the gross costs of care charged by care homes. The charges cover the costs of care and the day-to-day living costs of living in a care home. My proposals split the gross costs of care into 2 components: the standard long-term care costs and the co-payment. Under the scheme, the lifetime total of standard care costs will be capped at £50,000 for any individual. The maximum cap for a couple will be limited to £75,000 in total, even if they receive long-term care at different times separated, perhaps, by several years. This is a new

concept that very directly targets benefits of those who would otherwise bear the highest costs of care. The idea of a cap was first proposed by the Dilnot Commission which was set up by the Coalition Government to review the funding of long-term care in England. It proposed a cap on lifetime care costs of between £35,000 and £50,000. Subsequently the U.K. Government has proposed a cap of £72,000 to apply from April 2016. At this point, it is appropriate to stress that over the last 2 years, my department has undertaken extensive research and modelling to ensure that these proposals are sustainable over the next 30 years. Officers have worked with Oxera Consulting Limited to develop a long-term care costs forecasting model specifically for Jersey. The model incorporates long-term assumptions used by the States of Jersey Economics Unit and the Health and Social Services Department. It also incorporates population data from the 2011, I stress, Census. The Treasury and Resources Department have also independently audited all our figures. The Political Steering Group agreed the £50,000 cap as part of the overall packet of measures which are designed to maintain the long-term care contribution rate below 3 per cent over the next 30 years. It protects individuals against very high care costs and as the Health, Social Security and Housing Scrutiny adviser commented in their report, and I quote: "The scheme does not just benefit those incurring these costs but rather acts as an insurance against such costs for the wider community, removing financial uncertainty as individuals move into care." How does this cap work? Individuals will be expected to meet their standard care costs up to this new £50,000 cap. For those not in a position to do this, means-tested help will be available from the Long-Term Care Fund. The standard care costs that count towards the care costs cap equate to the long-term care benefit rates which will be set by order and determined by reference to the weekly rates that are currently set for Income Support residential care. Indicative weekly rates are set out in Table 2 on page 13 of my report. They are: care level 1, £340; care level 2, £520; care level 3, £670 and care level 4, £940. I stress that these are weekly rates. For each week that someone is receiving long-term care, their care costs will build up at the long-term care benefit rate appropriate to their level of care need, so importantly progress towards the cap is based on the long-term care benefit rates rather than by reference to the actual costs being met by the individual. When these accumulated standard care costs reach the care costs cap, individuals will be able to claim the universal long-term care benefit. This will be paid at the standard care costs appropriate to their level of care for as long as they continue to need such care. For those with insufficient income, means-tested assistance will be available to help pay both the care costs and an element of the co-payment if necessary. The length of time it will take to reach the care costs cap will depend on the care needs of the individual. It is likely to take just over a year for someone to reach the cap at the highest level of nursing care and up to 3 years at the lowest level of residential care. My department will open a care costs account for everyone assessed as needing long-term care and will keep track of their individual progress towards their care costs cap, alerting them when they are approaching it. Due to the unavoidable delay in finalising this new Long-Term Care Scheme, I am proposing that standard care costs incurred since 1st January 2013 will count towards the care costs cap. This means that when the new scheme commences on 1st July 2014 subject, of course, to approval by Members today, some individuals will already have reached the care costs cap and will receive the long-term care universal benefit from day one. For individuals receiving care in their own home, the care costs cap will build up at the standard care costs rate applicable to the same level of care in a care home, even if the cost of the approved care package is lower than the standard care cost. This means that the cost of reaching the cost of £50,000 is effectively lower than if they were receiving their care in a care home. To sum up, the care costs cap of £50,000 ensures that those individuals who would otherwise bear the highest lifetime care costs are the ones who will benefit the most from this new scheme. Identifying a fixed amount for individuals to pay towards their standard care costs before entitlement to the universal benefit means that people can more easily plan their financial affairs. With a similar capped scheme expected to be introduced in England in 2016, it is likely that tailored insurance products will become available to help fund the

costs of care up to the cap. Earlier I mentioned that those in a care home will still be responsible for a co-payment. I now want to say more about this and how it works. As well as paying the first £50,000 of their standard care costs, individuals will be expected to pay a co-payment. This co-payment will be a minimum of £300 a week but could be more, depending on the choice of home and any extra services, amenities or facilities available. Naturally some homes will charge more than others and individuals will be able to use their own resources or borrow using a property bond to agree a gross fee with the care home of their choice. The minimum co-payment covers day-to-day living costs that would be borne by the individual whether or not they had care needs. People receiving care in their own home will continue to meet their own living costs and so for them there is no co-payment. The co-payment will not count towards the £50,000 care costs cap and would always remain the responsibility of the individual. For those that cannot afford the minimum co-payments, means-tested help will be available from the Long-Term Care Fund. Homeowners will be able to apply for an interest-bearing loan to help with the co-payments. For each care level, the standard care cost plus the minimum co-payment will create the total fee available to care homes in respect of individuals who require means-tested assistance for their long-term care costs. At the moment, many people worry about the risk that much of their assets could be depleted in meeting care costs. I am proposing an asset disregard of £419,000 which will apply to both property owners and tenants alike. By comparison, the current disregard under Income Support residential care is set at the maximum of £22,718 for a couple. This figure of £419,000 is derived from the average value of a 2-bedroom house as published in the *Jersey House Price Index* over a 3-year rolling period. As at September of this year, this figure was £394,000. To this has been added a lump sum to cover savings of £25,000. The choice of a 2-bedroom house is linked to the States Lifelong Homes Policy which encourages the building of one and a half and 2-bed units to lifelong home standards and thereby aids independent living for older residents. Linking to a higher asset disregard above the value of a 2-bedroom house was discounted on the grounds of cost. Such a concession would have required a contribution rate that could not be accommodated within the costs parameter of a 3 per cent contribution by 2044. The effect of the asset disregard is that claimants who have total household assets valued at less than £419,000 will be able to request immediate help with their standard care costs up to the care costs cap and the minimum co-payment of £300 a week but they will be expected to pay their weekly income subject to certain allowances to cover liabilities such as income tax, Parish rates, and general property maintenance expenditure towards their co-payment and care costs and the Long-Term Care Fund will make up the difference. I now want to talk more about the situation regarding homeowners whose property is worth more than £419,000 and who are effectively asset rich but cash poor. The family home may be worth significantly in excess of £419,000 but it can be difficult and expensive to release equity from the property. At the same time, their disposable income and cash savings may not be sufficient to meet their share of the care costs. Once their savings and assets, other than their home, have been spent down to £25,000, these homeowners will be able to apply for an interest-bearing loan secured against the value of the property to help fund their standard care costs up to the care costs cap of £50,000 and also the co-payment. The loan can cover the minimum co-payment or a co-payment at a higher value if they so wish, allowing them to negotiate their own care placement at a care home of their choice. It is important to stress that individuals in higher value properties do not, and I stress “not”, have to spend down to £419,000 to benefit from the scheme. In fact, it is likely that an individual will reach the £50,000 care costs cap first. In that case, they will only be continuing with the loan if their income is insufficient to meet their co-payment. If a property is valued a little above the asset disregard and the point is reached where the drawdown against the loan means that their net assets fall to £419,000, the homeowner will be able to apply for means-tested assistance with any remaining standard care costs and the minimum co-payment of £300 a week which they are not able to afford from their income. If necessary, the loan can be extended to continue to support any higher co-payments agreed with the care home. The asset disregard means

that everyone, homeowner and non-homeowner, will retain at least £419,000 either in their property or in other assets unless they have chosen a care home with a higher level of facilities and wish to continue the loan to help fund their chosen care arrangements. In all cases, the loan will be payable when the property next changes hands. Interest at the Bank of England base rate plus a half per cent will be charged on the loan. To facilitate the loan that I have mentioned, a new type of legal hypothec, to be called a Social Security Hypothec, is proposed which will mean a loan can be created and secured against the value of immovable property. The law creating this new legal hypothec is set out in proposition 317/2013. The loan has the effect that those who are cash poor but property rich do not have to sell their family home to meet their care costs. Repayment of such sums will be sought by the department when the property next changes hands. In particular, if an individual is in care and their partner remains living in the property, the loan will not be due for repayment until the partner moves out of the property or the property is sold.

[14:45]

The Social Security Hypothec will have a very simple registration process. There will be no need to attend the Royal Court to acknowledge the debt and there are no fees for arranging the borrowing. Once recorded in the public register, the value of the outstanding debt increases as the claimant continues to receive long-term care. The hypothec covers property that is owned individually or jointly by a claimant and their partner. People who own a share-transfer property will also be able to borrow from the Long-Term Care Fund via a security interest agreement in respect of the shares in the company which owns the property. To ensure that people make a fair contribution towards their care costs, the new scheme is designed to reduce opportunities for individuals to arrange their affairs in order to maximise the benefits that they will receive while minimising the level of their own contributions. This behaviour, known as divesting of assets, places great pressure on the fund and is unfair to other members of our community. We will take account of any assets disposals below market value within the last 10 years. In addition, a transaction at any time in which the owner of a property transferred ownership but retained life enjoyment of the property will be treated as divesting. In both cases, the claimants will be treated as if they still owned the assets or the property. Continuing with the theme of fairness that informs my proposals, this is of particular relevance when considering the way that the Health and Social Services Department is constrained in the way it can currently charge for the long-term care services it arranges or administers. At the moment, people who access high-level nursing care through the Health and Social Services Department are only required to pay a fixed weekly charge of £474. It means that those placed by the Health and Social Services Department with the highest level of care need pay less than people in the lowest level of residential care. Proposition P.140/2013 proposes a new law, the Long-Term Care (Health and Social Services Charges) (Jersey) Law, to remedy this situation and to allow the Health and Social Services Department to levy fees which will be set in line with the long-term care benefit rates and the minimum co-payment rate of £300. Everyone already in care at the end of June 2014 under a Health and Social Services Department placement will continue under their current arrangement. I would like to reassure Members that while the Health and Social Services Department will, from 1st July next year, be able to levy fees for all long-term care beds, it does not mean that they will suddenly have a large cash windfall. In 2014 and 2015, any extra income the Health and Social Services Department receives will be transferred into the Long-Term Care Fund. From 2016, the Health and Social Services Department budget, unfortunately for the Minister who I am looking at, in the next Medium-Term Financial Plan will be adjusted and reduced to take account of this higher income. Proposition P.136/2013 sets out the residency requirements for eligibility to long-term care benefit. To be covered by the scheme, individuals have to have been ordinarily resident in Jersey either for 10 years continuously immediately before applying or for 10 years continuously as an adult in the past and for another year immediately before applying. Applicants below the age of 28 will need to

have been ordinarily resident continuously in Jersey for a period of 10 years at any age. This will allow a local young person with care needs to apply for the new scheme as soon as they reach the age of 18. It also covers young adults under 28 who might have a serious accident or illness that might leave them needing long-term care for the rest of their life. One of the most important features of the proposed Long-Term Care Scheme is the ability to fund packages of high-level care in people's homes. I must stress that this is not about funding all care of the individual in the home. The scheme will only fund domiciliary care where an individual's care needs are assessed as being such that they would otherwise qualify for entry into a care home. Existing arrangements for people receiving lower levels of care at home will continue as normal and are unaffected by the proposed changes. People receiving a care package at home will, like those in a care home, have to accrue the standard care costs towards the £50,000 care costs cap before entitlement to the universal benefit. They can also be supported through means-tested assistance and property bonds. They will not need to make the minimum co-payment of £300 a week but they will be expected to meet their normal living costs. There is also an incentive for people to receive a package of care in their own home. For some, the costs of the care package will be less than the standard care costs for their level of care but their contribution towards the capped amount will still accumulate based on the value of the applicable standard care costs. This means that the total amount paid by many individuals receiving care at home will be less than the amount paid by those with the same care needs and the same level of income and assets who receive care in a care home. These new funding arrangements will complement efforts being made by the Health and Social Services Department to provide more services in the community and to give people choice and the ability to get the right care from the right person at the right time. Research tells us that given the choice, many people would prefer to stay in their own home for as long as possible. The new access to approved homecare packages under this scheme should be seen as complementing and not replacing the essential contribution made by unpaid family carers. In anticipation of the growing demands for domiciliary care and in advance of the new Regulation of Care Law, which will regulate domiciliary care providers, the Health and Social Services Department will work with existing suppliers using service-level agreements to create a robust system for the approval and monitoring of community care providers. From 1st January 2015, a new long-term care contribution charge will be collected from Jersey residents with income high enough to pay income tax. This includes both working-age adults and pensioners. There will be no contribution from employers. Liability for the long-term care contribution will be calculated using income tax liability based on taxable income and take into account income tax allowances and marginal relief. This will mean that for most contributors; just as they pay an effective tax rate of less than 20 per cent assessed against their gross income, their effective long-term care contribution rate will be less than the headline long-term care contribution rate. So the long-term care contribution will have a broadly progressive effect, which means that individuals with higher total incomes will pay proportionately more than those with lower incomes. Unlike income tax, an upper-income limit will apply when calculating the long-term care contributions. Long-term care liability for individuals with a gross income above the Social Security upper-earnings limit of £152,232 will be capped. We do, of course, have an amendment to discuss on that later. The contribution rate will commence in 2015 at a 0.5 per cent rising to 1 per cent in 2016. However, for most contributors, the effective long-term care contribution rate will be less than a 0.5 or 1 per cent. For example, someone with an effective tax rate of 10 per cent will pay a long-term care effective contribution rate of 0.25 per cent in year one rising to a 0.5 per cent in the following year. My intention is to hold the main long-term care rate at 1 per cent for at least 3 years but, of course, this will depend on the demand for the new benefit. The contribution rate is forecasted to increase to 2.7 per cent by 2044. To reduce the cost of administration, the Taxes Office will collect the contributions using the existing I.T.I.S. and direct billing systems. The Taxes Office will transfer the long-term care contributions to the Social Security Department on a monthly basis. The legal changes necessary to

create the long-term care contribution are included in the Social Security Regulations set out in P.138/2013. These Regulations make changes to the Social Security Law and the Income Tax Law. A new type of contribution, the long-term care contribution, is added to the Social Security Law and the liability to pay the long-term care contribution and the rate of that contribution are set out. At the same time, the collection process for the new contribution is described in the Income Tax Law to allow the joint collection of income tax liability and long-term care liability by the Taxes Office, in particular with respect to the use of the existing I.T.I.S. and direct billing systems. If approved today, or tomorrow, these Regulations will come into force in 2 phases, most from 1st July 2014 to allow the Comptroller of Income Tax to send combined, effective rate notices to employees in the autumn of 2014, prior to the introduction of the contribution liability on 1st January 2015. The remainder of the Regulations allow contributions to be collected from the self-employed and pensioners and will take effect from 1st January 2015. While the Regulations set out in P.138/2013 would deliver most of the legal changes necessary to create the long-term care contribution, proposition P.139/2013 that I will also be asking Members to consider in due course, introduces a surcharge mechanism for the long-term care contributions. This is in line with the existing surcharge mechanism imposed on late payments of income tax liability. The efficient joint collection of income tax liability and long-term care contribution liability is facilitated by a single approach in as many operational areas as possible. Finally, I want to talk about the State's contribution to the Long-Term Care Fund which is the subject of an amendment by Senator Breckon. The Regulations in P.140/2013 set out how much the States will contribute into the Long-Term Care Fund from 2016. More detail has been provided to Members in the addendum that I used on 3rd December. One of the primary aims of the new Long-Term Care Scheme is to reduce pressure on tax-funded budgets as the number of older people needing care increases in the coming years. From 2016, a single States contribution into the Long-Term Care Fund will replace the majority of current long-term care costs included in the Health and Social Services Department and the Social Security Department budgets. Transfers to the Long-Term Care Fund in 2014 will be used in the calculation of the States contribution for 2016. It is estimated that the Health and Social Services Department will allocate £4.7 million into the fund in 2014 and £9.8 million in 2015. The Social Security Department will retain 10 per cent of their budget for Income Support residential care meaning that an estimated £8.7 million will be allocated into the Long-Term Care Fund in 2014 and £18.1 million in 2015. This estimated total contribution of £27.9 million will be maintained in real terms with the amount adjusted in line with the change in the March retail price index. The key point is that as care costs are expected to increase faster than R.P.I., the Long-Term Care Fund will bear these additional costs in future years, removing the pressure on tax-funded budgets to meet this growing expenditure. Until the long-term care contribution is set at 1 per cent in 2016, additional transfers into the Long-Term Care Fund will be needed to ensure that the Long-Term Care Scheme can operate. These funds will be provided from underspends in my department, as the level of provision in the Medium-Term Financial Plan for the costs of the recession are expected to be lower than anticipated and I am grateful to the Minister for Treasury and Resources for helping to organise this. The financial parameters of the Long-Term Care Scheme have been set to ensure that overall cost is one that can be sustained over the long-term. Benefit levels will be reviewed on an annual basis against relevant indices. An actual review will be carried out after December 2015 and every 3 years thereafter to examine the long-term viability of the Long-Term Care Fund and to guide decisions regarding any increases required in the contribution rate.

[15:00]

I suspect that some Members may be concerned about the future increase in the cost of the scheme. I would like to point out that there are a number of levers that will allow us to take action should the need arise. We can adjust the income coming into the scheme by increasing the long-term care contribution rate or the States contribution. Expenditure from the scheme can be controlled by

adjusting one or more of the following: the level of the co-payment, the level of the benefit rates, the asset disregard, care costs cap and the mean-testing rules. There is plenty of scope to amend the scheme should it prove necessary in the future. Of course I hope this will not be necessary. My department has done an extremely thorough job in researching and forecasting costs in order to put together a plan that we can be reasonably confident will stand the test of time. So in summing up, I would suggest that there are no easy solutions when it comes to funding the care costs of our ageing population. Although more people are living longer and healthier lives, unfortunately one in 4 of us are likely to need long-term care in our twilight years. The current system for funding long-term care is generally recognised as no longer fit for purpose. In fact, many would go further and say it is simply unfair. What is certainly clear is that the high costs of long-term care cause many Islanders and their families a great deal of uncertainty and worry as a loved one moves into care. This new Long-Term Care Scheme is designed so that those who do not need care will share the costs of those who do. Under my proposals, the amount many people will have to pay out of their savings when they need long-term care will be much less than under current arrangements and at least £419,000 of assets will always be protected. Today we have the opportunity to agree a sensible way forward for Jersey that offers Islanders a Long-Term Care Scheme that is fair, affordable and sustainable. I make the proposition. **[Approval]**

The Deputy Bailiff:

Is the proposition seconded? **[Seconded]**

9.2 Long-Term Care Scheme (P.99/2013): amendment (P.99/2013 Amd.)

The Deputy Bailiff:

We now have an amendment lodged by Deputy Young and I ask the Greffier to read the amendment.

The Greffier of the States:

Page 2. After the words “dated 22nd August 2013” insert the words - “except that in section 1.1 the words ‘They will require the L.T.C. (Long-Term Care) contribution rate to rise over the next 30 years to just under an estimated 3 per cent by 2044.’ shall be deleted and for Section 1.12 there shall be substituted the following section - ‘1.12. The L.T.C. contributions from taxpayers will be based on a scale of percentage contributions relative to individual taxpayers’ total gross income for income tax purposes, taking no account of deductions of income tax allowances and marginal tax relief, with the scale calculated to increase the L.T.C. percentage contribution payable by the taxpayer progressively from a nil contribution at a lower threshold of total gross income rising to the full (headline) L.T.C. contribution percentage rate payable on total gross income at the level of an upper earnings cap.’.”

9.2.1 Deputy J.H. Young:

I begin by apologising to the House if I take a little bit longer than usual. I did not expect to get sciatica and have to have strong medication so I will do my best. I begin by congratulating the Minister on the tremendous efforts he has made in progressing this scheme. He is clearly the expert on Social Security and I have no problem with the Social Security elements of the scheme which he has got right but, as he said, it is a very complex scheme which has been integrated with ... I think it is proposed to be integrated with our income tax system. I submit that in relying on that part of the system and the Treasury, a mistake has been made in relying on the method chosen to calculate the base contributions, contributions which will affect all employees and all pensioners. Everybody in the future will pay these contributions for life. Originally the concept of the scheme was to be a percentage of Social Security contributions as is done in other places, particularly our sister Island. The notion of a ring-fenced fund to which all those contributions were paid is absolutely

understood and I totally accept and agree that the contributions have to be extended towards those who are retired and therefore not in employment which means for that group; there is no option but to collect those L.T.C. charges from the income tax system. It would, for example, have been possible to have a dual system where contributions from those employed were collected from employees in the usual way and the additional contributions for retired persons and those with unearned income through the taxation system. Where I think the contributory scheme now proposed has gone wrong is the linkage of every contribution to the income tax system. Not only will this mean that it has all the ingredients of introducing a new tax, but for taxpayers and everybody in the Island it will be seen as a tax and has all the negative potential consequences of adverse economic effects which was mentioned by the Fiscal Policy Panel. This was also covered in the Minister's own economic assessment report on this aspect, which unfortunately was not put into the public domain, only very recently, and after the deadline for amendments had been lodged. I think that is a worrying aspect of the procedure to arrive at what is a very long-term decision. This document, the Minister for Social Security's own assessment, highlighted the effects of the current proposal and the Minister for Social Security refers to the contribution to the L.T.C. scheme as based on taxable income. I think it is more correctly to describe the basis as 5 per cent of the net tax payable as assessed by the Income Tax Department. For every taxpayer that pays £100 in income tax, there will be an additional £5 for the L.T.C. tax. I think in making that decision to go with that arrangement, that overlooked the unfairness of the 2-tier tax system that operates at present and it overlooks the distortions and anomalies and unintended effects of that which are repeated in much more detail in full in pages 14 to 20 in that economic impact assessment report of July 2013. I think all Members have had that document after the amendment date passed and I had intended to circulate it but fortunately in Deputy Tadier's amendment, he has reproduced some of the key pages from that report. So if you have Deputy Tadier's third amendment to hand, and I thank Deputy Tadier for this, in the appendix, pages 7 to 12 of his report, he reproduces pages 14 to 20 of the Minister for Social Security's own economic assessment. The Minister for Social Security's response to my amendment which we received very recently continues to refer to the L.T.C. contribution being based on annual income. That is not so. The Minister for Social Security's proposal to base the tax on the net tax payable is calculated after deducting all those allowances which some people get, child allowances, pensions, higher income allowances, single person's allowances, childcare allowances, *et cetera*, and I will not repeat the comments they made about the 2-tier tax system in the Budget last week but I think the documents indicated quite clearly that some of those allowances under our current rules are allowed to marginal taxpayers and others are not allowed to standard rate taxpayers. Generally I think what that means ... so the allowances are really, under the system proposed, the key determinant of how much L.T.C contributions people will pay under the recommended system. Just one example, pensioners have no such allowances and will almost certainly pay the full rate so we have a system where the standard rate taxpayers will pay the full L.T.C. charge which is the 5 per cent on what they pay, which is effectively 1 per cent of their gross income which means they will be paying tax effectively at 21 per cent and, over the lifetime of this scheme, it will rise to around 24 per cent. It is true that the standard rate taxpayers are in a minority. The marginal taxpayers will pay a lower rate of L.T.C. contributions and I think last week in the Budget debate when I published some graphs which, I apologise, I did not get to circulate again but I circulated in the Budget debate, I showed and I demonstrated how it is possible for marginal taxpayers to have the benefit of a lower percentage up to income levels of £190,000, £240,000, while pensioners earning less than half of that already pay standard rate tax and now under this system will pay the full L.T.C. charge. I think this means that we have elements of this solution which is highly regressive. If one looks at the charts on page 9 of Deputy Tadier's amendment, they are the charts that the economic assessment team used. You can see clearly there some of these differences which I think are unfair. For example, household 3 will pay an effective rate of 0.35 per cent on £200,000 of earnings, household 2, 0.9 per cent and so on.

Those are just examples. I think if one examines those graphs, one can clearly see there is really quite a significant difference. But, when one looks at households 2 and 3, one can see that these taxpayers will never reach the full 1 per cent contribution rate even though their earnings can be anything up to £600,000 a year and I think clearly this is a regressive scheme because it is not true to say that the L.T.C. charge is going to be based on income. The report itself says that for standard rate taxpayers, this will be proportional and for income above £150,000, the change will be regressive and for marginal rate taxpayers, it is progressive.

[15:15]

So we have a real mixed bag here. Looking at the numbers here, those that will pay under a progressive scheme, that means the more you earn the more you pay, I think it is generally thought that a sound tax scheme is progressive, one that the public accept, 39,600-odd taxpayers will fall into that category, so it is the majority. But equally there are 7,293 standard rate taxpayers who will not be getting a progressive tax structure and there are 810, a small number agreed, with verified earnings who will have a highly regressive tax percentage so the more they earn, the less percentage they pay. I do not think it is good enough that when we are introducing such an important and long-term scheme as this, that 19 per cent of the taxpayers will be treated less than fairly than the majority. So the end result of this, if one looks at the scheme as a whole, in the figure 2.8, which is in page 12 of Deputy Tadier's amendment, which was again taken from the Minister for Social Security's own assessment, one can see on that that figure 2.8 quite clearly how the average effective rate ... and that chart there is drawn on the basis of averages. So that means it takes the taxpayers as a whole in those income groups and calculates the averages, and you can see there that some groups do not get up to the 1 per cent. It is also a very odd-shaped graph and I think this illustrates ... and that is all taxpayers, it is the whole lot, so that is where the scheme, if you like, ends up under paragraph 2.8. As the tax report of the Minister for Treasury and Resources in the Budget said, there are winners and losers and if you want to check that out, page 11 of the Minister for Treasury and Resources' system, and I really worry that we are introducing a system here which is almost like playing roulette with people's financial affairs for life as to whether you end up in the winners or losers. What we will end up with there is that one thinks for sure the standard rate taxpayers will pay the full 1 per cent charge, which will be an additional 5 per cent on what they are already paying for life so I question: is this equitable? I asked myself what alternative is there here because the Minister for Social Security has produced an excellent scheme in every other aspect apart from the mechanics of assessing the charges and the way it is distributed between members of our population, and I think figure 2.8 gave me the answer. These are averages. What that shows is that a rising scale of a charge for L.T.C. against gross income, simple calculation against what people earn, what people receive, whether it is earned or unearned, it does not matter, whether it is pensions or job, and I think it would be possible to design a simple smooth curve, not a flat one as we have got there, and that scale of contribution ... and you can see there it could and I think there is a strong argument that it should increase over the £150,000 ceiling cap that has been included in the proposal because, as you can see, on average, people will not reach the 1 per cent contribution. In the Minister for Social Security's comments, he does say that it is very daunting to construct such a scale based on £10,000 income steps. It does not have to be. It can be simplified but the principles of having that fair distribution should be adopted. Now, my amendment, what does my amendment do? How did I come up with what was a solution and I am just going to read, if I may, if I can find it my amendment here. I apologise if I cannot find it. One of the things, it slows you down these medications. The first part of the preamble is really only a technicality because I was advised that if I proposed the amendment then the 3 per cent would have to be changed in some way. The main point is the substitution of paragraph 1.12 and I am suggesting here that the long-term care contributions from taxpayers - that includes pensioners - be based on a scale of percentage contributions relative to individual taxpayers' total gross income for

income tax purposes, taking no account of deductions of income tax allowances and marginal tax relief with the scale calculated to increase the L.T.C. parentage contribution payable by the taxpayer progressively, from a nil contribution at a lower threshold of total gross income rising to the full headline L.T.C. contribution parentage rate payable on total gross income at the level of the upper earnings cap. I did not propose what that cap should be. I did not propose, quite deliberately, what the cut-off point should be where taxpayers should not pay. Clearly, people who have low incomes should not pay as is proposed but I left that. I believe it would be possible for the Minister for Social Security to take the model that Oxera produced, and produce remodelled figures basing the tax on gross income and I think it is an easy matter. I read through the Minister for Social Security's comments and I was hoping to find well, where have I got my thinking wrong but I cannot find anything in there that challenges what I am arguing. What it says, it is a matter of judgment whether our current tax system is fair or not. All I could point to is the own report of the Minister for Treasury and Resources that suggests that there is a need for reform and therefore there will ... to have a decision to base a major new system on an income tax system that is going to be changed, troubles me immensely and it would be possible to interface these 2 systems. The Minister for Social Security also says that it is going to be difficult to do that system but here we are talking about 2 computer systems. The figures needed are in both and I think surely it is possible to communicate between them and have interfaces designed. Social Security: the Minister for Social Security also flags up the snag about taxpayers being joint whereas L.T.C. beneficiaries are, of course, individuals, but under my proposals the complications of shared allowances would not be necessary and fall away. Also where you have got the need to split income, for example between partners, divorcing partners, then there could be agreement or, in the absence of agreement, a 50/50 split. The other complication I was advised why what I had suggested was impractical was because it will require extra staff to administer. I put that in my report, that I accept that there is an issue there, but I was not given the information on how many extra staff would be needed. I was looking forward to the Minister for Social Security's comments to see how many will be needed, what are the facts, but I cannot see them. What it says now is that I have not provided the evidence. I think that is just too much to expect a Back-Bench Member to be able to effectively come to those conclusions without the full access to the system. The Minister for Social Security also argues that my amendment will cause delay but, of course, these changes are not going to be introduced until 2015. So, surely we have a year to check this out and get it right. The other thing I put in my report is that I really believe that a properly designed scale would not only be fairer but also would increase the amount of income that the Minister for Social Security would receive. It certainly would not be less because the logic is that if you go on that paragraph 2.8 and you construct a scale on that chart, that is the £16 million, the current figures. So I really do not think that there would be any less. My belief is that there would be more. I am not sure but I was thinking that today I feel like this is a really important matter, massive importance for everybody. I am 100 per cent behind the purpose. My concern is about the means and the distribution between the taxpayers who are paying for it. I feel a bit like King Canute, fighting the tide, or David and Goliath and almost like the boy in the Emperor's New Clothes who says: "Please have a look." I think the L.T.C. proposal, as I have written in my notes, has no clothes; that is unfair. It has an area that is really not right. Of course the Minister for Social Security has gone ahead and produced amendments to the draft laws. We have a whole pile of draft laws today to give effect to this proposal. He has drafted those amendments, they are not mine. Mine are viewed as clearly not practical and I think that is unfair. Here we have a massive volume of legislation which will follow this debate and I think there is a process that is really unfair to Members and the States that we are presented, effectively, with what almost could be seen as a *fait accompli*. I would submit that my proposal is simple. I do not think the legislation to change to it would be complex, in fact, I believe that most of the complexity of this legislation is because of the convoluted and complexities that exist in our marginal standard rate tax systems. If it was a simple scale, it could almost be a

schedule in the law. The Minister for Social Security says he is going to reform the tax. I would suggest that we should get it right from the start and I urge Members, please, to consider my simple amendment to introduce a progressive scale. Full marks to the Scrutiny Panel but I think the Scrutiny Panel also have said in here, and I have to flag it up, page 37, that only the best-off, i.e. income, will pay the full levy. That is not true as I hope I have demonstrated. I ask, please Minister for Social Security, please consider it possible that you may be wrong here and that in setting this contribution in this way, you have made a mistake and I ask Members to support it to try and put it right. You will get more money. I believe it will introduce fairness and equity into the system and make the arrangements universally acceptable. Design the scale, adjust the law. It is common sense. No winners and losers. I think a fair tax... we would make the tax fair. I am not here putting this forward to wreck the L.T.C. scheme. I believe it is possible for the L.T.C. scheme to go ahead but for this particular part to be amended and there is time to improve it before the charges are introduced. The Minister for Social Security says he needs the certainty. If we vote the whole thing through with an amendment, he has the certainty. I am not standing here saying that people should not pay tax, but please, I ask for the support for the amendment to have a fairer basis. I make my amendment.

The Deputy Bailiff:

Is the amendment seconded? **[Seconded]** Does any Member wish to speak? Minister?

9.2.2 Senator F. du H. Le Gresley:

I am sorry that Deputy Young feels he has been a bit hard-done by, particularly when he commented at the end that we had not produced any amendments to the legislation to take account of his proposals.

[15:30]

The reality is that his proposals would pull a halt to the development of the scheme until we had considered how we could receive the income that is needed to pay out the benefits. Although he does not call it a wrecking proposition or amendment, unfortunately it would delay things considerably. This amendment is not a simple request to adjust just one element of the proposals. It strikes at the heart of the scheme and if approved will almost undoubtedly lead to a delay in the implementation of the long-term care benefit. Deputy Young is requesting that a new type of contribution liability should be set up specifically for long-term care contributions. He proposes that there would be a scale of percentage contributions relative to taxpayers' gross income running from an unspecified lower threshold up to the upper earnings limit. In fact, I think I heard today that the Deputy would like to go beyond the upper earnings limit to something like £625,000, I think was the figure he mentioned. As my written comment explains, this would be a major task and it is extremely unlikely that we could bring the necessary regulations back to the States before July of next year when the new benefit is due to become available. For this reason alone, I will be opposing the amendment. I am committed to maintaining the July 2014 date. The general public and particularly those people currently in care homes have been waiting for this new scheme for many years and I am determined that it should not suffer any further delays. The long-term care proposals that I set out are based on a careful balance between collecting contributions into the Long-Term Care Fund and paying benefits out of it. The focus is a standalone structure and it must have sufficient income to cover its liabilities. As I said when I started, I am not prepared to start paying benefits out of the fund if there is any doubt at all as to the way in which contributions will be collected into the fund. Deputy Young has raised a number of issues in respect of the current income tax system in his speech and also in his report. We know that the Minister for Treasury and Resources has already begun a thorough review of income tax and I agree with the Deputy that there are changes needed. Two reports have been published recently and the Minister for Treasury

and Resources has committed to a further report next year. Given that this work is already underway, I am not persuaded by Deputy Young's argument that the long-term care contribution should be set up independently of the existing system of tax allowances and marginal rates. I would like to reassure Members that there is no complex new legislation to set up the long-term care contribution rate. I think Deputy Young, in essence, felt that the long-term care contribution scheme was complex and we should not be dealing with it lightly. Most of the content of the Social Security Regulations that we will hopefully be debating this later in this session, relates to the use of the I.T.I.S. system to collect long-term care contributions. The long-term care contribution liability itself is created in the proposed new schedule to the Social Security Law. In less than 2 pages of regulations, the basis of the long-term care liability is defined, an income limit is set and the percentage rate is established. Further changes to any income tax allowances or thresholds are automatically reflected in the proposed definition of the long-term care contribution. So, for example, States Members will recall last week that we agreed to change the rate of marginal tax from 27 per cent to 26 per cent. There will be no need to make any amendment to the Social Security Regulations in P.138, which were published before that decision was taken. When the long-term care contribution rate is collected for the first time in 2015, it will automatically use the marginal rate that is applicable at that time and any threshold limits and allowances. Using the existing features of the income tax system to create the long-term care contribution liability will not make any difference to the review of the income tax system. If anything, requiring tax officials, as Deputy Young would wish, to assist the Social Security Department to design a separate sliding scale for long-term care contribution will create a delay in the ongoing review of income tax. As Deputy Young has said a number of times, his proposal would create a fairer system of liability but I am also determined that the way we collect long-term care contributions should be as fair as possible. When I first became Minister for Social Security, I asked my officers to investigate options for long-term care contributions as I considered the original proposal to use earnings-related Social Security contributions to be unfair on lower earners. The current proposal is the culmination of considerable debate and discussion and represents a much fairer system than that proposed in 2011. At the same time, it is straightforward for contributors to understand and staff to administer. I do not believe that Deputy Young's outlined proposal is intrinsically fairer or less fair than my proposal; it is just different. Some contributors will be better off and others could be worse off. I do believe that creating a separate calculation just for long-term care is complicated and will create confusion. Given the ongoing review of the income tax system, it also seems unnecessary. I do not believe that there are any substantive issues in using the current set of income tax allowances in this regard to determine long-term care liability. As and when the income tax system is revised, the long-term care contribution liability will automatically be adjusted. The income tax system, as I have said a number of times, is already under review and setting up a new standalone calculation for long-term care contributions would do nothing to facilitate that review. Designing a new long-term care liability at this very late stage puts the whole long-term care timetable at serious risk and I will do everything in my power to introduce long-term care as planned in July 2014. I ask Members to oppose this amendment.

9.2.3 The Deputy of St. Martin:

I have not prepared a speech on this but I feel I would like to say something. Could I first praise the Minister for Social Services, along with Deputy Young, for all his team's work and the enormous amount of work that has gone into this proposal. Like Deputy Young I would wish to give it my wholehearted support. I have to say though, over the weekend I have spent much time looking over Deputy Young's amendment and I have to'd and fro'd between one side and the other. But the more I read the Minister for Social Security's response to the amendment, the more ... concerned probably is not the word to use but I did become slightly concerned. I think the overriding impression I got was one of a cannot be done type response and that alerted me because

I like people who can get things done and, to me, the Minister for Social Security is a man who gets things done. There are just a couple of things I would like to pull out of the Minister for Social Security's response. He says proper research is needed if Deputy Young's amendment is to go forward and that there is no justification for seeking to create a new standalone system. He also says that Deputy Young's amendment will be complex to develop and administer. The first thing I would say to this, I would hope that the Minister for Social Security and his team had done all the proper research they needed before they came to the House with these proposals, because they are, as Deputy Young says, very long-term and it will have huge financial implications on people through the decades to come. One of the reasons why I think I am going to support Deputy Young is that there has been much play of the complexity of trying to change and I think, in this new digital age that we live in, I would be almost certain that you could get computers to do these calculations which the Minister for Social Security is saying are complicated and going to cause confusion. It has been demonstrated to me time and time again increasingly, how simple computers find the most complex things. I cannot see for myself why asking a computer to read a line on your income tax return could be that bad. I have to share Deputy Young's reasoning that this is a hugely important piece of legislation we are looking at today and I want to be 100 per cent sure in my mind that we are being fair and equitable to everybody so although I am not 100 per cent committed - I still might change my mind - I am minded to support this amendment.

9.2.4 Deputy M.R. Higgins:

Just very briefly because I have not prepared a speech on this but I think that listening to the Minister for Social Security, who knows I have respect for him, although I have said that twice now and voted against him, the truth of the matter is, I think he protests too much. The Minister doth protest too much. What Deputy Young has put forward is a far more equitable scheme for funding this and I do not believe, as the Deputy for St. Martin was saying, that it is not within the capability of the department. I also do not believe it will cause a delay in the Long-Term Care Scheme being introduced. I am fully in favour of the Long-Term Care Scheme, it is something that we have needed for a long time but I do dislike it when Back-Benchers come up with propositions and immediately it becomes impossible to do. Too many difficulties and it is almost as if "Well, in fact I have a feeling that because we did not think about it or we did not like it, we are not going to agree with what you are putting forward." So I shall be supporting Deputy Young completely on this particular amendment.

9.2.5 Senator I.J. Gorst:

Not many weeks ago, I am not sure whether it was one, 2, 3 or 4, Members in this Assembly were critical of the Minister for Social Security and the Minister for Health and Social Services because in the opinion of some Members, they have not worked quickly enough and speedily enough to develop the new structure of primary care. I stood in this Assembly and said that we accepted that chastisement. We had not been able to move forward those issues in the timely manner that we had hoped and that perhaps we should have been more careful about committing to something that would take longer and was more challenging than we expected. I said that even where we are today with that particular proposal, it remained challenging. This afternoon, the Minister for Social Security in his response has been completely open with this Assembly. He has been straightforward. He has indicated that if Members wish to delay the Long-Term Care Scheme - and I do not support its delay, it has taken a long time anyway - but if Members wish to delay then vote for Deputy Young's amendment. It is quite straightforward. If Members do not wish to see it brought in in the timescale and I hear some Members saying "scaremongering." It is not scaremongering, it is being completely open and honest with the amount of work that would need to be undertaken to deliver what Deputy Young is proposing. We cannot have it both ways. Either we want it to be brought in on the timescale that the Minister for Social Security is saying or we opt

for Deputy Young's proposition and it will not be delivered. We cannot have it any other way. That is the choice before this Assembly today and Members can say it is scaremongering, they can call the Minister for Social Security and myself names, we are in politics so we are used to that. We are just being straightforward, we are being honest with the Assembly, that is what will happen and it is for Members to choose. I support the Minister for Social Security in his commitment to bringing forward this Long-Term Care Scheme in the timescale that he has outlined, which the Council of Ministers supported and I hope that Members will do the same. There are people in our community that want the certainty and they want to know that they are not going to be met with catastrophic care costs if they need them and for the future. I believe that we have an obligation to approve what is before us today because it has already taken a number of years to get to this point.

9.2.6 Senator L.J. Farnham:

I wanted to align myself with the comments of the Deputy of St. Martin because I came into the debate minded to support the line of the Minister for Social Security. I am still minded to support that but I would like Deputy Young, if he can when summing up, to explain because I have not quite grasped all of the intricacies of the amendment. This has to be fair. I also appreciate that the Chief Minister has talked about the timescale and, yes, I agree with that but the Long-Term Care Scheme, I think, takes a bit longer to get it right then that might be time wisely invested. So if the Deputy could just explain how his amendment would make things fairer. Thank you.

[15:45]

9.2.7 Deputy M. Tadier:

Something that confuses me about the timeline is that of course the long-term care package will take effect from 2014 but the funding will not take place until 2015, if I have understood that correctly. So there is already an inbuilt delay there which would mean, I would have thought, 2015 before the charging mechanism comes in is very sufficient time by which to decide the funding mechanism that we want to use. As much as Ministers carry on about how important it is and that this must not be delayed, the principle of the Long-Term Care Scheme, as far as I know, is not up for debate. It is seen to be the correct thing to do although of course we will move on to that. So that is not up for debate and something that does concern me is the selective arguments that seem to be used. Although we are not debating my amendment and of course, if we adopt this, we will not need to debate my amendment, which may mean a bird in the hand is worth 2 in the bush and all that. We are told that when it comes to raising the cap or lifting the cap completely or putting a higher cap on, the reason the cap is there is because currently Social Security contributions are capped. Of course, when it comes to Deputy Young's amendment, Social Security does not take into account allowances. If we are comparing like-for-like and saying that this new tax - which it is but let us pretend it is a contribution and not a tax - that this new contribution does not mirror the current arrangements for Social Security, which levies the contribution on all of your income. So, Minister for Social Security, you cannot have it all ways, I would suggest. He cannot say: "We are trying to mirror the current arrangements for Social Security", because we are creating a new contribution here, it is quite right that we do thoroughly think about what the alternatives are to that. I do not think this is rocket science. I do perhaps need a little bit of convincing in the summing up from Deputy Young that this is more progressive because presumably removing allowances and not taking them into account seems to me as a gut feeling to be regressive. The allowances are what makes our income tax system progressive, at least at the lower levels. So I would like to hear contributions from the Deputy on that. Otherwise, I am also open-minded and I think heavy weather is being made of this and it is imperative that we get the funding mechanism correct. That is why I think we have seen these amendments because nobody is saying that we do not need the Long-Term Care Scheme but who pays and how they pay is absolutely essential that we get this right from the very beginning.

9.2.8 The Deputy of St. Ouen:

Just a couple of comments. First of all, I think it is wrong of the Chief Minister and the Minister for Social Security to tackle and target Deputy Young and suggest that somehow his proposition will delay the scheme. The scheme has already been delayed. It was expected in 2012 and the delay has been the responsibility of the Minister for Social Security and others because they have chosen to review the funding. Now we have a Deputy who is saying: "Well, I challenge the choice that the Social Security Department has made", the same as he challenged the previous Minister for Social Security's decision that the option was the right one. Deputy Young also raises an important point. He said the system that we have and the taxation and this long-term care charge effect different people in different ways. Very kindly, just prior to the Budget debate, I think it was the Corporate Services Scrutiny Panel, was provided with the 2014 income tax budget measures and the long-term care charge because we wanted to understand what the implications are. We have been told and we have had Members say: "What a fantastic Budget we have had. We have to give money back to the public and this is going to be of real benefit to 84 per cent of taxpayers." Well, it is not quite like that. If I can just give you some examples. If you are single with no children, the tax saving so that everyone is agreed, is 27 to 26, puts £124 back in that person's pocket in 2015 if they are paying a year in arrears, which 75 per cent of people are. So you say that is not bad but that is not taking into account obviously the impôts duties that have been introduced but forgetting about that for a minute. The long-term care charge that kicks in in January 2015 at 0.5 per cent, will cost £42 for that single person, which will increase to 1 per cent in 2016, which comes to £84. So the single person with no children in 2016, his overall position, if he is lucky, is £40 and obviously because of the impôts duties, that is all disappeared mostly, so he is no better off. In fact, chances are, by the time it gets to 2016, he could be worse off. If you are married with 2 children and your wife is not working, earning £36,000 ... sorry, that single person with no children was only earning £20,500 a year. If you are married with 2 children, wife is not working, with an income of £36,000, initially they would be better off by £160 because of the changes in the marginal tax relief, but by the time the full rate comes in in 2016, it reduces to a benefit or perhaps money in the pocket of £62, bearing in mind the impôts duties, that is gone. That is gone. However, and it is fine to be selective because obviously the budget is a package and the package did help certain people. People at university and those people do benefit substantially, especially those that are earning £70,000, £140,000 and even the married person with 2 children with one child at university with £40,000, they do have and they will see some reasonable savings. So it is not benefiting everybody. The long-term care charge is not as equitable and fair as it might be. Yes, in simple terms, at 1 per cent, it is £5 for every £100 tax. That is 5 per cent extra of the tax that you are currently paying. Not all this 1 per cent, half a pound, 75 per cent, that is the rule of thumb. Then you have to ask yourself, what happened to a decision in 2006? Maybe the Constables will comment either now or later, about the introduction of the Island-wide rate. The decision then was taken that the Parishes would transfer their contribution for welfare and residential care to the States, however, homeowners, owner occupiers, both domestic and businesses, would contribute. However, it was agreed it would be set to R.P.I. What is the result? Today, homeowner occupiers, contribute a relatively small amount per quarter to the Island-wide rate, businesses contributed almost double per quarter. Collectively, it generates about £11.7 million. So individuals already pay for residential care. We are also paying for the rest of the residential care that the Minister for Social Security and both the Social Security Department and the Health and Social Services Department provide because, guess what, we all pay tax. So now not only have we got an Island-wide rate which we are all contributing for, not only do we have 20 Means 20, or marginal tax relief of now 26 per cent, not only are we contributing through Social Security, Health Insurance Fund - and by the way, let us not forget about 5 per cent G.S.T. (Goods and Services Tax) - we are now having another charge introduced. I have to ask: why? Why a new charge? Where is the evidence to show that for argument's sake we cannot utilise or

improve on the Island-wide rate? Where is the evidence? I come back to businesses contributing towards that cost. Do you see businesses featured in this particular proposal? Not at all. I am talking of non-local businesses as well as local. Any business, any company that owns a property, pays their rates by law. But here again it is the individual, it is the taxpayer, that is asked to take up and pick up all of the costs. Another lesson that needs to be learnt, the overall cost was transferred from the Parishes to Government back in 2006 at a rate and it has been inflated ever since by R.P.I. The figure they say is about £11.7 million as of today: 2013. The figure that has been quoted, and I think is mentioned in P.99, the proposition by the Minister for Social Security, which is the contribution made by Social Security is £16 million. Hey-ho, that is just over £4 million difference, which currently this Government is picking up. But what are they proposing? They are proposing to pass that back to the individual because they are wanting to set the States contribution to R.P.I. Why? Well I have not got a clue, to be honest, because the States funding is the taxpayer. It is not their money, it is ours. It is the public's. What are we doing protecting one contribution and adding to another? Where is the real gain? I fully appreciate that we need to protect people in long-term care. But when you start looking at and analysing the actual figures and the funding mechanism that is proposed, plus the cap and everything else - and I am not going to touch on that, I will leave it to another speech because I know you are going to tell me off in a minute - it is not a generous scheme. I really do question whether or not what is in front of us, or indeed even Deputy Young's proposal, will meet the needs of our community both now and in the future. Ultimately, obviously, it is Members that will decide. Thank you.

9.2.9 Deputy R.G. Le Hérisier:

I anticipated this might happen, that all the sins of the Revenue might fall upon the shoulders of the Minister for Social Security, because apparently for a matter of administrative convenience, he chose to use the income tax system. But according to Deputy Reed it seems he is now to blame for the faults of every revenue-raising measure that have been put before this House in the last 10 years, which is a little unfair. I think what that has done, it has taken away from the fact that this is an insurance scheme. For example, when the Deputy of St. Ouen mentioned the removal of Parish support for welfare, of course, it did not morph itself into an insurance scheme. As I understand it, the intention of the Island-wide rate was simply to replace that contribution. It was not to introduce an insurance scheme and that is a very financially different animal than the animal that was around at the time, which was simply a way of plugging a revenue gap once the Parishes withdrew from that system. But because we collected it through the tax system, the Minister for Social Security, as I said, is now being accused of all the sins of the tax methods that have been used, or attempted to be used, over the last 10 years. I think it was a wrong move but that is the way he wishes to go, that is the way he wishes to collect. But I think it has to be re-emphasised again that this an insurance scheme with all that implies, i.e. everybody contributes and it deals with needs that arise, often in a random way.

[16:00]

It is an insurance scheme; it is not a tax scheme. That said, if I am to look at the narrow nature of these amendments, I have to say I do prefer Deputy Tadier's in the sense that he does keep exemptions. I cannot quite understand Deputy Young's rationale for removing them and if he could explain that further I would be most obliged. Thank you.

9.2.10 Senator P.F. Routier:

I think Members need to probably try and get clear in their minds what I believe are 2 main issues with regard to this debate. The system that is being proposed by this amendment, is it an appropriate amendment? Secondly, does the amendment have the likelihood of causing perhaps any delay into this long-awaited scheme? Turning first to Deputy Young's proposal, I find that it

adds quite a lot of complexity to what is really a very straightforward and simple-to-understand system which is being proposed by the Minister for Social Security. Because there are a lot of decisions to be made from the Income Tax Department about the amount of money that needs to be collected from each individual contributor, I think possibly also there could be appeals against the decisions of the Income Tax Department on each basis, whereas this system is very straightforward. It is a simple 1 per cent and I think we should endeavour to try and keep it understandable for the public. The second issue is whether this would cause any delay and the effect of it causing any delay. I believe from what is being said by the Minister for Social Security that it may cause some delay. I think Deputy Tadier was suggesting that delay really would not matter because the contributions are not going to start to be made until 2015 and so the scheme could still go ahead on that basis. I think we would be letting down the public quite badly if we agree today to go ahead with a scheme where they did not know how much they were going to be contributing to it. I think it would be unjust really to go forward on that basis. So, on those 2 main things about the uncertainty of what Deputy Young's proposals are, because there is not any clear understanding of what is being proposed and what each member of the public is going to pay, and also the likelihood of it causing delay in trying to change things to what is being suggested, I certainly cannot support this amendment.

9.2.11 Senator S.C. Ferguson:

Very quickly, we are continually told that this is a charge, not a tax, in which case it says, and as the Minister for Social Security has said, in the report that we are basing it on income tax liabilities. But if it is not a tax, why are we basing it on the liabilities and not the gross which is, I think, Deputy Young's point? To follow on from the Deputy of St. Ouen's point, when the long-term charge under this scheme increases to 3 per cent, the only net beneficiaries under the scheme will be a married couple with 2 children, one at university and an income of £40,000 a year, and married pensioners on the full pension of £26,000 a year and everybody else is going to be a net loser. So the whole thing is really a bit skew-whiff. We do have to think carefully because we are adding another charge, it may not be allegedly a tax, on to the ordinary man in the street. I was accosted by a constituent this week who was feeling highly indignant because he reckoned that he now pays something in the order of 37 per cent tax. So are we just loading people up with more and more tax? I do not know. I think that Deputy Young has got a very good idea to simplify the system and I think we must think very carefully about it because every time a Back-Bencher comes up with this idea and says: "Why do we not do it this way? It looks simpler and better" there is always a great waft of opinion from the Ministerial benches which says: "Oh no, it is rubbish. You must do it our way or not at all." We need to think carefully.

9.2.12 Deputy G.P. Southern:

I really must arrange to fit more hours into my day because I missed this one coming through and I have only been looking at it today with my spectacles on that say: "What about the equity? What about the fairness of what is happening?" It was only during the Deputy of St. Ouen's speech where he illustrated exactly how some people can get into 20 per cent full-rate tax very easily and it is very straightforward. If you do not have a mortgage and you are single, you do not have to earn very much and you are whacked-up there; you are in the 20 per cent rate. Whereas some people, and he illustrated it again perfectly clearly, and made crystal clear what had been proposed by Deputy Young, I think, that you can really be a relatively high earner in £100,000 plus and still not be out of marginal relief because you have these exemptions that can build up. Therefore, that clarified for me the simplicity of what is being proposed here and indeed the fairness of what is being proposed here. So we have a tax system, and remember we are told this is not a tax, this is a charge, which compensates individuals for their particular circumstances and produces a fair income tax for a particular household in particular circumstances. Is that a reason, as we are

building in an extra charge, to say we must build it into the system that we have got for tax? I do not think it is. There is absolutely no reason, and certainly not a great deal of complexity, not a great deal of administrative problems attached to it, and certainly no excuse for a delay attached to it to say: "Well the Income Tax Department's starting point is: it knows what you earn. What your income is unearned or earned." So therefore we have a different marker which is fair, if you like, to a different set of people. It is fairer to a different set of people because it is adjusted differently than the income tax system that we have. As far as I can see there is absolutely no reason why we should not use that sort of system. Why? Because it is clearly progressive and it will not take long to explain to people why it is clearly progressive because it builds in, not a single rate, but an increasing rate. The more you earn, the greater proportion you pay and that is progressive taxation. So in as far as it goes, and I take my hat off to Deputy Young: *chapeau, Monsieur*, you have come up with a very straightforward, simple scheme that could be adopted, would not cause a delay, would not cause administrative problems and could be in place just as soon as any other scheme. This mantra that always comes out: "Oh, could not possibly do that, that is going to cause delay." Really? No, I do not believe so: "That is too administratively difficult." No. It is a declaration that everybody earning money with income on this Island makes to the Income Tax Department. There is not a problem with that. It is read on the first line on the income tax statement. Easy; it can be done. I think we ought to be doing it.

9.2.13 Deputy A.K.F. Green:

I just wonder if I see this slightly differently to some. Deputy Le Hérissier said it is an insurance and of course he is right. It is an insurance, it is not a tax. Senator Ferguson was talking about net losers. What we are trying to do here is help people who have worked hard all their lives to provide their own home to be able to secure that home going into the future. Insurance policies are based normally on risk. Okay, this is slightly different, and we have picked up on the income tax to collect it, but it is not a tax. Whether the Minister for Treasury and Resources had reduced some marginal rate down to 26 per cent or not, this charge of some sort would have to come in if we were going to help people get away from the position where they lose everything because one of the parents needs to go into long-term care. I started to tell a story, then got diverted, when we were discussing the Budget and did not come back to it. I am straying into the proposition main but I will come back to the point in a minute. I was talking to somebody in town the other day, an ordinary working family, who have worked very hard to set up a small business which is their home as well. Mother, unfortunately, was taken very poorly and spent 2 years in care. £100,000 that family had to pay and they did it, just. If the father needs to have the same sort of care without this sort of system, they will have to sell the family business. That is what we are trying to prevent. We are trying to come up with a fair system that will support people who have worked hard all their lives and allow them to benefit from the work that they have done. It is an insurance, it is not a tax. I cannot understand why people cannot see that.

9.2.14 Deputy S. Pinel:

This Long-Term Care Scheme has been modelled, re-modelled and modelled again over a period of about 4 years in order to achieve implementation in 2014. The Deputy of St. Martin's comment about a digital age and computing, a line on the tax form, is not the point. The problem is the timeframe. The Minister for Social Security has already said we cannot introduce long-term care without securing definitive funding. This would have to be achieved by 1st July 2014, not 2015 as has been said before, if we were to go ahead with this. We already have one set of rules for income tax, another set of rules for Social Security, and with Deputy Young's amendment this Island will end up with 3 sets of rules resulting in vastly increased confusion in an already complicated piece of legislation. I would ask Members to reject this amendment and allow the Long-Term Care Scheme to be implemented as proposed. Thank you.

The Deputy Bailiff:

Does any other Member wish to speak? I call on Deputy Young to reply.

9.2.15 Deputy J.H. Young:

I thank all Members who have spoken. Picking up the points that speakers made as best I can, the Minister for Social Security spoke about the fact that in the future our income tax system is going to be changed. We know that from the reports and what the Minister for Treasury and Resources told us last week. But I think he omitted to say that that report indicates that even the most optimistic assumption about when that will be enabled would be 2020 onwards. Because bringing the marginal standard rate tax systems into line is certainly something that is going to have to be phased over a very long period of time. Here we are introducing a tax: agreeing the structure in 2013, introducing it for 2014; I believe it is incumbent upon us to go for a system that will work in the longer run.

[16:15]

The Minister has said that he needs sufficient income to guarantee the scheme for financial support for all those people that all of us in the Assembly are trying to help, me included. What I am really puzzled with is that the Minister has already told us that in 2014 he is able to fund that from monies he has left over, saved, I do not know what it is, £30 million or something, already. So I am struggling to think if that money is there and it is already funded, those that will not be paying L.T.C. charge in the future that get that benefit from Income Support, that is already funded, why should it be that if we need to have a re-think on the charging structure that would cause delay? Is it the complexity of law drafting? I am really struggling with that. I think it is the fact that it has been said several times, the Minister for Social Security says he will not go ahead unless he can get, in effect, this basis of charge through. I would urge the Minister for Social Security to re-consider. I do not think if we have those funds available now to take such an inflexible position is necessary or helpful, because we all want to help to have this scheme but for all our lifetimes we are going to be paying these charges. The Minister for Social Security also said that I had not proposed a cap and therefore a cap could be up to £600,000. It could be but I think it is more likely the Minister for Social Security, if this is passed, will look at it and come to a different figure, a lower one. What my submission is showing is that we have people earning on £250,000 on our present tax system that will not be paying the full L.T.C. charge because they pay marginal rate. So, fairness: I think that nothing to me could be simpler than saying: "What you pay is based on what you earn." Simple. It is progressive. All of the reports that we have, I am sorry, I cannot find them to hand now, all the Fiscal Policy Panel reports, all the Treasury reports, all indicate that that is a fundamental principle of taxation. The Minister for Social Security calls what I propose a "standalone system". It is not. It is an integration of something which has been very long overdue, in my view, which is Social Security and Income Tax working together with joint systems, rather than separate boxes. So, no, it is not a standalone system. I am very grateful for the remarks that the Deputy of St. Martin made. I would like to feel that I can persuade him to support it. I can understand the questions he raised. One of the tests to me is that a part of this system is, looking at the other side of the scheme, that we are going to be paying several types of benefits out to people. There will be people who are currently receiving Income Support who will get that benefit. There will be no change there. But there will also be people who are in excess of the Social Security rate and have assets in excess of the £420,000 limit of the residential value who will get a universal benefit. Because part of this is a universal benefit in the scheme; that means it is paid to everybody. There are bits of this that are means-tested but because it includes a substantial chunk of universal benefit means that it is right that everybody pays and everybody pays on a fair system. I thank Deputy Higgins for his comments. Senator Gorst, I really am sorry if he feels that I am threatening the scheme. That is not my intention. As an ordinary Back-Bencher I have only had the

information available to other Members. I wish there would have been a longer-term consultation process where a broader range of Members' views could have been taken or this discussion could have been taken earlier and we could have made that judgment. But it is still better, in my view, to bring that forward and give the States the chance to debate it and make a decision. I do not believe, as I said earlier, that the scheme should be put on hold because I think it must be within the Council of Ministers' gist to agree with Senator Le Gresley that the scheme could go ahead if this area has to be re-worked. I am grateful for Senator Farnham and I can understand his wish: how the amendment makes things better. I think Deputy Southern has spoken about some of the circumstances where lower-income families will end up paying the full rate. It is certainly true of pensioners, because they do not have other allowances, they will pay the full rate at very much lower rates than those that gain all of the allowances under the marginal tax system. I refer him to all of the reports of which there were many. I know I certainly, when I came to this, was not absolutely 100 per cent understanding of the marginal tax system and it took me a long time to get my head round it, and I think that is the case for the public. So I find it really difficult to stand here and give a 100 per cent cogent answer on the hoof, so apologies for that. Deputy Tadier makes the point of progressive. We can either have a proportional tax system in which everybody pays at the same rate or we can have a progressive one where the more people earn, the higher they contribute, or we can have a regressive one where the more people earn, the less they proportionately contribute to the scheme. I think where we have universal benefits in this scheme, we should not be having any elements of the scheme which are regressive. All of the reports show that there are elements here that I think really should not be. The comparisons about 3 systems from Deputy Pinel. I think they all involve entirely different principles. The Social Security Fund is, generally speaking, about working people before retirement, in employment, and we have set ourselves limits. I think it is open to debate whether we got those limits right. We have not had that ceiling on employees' costs, I do not think, adjusted but nonetheless the purpose of the system is very different. Other Members have said: "Well this is an insurance scheme." I suppose it has some elements but the thing about this is it is compulsory, there is no choice. Normally people can make a decision. This is something which to my mind is a compulsory levy on them and it therefore is a tax. Senator Routier, he said that there will be a lot of complex appeals against the income tax. There will not be any difference. People will appeal against income tax anyway so there is nothing new here. For the moment they appeal against the income tax assessments. In this case I think there are fewer grounds to appeal because it is a simple question of fact: how much do you earn? Fact. Black and white. Where are the grounds for that? I think on the contrary it will reduce the amount of appeals. Then we have the complexity. My thinking must be probably influenced by the tablets I am taking for my sciatica. To me a simple scale that says: "Here is your income and the more you earn, the higher you pay" in a simple scale and the scale can be constructed in the simple way which will then become the law. I understand there is worry about the uncertainty over the scale of charges and I do accept that from Senator Routier. I would like to think that if there was a commitment in this Assembly, that could be sorted out and brought back here very soon, particularly if the Council of Ministers are behind it. I am grateful for Senator Ferguson and I am grateful for Deputy Southern and I think I have covered those points that he made. I think that I am at the point at which I now should leave it and ask the House for an appel on this vote.

The Deputy Bailiff:

The appel is called for and I invite Members to return to their seats. The vote is on Deputy Young's amendment and I ask the Greffier to open the voting.

POUR: 12		CONTRE: 27		ABSTAIN: 0
Senator A. Breckon		Senator P.F. Routier		
Senator S.C. Ferguson		Senator B.I. Le Marquand		
Connétable of St. Lawrence		Senator F.du H. Le Gresley		

Deputy G.P. Southern (H)		Senator I.J. Gorst		
Deputy S. Pitman (H)		Senator L.J. Farnham		
Deputy M. Tadier (B)		Connétable of St. Helier		
Deputy T.M. Pitman (H)		Connétable of Trinity		
Deputy T.A. Vallois (S)		Connétable of St. Peter		
Deputy M.R. Higgins (H)		Connétable of St. Ouen		
Deputy G.C.L. Baudains (C)		Connétable of St. Brelade		
Deputy J.H. Young (B)		Connétable of St. Martin		
Deputy of St. Martin		Connétable of Grouville		
		Deputy R.C. Duhamel (S)		
		Deputy R.G. Le Hérisssier (S)		
		Deputy of St. Ouen		
		Deputy of Grouville		
		Deputy J.A. Hilton (H)		
		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy K.C. Lewis (S)		
		Deputy E.J. Noel (L)		
		Deputy A.K.F. Green (H)		
		Deputy of St. John		
		Deputy S.J. Pinel (C)		
		Deputy of St. Mary		
		Deputy R.G. Bryans (H)		
		Deputy R.J. Rondel (H)		

9.3 Long-Term Care Scheme (P.99/2013): third amendment (P.99/2013 Amd.(3))

The Deputy Bailiff:

We now come to the amendment of Deputy Tadier and I ask the Greffier to read the amendment.

The Greffier of the States:

Page 2 - after the words “dated 22nd August 2013” insert the words - “except that in section 1.12, delete the third paragraph which says - ‘Unlike income tax, an upper income limit will apply when calculating the L.T.C. contribution. L.T.C. liability for individuals with a gross income above the Social Security upper earnings limit (£152,232 per annum in 2013) will be capped’.”

9.3.1 Deputy M. Tadier:

I have got a positive vibe about this. So many Members have left the Assembly and I take that to mean that they have already been convinced by my arguments so I will be relying on their vote for the core support. As for the rest of Members, first of all, can I congratulate Deputy Young even though his amendment was not successful? I thought it very much set the groundwork. Deputy Young obviously got his amendment in before the deadline and I should thank the Minister for Social Security formally for allowing this to be moved. That said of course, I did ask because the economic impact assessment was only released on the day of the deadline which would not have given time for that to be drawn on. I was grateful because it allowed those graphs to be included in my report and as an appendix, which Deputy Young has already referred to in his speech earlier. My one is perhaps even simpler. It has been alluded to by Deputy Le Hérisssier insofar as this is very much a simple, straightforward proposal. It is to say: “We are creating a new contribution here.” I am going to argue that it is, essentially, a tax and other Members might do that again. It has already been mentioned already. But irrespective of whether it is an insurance policy, a tax or maybe a combination of the 2, I am going to be focusing on the concept of proportionality in that

system and the arguments to make it more progressive than it currently is. If I can start with a quote which is from the report and I will be relying rather heavily on the report. Why not? It has already been written. “Would the Minister for Social Security not acknowledge that there was continuing controversy about the cap and it is only with great reluctance that his predecessor has raised it? Would he not acknowledge that this was a perfect opportunity to remove the cap to show that the much better-off in society were taking the strain?” That is a quote from the good Deputy Le Hérissier on my far left and I will be asking him to second this proposition, but that is up to him whether he chooses to do that. As I have said, the long-term contribution scheme is not, in itself, controversial, I do not think. It has been generally accepted and even back in 2008, I remember on the hustings scene, there were calls from members of the public who thought it was not fair that people should have to sell their properties in order to pay for the burden of long-term care which we know can be very expensive.

[16:30]

So the Minister for Social Security and his team have to be commended for that and I have also been grateful for the interaction from the team at Social Security who have been helpful in being able to construct the amendment. The rationale, as I said, is quite simple. It is to spread more evenly the burden of this new payment to make sure that the wealthiest in our society pay the same effective rate as the rest. What I mean by “effective rate”, I am not talking about the effective rate for tax *per se*, although it is linked but, essentially, the graph shows there at 2.5 on page 3 that once somebody earns over £150,000, those earnings are not taken into account. My argument is that is not correct, so somebody who earns £300,000 a year could quite easily, I suggest, afford to pay the same percentage and so that graph would tail off at the same level. It would carry on going horizontally. It would not be progressive *per se*. It would be proportionate. I am quoting from the economic impact assessment itself which supported the proposals, so this is not my definition. This is in the actual report itself. The argument, as I have said, about whether this is a tax or an insurance policy, is not relevant when considering whether it is progressive, regressive or proportionate. Just to refresh our memories - although I am sure we do not necessarily need to do that - the proportionate system imposed the same relative burden on all taxpayers. A progressive system would see the charge increase more proportionally as income increases and a regressive system would see a less than proportional rise in the charge relative to income. So how does the current system unamended as proposed stack up? We are told - again, not my words but the E.I.A. (Environment Impact Assessment) - that the long-term charge is progressive for marginal taxpayers. I raised that issue earlier. The allowances do provide some element of progressivity in that. It is proportional for standard taxpayers and it is regressive for those with incomes in excess of £152,232 per annum. So those are the words there. So the tally is it is progressive for marginal, it is proportional for standard and it is regressive for those who are most able to pay in our society. I am simply saying: “Let us get rid of the regressive element in that.” We do not want any element of regressive structures in this new charge. I hope that all Members agree with that principle. Why on earth would we want to have a regressive element there when we can very simply remove that? I hope that is the position that needs to be argued against and I think it is a very strong one. There are 3 advantages, as I see it, of adopting this amendment. First of all, it is fairer. What is often referred to as “middle Jersey” - and we heard a lot about that in the Budget debate - has seen a general reduction in their disposable income in recent years - I hope we would all agree with that - with a tax system pushing the burden increasingly on to personal tax and on to workers’ incomes. This amendment will mitigate some of that burden so that it is shared more equally by those most able to pay. Before I continue, essentially, what I am asking for is to increase the amount that gets paid into this pot annually by £3.37 million per annum and to do that without putting that burden on middle Jersey. I would expect the Council of Ministers and other Members to bite my arm off at that offer. The second advantage is that it will help to frontload the costs by raising this extra

£3.37 million and thereby reducing future liabilities allowing for greater flexibility, and it also helps with uncertainty. We do not know what the future is going to hold. We do not know what the incomes are going to be in the future necessarily, so by frontloading this it makes the scheme a lot more stable and adds to that flexibility. The third point is it is in keeping with the broad objectives of the Strategic Plan and the election pledges of the Minister for Social Security. We know that the Minister for Social Security stood at 2 elections. One of his strands for his election was that of progressive taxation and this is a chance for the Minister for Social Security to be true to that pledge. Whether this is a tax or not, it is progressive and the Minister for Social Security, I would fully expect, hopefully, now hearing this speech, will be supporting this amendment. The Council of Ministers also have said that they are committed to delivering strong leadership to valuing our community and promoting fairness. I will not comment on the first 2 but there is an opportunity for them to be able to promote fairness by adopting this amendment. The Strategic Plan also goes on to state that taxes should be low, broad and simple. However, it seems that the breadth of this new tax, only being applied up to the cap of £152k, is neither fair nor broad. Similarly, I have already talked about the support from Senator Le Gresley for progressive taxation. It may be clichéd but we are told that if something looks like a duck, walks like a duck, perhaps swims like a duck and maybe even goes: “Quack quack”, it probably is a duck. So when is a tax not a tax? I would suggest this certainly looks like a tax and it acts like a tax. Certainly for those who are earning under £152,000 a year, it is a tax. It is essentially a 1 per cent tax or thereabouts for them and their disposable income will go down by that amount. So it is a tax for them but of course we are giving a message saying that the wealthiest in our society should be at least partly mitigated and partly immune from this new charge. We have got a couple of quotes. I know the Deputy of St. Ouen is back in the Chamber just in time. He must have sensed it coming. If contributions are to be levied on earned and unearned income, will the Minister for Social Security confirm that the effect will be that the Island’s headline income tax rate will go up from 20 per cent to 21 per cent? That was on 18th June. Another question. The Minister for Social Security says: “This is not to be regarded as a new tax but new Social Security payments” but he appears to be treating it exactly like a tax in his proposals and that was from Deputy Southern in the same question period. The Minister for Social Security stated that it is the very presence of the upper cap that prevents this from being a tax. However, unlike Social Security contributions, this levy is collected by the tax system and will capture unearned income too which would not otherwise be liable to Social Security contributions. So in that respect, it does not act like an ordinary contribution either. However, if the rationale is that the new charge is not a tax simply because there is an upper limit, then this is a very narrow and fragile definition. It stands to reason, I would say, that to all intents and purposes, as I have said, for all those earning under that cap, it feels, acts and looks like a tax, a tax which disproportionately hits middle-income households. If I can refer Members to the graph on page 6, although it is not in colour, we will see where the contributions will come from and, in the top column, we see that the burden is largely falling on those in the £50k to £150k bracket with those in the top part earning over £150k, which is a lot smaller. That would obviously go up significantly if this amendment is adopted. I think the graphs have already been referred to. It is a relatively straightforward proposition, although I am sure it will prove to be controversial. As a society, we often hear the phrases from politicians that imply that we are all in this together. However, it is difficult for the public to believe this when in their daily reality, they continually experience the divide between the rich and poor increase and when government actively pursues funding mechanisms that perpetuate this divide. I believe, as a government, we have the perfect opportunity to realign the burden of this otherwise worthy scheme to make sure that the funding mechanisms are much fairer than they are under the current proposal and I also make the plea to the Minister for Social Security to stick by the principles of his election pledges and support this move to make the system less regressive and more progressive.

The Deputy Bailiff:

Is the amendment seconded? **[Seconded]** Minister.

9.3.2 Senator F. du H. Le Gresley:

Election pledges. I wonder how many of us keep their election pledges. I believe I have kept my election pledges in relation to this new long-term care charge and I am about to explain why. But before I do, I do want to thank Deputy Tadier because in his report and in his speech, he has been very supportive of the long-term care proposals and I thank him for that. But what he wishes to do is to remove the cap on liability for the proposed long-term care contribution. When I became Minister for Social Security at the end of 2011, I took on the responsibility of implementing this Long-Term Care Scheme that the States had previously considered in July of that year as part of the report and proposition on the Long-Term Care Law. At that time, the scheme proposed was based on collecting a Social Security type contribution from working-age people based on their earnings and collecting an income tax type contribution from pensioners based on all income. I challenge the fairness of that system. It would mean that many low-earning workers would be contributing into a fund which they would not receive any new support from and many wealthier working-age people would escape from making any contribution in respect of investment income or any other unearned income. So I asked my officers to thoroughly review the long-term contributions and during the course of 2012 we worked closely with the Taxes Office to identify an appropriate contribution mechanism that would minimise the impact on low income workers, collect a fair contribution from higher earners and be easy and economic to collect. In a previous speech, Deputy Young said that I had come to the Assembly very late with my proposals of using the tax system but, in reality, in June this year, I announced that I would be proposing a long-term care contribution which would use the rules of the existing income tax system to determine liability up to the upper earnings limit. This satisfies my 3 demands. Individuals who do not have a tax liability will not need to make any contributions into the Long-Term Care Fund. These individuals are likely to need means-tested assistance with long-term care costs and would and will receive similar support under the new scheme as under the existing Income Support residential care scheme. Higher earners receive less allowances under the income tax system and, therefore, are more likely to pay the full long-term care rate. Using the existing marginal rate system means that the effective rate of the long-term contribution increases as gross income increases. The close link with income tax calculations allows the existing income tax collection system to be easily adapted to collect long-term care contributions alongside income tax liability. However, the long-term care contribution - and I stress "contribution" and not "tax" - is a contribution under the Social Security Law. Contributors pay - as they do into the Health Insurance Fund - into a new ring-fenced fund and can apply for a specific set of benefits that are paid out of the fund. The concept of "unlimited liability" does not exist in the Social Security Law and I have no intention of introducing it. Therefore, the maximum liability for the long-term care contribution has to be linked to the upper earnings limit that already exists within the Social Security Law. It may be helpful at this point to give a little background as to the reason for the introduction of the upper earnings limit of £152,232. The upper earnings limit was introduced in 2012 as part of the fiscal policy review. The initial proposal was to levy a new 2 per cent Social Security charge up to the upper earnings limit on both working-age employees and their employers. After review, it was decided that the charge in respect of employees would not be introduced in 2012, although this was challenged in the Assembly. This decision was influenced in part by the knowledge that a new long-term care charge was in the pipeline for employees. The current proposal is that the long-term care liability in respect of individuals will be limited to the same upper earnings limit that is already in place for employers paying Social Security contributions. I do believe that my proposals do provide a fair and more progressive contribution liability compared to the original 2011 proposals and I ask Members to reject this amendment.

The Deputy Bailiff:

Does any other Member wish to speak? I call on Deputy Tadier to reply.

[16:45]

9.3.3 Deputy M. Tadier:

Good. This is Ministerial efficiency and I am quite happy to thank all those who have spoken and in fact I think I may even buy all of them a drink. I can hear some people who are wishing they had spoken. I think this is probably a simple proposition and that is why Members do not feel the need to speak on this. But I would, nonetheless, encourage Members to think carefully about the support. If I can just say to the Minister for Social Security, notwithstanding I think the good work that he has been doing at the Social Security Department and he has been busy, that is for sure, I think there is still room for improvement in terms of seizing the concept of progressivity in our system, whether that be in Social Security contributions, in the tax system, wherever that may be. I would just add that it is not me who is saying that there is a regressive aspect to this contribution, as I have said, with that graph. It is the Economic Impact Assessment team in their report who have said it themselves and I will just reiterate that. It says that: “Admittedly progressive for marginal taxpayers, proportional for standard taxpayers, regressive for those with income in excess of £152k.” The Minister for Social Security has not told me why he will not get rid of that regressive part, apart from saying that the cap is in place and unlimited contributions do not exist for any other contribution and that he does not want it to start existing now. I simply say it could easily exist but this is a new contribution. I have explained in the previous speech that it does not act entirely like a Social Security contribution because Social Security contributions are applied on all of one’s income. The Minister for Social Security has chosen to make it look like a tax by introducing these allowances. If we are to make it act like a tax by introducing the allowances to make it progressive, then he should also do the full job and make sure that those who are high earners, who also pay 20 per cent tax at the higher rate, should be paying the 1 per cent tax on all of their income. That is what the Minister for Social Security should be doing if he is being consistent. He cannot have it both ways, argue against Deputy Young saying: “We cannot make it act like a Social Security contribution because we want it to mirror the tax system, that is why we have allowances.” But when it comes to mine say that we want it to mirror the tax system. It is quite bizarre logic. The Minister for Social Security also said that it makes it more progressive compared to what it started off as initially. That may well be the case but he did not comment on how it compares to my amendment, which is the most progressive of all. On that logic I would ask every Member in this Assembly to be aware of the message that we are sending out to the public, that those who are most able to pay in our society should do, 1 per cent is not going to kill them. It is not going to drive them away. They are based in Jersey already and I am sure that any individual who is earning more than £152,000 a year as a proud Jersey man or woman would be proud to pay that extra 1 per cent contribution so that in future others who are not so fortunate may have their circumstances and their liability reduced as a consequence. I maintain the proposition and ask for the appel.

The Deputy Bailiff:

The appel is called for and I ask Members to return to their seats. The vote is on the amendment of Deputy Tadier, Long-Term Care Scheme, and I ask the Greffier to open the voting.

POUR: 11		CONTRE: 25		ABSTAIN: 0
Senator A. Breckon		Senator P.F. Routier		
Deputy G.P. Southern (H)		Senator S.C. Ferguson		
Deputy of St. Ouen		Senator B.I. Le Marquand		
Deputy of Grouville		Senator F.du H. Le Gresley		
Deputy J.A. Hilton (H)		Senator I.J. Gorst		
Deputy S. Pitman (H)		Connétable of St. Helier		
Deputy M. Tadier (B)		Connétable of Trinity		

Deputy T.M. Pitman (H)		Connétable of St. Peter		
Deputy M.R. Higgins (H)		Connétable of St. Ouen		
Deputy G.C.L. Baudains (C)		Connétable of St. Brelade		
Deputy J.H. Young (B)		Connétable of St. Martin		
		Connétable of Grouville		
		Deputy R.C. Duhamel (S)		
		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy K.C. Lewis (S)		
		Deputy E.J. Noel (L)		
		Deputy T.A. Vallois (S)		
		Deputy A.K.F. Green (H)		
		Deputy of St. John		
		Deputy S.J. Pinel (C)		
		Deputy of St. Mary		
		Deputy of St. Martin		
		Deputy R.G. Bryans (H)		
		Deputy R.J. Rondel (H)		

9.4 Long-Term Care Scheme (P.99/2013): second amendment (P.99/2013 Amd.(2))

The Deputy Bailiff:

We now come to the amendment of Senator Breckon and I ask the Greffier to read the amendment.

The Greffier of the States:

Page 2, after the words “dated 22nd August 2013” insert the words “except that in section 1.13” after the words “adjusted in line with changes in general price inflation (R.P.I.)” there shall be inserted the words “plus 1 per cent”.

9.4.1 Senator A. Breckon:

What is this about? When I read some of the excellent work and reports that have been done on long-term care I had some concerns and, hence, this amendment, because I believe that the Social Security Department’s proposals have much to commend and they go a long way to achieving a successful outcome. I know from direct experience this has been a concern for many families over the years because when an elderly relative has fallen into this situation then they become aware of the consequences. I think with others I generally welcome what is to come. But I believe that the States contribution should be ramped up a little bit. Senator Routier mentioned a moment ago that: “Uncertainty for contributions” he said he cannot support. That is in fact what we are going to do for the people who will be contributing to the scheme. Future contributions are uncertain because we know a number of things. We know there is going to be an increase in numbers and there is going to be growing demand because of medical advancements and the extension of the scheme to home care and other things that have been touched on. I have touched on something in my report and I would like to thank the Health, Housing and Social Security Scrutiny Panel, they have done a tremendous amount of work. A report was done in 2008. I was a member of that panel that produced that report at that time and the current panel have produced a number of reports and they have also produced some helpful comments. Within their most recent report, S.R.11/2013, it had this to say on page 46: “If the contribution to the Long-Term Care Fund were to grow in real terms at the same rate as the other costs and payments in the model, the Oxera model assumes care costs, asset disregards, co-payments and the contributions grow at 1 per cent a year in real terms” and that is where my amendment is coming in. “While the States departmental contribution is assumed that 0 per cent real growth, the effect would be to reduce the required levels of contributions in future.

This is not considered in the Oxera report. In addition, the assumption implies that funding the Long-Term Care Fund will comprise a shrinking share of Central Government spending in the long-term and this could leave scope for reduced general taxation.” I do not remember agreeing to that anywhere and I want to touch on that in a moment or 2. But for me it says that the Oxera report did not factor in real growth in States contributions and I wonder why that is. I believe that is wrong for a number of reasons because, as I said, there is now going to be increased demand and I think it is appropriate that the States, through tax funding, pay a significant part of that because we have identified for some time that we knew that the ageing of the population, and I include myself in that, would be an issue in the future. The idea of this is Guernsey have had a scheme since 2004. We look to do something and then how do we fund it? I do not think it is fair to leave the liability - and that is what it would be - to the contributors of the scheme and for this Government to say: “Our part is limited to whatever this figure is, £30-something million, when we strike a deal between the Health and Social Services Department and the Social Security Department”. The money goes into the fund and then it is increased by the Retail Price Index because in 2013 this year the March Retail Price Index was 1.4 per cent. That would be inadequate at this stage if we look at that and that were to happen again next year and the year after. If we do that then we are going to create a hole in funding that would need to have a catch up later. The other thing: I have distributed an extract from the Social Security report and financial statement for 2012. The reason I have done that is it shows where the Treasury States contribution to the fund for supplementation has gone down. If Members look at the table at the bottom, the third line, in 2010 it was just £66.6 million, in 2011 it was £65.3 million and in 2012 it was £61 million. The reason I say that is because supplementation picked up people on low pay and no pay, we have had record unemployment levels in that and the contribution has gone down. But what is important in there as well, somewhere it talks about the percentage rate; it has gone down from picking up 31 per cent of the contribution to the fund in 2010/2011 to 28 per cent. I think this is an example of the smartness of the Treasury in saying: “We need to cap this.” If Members look at the table again they will see that the contribution from the change to the Standard Earnings Limit, which is S.E.L., is just over £7 million. What has happened is higher earners, instead of putting money into the fund to benefit everybody it has benefited the Treasury, if Members look at that contribution, that is in my opinion. If we are going to do the same with elderly care and the Long-Term Care Fund, then that is where I have a concern now that that would happen. Then it is a question of, looking around, who pays? People contributing pay, we have our sum fixed and I do not think, bearing in mind what we know already, that that is appropriate. I mentioned the Scrutiny Panel but they also come forward with some comments on the whole package, as it were, the long-term care package. On page 14 it has some general comments and it says this about the financing: “The proposal will ensure adequate financing for long-term care in the short-term. However, over the longer term the costs of care are predicted to rise at a much greater rate than inflation. Pressure of rising long-term care costs will, therefore, need to be borne by increases in long-term care contributions, which are to be paid by all those paying income tax. As the States contribution will remain constant in real terms, it will decline as a share of the tax-funded spending, that is assuming tax revenues rise in line with economic growth. The higher the rate of economic growth, the smaller the share of States funding for long-term care share in tax-funded expenditure, assuming total spending also grows in line with economic growth. With an assumed economic growth rate of 1 per cent and the same rate of growth of tax revenue spending is assumed in the Oxera report, and if there are no further changes in tax-funded spending the share of the States-funded Long-Term Care Fund in total tax-funded expenditure will fall to 90 per cent of its current level in 10 years and to 75 per cent in 30 years. At a higher rate of growth the fall of spending shares would be more rapid with a 2 per cent average growth rate the share of States spending on long-term care in total current tax funded spending would fall to 80 per cent of its current level in 10 years and 50 per cent over 30 years.

[17:00]

Over time, therefore, the States' share of the long-term care budget will shrink as a proportion of the total spending and also as a share of Long-Term Care Funding. Setting the growth rate of the long-term care budget at the R.P.I. therefore has implications for the long-term care contributions rate which will be higher than would be needed if the States contribution was to grow in line with the economy as a whole." Of course nobody has proposed that and with all of this funding and the need then there is an element of guess work about what is going to happen in 5, 10 years' time. So that is why I believe it is prudent at this stage for the States to show their commitment by saying that our contribution will be the retail price index in March plus 1 per cent. There is another comment, this is in the Minister for Social Security's comments to this amendment. He says this in the second paragraph on page 2: "Care costs are predicted to increase faster than the retail price index as both the number of people receiving care and the unit cost of care increase. It is the intention that the Long-Term Care Fund and its ring-fenced contributions will bear these additional costs in future years, removing the pressure on tax-funded budgets to meet this growing expenditure." I do not remember agreeing to that because I think it has been known for some time. It is has been called a number of things, the ticking time-bomb, the demographic time-bomb, whatever it is but it has been known and the Health and Social Services Department and the Social Security Department have identified it for growth in future budgets. So I do not think now is the time to cut that off. I think we should commit to it now and we can say to the general public, those contributing, that, yes, we have come up with our side of the bargain because, as I said before, the March cost of living index in this year was 1.4, which would go absolutely nowhere in this so we need to make that commitment. I think it is a fair and reasonable thing to do at this stage because it shows that we are committed to this but we are also putting our money not only where our thoughts are but where our sentiments are in supporting the public, some of whom are struggling with various charges and other things, and general living costs. So it shows that and I think it demonstrates that we are committed to this, not just in thought but indeed in actions. I make the amendment.

The Deputy Bailiff:

Is the amendment seconded? **[Seconded]** Does any Member wish to speak? Minister.

9.4.2 Senator F. Du H. Le Gresley:

I do want to start by thanking Senator Breckon because he was on the original Scrutiny Panel in 2008 and he has continued to support the introduction of long-term care. In fact he has consistently lobbied for a scheme to be established and I am pleased that he has commended the work that the department have done to get to where we are today. What worries me about what he has said in his speech is that he seems to have confused the whole purpose of setting up the Long-Term Care Fund. His current amendment seeks to increase the value of the States contribution into the fund each year. The difference between my proposal and Senator Breckon's amounts to 1 per cent of roughly £30 million a year, i.e. about £300,000 to start with. But this will increase over time and in 30 years the effect would be to increase the States contribution by about one third. Under my proposal the value of the States contribution tracks the R.P.I. from year to year. We all know that the cost of care will rise much faster than R.P.I. Not only will the number of people needing care increase but the cost of care itself typically rises faster than prices in general. This means that the proportion of funding for the Long-Term Care Fund that the States contribute each year will gradually decrease as the long-term care contribution rate increases to cope with the increasing cost of long-term care. This is one of the stated aims of the scheme, to create a separate ring-fenced fund with its own contribution rate that is designed to respond to the increasing cost of care. At the same time the amount of funding required from general taxation is ... sorry, I respond to Deputy Southern so often I always think I am responding to him. **[Laughter]**

Deputy G.P. Southern:

Absolutely understandable.

Senator F. Du H. Le Gresley:

As Senator Breckon has said, it is not, in effect, frozen at the 2014 level. The States through all types of taxation will make an annual contribution but this will not create any further pressures on the States in future years. All of that pressure will be borne by the fund itself. Increasing the value of the States contribution as proposed is something of a halfway house. The long-term contribution rate will still need to rise over time but general taxation will also have to find an increasing contribution each year under Senator Breckon's proposal. There will be many other pressures on tax-funded expenditure in respect of an ageing population and the increased contribution to the Long-Term Care Fund will need to compete with these other pressures for the available funds. As an aside, Senator Breckon has made reference to the £61 million which is currently the 2012 figure for supplementation paid out of taxation into the Social Security Fund. He has made the point that that figure is reducing but the whole point of controlling that figure was to introduce a new source of income which was the 2 per cent additional contribution paid by employers, not employees, between the standard earnings limit of about £45,000 and the new upper earnings limit of £152,000. The whole point of introducing that new contribution was to reduce the burden on tax-funded contribution to the Social Security Fund and that is exactly the same process that we wish to do with the contribution from the States which will come out of the Consolidated Fund from 2016. The second half of Senator Breckon's report refers to the impact of the additional income that the Health and Social Services Department will receive. He did not really mention much of this in his speech. Since Senator Breckon published his amendment I have released the addendum to P.140 which I hope has helped to clarify the position regarding this additional income. I can confirm that the Health and Social Services Department will see no difference in their total available budget as a result of the introduction of long-term care and the changes to the Hospital Charges Law. The extra income that they will receive will be balanced by a corresponding reduction in their cash limit. This is one of the ways in which the pressure on tax-funded budgets is reduced by the introduction of the Long-Term Care Fund. As I have mentioned, I am really grateful to Senator Breckon for his longstanding commitment to the introduction of a Long-Term Care Scheme, unfortunately I am unable to agree with this particular amendment and I ask Members to reject it.

9.4.3 Deputy G.P. Southern:

I was impressed by Senator Breckon's picking up of what was happening in 2012 in terms of supplementation. It is clear to me that this has serious ramifications for the often-stated policy that underlies the Social Security Fund, which is the principle of one third, one third, one third. I have had that repeated at me whenever I have tried to change the fund in any way whatsoever on several occasions. The fact is: the policy is that the Social Security Fund is made up of contributions from employers, contributions from employees and States supplementation. The policy is that that will be approximately one third, one third, one third. It seems to me that the Ministers have quietly slipped away from that policy without saying a great deal, certainly not explaining it either to us or to employers, to say we set this scheme up in the face considerable opposition at the time - before my time of course - on the one third basis and now we are quietly walking away from our commitment. That strikes me as very not transparent - what is that word? Opaque. There we are, I found it. That is opaque, which is not what we should be doing. We are quietly walking away from that commitment. When it comes to the L.T.C. Fund I fail to see the logic of what is happening apart from, it seems to me, here we are not quite reneging but stepping away from our responsibilities and transferring the burden to taxation. Effectively what we do not put into this fund, contributors will. As the Minister for Social Security said in his response, it will not stop the contributions going up. If we were to put more taxation money in there it would stop the rate going up quite as quickly as it might otherwise, because as he said, the cost of long-term care will always

go up at a greater rate than the R.P.I. The cost of individual care and the numbers combine to say it will go up. We are already told that down the line we will see 3 per cent, further down the line we will see 4 per cent perhaps. But I just want to make a comparison between this 30-year projection and the recent Housing 30-year plan and look at the figures involved there. How much does Housing intend to put up rents? That is transferring a cost to rent payers in social housing. Why, it is R.P.I. plus 1 per cent. By how much does Housing propose to return to the Treasury over the 30-year plan? Lo and behold, look at it again, here we are, R.P.I. plus 1 per cent. Yet when it comes to: "And what is the States contribution into this system?" we are told it could not possibly be R.P.I. plus 1 per cent; that is a different rule for us, we will cap ours to R.P.I. which we know is not going to be adequate to maintain the fund without increases on the tax, if you like, on the charges coming from individuals who are paying for it. So we have one rule for us and one rule for everybody else. Clear distinction, we are fixing the playing-field if you like so that we get the advantage. We have the wind, the sun and the slope both halves.

9.4.4 The Deputy of St. Ouen:

The States contribution is one of the areas that I, as one of the members of the panel, struggled with the most, mainly because it is a moveable feast. The first information that we saw, and forgive me if my memory does not serve me absolutely correctly, showed a contribution of £17 million from the Health and Social Services Department and £16 million from the Social Security Department, £33 million. Then a bit later on, and as reported in our report, finding 19, it says that: "The States will transfer current annual spending on long-term care into the fund, which at present stands at £31 million a year." Then a bit later on, and today, we got the Minister for Social Security saying: "Well, maybe it is £27.8 million because I am going to keep 10 per cent. We are not sure about the Health and Social Services Department yet, they might be holding on to some, they might be dealing with some matters, we are not sure." But the fund is being created for long-term care services and, if we think about it, the Health Insurance Fund, what happened, and quite properly some would say, widened to deal with other matters.

[17:15]

That is not to say that this one will not be as well. This is the issue: it is about looking for the right balance between taxpayer's overall contributions and the individual's contributions to the scheme. Quite rightly our adviser - and I think it has been mentioned already - pointed to the fact that if you do not allow some growth, you will put more pressure on the individuals and the fund and contributions will rise accordingly. As I said earlier, we know that, we have seen that experience with the Island-wide raising of the contributions that the Parishes and ratepayers are collectively making to the States, because 11.7 versus 16, it has depreciated in value. Exactly the same thing is going to happen. Over time the amount the taxpayers collectively contribute to the fund will reduce. The individual will have to pick up the bill, but only if they earn under £152,000 because if you earn just that touch more you do not have to pay any more. I do not think that this is the wrong place to start, as proposed by Senator Breckon, and that you allow that small amount, and 1 per cent is small, the small amount of growth to come from general taxation to support the contribution. Because let us not forget everyone said: "Oh, it is a contribution to Social Security." I am sorry, but this one is a contribution for life. You start when you start work and pay income tax: 18. You finish when they put you in your coffin. That is it. Well, no, it is later than that, the probate happens, sorry. I am not being flippant, but unlike Social Security where we know there is a limit, once you get to 65, 66 whenever the date, it stops. This does not. You are going to be in a home, you are going to be paying your bills. You might even reach the magic £50,000 so you can get some benefit, but: "Oh, no, hang on" you have still got to write out the cheque for £300 a week, plus you have to pay your annual subscription to the fund. I do not know. I think that with this particular proposal it helps to redress some of the issues, and maybe provides some comfort for the

younger members of our society who from 2015 will be contributing towards this fund for the rest of their lives. Thank you.

9.4.5 Deputy R.G. Le Hérissier:

What the good Lord taketh, the good Lord giveth. All I would say to Deputy Reed in the position of the good Lord, in that sense only, is that of course it will be the taxpayer, and a lot of the taxpayers providing for the under-payment, or so called “under-payment” of contributors will of course be the very young people he is seeking to protect.

9.4.6 Deputy T.A. Vallois:

Just briefly I have to respond to Deputy Le Hérissier’s point there: is that it may be the taxpayers but how about a crazy idea of looking at, if we are able to measure appropriately, where savings can be made and identify a better and more robust system efficiency and reforming the States then maybe that money could come from there rather than raising taxes.

The Deputy Bailiff:

Does any other Member wish to speak? Then I call on Senator Breckon to reply.

9.4.7 Senator A. Breckon:

I thank Members for their contribution. Obviously there is an issue about whether we should do this at the start or perhaps we could be asked sometime in the future to do that. But other Members have touched on it: what is a Long-Term Care Fund? Deputy Southern might have been getting carried away when he got as far as 4 per cent, but what if the contributions were to go to 4 per cent, who is going to ask the question: “Well, why is it 4 per cent? How much are the States paying?” So although we may have this vote on this amendment today, it is on the record. So in 5 or 10 years’ time, when we have had actuarial reviews in 2015, 2016, whenever it is, and there is a report back about a recommendation about what we do and then some of the bad news comes out about: “Well, the contributions are going to be at this level. We thought it might be that, but demand and need and the rest of it is at that level, so this is what it is pitched at.” Then that might be the time to revisit it, but this decision will be part of that. As I say, has anybody ever thought about the States paying more? Well, I have. It is in this amendment and it is up to Members how they vote. But it is long-term. We have talked about 30 years, but it is longer than that. It has been a long time coming. But at the same time it is something I believe that we could do today, we could show that commitment and we could do that by voting for this amendment. I maintain the amendment and ask for the appel.

The Deputy Bailiff:

The appel is called for. I invite Members to return to their seats. The vote is on the second amendment which was lodged by Senator Breckon and I ask the Greffier to open the voting.

POUR: 13		CONTRE: 23		ABSTAIN: 0
Senator A. Breckon		Senator P.F. Routier		
Senator S.C. Ferguson		Senator B.I. Le Marquand		
Deputy R.G. Le Hérissier (S)		Senator F.du H. Le Gresley		
Deputy G.P. Southern (H)		Senator I.J. Gorst		
Deputy of St. Ouen		Connétable of St. Helier		
Deputy of Grouville		Connétable of Trinity		
Deputy J.A. Hilton (H)		Connétable of St. Peter		
Deputy S. Pitman (H)		Connétable of St. Lawrence		
Deputy T.M. Pitman (H)		Connétable of St. Ouen		

Deputy T.A. Vallois (S)		Connétable of St. Brelade		
Deputy M.R. Higgins (H)		Connétable of St. Martin		
Deputy G.C.L. Baudains (C)		Connétable of Grouville		
Deputy J.H. Young (B)		Deputy R.C. Duhamel (S)		
		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy K.C. Lewis (S)		
		Deputy E.J. Noel (L)		
		Deputy A.K.F. Green (H)		
		Deputy of St. John		
		Deputy S.J. Pinel (C)		
		Deputy of St. Mary		
		Deputy of St. Martin		
		Deputy R.G. Bryans (H)		

9.5 Long-Term Care Scheme (P.99/2013) - resumption

The Deputy Bailiff:

Very well. We now return to the Minister for Social Security's proposition on Long-Term Care Schemes. Does any Member wish to speak? Senator Routier.

9.5.1 Senator P.F. Routier:

I can recall in my time as the Minister for Social Security the Age Concern representatives, and many people representing people who are cared for, people who are getting older in our community who were campaigning vociferously for this scheme to be brought into place. When I look at the title of this, Long-Term Care Scheme, I sort of think it is the "long-time coming scheme". It has really taken us a long time to get here. There has been so much thought that has gone into this. I think the team at the Social Security Department and the current Minister for Social Security have been very thorough in what they have done. They brought forward very fair conditions which we are being asked to approve today. I believe it is affordable and it is sustainable and I hope everybody will be able to get right behind this proposition and support it wholeheartedly. **[Approbation]**

Deputy J.A. Hilton:

I am mindful of the time with only 5 minutes to go and I wanted to talk for about 10 minutes. So I was wondering if the Assembly would rather we adjourned at this point? **[Seconded]**

Senator P.F. Routier:

I propose the adjournment, Sir. **[Laughter]**

The Deputy Bailiff:

Before we adjourn I can just announce that P.160 Elected Speaker of the States has been lodged by the Connétable of St. Helier. The States now stand adjourned until 9.30 a.m. tomorrow morning.

ADJOURNMENT

[17:24]