

STATES OF JERSEY

OFFICIAL REPORT

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[9:30]

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

PUBLIC BUSINESS – resumption

1. Health Insurance Fund: transfer to Health and Social Services Department for 2012 (P.185/2011) - continued

The Deputy Bailiff:

We now resume debate on P.185 - Health Insurance Fund: transfer to Health and Social Services Department for 2012 - and I call on the Connétable of St. John.

1.1 Connétable P.J. Rondel of St. John:

Like previous speakers yesterday afternoon, I have some real concerns over this particular item given the Health Insurance funds belong to the people of Jersey who have been paying social security. They are not there to be raped by the Minister for Treasury and Resources Department. As Members will know, in fact I took this a bit further but, although I am told by the Chief Minister that this has been resolved with the Privy Council, I have not been notified officially. When people pay social security we know what the money has, in the past, been put away for. It is for our health and also for our pensions. Listening to the Minister for Health and Social Services yesterday when she gave us a résumé of the work the department undertakes and said everything had been audited, when somebody goes and sees a G.P. (general practitioner) who has never paid social security but they are getting their hands indirectly on some of these funds, I have got some real concerns. We are talking about the smoking strategy, and so on, that the money is being used for and I do have concerns because this would be treating, in part I am sure, people who have never paid into our social security funds. You can audit things in a number of different ways and I do have some real concerns. I did not support the first tranche. I am definitely not supporting the second tranche because I believed, and I still believe in my heart of hearts, we are not working in the best interests of the people who put the money into these funds. It is their money and we are the guardians of it. We should not have taken any money out of that whatsoever to bail out the Treasury Department. It was for the Health Department, as far as I was concerned, to make sure that their budgets were such and for the Minister to fight her corner within the Council of Ministers to get the amount of cash she required to run her department. In another time or another place we are told, and I was told outside in the Members' room this morning, that this will be the last time this will be allowed to happen. This was told to me by the Chief Minister. In my book, it should not have happened in the first place. Over £12 million will have been transferred out of Social Security funds to bail out another department. I cannot support this and I definitely will not support it.

1.1.1 Connétable J.M. Refault of St. Peter:

I am pleased to follow my very good colleague and friend, the Connétable of St. John, as we shared the same view, but that was over a year ago when the previous Minister for Social Security did a presentation and I remember being quite aggressively against the principle at that time, not knowing the full implications. When it came to the vote, I grudgingly went with it because I was not prepared to see Health and Social Services not get the funding they required. Since that time Members will be aware that I have now become an Assistant Minister for Health and Social Services. I have seen the work that needs to be done and is ongoing from the inside and I appreciate where the spending pressures are much more focused now. I would urge Members that have not committed to coming along to the Health and Social Services presentation later this week to do so, so they can see for themselves the complexity of the work and the funding pressures that are required. Coming to the matter under debate, the crux of the issue is that the Health Insurance Fund is in place to fund aspects of primary care services, not hospital or social care services. There are a number of States Members, some of whom have already spoken, who fundamentally oppose

this transfer, seeing it as nothing more than a raid on Social Security monies that it is not entitled to and transferring them from the Health Insurance Fund to Health and Social Services. The fund was approved for 2011 and it was envisaged that the same would apply for 2012, subject to your agreement today. A key point I need to advise Members of is that Health and Social Services in fact provides a lot of services that, in other jurisdictions, would be considered to be primary services; in other words, services provided in a non-hospital setting and funded accordingly. Funds provided to hospitals and these places would not be used to fund primary care services. Examples of primary care services would include community nursing, for example district nurses, health visitors, school nurses such as those provided by Family Nursing and Home Care, which costs Health and Social Services around £5 million per year, vaccinations and immunisations, contraceptive services and community dental services. In preparation for last year's debate, Health and Social Services identified a wide range, considerably in excess of £6 million worth, of primary care services that we provide and fund from the H. and S.S. (Health and Social Services) budget. This list was discussed with the primary care body representing G.P.s on the Island and I have been awaiting that figure for 2011, because they have been audited and checked, but Health and Social Services has spent around £9 million in 2011 on what would otherwise be considered primary care services. By funding these primary care services from the Health Insurance transfer, we were able to free up some £6 million of Health and Social Services monies to invest in additional hospital consultants and middle-grade doctors' contracts, provided the general 2 per cent growth that deals with drug inflation, new drugs and pressures from an increasing number of overseas transfers, et cetera. The point to note is that, by transferring the responsibility to G.P.s under an S.L.A. (Service Level Agreement) for childhood immunisations, we saw in 2011 a significant increase in the number of children vaccinated and our levels of coverage now exceed the U.K. (United Kingdom) and stand in good comparison with other European states. We are, therefore, making good our commitment to move more service provision and funding into primary care. We expect to place new S.L.A.s for smoking cessation services with primary care practitioners during 2012, this year. The only thing I would add is that it was agreed that the Health Insurance money would transfer from Social Security to the Treasury, not direct to Health. Treasury would then remit to Health based on certain verifiable information on the actual expenditure given. This is then fully audited at the end of the year and this was done in 2011 and found totally appropriate. In short, the H.I.F. (Health Insurance Fund) transfers are required to fund services provided in Health and Social Services that are effectively primary care services, the rationale being that they could legitimately be provided by primary care professionals in a primary care setting. These primary care services have developed in Health and Social Services over time because they are free to patients, whereas attending a G.P. has a cost implication for the patient. The consequences of Health and Social Services not receiving the £6.1 million from the Health Insurance Fund to compensate the reduction in the Health and Social Services consolidated cash deployment funding is that the Accounting Officer will not be able to provide the current range of services within the reduced funding. From a Public Finances (Jersey) Law perspective, once the Accounting Officer makes this assessment, a plan would have to be produced that clearly articulates which services will be reduced or expenditures constrained as a consequence of the funding not being available. This is required so that Health and Social Services remain within the law and deliver services within the approved cash limits. Members will also be aware of the considerable case for change set out in the Green Paper, *Caring for each other, caring for ourselves*, and will know of the significant pressure for investment in Health and Social Services in order to continue to provide services in the face of growing demand and to modernise the service and buildings for the future. The removal of the Health Insurance Fund transfer would result in significant cuts to services that are already under considerable pressure. Moving now to respond to Members' comments yesterday on the Green and White Papers. We had a positive consultation process with strong support from the public, well over 80 per cent supporting Scenario 3. Since the end of the consultation in August last year, we

have developed a draft White Paper setting out what we plan to do in some detail to make Scenario 3 a reality. This is not yet in the public domain for 2 reasons; firstly, the election and the formation of the new Council of Ministers and the development of the States' Strategic Plan which has, quite rightly, taken priority and which includes the modernisation of Health and Social Services, a chief priority for the States. Secondly, we are working with colleagues in the Treasury on the development of the Funding Options Proposal for discussion at the Ministerial Oversight Group of the Council of Ministers in order to inform a Health and Social Care funding policy paper to be issued at the same time as the White Paper.

[9:45]

However, while we await these outcomes, we have been busy during this period and have developed a 10-year transition plan that details what we will do, in what timeframe and what it will cost. This also sets out the underpinning cost-cutting work on workforce planning, commissioning, informatics and estates that will be needed to make a reality of Scenario 3. The transition plan sets out actions in each of the 3 medium-term financial planning periods of 2013 to 2015, 2016 to 2018 and 2019 to 2021. In addition, we have developed 7 key priority work streams and associated outline business cases to set out the actions and costing for specific early development in the 2013 to 2015 timeframe. These 7 include: healthy lifestyles, starting with the alcohol pathway; children, starting with early intervention and preventative services; adults: mental health, starting with increasing access to psychological therapies, cognitive behavioural therapies delivered in primary care settings - this has had good success in the U.K. in getting people off benefits and back to work; adults: community-based services, long care conditions, starting with the C.O.P.D. (chronic obstructive pulmonary disease) followed by heart failure and diabetes; older people: mental health, starting with dementia services; older people: community-based care, starting with intermediate care services such as "step-up, step-down" services and telehealth in the home; end-of-life pathway, developing primary community-based services and broader access to hospice-type care and beds. Some States Members may cite the absence of significant on-the-ground change as meaning the Health and Social Services Department is failing and will continue to fail to deliver. However, there are 2 points to consider here. We are asking the States to commit to finding a way to provide us with significant ongoing funding. There must be a comprehensive robust plan against which we can be held to account for delivery and to show we are doing the right things for the right people in the right places with good value for money and doing it safely. This cannot be rushed. Secondly, at the moment there is no additional money on the table and will not be until a funding stream is agreed and established. This will be challenging and will take some time. We are working closely with our colleagues in Treasury to try to ensure the business case at least can start to be implemented between 2012 and 2014 and, at the same time, work hard to deliver our White Paper in co-ordination with the Treasury's funding policy paper around the middle of this year. If I can just, finally, comment on the sort of pressures that come under the Health and Social Services budget. Those Members that were at the Home Affairs briefing yesterday lunchtime will recall I asked a question of the Minister for Home Affairs about the funding for criminal activity where the perpetrator has to end up in a special facility in the U.K. People in those cases suddenly spring a deficit on the Health and Social Services budget of £300,000 per person per year. We cannot plan for these unforeseen events of that sort of magnitude. If we were to go back to around about 2 years ago, we discussed in this house family X and about putting them in the U.K. at about £1 million per year to look after them. However, the last cost I was advised is nearer now £1.5 million. That is just for family X. While these things are relatively unique, it is not unfeasible to expect them to happen again in the future. These are pressures we have to face in Health and Social Services.

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

I must congratulate the Constable of St. Peter on reading out that speech. I am not sure it was entirely his own, quite cleverly crafted but read at high speed. It was an attempt obviously to pull on the heartstrings and I do not deny that Health is under enormous financial stress. I did support this move enthusiastically when Deputy Gorst came with the first tranche of money and the reason I did is I thought it was wonderful - and I still do - that the health service was moving to primary care and the glacial speed or non-speed with which we had dealt with G.P. reform was, at long last, history and we were moving to primary care through practice nurses and people like that. There was going to be a different way of addressing care and the fear that people had of going to the doctor, the continual charges that they faced, we would gradually start, like the proverbial oil tanker, setting that oil tanker in another direction, albeit very slowly. I thought that was great, so with a peg on my nose, as a previous occupant of this seat used to say, I decided to vote for it because I thought those were good reforms, long, long overdue. But what I am worried about now is it is now being justified as primary care and I notice the Treasury have been elevated the experts in defining what primary care is, according to the audit arrangements outlined. It is now being defined as primary care but, as Senator Breckon said yesterday, who has made the decisions as to where the money will go other than dealing with an urgent C.S.R. (Comprehensive Spending Review) deficit situation as outlined by the Constable? Who will make the decision? There has not been a proper debate on whether we should be giving, for example, as Senator Breckon said, more support to dental care, dental preventative work, for example; whether we should be whizzing around the countryside in Deputy Breckon's mobile clinic to try and get to the root of the problem and so forth. There has not been that discussion. All this is it is a cover-up for a deficit that has been emerging, admittedly, for years and years and years. It is a cover-up for a deficit and I do regret that there has not been this proper debate. I am very, very supportive of the direction Health is trying to take primary care in, but all we are doing is just cementing in place the current system. We are not using this opportunity by launching a proper discussion, which I have no doubt the Minister will say will come through the Green Paper, on where the money should go. We are just filling a gap very urgently. As I said, I regret having to say this because I was really supportive, for mixed reasons, of phase 1, but phase 2 looks a lot more uncertain and the rationale for it, quite frankly, I get the impression it is being put in place as we go along, so to speak; that there is not a solid policy rationale.

1.1.3 Deputy J.A. Martin:

It is always good to follow the expert on everything and obviously now he is the expert on primary care. Of course, we will be discussing what we should be doing in this House, as we usually do. I will leave that expert there because he accuses Health of just filling a hole. Well, if we were filling a hole I am telling you now we would be asking for a lot more than £6.1 million because the hole we have created in a law that is 47 years old was very, very narrow. I think it is in the title. It is the Health Insurance (Jersey) Law. Years and years ago in Jersey, and we have just got them coming this way now, you had one practice with one doctor in them and they did not do anything else. Senator Ferguson and Deputy Le Hérissier said, in both speeches, it is taking too long. It has taken a long, long time to get this body of people to work together, to have proper presentation and talk to Health. They work as a business. We have come a long, long way since Senator Ferguson was on Health. She knows the difficulties, but we have come a long way. Deputy Le Hérissier and Senator Breckon talk about: "What should we be doing?" Well, we do primary care. We do free dental care in the hospital for any child under 11. We do dental care through orthodontists up to the age of school leaving. This would not be done in any hospital in the U.K. It would be done by primary care. Senator Ferguson, amazingly, thought yesterday that antenatal check-ups have suddenly gone over to G.P.s. G.P.s have always done antenatal and postnatal checks. They cost the price of a consultation and sometimes double the price, because of the length of the

consultation, and a lot of people choose not to pay the full £80. They go to the antenatal clinic and that is done at Health. Again, we have mentioned the immunisation. Everything we are doing good at Health, but it would be done out in the community. It would be done by primary care. Now, I have got to follow on from the Constable of St. John because, if you follow his argument through, he has a worry that there are people gaining from this fund who have never paid in. Well, then, sorry, none of your children should have had anything to do with the hospital or a G.P. up until now because they have not paid in. You have got non-working mums who probably have never paid in. Are you going to deny them any sort of health care? That is what you get if you follow the Constable of St. John's, I think now, desperate argument through because he is also still muddling the Health Insurance Fund with the Pension Fund and we cannot get it through to him that it is not the same money: "Health is raiding." Now, Senator Ferguson said Health have not done the core checks. Well, if you really want us to do the core checks what do we stop doing tomorrow? It will be £6 million worth more of services we provide and Senator Ferguson is nodding and says we should do that. Well, I would like to see us turn away people at the hospital because this is how it has grown up. As they say, if you were inventing a new services now - and we are working with the White and Green Paper - you would not start here. So we need a transition. This money, because the law has been so tightly worded, has to be a States decision. You can believe what you like. Whether you think this money is to fill a gap, I believe we should have looked at this law years and years ago. To me, the Social Security Department are a collecting agency and the Health Department, the professionals, are the ones who decide who spends this money where it is needed and this primary care needs a lot more work doing. It should be out in the community. Our hospital is getting smaller. Maybe that is also because our population - and nobody has come on this - we have just found another 5,000 people that we are trying to deal with in Health; now, whether that is primary, in hospital or for the elderly. I am watching the law on the long-term care because I have some great concerns about who that will be for, who pays in, who decides when they are too ill to be on long-term care. I will have problems with that if Social Security is deciding that, but that is for another day. What I am saying, we could look at our core services tomorrow. We could stop doing at least £10 million worth of work. It is not possible, not in this society. We are where we are. The money is there and the money has been collected from people who pay Social Security, but if you went out on the streets today and asked somebody: "What part of your tax, your Social Security or anything is paying for you to go to this or that provision when you need it," I would be surprised if anybody knew and especially if you turned around and said to them: "Well, I am sorry. We do not think we could deal with your children because they have not paid in social security or the non-working mum who has never worked, or the father." It may be a father. It is a very desperate argument from the Constable of St. John. He did not get the reply from the Privy Council because this is internal. Again, I will say, if we cannot deal with this here we should not be elected to Government. I will leave it there but it is not a dip-in. It is not a raid on the social security Health Insurance Fund; we can stop doing it tomorrow. If that is what States decide, tell us what we stop doing. We will stop doing it at Health.

Senator S.C. Ferguson:

I would just like to make a correction. I was not agreeing with the Deputy. I was intimating that there were some quick wins that they could do to move stuff into primary care which they are not doing.

Deputy J.A. Martin:

Maybe the Senator could let the Minister for Health and Social Services know.

1.1.4 Deputy C.F. Labey of Grouville:

I voted for this transfer the first time round but I am going to change my mind. I am a woman, after all. I will try and explain to you why this is. I am going to change my mind because the first time we had this debate I had been convinced that these monies were going to be used for primary care. Not even a week later there were *J.E.P. (Jersey Evening Post)* headlines saying that £800,000 was going to be siphoned-off for a report produced by accountants on the state of our health care, £800,000, and I felt quite cheated after having made the decision to transfer these monies, which I felt uncomfortable about in the beginning anyway, because I feel if people pay into a fund ... I mean, nobody minds paying if they know what it is for; if it is for elderly care, if it is for a pension and they pay throughout their working life.

[10:00]

These funds were collected and I was convinced that Health was in desperate need for these monies for primary health care and then you read £800,000 goes to an accountancy practice. We can argue that what the accountancy practice produced was a good report. I am not saying that, but I do question - we have highly-paid directors and managers within our health service - why something could not have been done in that area in-house or internally. So I felt quite cheated after having made the decision to vote in a certain way. Making this decision here by, as I say, siphoning-off these funds into a different area could have the potential of opening up a can of worms. We heard yesterday the Constable of St. John saying about the state of our sea water, on environmental issues. Why should not some of these monies go towards that? That has got potential health issues. Deputy Baudains: dental care. I think, until we have decided exactly how our health service is going to be structured, we should not be switching funds from one side to the other. I cannot support this today.

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

As a new Member, I did not understand fully the background to this debate, but when I read the report and proposition some weeks ago now I just wrote my comments on the front page, as I usually do. Those comments in this case were: "Decision already taken, no debate necessary." Also as a new Member, I obviously had under-estimated the ability of the Assembly to maybe find a debate where there was not one immediately obvious. Yes, it is very right that we question all spending and question that it is spent properly, but I think we need to remember that this is taxpayers' money and it is being spent on primary health care. Provided that is well and properly spent, I do not have a problem with which account that money comes out of. The fact that it is also properly audited and that this payment we are being asked to approve today is the second of 2 tranches, which is going to take us forward to a new system, also gives me assurance. This is money that is being well-spent on front line health services and I cannot really believe that Members seriously want to question spending on issues such as immunisations for our children, family nursing and health care and antenatal services. I would strongly urge Members to support this proposition.

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

Having, myself, worked in the health services in the Island in the 1980s, I know that primary health care is absolutely vital expenditure to the community and also I am very familiar with the lists of valuable organisations providing the work for us - the third sector teams on page 12 of the report, which lists those funding subjects from a 2010 proposition, which up until yesterday I had not even heard of. I rise to express my concern about the funding mechanism and I am really surprised both reading the papers through and Members have emphasised it today. I question whether the way of dealing with this is good governance. It may seem, this transferring from one pocket to another, that this is just like moving wooden dollars, that it does not matter; but I think it does. Moving wooden dollars between funds will be very material to the overall position of the States financially

of whether we show, correctly, our surplus or deficit that our economy is running on public-sector spending. I will return to that in a minute. I have also been surprised in today's debate - I suppose this is influenced by being a civil servant in a previous life - of the paucity of information that has been provided to us to support this transfer. I think Senator Ferguson summed it up perfectly. We have got nothing for 2011. We have got nothing for 2012, no detail there. The detail is provided from a 2010 report, which I accept is reliable, but I would like to have more than just an undertaking that this going to be audited and, presumably, at some stage we might get to see a certificate to say it is okay. The first question I had in looking at it - I suppose it is my kind of nit-picking propensity to dive into detail - is, do those figures include the I.T. (information technology) costs, the costs of the new primary care computer system which is mentioned at page 10 of that report? I do that obviously because it is well-known that I.T. systems in the health care arena are pretty risky beasts. It is well-known that some of these are black holes into which massive amounts of money can be consumed. I see in that report - again it is a 2010 report - it says a figure of over £1 million for the costs of implementation. I would like to know, do these transfers include this or is that extra? Is that also coming out of the Health funds? I suppose I return now to the point of the deficit. I am going to raise this on another occasion but I will flag it up now and I will be listening to hear what the reply from the Minister is. In the report that the C.A.G. (Comptroller and Auditor General) recently published on the performance of the States of Jersey it shows a comparative set of figures from 2005 to 2010 and there are 4 lines there. The first line is the net general revenue income, in order words it is all of our income altogether. The next one is the net revenue expenditure, underneath that. The third line, and this is probably, I guess, where these transfers are: "other expenditure," and it says in the note: "This is spending incurred by a Ministerial or non-Ministerial department, including capitalised spend, that is subject to approval by the States." So that says to me that these are decisions by this House and then the last line is the rub: "surplus or deficit" and in 2010 the deficit is shown as £229 million. That compares to 2009 where there was a surplus of £46 million and all the other years have got a £46 million surplus. So I thought: "My word, what is going on" when I first saw that. That is a question that I will come back to and obviously seek some replies from the Minister for Treasury and Resources of what explanations are in there, but if it is right that this transfer is part of the pot of monies that is transferred over and above normal budgetary processes and budgetary disciplines, I have a concern about that. One last point: I accept all the points made that the primary health care fund ... life has changed and I think the Constable of St. John is absolutely right to tell us that the purpose of a fund was obviously to equate the income and expenditure of a vital area of public expenditure over a very long period because those liabilities do not occur in one year, 3 years, 5 years. They are long term. That is why you have a plan, to iron-out the peaks and troughs of short term and long term, but life has changed and there is no question that the way that fund is set up will need a review and some new accounting treatment. If, as a policy, that fund has to be supported by the States then it should be done properly as a budgetary subvention item including, as has asked today, projected budgets, properly planned. I think those are the things which I would like to see and I hope that the States sets its standards of governance by. I will support this transfer today because it would be very destructive, I feel, not to do so because those services are essential and have to go on. But I am really looking for some absolutely clear commitments from the Minister, on behalf of the Council of Ministers, that it will not be repeated; that this fund will be properly looked at and we will get a proper budgetary arrangement and a funding mechanism and a funding mechanism for this absolutely vital service in the future.

1.1.7 Senator P.F.C. Ozouf:

I am very pleased to be able to follow Deputy Young. I recognise that there are strong feelings about the Health Insurance Fund but let us be frank in this debate. The necessary modernisation of our health care service took too long in order to commence. It was only since the appointment of

former Senator Perchard and then the Deputy of Trinity as Minister that the proper commencement of reform and modernisation, policy change in health care commenced. *New Directions* had floundered. It made no progress whatsoever in terms of modernising our healthcare system and health care does need and was in urgent need of modernisation, not just in Jersey but around the world. Health care is changing, not only for demographic reasons. The bulging of the population of elderly people means the calls on hospitals are far greater. The advance of medical science means we have to limit, to the extent that we can, the use of secondary care by fortifying and strengthening primary health care. The frankness of this discussion is that the scope of the primary healthcare system in Jersey and the funding arrangement had not been modernised because of the absence of the necessary policy reform that did not happen in the early part of the 2000s. We have an excellent G.P. service, an excellent service that is well regarded by Islanders, but the scope of the primary healthcare system delivered in the community was not developed and not expanded. There have been many calls on the floor of this Assembly for the Health Insurance Fund to be able to pay for nurses in G.P. practices so that G.P.s did not have to do the basic immunisations or blood testing or screening. At the same time as the lack of advance of our G.P. primary healthcare system, there was, to some extent, some mission creep within Health and Social Services that filled the gap and started delivering, over a period of years, primary health care services. Because of the progress that was not made in the early 2000s, the last Assembly had a difficulty. At the same time, the Health Insurance Fund - money as the Constable of St. John should know by now, deducted from people's salary for the purposes of primary health care - was effectively rising in terms of the Health Insurance Fund and a surplus, almost an embarrassing surplus, started to be gathered on that fund; money from people's salaries not being directed towards primary health care services. Whether or not the decision was right in order to give free prescriptions, that dealt with some of the surplus - I still maintain the view that that was not the case - but what happened is 2 years ago in the business plan we had a serious crisis in terms of health care funding. We needed to find a solution and it seemed entirely sensible as a stop-gap in order to use some of the resources that had been deducted from people's wages for primary health care, subject to this Assembly's approval and subject to the law being changed, to be directed towards primary health care services that Health and Social Services was providing. It is a stop-gap solution. It is a 2-year solution, but while we progress the White Paper for the long-term arrangements for health care and we put the whole of the healthcare system on a sustainable footing. That is where we have got to and many Members will understand that that is the case. This is a temporary stop-gap arrangement which has strict controls. The Minister has asked me to agree that an Internal Audit memorandum from the Treasury on the deductions from the fund should be circulated and the Minister will address this in his summing up, but I have circulated it for Members. We do not usually release Internal Audits but Members will see this is the Internal Audit which did the review to ensure that the money that Health and Social Services was asking for, for the primary health care, was used. To the Deputy of Grouville, I must say that the £800,000 - necessary expenditure for the drafting of the White Paper; not just writing a report but building on a whole financial model for health care of the future - necessary expenditure, but not paid for out of the Health Insurance Fund. So she does not need to worry and it would be entirely wrong if it would have been used for that. It was not used for that. That was paid for out of Health and Social Services. It was not used. The money deducted from the Health Insurance Fund, as undertaken by myself and the previous Council of Ministers, was properly audited and directed towards primary health care.

[10:15]

I would say to Members, as they look down the list of the items which have been authorised, whether any Member would have any argument that this is not primary health care focused in terms of its resources. The nurses that are going out and the arrangements for family nursing and home

care, is that not primary care? Of course it is. The other out-of-hours G.P. services and the support that has been given to that, is that not primary care? It is absolutely primary care. That was the undertaking. That is the audit that has found that that is satisfactory and that will exactly be, again, the arrangements that are going to be put in place for this agreement in terms of withdrawal from the Health Insurance Fund. So Members need have no concern that there is no absolute proper independent assessment, proper oversight, proper audit, of the amounts that are paid. I accept that we should not have been in this position. We should have been in a position where we modernised the arrangements for the Health Insurance Fund and we had made a lot more progress than we had done until the new Minister has been in place in terms of modernising health care. We did not and it was a failure of the previous Assembly and the Assembly before that that they did not make progress - not the last Minister but the previous Assemblies - in terms of modernising health care. That is the reason why we are in this position. I ask Members to support the request by the Minister for Social Security to allow a further year of arrangements for direction of primary health care from the fund and that this Assembly sends the clear message to the Council that they want the White Paper for health care modernisation to happen, the new arrangements for the Health Insurance Fund, the new funding model for health care to be found during the next 12 to 18 months of the life of this new Assembly. I hope Members will support the Minister for Social Security in his request and support the Minister for Treasury and Resources in his request that if we do not find this funding mechanism for Health and Social Services, we are going to effectively cause a crisis, a problem, in health care funding. Health care is the biggest issue that faces this Assembly in terms of its funding arrangements. It was the biggest issue of the last Assembly and this was the solution, on top of the resources that have been already allocated, both in terms of revenue expenditure and capital, in order to properly care for the people that need care in our Health and Social Services systems. With those comments, I urge Members to support the Minister.

1.1.8 Senator I.J. Gorst:

I am pleased to be able to follow the Minister for Treasury and Resources because he is absolutely right and I support, 100 per cent, what he said. There have been some suggestions yesterday afternoon and this morning that progress has not been made and that Members would have liked more progress to have been made than they feel has been made and I just wanted to touch on some of the progress that has been made. I think it is only appropriate that I do pay tribute to the current Minister for Health and Social Services and her team because they have started a process which I now believe is unstoppable and it is a progress which, as the Minister for Treasury and Resources said, should have been started many, many years ago. We, as a legislature and the Government, perhaps are amiss in the fact that we have allowed health care, in many ways, to stagnate in our community in an unacceptable way. When I initially brought the proposition to transfer money from the Health Insurance Fund, I was aware of my responsibility, which now the current Minister has, of oversight and protection of the funds collected by the department and ensuring that they are appropriately used. Therefore, when I brought that proposition I time-limited it to 2 years and that was an amendment to the primary law and that is why I was able to, with confidence, tell the Connétable of St. John that this is the last time that money can be transferred from the Health Insurance Fund without another amendment to the Health Insurance Fund (Jersey) Law. It has been an open and transparent process. Every decision, initially to make a 2-year ability or 2-year window to transfer the money, was decided by this Assembly and sanctioned by Privy Council or Her Majesty in Privy Council and each amount of transfer - so the actual money that was going to be transferred - has also been approved by this Assembly. In that window the previous Council of Ministers and the current Council of Ministers gave a commitment that they would start the modernisation process, not only of the hospital and the work that Health and Social Services does but also of the primary care delivery within our community. Why am I more optimistic than some Members? It is quite simply this. We in this Assembly have made some very difficult decisions to

change laws which have been in place for many, many years and were starting to fail our community. The Minister for Health and Social Services brought forward amendments to her laws which will allow nurse prescribing, initially in the hospital but, in due course, in the primary care setting and in community clinics. The Social Security Department has brought forward legislation which modernises the way that G.P.s are able to provide care in the community. They are able to modernise their service and we have support them in that. In due course, the Social Security Department, working with the Health Department, will be able to contract with G.P.s to provide various services that we, again as a Government and Legislature, think is appropriate. The reason I raise that is because many Members in this Assembly are told often that the cost of access of G.P.s is too much. By entering into contracts on a wholesale level or contracts across the primary care community we will be able to match up the cost to the Health Insurance Fund with the benefit to the individuals across our community and perhaps move away, for the first time in the provision of various services, from paying solely for a visit and the unintended consequences that that might have to people's health. That is an exciting progression. We have also brought forward legislation which will allow us, in due course, to have contracts with pharmacists. Why do I think that is important and why do I mention that? Quite simply because it picks up on what Senator Ferguson was saying. She was saying that she believes there are some easy wins, particularly around smoking cessation. In other jurisdictions pharmacists provide smoking cessation services. Under our previous law we were not able to do that. We were not able to pay pharmacists to provide a service that probably most of us agree would be better provided by those pharmacists. The department will now be in a position where they can go away during the course of this year, I hope - and this is me pushing them forward, we will wait to hear what the Minister has got to say - and be able to contract with pharmacists to provide these services. There is an amount of service that could be provided in due course, throughout this coming year, in the way that I believe that we all want it to be provided. So a lot of progress has been made. The Minister for Health and Social Services is committed to continue to make that progress and continue down that line, as I know the current Minister for Social Security will, with the support of the Minister for Treasury and Resources and the Council of Ministers. This is one reason why the Council of Ministers believes that the reformation and the appropriate delivery and the first class health care services have to be one of our priorities over the coming 3 years. So I would ask Members not to walk away from the commitment that we have given of delivering the best possible health care at the most appropriate point to deliver the best possible health outcomes and, importantly, move from a delivery of dealing with symptoms to preventative care. These modernisations will allow us to do that. Yes, I understand the difficulty that some Members have with this idea of bailing out Health, but nothing could be further from the truth. These are services that our community wants, they deserve and by giving this money for this window of time will allow us to modernise it and deliver it in a much more exciting way, which will deliver, I am absolutely certain, far better health outcomes for every member of our community. I ask Members to continue down this road, finish this process; and we will be able to finish this process if Members continue to support this proposition today.

1.1.9 Deputy M. Tadier of St. Brelade:

I will not speak for too long because I think this proposition and the debate has been a good one. It is also probably inevitable that this will go through and I think that is the correct decision. There are a couple of reservations and a couple of points I think it is incumbent upon the Chief Minister but moreover the Minister for Health and Social Services to take on board. Now, in this Chamber we can often be detached from reality. We think this is the centre of Jersey, the centre of the universe. In fact there is lots going on outside in the real world and I was just thinking how many people there will be working in our health care service, either at the hospital, St. Saviour's Hospital, in the various clinics around the Island. The staff involved there and those who are waiting in those clinics this morning do not care where this money comes from. They just want to know, many of

the staff who, it has to be said, are already working under duress at point ... certainly I know staff who, if they were working in the U.K., would not have to necessarily have to work shifts back to back, et cetera, and they often make sacrifices in their own lives to provide a very good level of health care for Islanders. They do not care where this money is coming from and I think we have to dispel this argument. I have listened to this impartially yesterday and today. I have not heard any compelling argument as to why we should not be using this fund certainly today. What I have heard is many arguments which suggest that the use of this fund is not sustainable. I agree with that. I think the Minister needs to listen to that. We have received an assurance from the Minister for Treasury and Resources that this is a stop-gap and that put my mind at rest to some extent. That said, we do have a White Paper coming forward. Now, this is not the last time we will be having this debate, probably this year or even next year, because the White Paper ... and I would encourage all Members and members who are listening in the community to get involved in this White Paper because it is flawed, as many of our consultative processes have been. We have just got one option in this paper. We have been given 3 options ostensibly but the first 2, even in the paper the Minister for Health and Social Services ...

The Deputy of Trinity:

Sorry, could I just make a point? He should be talking about the Green Paper, not the White Paper.

Deputy M. Tadier:

I said White Paper because the Minister for Treasury and Resources use the word “White Paper”, but the Minister is quite correct. At this stage it is just a Green Paper. Nonetheless, these are all essentially the same. They are consultative papers. They are there to give options. We have been given 3 options but in the paper it says that the first 2 are not viable and you would have to be an idiot to think that the first 2 are viable. So you have got one option and that is neither a Green Paper nor a White Paper. I would ask Members to have caution. When they are submitting their responses they should not fall into the trap and say: “What is it that we want?” Now, to talk very briefly about this idea of people who have not paid into the fund getting access to the fund. This is what happens in Government and taxation anyway. I do not have children, lots of people do not have children, and I am paying for somebody else’s children to get educated, to go to school, people who may or may not have paid tax in their life, and that is fine. That is the way our system works because it is accepted that there are *quid pro quos* in our system and there are other things for which I will be cross-subsidised and, hopefully, in the round things work out. It is right that those who are least able to pay, for whatever reason, but contribute in other ways to our society are not excluded. So I think that argument needs to be put to bed once and for all. I think there is an underlying problem here that the Constable of St. John and others have partly touched on. What we do not hear, unfortunately, from the Constable of St. John is: where does the money come from? He said that this fund is sacrosanct. Again, I do not think that is true. So where is the long-term funding going to come from? This is the problem that we have in our Island because we do not have the same mechanisms or we refuse ourselves to have mechanisms to raise revenue and taxes that other jurisdictions have because we will not put the income tax rate up. Twenty per cent, apparently, is sacrosanct. We will not tax those who can afford to pay more. We will continue to have breaks. We seem to be very reluctant to increase or lift the ceiling for social security completely. Why is it that when Health admittedly needs more money ... I think Deputy Martin, the Assistant Minister for Health and Social Services, said this already, that the black hole, if there is a black hole at Health, could be filled many times over and they could keep on spending this money and it would still be sensible spending. It would not be nice-to-haves. So there is clearly a funding issue that needs to be grasped by this Assembly. I am quite happy if Members do not agree with my views on tax and spending, but what I would say is that Members need to get to grips with this in one way or the other because in the White Paper, as we are seeing today, we are going to

have a choice, I think, between user pays or cross-subsidy and free access or at least cheap access for all to health care or somewhere in between.

[10:30]

Those are the fundamental problems that we are going to be looking at when it comes to health care in Jersey. So today I think this is just a taste of what is to come. To a certain extent we have made heavy weather of this. I think we do need to take on board the concerns of Members because this is a short-term stop-gap, but the problem is we have not heard anything else about what the long-term plan is for this and that is why there is so much concern. Deputy Young's speech today is pretty much the speech many Members would have been giving the first time here. They have reservations. They are holding their nose. They are going to let this happen once, but certainly, if this comes back to the House again, I think that the patience of Members will be tried one to many times. We do need to get a long-term funding plan in for this which is both equitable and sustainable.

1.1.10 Deputy J.G. Reed of St. Ouen:

Just a couple of questions really directed towards the Minister for Social Security because ultimately it is he that is bringing forward this proposition and it is he that is responsible for this fund. In P.125/2010 we are told that the effect of taking this additional money out of the Health Insurance Fund will place the fund in an in-year deficit for both 2011 and 2012. I want to know what he, as the Minister responsible for this fund, plans to do to deal with those deficits that are going to be created by re-allocating this money. I also concur with some of the comments that have been made previously, especially around the move towards G.P.s undertaking more primary care services, but there is a consequence that we are already aware of - or at least I am - and that is that many elderly, and pensioners in particular, are facing increased costs because they are now required to consult with their doctor more regularly than perhaps they otherwise were. Let us remember that this fund primarily was set up to support and subsidise the G.P. costs. So although we tend to pay £35 or more to visit our G.P., in fact there is an additional £19 that is going towards the cost of that visit. That is the issue and that is the question that perhaps needs to be addressed and has not been commented on by anybody and indeed the Minister for Social Security, as we move forward, in seeking to pass some of these services to the G.P.s, also needs to look at the impact that that will have on those with limited incomes, in particular pensioners who rely solely on their pensions. If we do not do that, then what we will find is, as we are already finding, that pensioners are making serious choices about whether they can afford to seek advice, which they are now directed to by the Health Department, to determine whether they need medical assistance or not. I would also like to remind Members that this is an additional sum of money that is being allocated, in part, to the Health Department. £6.1 million very roughly equates to 0.5 per cent G.S.T. (Goods and Services Tax). We are saying that this is the last time that we will use this money from this fund to support the primary care services. It means that some way or another, whether it is G.S.T. or another mechanism, additional money will have to be extracted from taxpayers to help and replace the money that we are now taking from this fund. There are no easy answers and I accept that the Council of Ministers have already recognised this, but let us be clear that there will be an additional cost going forward for the taxpayers, for the Islanders, as we move forward to deal with this matter.

1.1.11 Deputy P.J.D. Ryan of St. John:

I am grateful for the explanation from the Minister for Treasury and Resources about the history of the budgets to do with Health and Social Services. For new Members, and in this context I think I include myself, leading up to this decision and from outside the Assembly it is difficult to understand the roots of the more complex decisions sometimes to be made by the States. But the perceptions of both new Members and the public in this particular area are clouded, I think, by a

belief that excess funds have existed in the Health Fund at Social Security for some time. We need to go back to something like 2008 when these excess funds were quite openly talked about in the Council of Ministers' corridors. Perceptions were then influenced, I think, by a somewhat questionable decision that was made to abolish prescription charges and I think it was questionable both in terms of its timing, just before an election, and, in my view, also it was questioning in terms of the advisability of abolishing prescription charges itself. In hindsight, I think that people generally question the wisdom of that decision at this point in time in 2012. Now that I do understand better the background to it, I will be supporting this, but I think that we do also need to think about prescription charges again. I do not know if I am typical or not but, personally, when I go and get something from the chemist - I am relatively healthy - I feel quite embarrassed that I am not paying a prescription charge and I think that is quite common. So I would personally like to see that decision reversed and I think that will go a long way towards helping people's perceptions generally.

1.1.12 Deputy M.R. Higgins of St. Helier:

Just a very brief comment. It has been mentioned that this is only a 2-year stop-gap measure but, again, in one of the papers that was provided to us, the Draft Health Insurance Fund (Miscellaneous Provisions) (Jersey) Law 201-, in the comments it says: "There is no provision made for any further transfers and the Minister for Health and Social Services has made a clear commitment to address the issue of primary care health services within this 2-year period. Legislation to replace or substantially revise the current Health Insurance Law will be brought forward before 2013." It says: "Given the continuing pressures on health services this is likely to include the requirement for increased contributions to fund a modern primary care health service." Now, I take it that that is to increase the amount of contributions. In other words, they are going to revise the Health Insurance Law regarding this fund and there will be calls for further money from that for re-alignment. To be honest, to hear that it is only a 2-year thing, this is going to be an ongoing thing. I have major concerns about the Health Department and I have done for quite some time; in fact, ever since I read the Comptroller and Auditor General's report when he stated that the health service could not even say what the cost of having a patient in a hospital bed overnight was. Now, if they do not have the basic statistics and everything else ... and I have not seen anything since that tells me that they have got the costs under control or they know what they are spending their money and, in fact, until they do have some measures like that, I am going to be a sceptic about anything that the Health Department comes forward with when it comes to funding. So just a word of warning to people; do not think this is it. I think this fund is going to be raided continuously in the future, but I do want the Health Department to come forward with some statistics as soon as possible so that we can see that they have got their costs under control and we know what things cost.

1.1.13 Deputy J.A.N. Le Fondré of St. Lawrence:

I was semi-prompted to speak after the speech of the Deputy of St. John, all of which I agree with having been in the room on the day when one of the decisions he was referring to was being made. Really, the point about the actual proposition, it has been previously, if you like, committed to. It has been. As we have all been reminded, it is a time-limited decision. Therefore, on that basis, although there may be a degree of reluctance, I think we should be supporting this and certainly I will be voting for it. What I really wanted to say was in a broader context, which I think iterates a little bit what the Deputy of St. John has semi-referred to, I think there is a wider concern that this is precursor, if you like, to using reserves in different ways, to potentially using reserves to disguise increased revenue expenditure. Now, I will put it that way round and ask the question and I hope that ... The Chief Minister is shaking his head and the Minister for Treasury and Resources is shaking his head, so that is good. But I really just set the marker down. We have got to keep the emphasis on not disguising what we spend, but making sure we control it and its business

transformation and making sure we start doing things in different ways. That was the only reason I wanted to put the marker down. There are lots of heads going round, particular from Ministers which I am glad to hear. One minor comment I will say is some reference has been made to the Internal Audit report. It is very helpful, but what the Internal Audit report appears to say - and that is from my brief reading of about 30 seconds - is that: "We have checked the expenditure. We have checked it back to the invoices and it has been posted in the right place." What it does not tell us, it makes no comment on the value of the money. It does not say that the services have been provided in a different way to achieve the same aim but for less cost. That may not be the purpose. What it is saying is: "The invoices exist and we are happy." There is a degree of comfort it gives, but do not go away feeling totally happy and warm that all the £6 million has been spent to the 99th per cent level of efficiency. That is not what it says. So all I will say is it is something to keep an eye on, but in this instance I think we should be supporting the proposition.

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

Just very briefly, listening to what everybody was stating with regards to the proposition. Just one area which I think that the Council of Ministers needs to look at when they are bringing forward requesting extra money, particularly from funds such as this, is that in P.125 the States and the public were promised a large amount of things in the report as to what they were going to do with regards to primary care services, the new system for Health and Social Services, the Jersey Quality Improvement Framework. Now, I can remember a large amount of this being approved by the States by amendments to legislation, et cetera, but what would have been useful was an update; like a list of exactly what has been agreed - what has been implemented in Health, how far have we come, what we are doing, where the money has been spent exactly in those areas - so that when you come forward for an extra £6 million then we know that it is going to tide over doing the rest of it. In actual fact we might not need that much money, but it is just, I think, a constructive criticism that needs to be made because this is a large amount of money. Although I agree with it, we need sustainable funding in the future and if we can see those monies being used in the correct manner when it comes forward to us like this then there may not be need for such debate in the future.

The Deputy Bailiff:

Does any other Member wish to speak? I call on the Minister to reply.

1.1.15 Senator F. du H. Le Gresley:

It may surprise Members to know that I inherited this proposition. **[Laughter]** However, irrespective of the fact that I inherited it, I am fully behind it and I hope that came across in my opening speech. We have had a very good discussion about this and I think the Council of Ministers, myself and the Minister for Health and Social Services and the Minister for Treasury and Resources all need to appreciate that there is a lot more work to be done and that this is really a holding position. When I was preparing for this debate I was very much thinking of all the processes that Deputy Le Fondré, Deputy Vallois, Deputy Young ... all these people who have spoken have gone through the same thought process I went through. I went through the whole of the debate we had last time because last time we had a tough debate on this matter of transferring money. I read all the responses and I read the assurances that the previous Minister, now the Chief Minister, gave to this House and I said to my officers: "I am not going to stand up in the States and ask for this money to be transferred unless I personally believe that I can fulfil the assurances that the previous Minister gave to this House. I can say for you today that I do believe that what I have read, the audit that has taken place and with the progress that has been made, that it is the right thing today to make this transfer of £6.1 million. Now, I apologise for the lack of detail and this is a fair criticism. I have obtained permission, and I hope you have now seen it, to release this document, an internal memorandum from Internal Audit, which, on the final page - my copy is a

little bit wet, unfortunately, but I think I can still read it - the list of primary care services which were paid out in 2011 - and you will see the document is dated December 2011 - are all there quite clearly to be seen.

[10:45]

Invoices were provided in respect of Family Nursing and Home Care, which received the vast majority, about 80 per cent. There is an S.L.A. in place, as there is with Brook Advisory Services. So there are checks and balances that, quite rightly, Deputy Le Fondré is seeking. I also have a document here that has not been released but this is a more detailed audit done by Internal Audit of the use of the funds and the transfers. If I get permission to release it, I will do that as well. So quite correct to pull me up on lack of detail, but I hope that, with the additional information, that has been released today and the assurances that you have received, Members will be able to support this. Now, a lot of people have spoken and I do not propose to deal with each speech individually, but some people, quite rightly, have expressed concern about the Health Insurance Fund being diminished when there are other uses that have yet to be put to the fund, such as dental care and optical services. As most Members know, I have already agreed with Senator Breckon that we will be reviewing the provision of dental services in Jersey during 2012. That is an undertaking I have made and my department will deliver and it may be that we will need to look to this fund in the future to improve the dental services available to the public outside of the current schemes that are in place. That is quite a strong possibility and something we will be looking at and engaging the public, States Members, dental practices, et cetera, in that process. A number of Members mentioned dental services, so I hope that has covered that point. Obviously the 2 Assistant Ministers and the Minister for Health and Social Services were supportive of this transfer for obvious reasons. It will help their departments' budget if they get money from the Minister for Social Security but, that apart, they are doing a lot of work in developing the Green Paper, moving towards a White Paper, on the future of health services and really there is a lot of work going on in the background. The Health Insurance Law may well need to be changed dramatically in its future use but, again, that will be a proposition that will come to the States and there will be discussion with States Members and the public before that takes place. The Deputy of Grouville mentioned the £800,000 paid to an accountancy practice. I think the Minister for Treasury and Resources corrected her. That has not come out of the Health Insurance Fund. It is true that the fund is being used to fund primary care services on 2 occasions, this year and last year. Again, this is subject to end of year audit, but the fund after transfer of the £6.1 million has a balance in the region of £79 million. So that is the position of the fund at the moment, the net assets, and if it was not for the £6.1 million transfer we would have had an additional £2 million surplus of income over expenditure. So every year the fund effectively, excluding these transfers, is increasing by £2 million after allowing for, obviously, the fate of the investments of the fund through the Common Investment Fund. I think we are all agreed that the future of health is one of the biggest issues for this Assembly. It is in the Strategic Plan. A lot more work has to be done. I am getting up to speed on what is happening at the moment, but we really have to provide this transfer today. I am not saying it is going to be moved straight away but what I am saying is we have to agree that the £6 million is made available to the department for the primary care services that they provide. The Deputy of St. Ouen asked me a couple of questions and I think I have clarified about the actual position of the fund, that there is, year to year, a £2 million surplus and, just for these 2 years, because of £6 million, the result will be a £4 million deficit on that particular year. The impact on low-income groups if we start to move primary care services out of the hospital or out of charities that are currently funded is obviously an issue that we need to address and I do not know what the solution is. I have not got a magic wand, but I suspect - and it has been alluded to by some other people - that we will in time have to increase contributions to health insurance. There is no other

option as I see it because we are talking about health insurance and if we are going to widen the use of the fund then almost certainly what will come down the line will be increased contributions. I do not know how much they will be, what percentage of increase, but I do suspect that that is the direction we will be moving in. I hope, in that very brief summing up, I have covered some of the main points raised by Members. I would just like to end with a very short speech that was made in this House about a year ago when we were dealing with the first of the £6.1 million transfers. It is a speech that was made by a respected Constable who is no longer in this Chamber who had a knack - and this is something I learned in the short time that I was in the States with him - of saying in a few words what some people would say in 20 minutes. So if you will forgive me, I will just very briefly read what the former Constable of St. Martin said in the same debate last year. He said: "Ever since yesterday afternoon I have had a series of flashbacks and the flashbacks were of my grandmother's accounting system, which was a mantelpiece in her kitchen with a series of pots on top of it. There was one for the rent and one for the groceries, one for the Prudential and I think there was probably another one but she also collected ship ha'pennies" or halfpennies. I hope everybody know what they are: "There are 24 of them to shilling", if you know what a shilling is. **[Laughter]** I hope everybody is up to speed: "Now, ship halfpennies" - I had some of these, they are very nice coins: "Why did she collect them? She liked them and they were a nice little coin with the head of King George VI on one side and a very handsome picture of, I think it was, the Golden Hind, Francis Drake's ship, in full sail on the other. That pot was almost full or three-quarters full. If she perchance had a headache and the doctor's tin was empty, she would have to take the money for the aspro from one of the other pots and reluctantly she would often take 3, 4 or 5 ship ha'pennies out of the pot and say to me, 'Please nip down to Donald Dodsley in Colomberie and get me a strip of aspros because I cannot do anything else. You will not be having any supper because I cannot do anything until I get my aspros.' Now, if Health and Social Services has got a headache let us try and make it better and I think that the paracetamol should come from the ship ha'penny pot, which I think is the Health Insurance Fund." **[Laughter]** **[Approbation]** I maintain the proposition 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 whether to accept the proposition of the Minister for Social Security in relation to the Health Insurance Fund transfer and I ask the Greffier to open the voting.

POUR: 43		CONTRE: 6		ABSTAIN: 0
Senator P.F. Routier		Senator A. Breckon		
Senator P.F.C. Ozouf		Connétable of St. Clement		
Senator S.C. Ferguson		Connétable of St. John		
Senator A.J.H. Maclean		Deputy of Grouville		
Senator B.I. Le Marquand		Deputy M.R. Higgins (H)		
Senator F. du H. Le Gresley		Deputy G.C.L. Baudains (C)		
Senator I.J. Gorst				
Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				

Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisssier (S)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy T.M. Pitman (H)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy of St. John				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

2. Draft Cold Weather Bonus (Jersey) Regulations 201- (P.186/2011)

The Deputy Bailiff:

We now come to P.186 - Draft Cold Weather Bonus (Jersey) Regulations - lodged by the Minister for Social Security and I ask the Greffier to read the citation of the draft.

The Deputy Greffier of the States:

Draft Cold Weather Bonus (Jersey) Regulations. The States, in pursuance of the Order in Council dated 28th March 1771, have made the following Regulations.

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

I am delighted that the first piece of new legislation that I bring to this House for approval are regulations to set up a cold weather bonus for local pensioners aged 65 years or over as requested by the last States Assembly following approval on 16th February 2011 of my proposition P.4 of that same year. It is interesting to note that of the 18 Members who voted against P.4/2011, 7 are no longer in the States and 7 are in the current Council of Ministers. **[Laughter]** I am hoping that the latter group are now prepared to support this proposition and that the new Members of this Assembly will also do likewise. In P.4/2011, I explained that nearly one third of pensioner households in Jersey were experiencing fuel poverty because they spend more than 10 per cent of their income before housing costs on domestic fuel. Only pensioners' households in receipt of income support benefit are currently entitled to receive cold weather payments. The harsh winter of 2010/2011, coupled with a steep increase in the cost of domestic fuel, emphasised the need to provide additional help to pensioner households who fell just outside of income support benefit. Although fortunately this current winter has been exceptionally mild, it is still important to press

ahead with this new bonus for which funding of £300,000 was agreed in the 2012 Business Plan. The benefit structure that I am proposing today comprises stand-alone triennial regulations, which will cover the period from January 2012 up to April 2014. The regulations are closely linked to the existing food costs bonus scheme. Most pensioners aged 65 or over who received a food costs bonus in 2011 will be able to apply for the cold weather bonus in the next few months and will then receive a payment covering January to April 2012 as a lump sum in May. Following this initial period, pensioners will then be able to apply for the food costs bonus and the cold weather bonus at the same time each year, typically over the summer. The cold weather bonus will be paid to pensioner households that have incomes above the income support level but below that of income tax liability. It is likely that the great majority of eligible households will be owner/occupiers. Approximately 1,000 pensioner households received a food costs bonus in 2011 worth £193.36. The value of the cold weather bonus will depend on the average daily temperature throughout the winter months. Payments will be made twice a year in January and May. As an example of the values, if this scheme had been operational last year, the January payment covering the very cold spell in November and December of 2010 would have been £104.29 with a further payment of £115.58 in May of 2011. The base value of the bonus is automatically updated each year in line with fuel prices. Therefore it has recently been updated by 11.2 per cent in relation to the June R.P.I. (Retail Price Index) fuel and light element figures. My department provides a number of benefits mainly targeted at pensioners. These include the Christmas bonus, 65-plus health scheme, the TV licence benefit and the food costs bonus in addition to this proposed cold weather bonus.

[11:00]

Apart from the Christmas bonus, these are all linked to income tax thresholds. Both the food costs bonus and these new cold weather bonus regulations will expire during 2014. Before then, I hope to be able to review the range of benefits available to older householders to ensure they provide effective targeted support to pensioners. I have already announced that my department will be reviewing the way in which dental benefits are administered under the 65-plus health scheme during 2012. I also intend to discuss with the Minister for Planning and Environment how the receipt of cold weather payments can be linked to improving the thermal efficiency of homes through the installation of energy-saving measures by the energy efficiency service. It should be noted that this scheme already has been extended to those households in receipt of food costs bonus. I am grateful to those Members that supported my proposition last year and to the Chief Minister who, in his previous role as Minister for Social Security, made provision for the funding of this benefit for 2012. As this new benefit is very closely linked to the existing food costs bonus, the extra cost of administering it will be very low. I hope that all Members will support the introduction of this new cold weather bonus for our senior citizens and I propose the principles of these regulations.

The Deputy Bailiff:

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

2.1.1 Deputy G.C.L. Baudains of St. Clement:

Broadly, I support these proposals. I would like the Minister in his summing up to address the financial issue which, looking under the financial and manpower implications, is slightly vague. I am becoming somewhat confused. We are told here there is an underspend yet just a few moments ago, we were dealing with millions of surplus. The department appears to be awash with money at a time when the fundamental spending review and others are trying to cut back on expenditure. Contributions have had to be raised and yet there seems to be a lack of balance that I am hoping the Minister can address when he sums up.

2.1.2 Deputy R.C. Duhamel of St. Saviour:

I am pleased that the Minister for Social Security is almost coming to the same point of view as myself that perhaps burning pound notes is not the best way of providing benefits to the public in order to keep them warm, in particular, in respect to his comments about insulation of non-standard buildings as perhaps being a better way to get value for money. The main reason for standing is to ask a question of the Minister for Social Security as to why there appears to be an omission in the regulations as to how the cold weather bonus payable is determined in terms of the temperature that is attributed to the Island below which the triggering of the payments is made. Members will have no doubt heard on the radio just recently the controversy over how facts and figures are collated in terms of sunshine for the Island. In particular, Eastbourne was claiming to have had more sunshine than Jersey. It is perhaps down to where we take those figures from and we heard on the radio that if you take the figures from the top of Fort Regent, then perhaps more sunshine falls on that particular place than indeed other more shaded places within the Island. In exactly the same vein, if we are coming to a formula which determines the average daily temperature of a particular day, I would like to know exactly how that temperature is arrived at and whether or not the place at which the measurements are taken does properly represent the overall temperature on which this benefit is made. In order to assist the Minister who might not have the information at his fingertips, I do perhaps think that the measurements have been taken at Maison St. Louis but again I query as to whether or not the temperature at Maison St. Louis at the Met. station there does adequately represent all of the places to the same temperature within town. It is well known that urban temperatures are slightly higher than rural temperatures in that a whole load of the land is covered in concrete and other structures. It is just a picky point but I wait to hear what the Minister has to say.

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

I have a few questions for the Minister. I was contacted recently by a parishioner of mine who had been ill. He is an elderly gentleman who lost his wife recently and finds it difficult to manage on his own. Nevertheless, he is able to be at home with some support from his family. Having been ill, he had overlooked some information that he had received, he cannot tell me where he received it from, but it was in relation to the food costs bonus of 2011. When he read the leaflet, he believed that perhaps he was entitled to receive some money from Social Security. When he telephoned them, he was told by the officer that he was 2 days late to apply for this bonus and could not be considered for it. I am pleased to say that with my help, and I believe the help of the Connétable of St. John as well, he was able to receive his food costs bonus, but it makes we wonder how we make these payments public. What publicity do we give to the general public to tell them that they are entitled to benefits from the States of Jersey? We are talking here obviously about pensioners and not all of them are, as I say, able to deal with paperwork and not all of them read the *J.E.P.* My specific question to the Minister is what publicity is being given about this new payment? How will his department notify people? I notice on page 5 that paragraph 4 does say that: "Applicants will be encouraged to apply for the food costs bonus and the cold weather bonus at the same time and eligibility will last for up to 12 months." Will he tell us clearly how applicants will be encouraged to apply and how "eligibility will last for up to 12 months". Does that mean specifically from 12 months after April of 2012?

2.1.4 The Deputy of St. Martin:

On page 6, the explanatory note Regulation 1 states that: "Cold weather bonus is going to be paid during a cold weather month." I am concerned that the last sentence in that regulation says that a cold weather month is the aggregate of the amount by which the average daily temperature on each day of that month falls below 15.5 degrees. I hope the Minister is going to correct me but it seems to me that if we have a cold weather month with temperatures of 12.5 degrees in January and 12.5

degrees in February, that by his calculations on this recommendation, January will be defined as a cold weather month but February will not. I hope he can enlighten me.

2.1.5 Deputy K.C. Lewis of St. Saviour:

I will be supporting this proposition and we heard yesterday that unlike the United Kingdom, the price of gas in Jersey will not be going down and the price of fuel generally has been stable but definitely not going in the right direction. I have visited constituents in the past that have been burning refuse in their fireplaces just to keep warm during cold periods. There is fuel poverty out there and I believe we should all support this proposition.

The Deputy Bailiff:

Does any other Member wish to speak? I call on the Minister to reply.

2.1.6 Senator F. du H. Le Gresley:

I think 2 main issues came out of those people who spoke who I thank. Deputy Baudains was concerned about financial figures or the financial report which accompanied the proposition. What the department has done is based the calculation of a budget of £300,000 on 1,100 claimants at an estimated cost of £280,500. That is based on basically what was paid in cold weather payments to people on income support over 2010/2011 so that is the basis of the calculation. Now, when we had the debate on my original proposition, I did extract from Social Security approximate figures of the number of possible pensioners who might be entitled to claim the food costs bonus who currently do not do so. There was an estimate that the figure could be as high as 3,000 households who could be claiming the food costs bonus who are currently not doing so. So although the budget is set based on 1,100 claimants, it is possible, if we do as the Constable of St. Lawrence wishes us to do and I certainly intend to do, that the number could rise but, of course, we have to bear in mind that this year we are having a very mild winter so it is unlikely that that budget would be breached but, of course, there is a possibility that for the winter of 2012/2013, if we return to cold weather, we might see that we needed a higher budget but that is a matter for fixing in the annual setting of budgets. A number of people are puzzled about what constitutes a cold weather month and I knew this would crop up so I asked the department to give me a very simple explanation and I hope this is simple. Essentially, the calculation is the same one we are currently using for the income support recipients so nothing is changing. It is a calculation that has been approved, if you like, by this House when we debated the actual income support special payments for cold weather payments. However, it goes as follows. If the average temperature in a day drops below 15.5 degrees Celsius, then the gap in degrees between the average and 15.5 is counted. Add up all the gaps for the month. If that totals above 90, a payment will be made. I think everybody understands that. **[Laughter]** That is the best explanation I am afraid I can give on that. I think I understand it and I hope the majority of the House does as well. As far as giving publicity, in answer to the Connétable of St. Lawrence, what will happen is that everybody who received the food costs bonus for 2011 will be eligible if they are over 65 and, because we have that information on computer, they will be sent details to apply for the cold weather bonus so they will be automatically informed. There will be more information put on the States of Jersey website under Social Security and also what the department did last year was that when we did the uprates of the old age pension in October, all pensioner households were sent details of schemes that they could apply for which may or may not have been relevant to their personal circumstances, and that is something I would hope that we would continue to do. I think I have hopefully dealt with all the questions and I maintain the principles.

The Deputy Bailiff:

The appel is called for. I invite Members to return to their seats. The vote is on whether to adopt the principles of the Draft Cold Weather Bonus (Jersey) Regulations and I ask the Greffier to open the voting.

POUR: 35		CONTRE: 0		ABSTAIN: 0
Senator A. Breckon				
Senator S.C. Ferguson				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisssier (S)				
Deputy of St. Ouen				
Deputy J.A. Hilton (H)				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy T.M. Pitman (H)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

The Deputy Bailiff:

Chairman, does your panel wish to scrutinise these Regulations?

Deputy K.L. Moore of St. Peter (Chairman, Health, Social Security and Housing Scrutiny Panel):

No.

2.2 Senator F. du H. Le Gresley:

I wondered if the Members would be happy for me just to run through the regulations very briefly and then take a vote *en bloc* if that was acceptable?

The Deputy Bailiff:

If that is the way you wish to propose it.

[11:15]

Senator F. du H. Le Gresley:

Thank you. Regulation 1 sets out various terms used within the regulations. The definition of a household is the same as in the Income Support Law. Regulation 2 creates the legal requirement for the bonuses to be paid twice a year in January and May. Regulation 3 sets out the eligibility criteria to receive the cold weather bonus. These are that the household qualifies for a food costs bonus, the household occupies its own accommodation, i.e., it is not paid to people living in a lodging or hostel accommodation or living with another householder. Somebody in the household is at least 65 years old or plus and is receiving a Jersey old age pension. The household is not receiving cold weather payments under the Income Support Law. Regulation 4 explains how and when applications are made for the bonus. Applications in respect of May 2012 bonus can be made at any time up to the end of March 2012 and will be based on eligibility for the food costs bonus during the second half of 2011. After May 2012, an application can be made at any time and is valid for the following 12 months. Regulation 5 sets out the calculation for the amount of the bonus. This calculation is identical to that used in the Income Support Cold Weather Payment Regulations. The administrative arrangements for these regulations are identical to those set out in the Food Costs Bonus Regulations and Regulation 6 therefore makes the cross-reference to the F.C.B. (Food Costs Bonus) Regulations. They provide for the initial decision to be made by a determining officer, the right for a second determination by a separate officer and a further right to an independent appeal which in this case would be the Social Security Tribunal subject to specific time limits. Regulation 7 sets out the offences and penalties associated with this bonus. Again, these are identical to the Food Costs Bonus Regulations and have been approved by the Attorney General. Finally, Regulation 8 provides the name of the regulations and that the regulations come into force the day after they are made. I propose the regulations.

The Deputy Bailiff:

Are the regulations seconded? [**Seconded**] Does any Member wish to speak?

2.2.1 The Connétable of St. Lawrence:

I am not sure if I am not with it today. Members will decide for themselves no doubt but looking at Article 4, paragraph 2, I read that: "Subject to paragraph 5, an application for a cold weather bonus may be made in respect of January, February, March or April 2012 on or before 31 March 2012" and I do not understand how you can make an application in advance or if indeed that is what we would be doing is, applying in advance for a cold weather payment in April. Presumably that is the intention, people to anticipate the weather.

2.2.2 Connétable J. Gallichan of St. Mary:

Notwithstanding the explanation given by the Minister in the debate on the principles, the Deputy of St. Martin asked a question and I do not think he challenged that he had not been answered. The cold weather month calculation surely depends on the number of days in the month and February I do not think would fall ... that is the exact question that the Deputy of St. Martin made. I do not think it was addressed and I would be grateful if the Minister could address it in this summing up, please.

2.2.3 Deputy R.C. Duhamel:

The Minister did not answer my query either on the first part and just to remind him, it is whether or not specifically the method for determining the average daily temperature on a particular day in the relevant months, how that calculation is made, where it is made and whether or not the calculation as done in that particular place is truly representative of the overall temperature upon which the Island is relying for this particular calculation.

2.2.4 The Deputy of St. Martin:

I rise again to raise an issue under the Regulations 1.2 and I thank the Constable for her support. If I could explain a little bit more in depth because maybe my first explanation was not good enough. We are talking about aggregates of figures and it becomes quite obvious that if you have the same figure in every day in January and in February, that the aggregate figure in January must be higher than the aggregate figure in February. If, for example, the difference between the average and 15.5 is 3 degrees, in the 31 days in January, the aggregate will be 93 and it will qualify for a payment. If the difference is 3 degrees in February when we have 28 days, the aggregate is 84 and we do not qualify for a payment. I cannot understand how we can have the same temperature in January and February and have one month as a cold weather month and one month as not a cold weather month.

The Deputy Bailiff:

Does any other Member wish to speak? I call on the Minister to reply.

2.2.5 Senator F. du H. Le Gresley:

At this stage, I am looking for a lifeboat. **[Laughter]** I will do my best, what more can one do? I have to agree with the Constable of St. Lawrence that Article 4 paragraph 2 does look a bit strange because it does say, as she quite correctly says, that an application for a cold weather bonus may be made in respect of January, February, March or April on or before 31st March. So I do not quite know how we can do April if we are going to do it before 31st March. I am a bit concerned about that and I am not quite sure what else to say. Unless I get a bolt of lightning coming out of the sky, I am going to be struggling to answer that one.

The Deputy Bailiff:

Maybe, Minister, I can help you. I think in the absence of the Attorney, what it perhaps means is that you must make your application in March although whether your application will be met or not will not be known until the temperature has been determined in April. That may not make much sense but at least it is possible for the regulations to be construed in that way.

Senator F. du H. Le Gresley:

I think it is a wonderful explanation, Sir. **[Laughter]** I just wish I had thought of it. I was wondering, Sir, whether you could deal with the next question. **[Laughter]**

The Deputy Bailiff:

Well, fortunately, the Attorney General has arrived. **[Laughter]**

Senator F. du H. Le Gresley:

Right, so the next concern is what happens in February when we have fewer days although this year is a leap year, I think, so we have got one more day. **[Laughter]**

The Deputy Bailiff:

I am wondering if perhaps the Minister would like to ask the Deputy of St. Martin to put the question to the Attorney General just in case there is a legal response to it. Can you put the same question in relation to aggregates and the construction of Article 5?

The Deputy of St. Martin:

My question relates to the aggregation of the difference between the average temperature for the day and 15.5 degrees. If the average temperature for a day is 12.5 degrees, the difference is 3 and in January, we would have 31 days times 3 which would give us 93 and in February, we would have 28 days times 3 which would give us 84 and in the course of a leap year it would be 87 which still would not qualify. Seeing that the important number is 90 and that January will always exceed 90 and February will always be less than 90, I cannot see how the same temperature in January and February can come to a different result as in one month being a cold weather month and the other month not being a cold weather month.

The Deputy Bailiff:

So the question for the Attorney is whether the regulations properly construed have that impact. While he is thinking about that, Deputy Baudains, you wish to say something.

Deputy G.C.L. Baudains:

I was wondering if a way forward from this confusion might be that we adopt the proposition today and perhaps the Minister would come back in a week or 2 with any necessary amendment to these Articles.

Connétable D.J. Murphy of Grouville:

If I may try to be helpful, depending on which way you read the statement, it could mean that you can apply in any month of the first 3 months of the year; the application would apply to all 4 months of the year. So providing your application is in by 31st March, all 4 months would be taken into account.

The Deputy Bailiff:

Thank you, Connétable. I think we have now moved on to the more difficult question that the Deputy of St. Martin has put and the question really for the Attorney is simply whether on a proper construction there is a problem between the months of January and February.

Mr. T.J. Le Cocq Q.C., H.M. Attorney General:

I have to say I am going to need a little bit more time and I am going to need to understand the question rather better, I am afraid, because although it was read out to me once, I am not sure I entirely follow what the essence of the problem is supposed to be. Obviously, Regulation 5 is to do with the amount that is payable. It is not to do with whether or not it is, in fact, a cold weather month or anything of that nature but I think I am right. If I could take a few moments to speak to the Deputy and get a better understanding of what the question is, I am afraid. I was not following across the road.

Deputy M.R. Higgins:

Is it possible under the Standing Orders for us to leave this one in abeyance at the moment at this particular stage and move on to some of the other non-contentious pieces of legislation we have got to deal with and give the Attorney and others a chance to try and come back on this because the idea of passing a piece of flawed legislation does not appeal to me in the least.

Senator I.J. Gorst:

Perhaps I could be helpful.

The Deputy Bailiff:

Chief Minister, there has just been a suggestion from Deputy Higgins which I propose to deal with by acquiescing in it. Under Standing Order 167, if a matter is not dealt with in accordance with

Standing Orders, if it is not providable by Standing Orders, the Chair has discretion. What I am going to do is now call a halt on this debate, temporarily suspending it, to deal with the statement by the Deputy of St. John, the Minister for Education, Sport and Culture. We will take questions on that and then during that interval, the Attorney will be able to discuss the matter with the Deputy of St. Martin and perhaps with the Minister, and we will then resume thereafter. So, Minister, you wish to make a statement?

STATEMENT ON A MATTER OF OFFICIAL BUSINESS

3. Statement by the Minister for Education, Sport and Culture regarding grants to St. Michael's and St. George's schools

3.1 The Deputy of St. John (The Minister for Education, Sport and Culture):

Yes, please. Following a question raised in the Assembly yesterday, I would like to provide further information to Members about the discontinuation of States grants to St. Michael's and St. George's preparatory schools. The annual grant to St. Michael's school of approximately £410,000 per annum will be phased-out over the next 5 years. By 2016, they will no longer receive a States subsidy.

[11:30]

The arrangement for St. George's is different. When negotiations began, the school was facing a large rent increase that would have put its future in doubt. In order to avoid closure, the school requested an advance of the annual grant it would have received over the next 5-year period. This enabled St. George's to purchase the premises at La Hague Manor, St. Peter, and secure the future of the school for its 180 pupils. The proposal was worked through by both the States Treasury and approved by the Comprehensive Spending Review Board under the previous Council of Ministers. It was approved by the Minister for Treasury and Resources who made the money available from the restructuring provision. Both Ministers recognised that this payment would support the States strategy to deliver real savings and provide better value for money within existing spending limits. I am grateful to the Minister for Treasury and Resources and his officers for their work on this and I should also mention I am also grateful to the previous Minister for Education, Sport and Culture, Deputy Reed, who was also instrumental. The level of grant provided to St. George's each year has been approximately £204,000 but fluctuates slightly depending upon student numbers. The advance payment it received was £500,000, equivalent to 2½ years of the full grant roughly or roughly the same as it would have received if the funding had been phased-out over the 5-year period. In other words, the amount of public funding received by the school has not changed. It is only the timing of the payment that has altered. The arrangement clearly has important benefits to St. George's and the Jersey taxpayer. By adopting a flexible approach, we have been able to save a valued school. We have also reached a solution that has enabled us to save a considerable sum of money in the long term. This one-off payment has ended St. George's reliance on taxpayers. I have already said that I support transparency and it was always my intention to publish this information as soon as possible. However, it would not have been appropriate to publish details of the payment until the property transaction was completed. The sale went through the Royal Court on 16th December. I was then in the process of arranging a meeting with the school to discuss the announcement but this was overtaken by events and yesterday's question. I am grateful to the schools for their co-operation in achieving these statements. I would also like to reassure States Members and the public that safeguards are in place to ensure that this grant cannot be exploited for commercial gain. A contract is in place that requires full or partial repayment of the £500,000 in the unlikely event that the building ceases to operate as a school during the timeframe of what would have been the grant.

The Deputy Bailiff:

The statement having been made, it is now open for questions. Does any Member have questions for the Minister?

3.1.1 Senator L.J. Farnham:

My key interest in this matter is to ensure that for all fee-paying schools in the Island, their States funding is protected while a policy is formulated and the appropriate timescale is given, and I believe a very lengthy timescale of approximately 10 years needs to be put in place to address funding to schools. But my first question on this issue, after the States decision I believe on a proposition from former Senator Ben Shenton... my question is why were these 2 schools treated differently from the other fee-paying schools?

The Deputy of St. John:

To quote the Minister for Social Security, it may surprise Members that I inherited this decision but that I do agree with it. I cannot say what was in the minds of the States Members who made that decision. I was not party to it. It would be wrong for me to surmise what States Members were thinking but it is quite clear that they made a decision to reduce the grants to these particular schools. That is the only way that I can answer the question, I am afraid. It is not particularly helpful to the Senator but I am afraid I was not there at the time.

3.1.2 Senator L.J. Farnham:

I am just trying to establish was the current outcome that St. George's and St. Michael's found themselves in now, was that negotiated by the current Minister or the former Minister? If it was negotiated by the current Minister, I ask again why when the States had agreed not to act on any changes to ...

The Deputy Bailiff:

I understood the Minister to say he inherited it and therefore he did not negotiate this.

The Deputy of St. Ouen:

Please, Sir, as a point of information and just to clarify the matter of P.72 ...

The Deputy Bailiff:

It is Question Time, Deputy, and therefore not a time for clarification.

The Deputy of St. Ouen:

Well it seems to me that the current Minister for Education, Sport and Culture is quite rightly unable to answer the question put to him about P.72, that was a proposition debated by Senator Shenton, and it is important that States Members recognise what that proposition meant and it was Senator Shenton who specifically excluded St. Michael's and St. George's from his proposition. In fact, he also excluded the States schools until an amendment that was proposed by Deputy De Sousa.

3.1.3 Deputy J.A. Martin:

Just a point of clarification. In the last paragraph, it states: "A contract is in place that requires full or partial repayment of the £500,000 in the unlikely event that the building ceases to operate as a school during the timeframe of what would have been the grant." Firstly, is it full or is it partial and secondly, which is the timeframe, the 2½ years of the double the £204,000 or the 5 years that would have taken if we had given it over the increment of 5 years and also I have a concern that if it is the 5 years, that that is not even long enough. We are talking about a gross repayment of half a million ...

The Deputy Bailiff:

Deputy, the first 2 were questions. Can you please answer the questions, Minister?

The Deputy of St. John:

Yes, I have the contract in front of me and if you will just give me a few moments. It is difficult for me to pull out the right piece in the contract right now. It is a contract between the Education Department and the school but my understanding is certainly that it is over the 5-year period and not 2½ years. I will confirm with the Assembly there is a copy of the contract here. I can give it to the Attorney General, Sir, if that would be better. [Laughter]

The Deputy Bailiff:

Absolutely not, Minister. It is for the Minister, not for the Attorney General.

The Deputy of St. John:

Okay, right, in that case, my understanding is that it is for the 5 years. It would depend upon the timing of when the school ceased to operate as a school as to the amount of the repayment of the £500,000 so that it is the way that the contract would work. I have looked at the contract and I have had my officers look at it very carefully. That was, in fact, the first question I asked when I was aware of this particular agreement and I am assured that it is commercially correct. I hope that satisfies the Deputy.

3.1.4 Deputy M. Tadier:

I am slightly confused. We had a very reasonable question from Senator Farnham and the Minister, although I know he is a new incumbent relatively, said that he supports this decision but was unable to answer the Senator's question as to why this was being targeted at these 2 schools as opposed to the other fee-paying schools. Now, if the Minister does not know why this decision has been made, how can he say that he supports it?

The Deputy of St. John:

The decision was made by my predecessor and the Minister for Treasury and Resources. In terms of why though those 2 particular schools were excluded, that was a decision made by the States of Jersey during the debate last year on grants to fee-paying schools.

The Deputy Bailiff:

I think the question, Minister, is why you support it?

The Deputy of St. John:

Why do I support it? I think they would have made the right decision. I would have made the same decision as the previous Minister and the Minister for Treasury and Resources and I would have made that decision, had I been party to it, on the basis that we have preserved a valuable school that was in danger of closing and that is why it was decided to pay the £500,000 in advance to enable them to buy their freehold property. A school that owns its own freehold property is in a far stronger position to spread its costs over a much longer period of time. Anybody who has been in business knows that the ownership of a freehold allows much more long term objectives in spreading one's cost base or costs over a period of time. I certainly ...

The Deputy Bailiff:

Answers must be succinct, Minister.

3.1.5 Deputy M. Tadier:

Can I have a supplementary because that is not the question that was being asked? The intimation by Senator Farnham is that by singling out these 2 schools to cut their subsidies, now and over a planned period and not look at the other fee-paying schools is inequitable. Now, the Minister has basically said that he does not understand why these 2 schools have been singled out but he supports the decision even though he does not know why the decision has been made, so can he clarify the position or at least seek to come back with more information at a later date?

The Deputy of St. John:

I support the decision to use the invest to save fund to pay £500,000 rather than tailing-off on a glide path the grant over the 5-year period in the case of St. George's school. I have no comment to make about a previous States decision. I was not party to it. I hope that is clear. I have no comment, I am completely ambivalent one way or the other. I am not party to the information that the States had at the time to make the decision to exclude those 2 schools.

3.1.6 Deputy G.P. Southern:

Will the Minister assure the House that the next time he comes with a statement or some sort of explanation of his position as Minister, notwithstanding his newness to that position, will he come better prepared?

The Deputy of St. John:

I do not believe I have come ill prepared.

3.1.7 Deputy G.P. Southern:

Does he accept that this question and answer session is producing no fresh answers and no fresh information?

The Deputy of St. John:

No.

3.1.8 Senator S.C. Ferguson:

Just 3 quick 2-word answers. Will the same loan facilities be given to St. Michael's? Was the loan agreement given to the Law Officers to review?

The Deputy Bailiff:

Two questions, I think, is enough, thank you.

Senator S.C. Ferguson:

What was the interest rate?

The Deputy Bailiff:

Two questions, you can choose any 2, Minister.

The Deputy of St. John:

Which 2 to choose? I do not mind answering all 3, Sir. It was given to the Law Officers to review. There is no interest rate because it is in lieu of a grant. That will do, that is 2.

The Deputy Bailiff:

Thank you. That brings the questions to an end, 10 minutes having expired.

PUBLIC BUSINESS - resumption

4. Draft Cold Weather Bonus (Jersey) Regulations 201- (P.186/2011) - resumption

The Deputy Bailiff:

Attorney, are you ready to return to advising the Assembly on the ...

The Attorney General:

Thank you and I am grateful for the small gesture of time. I believe the answers to some of the questions will be dealt with by the Minister but in short, having looked at it, the legal position is that there is a potential anomaly in that it is possible for the same temperature to be throughout January, throughout February and throughout March but, for example, for January and March to be cold weather months but February not to be a cold weather month because of the aggregating provisions. That, it seems to me, falls within the definition interpretation in the regulations so that I think is the legal effect, that it is possible for some temperatures for that to be the case.

Deputy G.P. Southern:

Could I ask a question?

The Deputy Bailiff:

Of the Attorney?

Deputy G.P. Southern:

Yes.

The Deputy Bailiff:

Yes, Deputy.

Deputy G.P. Southern:

Could I ask the Attorney, given that some Members are a little uncertain as to whether we are approving what might prove to be flawed regulations, could the Attorney tell us whether it would indeed be perfectly reasonable to approve this and that this issue could be resolved post our approval?

The Attorney General:

I think the position, as I understand it, is that it is not inevitably the case that for all months there will be this problem. It depends upon the temperature and whether or not the aggregate figures are reached. It is, I believe, precisely the same formula that already applies in the Cold Weather Provisions this Assembly has already approved and that, as far as I am aware, has been operated without too much difficulty, but I think that is something on which the Minister would have to give better guidance. It is, of course, a matter for the Assembly whether these regulations are passed.

[11:45]

4.1 Senator F. du H. Le Gresley:

I thank the Attorney General for his explanation and I would also like to thank the Deputy of St. Martin for pointing out this anomaly, which apparently was known but in the light of the discussions we have had today, I will undertake to review the Income Support Special Payment Cold Weather Regulations and these current regulations to address the anomaly. So I give that assurance to the House that that will be done in due course but it may be that we need to come up with a formula that deals with each month rather than a general figure. So the best I can do is to give Members that assurance that I will come back with an amendment to address the anomaly that has been pointed out by the Deputy of St. Martin. While I am on my feet, the Minister for Planning and Environment has asked me to clarify where the decision about the temperatures is arrived at

and that comes out of the Met office which, of course, is the department under his control and if he is not happy with the way the temperatures are gauged, then I think it is a matter he has to take up with his own staff. So subject to the caveat that I have given to the Members, I maintain the regulations.

Deputy R.C. Duhamel:

A further query in asking for the information, I was also referring to the fact that there is nothing within the interpretation to define the taking of an average daily temperature from any establishment or any particular place in the Island and I think that any regulations that do rely upon that particular average daily temperature within this calculation, certainly there must be something within the regulation to define all terms.

The Deputy Bailiff:

It is becoming a speech rather than a question for the Minister but ...

Deputy R.C. Duhamel:

So will the Minister ...

The Deputy Bailiff:

No doubt the Minister will be examining that question of where the temperature is taken when there is a review of the Deputy of St. Martin's objections.

Deputy M.J. Higgins:

Can I ask a further question? What is the situation with regard to this year if this is passed? It is the law at the present time that these people will be compensated for it. Will he give an undertaking that should cold weather payments be required for the months of this year that were going forward, that he will make sure that they are paid the appropriate rate retrospectively.

Senator F. du H. Le Gresley:

I am happy to give that assurance that if there is a correction, those who are in receipt will have an amended payment or an additional payment.

The Deputy Bailiff:

Subject to States approval. Right, Regulations 1 to 8 are proposed. All Members in favour of adopting them, kindly show? Those against? The regulations are adopted. Do you move the regulations in Third Reading, Minister?

4.2 Senator F. du H. Le Gresley:

Yes.

The Deputy Bailiff:

Is that seconded? **[Seconded]** Does any Member wish to speak in Third Reading?

4.2.1 Senator P.F. Routier:

Very briefly, the cold weather payments were originally brought into place during my term of office and this calculation was something which was looked at very carefully and the officer within the department advised us that this would work and it has worked for many a year, and I think Members can take comfort from the fact that this system has been in place for a number of years and people have received the money so I hope we can just get on and deal with it.

The Deputy Bailiff:

Does any other Member wish to speak? I call on the Minister to reply.

4.2.2 Senator F. du H. Le Gresley:

I am glad the Senator has owned up because I thought it was my fault. The other apology I make to the States is unfortunately I failed mathematics at my first attempt at O level but I did subsequently pass it and mathematics is not my strong point but if I have any propositions to bring in the future which include calculations, I will make sure that I am better briefed. With that, I thank Members for their support and say that I look forward to our senior citizens having help in the forthcoming winter months with their fuel bills. Do I have to say anything else, Sir?

The Deputy Bailiff:

Not unless you wish to.

Senator F. du H. Le Gresley:

No, thank you. [Laughter]

The Deputy Bailiff:

All Members in favour of adopting the Cold Weather Bonus Regulations in Third Reading, kindly show? Thank you. Those against? The regulations are adopted.

The Deputy of St. John:

Before we come to P.189/2011, I may inadvertently have misled the House 5 minutes ago on following questions and I would like to correct it as soon as possible if that is okay by you, Sir.

The Deputy Bailiff:

Please, correct them now.

The Deputy of St. John:

Deputy Martin asked me a question about the partial or full payment recovery and I said 5 years and I was wrong. It is not 5 years, it is 3 years. I have the schedule in front of me here. Prior to 12 months, 100 per cent of the payment will be recovered. Between 12 and 24 months, 67 per cent of the payment will be recovered, between 24 and 36 months, 33 per cent of the payment will be recovered and after 36 months, there will not be a reclaim, and I have the schedule in front of me and I thought it was right to correct my inadvertent mistake and I do apologise if that is the case.

5. Planning Applications Panel: appointment of members (P.189/2011)

The Deputy Bailiff:

We now come to the Planning Applications Panel: appointment of members, P.189/2011. I ask the Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion to appoint, in accordance with Article 9A(2) of the Planning and Building (Jersey) Law 2002, the following persons as members of the Planning Applications Panel (P.A.P.) until 31st December 2014, with immediate effect. Deputy S.S.P.A. Power of St. Brelade (nominated as Chairman); the Connétable of Trinity; the Connétable of St. Mary; Deputy R.G. Le Hérisier of St. Saviour; Deputy J.M. Maçon of St. Saviour; Deputy G.C.L. Baudains of St. Clement.

5.1 Deputy R.C. Duhamel (The Minister for Planning and Environment):

To start, I would like to thank the outgoing members, some of whom, in fact, have asked to be appointed again on to the new Planning Applications Panel, for their sterling work in what is quite often not an appreciated role, either by the public or perhaps even by some of the Members of the House. I would like to thank them for performing their functions diligently and responsibly in the past and I hope that exactly the same will pertain in the future with the new membership. In bringing forward these names, I was a little disappointed that we did not get a number of persons from the more built-up areas, notably St. Helier putting their names forward. So the team as has been proposed does not have a substantial number, in fact, it does not have any members from St. Helier at the moment, which I think is an omission. Notwithstanding that, I think it would be my intention to bring forward any further nominations to this House should any of the Deputies from St. Helier or any other Parishes suddenly realise that perhaps they do have a vocational bent or desire to assist the Minister for Planning and Environment on his Applications Panel so I wait for my telephone to start ringing. A number of Members have asked me to outline the mechanisms and the new protocols by which decisions will be taken, not only by myself but by officers and, indeed, the members of the Planning Applications Panel. R.81 produced and presented to the House on 12th July 2001 outlined the report from the political steering group which was set up to make recommendations to the former Minister for Planning and Environment as to improvements to the planning and development control process of which a large part is how we decide on applications. Those recommendations have been endorsed by myself and, indeed, new protocols for how officers behave, the Minister behaves and, indeed, the Planning Applications Panel behaves, have been formulated and, indeed, all the Members who have been nominated in my proposition attended a training session recently and have endorsed the new protocols which will bind their behaviour on the panel. I have had a query from another Member asking to explain in detail which decisions will be decided by whom. Under 4.84 of the R.81 report it does state that: "Levels of delegation should be reviewed to allow applications to be determined by officers when there are fewer than 3 outstanding representations by the public", to which the officers have responded and shown how they have balanced those representations in their decision. So I have endorsed that particular recommendation and delegated decisions will be to officers if indeed the number of objections put forward by members of the public or any others are fewer than 3. For applications of a non-significant Island-wide importance, which will be undertaken or perhaps be able to be undertaken by the Minister and determined by the Minister, all of those applications will then be forwarded to the Planning Applications Panel for its consideration. The Application Panel therefore has a protocol by which it is given work and it is quite clear that by revising the applications and the number of objections, which trigger the moving of those items to be undertaken by the Applications Panel, the workload of the panel can be either increased or decreased. It was my intention in acceding to the suggestions of the Planning Improvement Programme to review the figure for the delegation. That is indeed if the work of the Applications Panel is not too onerous. Previous Members have expressed the view that perhaps the agendas were perhaps getting to be a little bit too long and indeed the workload was becoming excessive, so I have taken effective steps to remedy that situation. As far as my powers goes, under 8.14 of the same document R.81/2011 it stated that: "The Minister should retain reserve powers to determine applications by exception where not in accordance with the Island Plan and the Planning Applications Panel is minded not to accept an officer recommendation, known as the "cooling off period", as set out in Ministerial Decision PE-2006-0012. The Planning Applications Panel therefore will be asked to determine most of the controversial applications and will be able to make decisions on all applications other than major proposals of Island-wide significance or a significant proposal on which the Minister has published or recorded Ministerial pre-application guidance or any proposal not in accordance with the Island Plan. So we have a clear set of protocols, which should streamline the process and make it a little bit easier for all those within it to know exactly what their job remit is. I did

mention that all members or prospective members of the panel have signed up to the protocol and on that basis I am happy to recommend them *en bloc* as the new Planning Applications Panel and make the proposal.

The Deputy Bailiff:

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

5.1.1 Deputy J.H. Young:

I would like to raise one question of the Minister in respect of his announcement of new protocols under R.81/2011. It was a point that the Environment Scrutiny Panel raised with the Minister and his officers and if he could please confirm the reply on it. It concerns this question of the change to those matters that go to the panel and those matters that are delegated to officers. The adoption of a quantity criteria, i.e. if there are fewer than 3 objections or representations to an application, that would always be an officer decision. The question I raised is, having had some experience in a past life, it is not just the quantity of objections it is the quality and how they deal with planning policies.

[12:00]

The second point is the question of that would be if there was only one representation that was a representation by a Member of this House, an elected Member, on behalf of a constituent, I think that that is not right that that would be dealt with under the delegation to officers procedure, that should be a matter going to the panel. When we raised that with the Minister and his officers those points were agreed to be taken on board. I would like the Minister to confirm or otherwise that is the case.

5.1.2 The Connétable of St. Lawrence:

It seems some time to me since this House approved the Island Plan, and as Deputy Young has just alluded to, very often it is States Members themselves who raise objections on behalf of their constituents. I wonder whether the Minister would be able to advise me when Members will be receiving the full version of the Island Plan as agreed within the House last year, because it is difficult at the moment to manage with what we have because it was the draft plan, and I would like to know when we will be receiving the new one.

The Deputy Bailiff:

Before we go too much further, this is simply a proposition to appoint members to the Planning Applications Panel and I would ask Members to bear that in mind.

5.1.3 Deputy M. Tadier:

I would just like to take this opportunity first of all to congratulate those who put their names forward. Planning is not something that I would be able to do. It is not my cup of tea but unfortunately ... I say "unfortunately", I have unwittingly found myself before the panel probably more often than they or I would have liked. It is part of the job of a semi-urban Parish Deputy, I think. First of all, I wish them all the best for that. But I would like to take the opportunity via the Minister to convey a couple of constructive criticisms, if that is okay, which the Minister and the board can either take on board or not, depending on whether they are useful. The first one is I think it can be quite intimidating for members of the public in general to come before any kind of States process. Of course they have very passionate views and it is up to the board to decipher what are valid comments and which are not. But it seems to me one particular resident I had in St. Brelade, a young man who did not live in Jersey but whose parents live in the bay at Petit Port, wanted to bring his own stick in so he could put it in a computer and make his own presentation, and it seems

to me that there does not seem to be an inequality of arms currently in the way that members of the public can present. We have a whole department of officers, we have architects who are able to put their own projections there and, as we know, architects, and even the department sometimes, are able to highlight the more favourable features of development to cover up the less favourable ones; and I think it should be, I am sure, hopefully the chairman of this new committee being open-minded and fair-minded as I know he is, will take those considerations on board because I think it would expedite the system. It is easier if somebody has already got a PowerPoint that they can go through and highlight the things that they want to do, and it is good for residents to be able to put their points of view across rather than simply having to rely on pictures which have been taken by other people, which do not necessarily represent the points that they are trying to bring out. What I would like the Minister to consider is the future as well, and maybe to explain, because it is something that I have an issue with; is I am slightly uneasy in a philosophical sense about the board being entirely and solely comprised of politicians. I think it is quite right of course that planning applications should be considered not solely on black and white interpretations, which are nonetheless subject to interpretations, but it seems to me also that if decisions are being made by the book then it does not matter who is making them and that there should not be any difference between the officers making the decision and the panel making the decision. That seems to imply that there is space for political considerations to be made when looking at developments, but I would like to know from the Minister, and it is very topical I think after yesterday's question time, to know where the line is between how much political considerations should be given weight and to what extent the letter of the protocols in the Island Plan, et cetera, should be followed without deviating from that. But nonetheless I think these are largely arguments for another day. I think there could be a possibility of inviting expert members of the public on board, similar to other bodies like P.A.C. (Public Accounts Committee). Finally, I wish them all the best and I hope I get some more decisions going in favour of the residents of St. Brelade than perhaps have been the case up until now.

5.1.4 Senator P.F. Routier:

Very briefly, I really would like to thank those Members who are prepared to take on this very onerous task. Obviously having seen copies of the agendas I know it can be quite an intensive process that they go through. I am also pleased that the Minister highlighted the protocols, which have been formulated, that all the Members have signed up to. I see that as being a protection for the Members, that they know how they are going to operate and also it is a protection for the public as well knowing that Members will be following a set procedure with regard to the way that they look at applications and how they deal with members of the public. I think the Minister said that the protocols were formulated after the R.81, new-ish protocols which have been formulated. Is it possible that they can be published as well so that the public know exactly what Members have signed up to, so that they will know and everybody will know what those protocols are?

The Deputy Bailiff:

Does any other Member wish to speak? Then I call on the Minister to reply.

5.1.5 Deputy R.C. Duhamel:

[recording inaudible] I think everybody heard me, although the public did not. Should I repeat myself?

The Deputy Bailiff:

No, I am sure ... [Laughter]

Deputy R.C. Duhamel:

Deputy Young's second point was whether or not any objections put forward or points forward by elected Members if there were applications of that nature then should they automatically of right be considered by the Applications Panel? I am in 2 minds about this one, and indeed as far as the protocols go at the moment they have been designated as being up for review. After a period of time we are going to see how we go with these, if indeed this is an important point, and I am sure it is because Deputy Young has mentioned it, and he does have relevant experience, then I am quite happy to reconsider it in consultation with all of those who are involved. The Constable of St. Lawrence asked when the full version of the Island Plan is on its way. I will make further inquiries and ensure it is as soon as possible. Deputy Tadier suggested that he was going to give me some constructive criticism - indeed he did - about can individual members of the public bring their communication skills and devices to application meetings. This will be an issue for the panel themselves. Personally I could not see that would make a problem. I think we would have to put a little proviso on that one with data protection services and things; the free exchange of the contents of memory sticks is not always allowed because we do have kind of virus protection programmes and all the rest of it to ensure that contamination of the States systems will not take place, but if we could get beyond those checks then I think it is something that could and should be considered by the new panel. Moving on to the suggestion that perhaps we should move to an applications panel or board comprised not necessarily of politicians but by other members of the public. Indeed, the work that has been undertaken to bring forward a planning merits appeal system might actually begin to move the Island and indeed the Ministry in that direction. I thank him for his constructive criticism and make a note of his suggestion and will discuss it in due course. I thank Senator Routier for his comments and will indeed publish the protocols to make sure that all States Members and members of the public do have a copy so that we can all see the openness and the transparency that the new protocols have been designed to engender. With those comments I make the proposition.

The Deputy Bailiff:

All Members in favour of adopting the proposition ... the appel is called for. I invite Members to return to their seats. The vote is on the appointment of members to the Planning Applications Panel and I ask the Greffier to open the voting.

POUR: 44		CONTRE: 2		ABSTAIN: 2
Senator P.F. Routier		Deputy J.A. Martin (H)		Deputy S.S.P.A. Power (B)
Senator A. Breckon		Deputy T.M. Pitman (H)		Deputy G.C.L. Baudains (C)
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Ouen				
Connétable of St. Brelade				

Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisier (S)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
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 of St. Peter				
Deputy R.J. Rondel (H)				

6. Jersey Employment Tribunal: appointment of members (P.190/2011)

The Deputy Bailiff:

We now come to the Jersey Employment Tribunal: appointment of members, P.190, lodged by the Minister for Social Security. I ask the Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion to appoint further to a process overseen by the Jersey Appointments Commission and in accordance with the Employment Tribunal (Jersey) Regulations 2005 the following persons as members of the Jersey Employment Tribunal each for a period of 5 years from the dates indicated: Mrs. Angela Swindell 1st February 2012, Mr. Ian Carr 1st February 2012, Mr. Timothy Allen 1st April 2012.

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

The Employment Tribunal deals with disputes between employers and employees regarding employment rights. A panel consists of a legally qualified chair with 2 side members, one employee representative member and one employer representative member. Members receive payment at the daily rate of £97 per sitting. During the period July 2010 to 30th June 2011 the Tribunal received 194 applications, which was a 15 per cent increase on the previous year. They sat on 74 occasions, held 53 full hearings and 21 interim hearings. Following an open recruitment process undertaken in accordance with best practice and overseen by the Appointments Commission I am pleased to propose the appointment of Mrs. Angela Swindell, Mr. Ian Carr and Mr. Timothy Allen as new side members of the Jersey Employment Tribunal, each for a 5-year term. I believe that the proposed new members have the required knowledge and experience, and I thank them for offering their services, and I ask Members to support the proposition.

The Deputy Bailiff:

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

6.1.1 Deputy J.H. Young:

I am fully supportive and I know, having spent the last 5 years working for a law firm, the hard work and the sometimes quite onerous commitment in sitting on the Employment Tribunal. My question is that we have 2 nominations who are from outside the States and one who is currently a States employee. Could I just ask the Minister to confirm that, for the States employee, thought has been considered to leave and matters of expense, because I do know members are entitled to an allowance under the rules? Could I take it that some arrangement has been agreed as far as the public sector employee is concerned to reflect that?

The Deputy Bailiff:

Does any other Member wish to speak? I call on the Minister to reply.

[12:15]

6.1.2 Deputy F. du H. Le Gresley:

The question Deputy Young asks is a matter for the person who volunteered their name and the employer, and I would assume that this question of leave to attend hearings is a matter that has been discussed with the employer. I do not know the finer details of that. Just for the benefit of Members who might have just any concern about possible conflict of interest, there is an issue that upon selection for a hearing each Tribunal member must complete a declaration registering whether or not there is a conflict of interest in that particular case. If additional information relating to a potential conflict arises in the period between appointment to the panel and the hearing, members have to complete an additional declaration form. I do not know if Deputy Young was alluding perhaps to any possible conflicts of interest that might arise, because this person is currently employed by the States but the provisions allow for dealing with any potential conflict of interest, and I maintain the proposition.

The Deputy Bailiff:

All Members in favour of adopting the proposition kindly show. The appel is called for. I invite Members to return to their seats. The vote is on the appointment of members to the Jersey Employment Tribunal and I ask the Greffier to open the voting.

POUR: 48		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. John				

Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisier (S)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy T.M. Pitman (H)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
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 of St. Peter				
Deputy R.J. Rondel (H)				

7. Jersey Police Complaints Authority: appointment of member (P.191/2011)

The Deputy Bailiff:

We now come to the Jersey Police Complaints Authority: appointment of member - P.191 - lodged by the Minister for Home Affairs and I ask the Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion in accordance with Article 2 of, and the Schedule to, the Police (Complaints and Discipline) (Jersey) Law 1999, to appoint Dr. John Birtwistle as a member of the Jersey Police Complaints Authority for a period of 3 years.

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

This is another straightforward appointments matter. The Jersey Police Complaints Authority is the independent body, which has responsibility for the oversight of investigations following complaints against police officers. They do not conduct the investigations. Those are conducted by police officers either locally or, in a case of complaints against more senior officers, from away, but they oversee the process and make recommendations in relation to disciplinary hearings. The Deputy of St. Martin has given excellent service for about 5 years but has now resigned, rightly so in my

opinion, to maintain the independence of the party upon becoming a States Member. A proper selection process took place in accordance with paragraph 2 of the report and the outcome of that is a recommendation to the States for the appointment of Dr. John Birtwistle, and I present him as a most suitable candidate for approval by the States today.

The Deputy Bailiff:

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

7.1.1 The Connétable of St. Lawrence:

We have just appointed some members to the Jersey Employment Tribunal and learned that it was a remunerated position. Will the Minister advise whether this is an honorary appointment or whether expenses or costs are paid and, if so, provide us with the details please?

7.1.2 Deputy M. Tadier:

I raise this point now, and it is just one of housekeeping and nothing to do with this individual member, but I note again - and I think I made this point in the past - that we will be appointing the Jersey Financial Services Commissioner, or reappointing him, that debate is held in camera. I know it has to be because of Standing Orders, but I do not think I know why we have certain appointments which are made in camera, whereas the argument can be compellingly made to hold these in camera. It should apply to all of them. So if anyone can tell me that I would be interested to know because I am in favour of open Government wherever possible, and it does not seem consistent and perhaps it is something we should need to look at on P.P.C. (Privileges and Procedures Committee) if there is no consistent reason for that.

The Deputy Bailiff:

I can answer that from the Chair. The reason for the Financial Services Commissioner being debated in camera is that that is what the law says. Does any other Member wish to speak? Then I call on the Minister to reply.

7.1.3 Deputy B.I. Le Marquand:

I am 99.5 per cent confident it is an honorary post. I am looking at the Deputy of St. Martin in case the horrendous 0.5 per cent has come up. It is in fact an honorary post. I maintain the proposition.

The Deputy Bailiff:

All Members in favour if adopting ... the appel is called for whether to adopt the proposition of the Minister for Home Affairs for the appointment of a member to the Jersey Police Complaints Authority. I invite members to return to their seats and ask the Greffier to open the voting.

POUR: 47		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				

Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérissier (S)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy T.M. Pitman (H)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
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 of St. Peter				
Deputy R.J. Rondel (H)				

8. Jersey Overseas Aid Commission: reappointment of non-States commissioner (P.194/2011)

The Deputy Bailiff:

I propose to take the P.194 out of order as we are going to go into camera for the other matter. We turn to P.194, the Jersey Overseas Aid Commission: reappointment of non-States Commissioner, lodged by Senator Routier.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion to appoint in accordance with clause 7.4 of the constitution of the Jersey Overseas Aid Commission as set out in schedule 1, to the Jersey Overseas Aid Commission (Jersey) Law 2005 Mrs. Toni Roberts as a non-States commissioner for a further period of 3 years.

8.1 Senator P.F. Routier:

It gives me great pleasure to propose the appointment of Mrs. Toni Roberts as a non-States commissioner of the Overseas Aid Commission for a further 3 years. There was an open recruitment process overseen by the Appointments Commission. I would like to thank all those who applied for the position. I am pleased to say that some of the other candidates have agreed to help the Commission in other ways in a voluntary way. With regard to Mrs. Roberts, I would like to acknowledge and thank her for her past significant contribution to the Commission in this honorary post, and it gives me great pleasure to propose her again. I make the proposition.

The Deputy Bailiff:

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

8.1.1 Senator I.J. Gorst:

I think it would be remiss of me if I did not also add my thanks to those that the chairman has given. She served exceptionally well over the last 6 years. She is an exemplary member of the Commission. She is committed to the developing community as shown by her visits to that community and including herself on the working parties that have gone out and got their hands dirty. She has also been instrumental in looking at modernising of processes within the Commission to ensure that we are and continue to get best value for money. I wish to publicly thank her for that and I know that she will continue her commitment throughout the next 3 years.

The Deputy Bailiff:

Does any other Member wish to speak? Do you wish to reply, Senator?

Senator P.F. Routier:

Nothing further to add, Sir.

The Deputy Bailiff:

All Members in favour of adopting the proposition ... the appel is called for. The vote is on whether to reappointment Mrs. Roberts as a commissioner of the Jersey Overseas Aid Commission. I ask Members to return to their seats and invite the Greffier to open the voting.

POUR: 48		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Clement				

Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisier (S)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy T.M. Pitman (H)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
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 of St. Peter				
Deputy R.J. Rondel (H)				

9. Jersey Financial Services Commission: reappointment of commissioner (P.193/2011)

The Deputy Bailiff:

We now come to P.193, Jersey Financial Services Commission: reappointment of commissioner, lodged by the Minister for Economic Development, and I ask the Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion to appoint, in pursuance of Article 3 of the Financial Services Commission (Jersey) Law 1998, Mr. John Clark Averty as a commissioner of the Jersey Financial Services Commission, with effect from 20th January 2012 for a further period of 4 years.

The Deputy Bailiff:

Pursuant to Article 3(2) of the Financial Services Commission (Jersey) Law 1998 this debate is to take place in camera, and therefore I must order all strangers to withdraw from the precincts of the States and the doors of the Chamber to be closed in accordance with Standing Orders.

[Debate proceeded in camera]

The Deputy Bailiff:

Very well, there is a proposition from the Connétable of St. John that we move on to the next item of business. Is that seconded? **[Seconded]** The appel is called for. I invite the Greffier to open the voting.

POUR: 17		CONTRE: 31		ABSTAIN: 1
Senator A. Breckon		Senator P.F. Routier		Deputy T.M. Pitman (H)
Connétable of Grouville		Senator P.F.C. Ozouf		
Connétable of St. John		Senator S.C. Ferguson		
Connétable of St. Ouen		Senator A.J.H. Maclean		
Connétable of St. Martin		Senator B.I. Le Marquand		
Deputy R.C. Duhamel (S)		Senator F. du H. Le Gresley		
Deputy R.G. Le Hérisier (S)		Senator I.J. Gorst		
Deputy J.A.N. Le Fondré (L)		Senator L.J. Farnham		
Deputy S. Pitman (H)		Senator P.M. Bailhache		
Deputy M. Tadier (B)		Connétable of St. Helier		
Deputy M.R. Higgins (H)		Connétable of St. Clement		
Deputy A.K.F. Green (H)		Connétable of St. Peter		
Deputy J.M. Maçon (S)		Connétable of St. Lawrence		
Deputy G.C.L. Baudains (C)		Connétable of St. Mary		
Deputy J.H. Young (B)		Connétable of St. Brelade		
Deputy S.J. Pinel (C)		Connétable of St. Saviour		
Deputy of St. Peter		Deputy G.P. Southern (H)		
		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 T.A. Vallois (S)		
		Deputy of St. John		
		Deputy J.P.G. Baker (H)		
		Deputy of St. Mary		
		Deputy of St. Martin		
		Deputy R.G. Bryans (H)		
		Deputy R.J. Rondel (H)		

The Deputy Bailiff:

We have to go back into camera. Does any other Member wish to speak? Do you wish to reply, Minister? If you do not wish to reply then we do not need to ask the media to withdraw, we just go straight to the vote.

Senator A.J.H. Maclean:

To be fair, Members have asked specific questions so I feel I should answer.

The Deputy Bailiff:

They have indeed. Then I am sorry, the Chamber must be cleared once more. So I ask the media to withdraw. Strangers to withdraw.

[Debate proceeded in camera]**The Deputy Bailiff:**

We are out of camera now. The appel has been called for. I invite Members to return to their seats and ask the Greffier to open the voting.

POUR: 38		CONTRE: 3		ABSTAIN: 7
Senator P.F. Routier		Deputy R.C. Duhamel (S)		Senator A. Breckon
Senator P.F.C. Ozouf		Deputy M.R. Higgins (H)		Connétable of St. Mary
Senator S.C. Ferguson		Deputy J.M. Maçon (S)		Deputy R.G. Le Hérisssier (S)
Senator A.J.H. Maclean				Deputy S. Pitman (H)
Senator B.I. Le Marquand				Deputy M. Tadier (B)
Senator F. du H. Le Gresley				Deputy T.M. Pitman (H)
Senator I.J. Gorst				Deputy J.H. Young (B)
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of Grouville				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. John				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy G.P. Southern (H)				
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 T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.P.G. Baker (H)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				

Deputy R.J. Rondel (H)				
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ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

The Deputy Bailiff:

That concludes the Public Business under paragraph L of the Order Paper. We now come to the arrangement of public business for future sittings and call on the chairman of P.P.C.

10. Connétable A.S. Crowcroft of St. Helier (Chairman, Privileges and Procedures Committee):

Business for the next meeting is as shown on the Consolidated Order Paper with a number of exceptions. P.174 - Election Campaign Period Restrictions - is moved to 17th April; P.184 - Draft Maintenance Orders - is moved to 31st January; P.187 and P.188 are moved to 29th May; and P.8 will be on 21st February.

The Deputy Bailiff:

Do any matters arise?

10.1 Deputy I.J. Gorst:

I had, as Members will be aware, intended to ask for an in committee debate on 31st January with regard to the Draft Strategic Plan consultation document. After the briefing that we had on Monday it has been agreed that I will not be asking for that until 21st February to give Members more time to consider the content of that paper, so I will be doing that in due course.

The Deputy Bailiff:

Very well, as there is no other business the States now stand adjourned until 9.30 a.m. on 31st January.

ADJOURNMENT

[12.43]