

STATES OF JERSEY

OFFICIAL REPORT

TUESDAY, 17th JANUARY 2006

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APPOINTMENT OF MINISTERS, COMMITTEES AND PANELS

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Deputy K.C. Lewis
H.M. Solicitor General
Deputy G.W.J. de Faye
Senator P.F.C. Ozouf
Senator W. Kinnard
Senator F.E. Cohen
Deputy J.A.N. Le Fondré
The Deputy of St. Ouen
(Reference back defeated)]

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

APPOINTMENT OF MINISTERS, COMMITTEES AND PANELS

1. The Deputy Bailiff:

We come to F and although there is nothing on the Order Paper, it is the case that under Standing Order 112(10) it is necessary for the Assembly at this sitting to appoint members of the

Chairmen's Committee in relation to Scrutiny Panels. Deputy Duhamel, I understand that you are the Chairman. Would you wish to put forward two nominations?

Deputy R.C. Duhamel of St. Saviour (Chairman of the Chairmen's Committee):

Yes, Sir. Two names have been suggested but I am happy to accept further nominations from the floor of the House if Members so wish. The nominations mentioned so far would be Senator Norman and Deputy Le Herissier.

The Deputy Bailiff:

Normally we would proceed to deal with this straight away, but unfortunately as I say, due to an oversight, there was no mention in the Order Paper of this. Would the Assembly feel happier if perhaps this was adjourned until after lunch so that Members can decide whether they wish to nominate anyone else, because it is rather difficult, I think, to do so at such short notice?

Deputy R.C. Duhamel:

I think that would be wise, Sir.

The Deputy Bailiff:

So, perhaps we will consider this at the first convenient moment after the luncheon adjournment, and at that stage I will see whether there are any other nominations.

QUESTIONS

Written Questions -

2.1 WRITTEN QUESTION TO THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES BY SENATOR B.E. SHENTON

Question

Would the Minister inform members –

- (a) whether the current school bus contract has expired and, if so, whether the new contract will be put out to tender and what the expected timetable is? and,
- (b) whether any actions have been taken to recover the £186,802 paid to Connex in respect of shift allowance, (as outlined in Recommendation 6 of R.C. 64/2005 of the former Environment and Public Services Committee – Response to the Committee of Inquiry into the tender process and award of the bus contract), and, if not, advise whether this money will be claimed and when, the reason for the delay, and whether interest will also be claimed?

Answer

- (a) The current contract for the provision of school buses expired at the end of the summer term 2005. Since then, discussions have been ongoing with the current operator to ensure the service continues and to consider how best to provide the service in the future.
- (b) The Committee of Inquiry into the Bus Tendering process recommended that the Environment and Public Services Committee should take immediate action to determine whether the £186,802 payment in respect of the shift allowance can be recovered, either from Connex or from any other person. The previous Committee took that action and sought the advice of H.M. Attorney General. When that advice has been received, I will consider the appropriate action to

take which, if it is to seek repayment of the monies from Connex, will include the issue of interest.

2.2 WRITTEN QUESTION TO THE MINISTER FOR HEALTH AND SOCIAL SERVICES BY DEPUTY R.G. LE HERISSIER OF ST. SAVIOUR

Question

Would the Minister inform members –

- (a) of the number of staff who have been suspended in each of the last three years (2002 to 2005) as a result of disciplinary infractions, if any, and in each case, identify the nature of the alleged infraction, the period of suspension and the means of disposal of the case?
- (b) whether the Director of Nursing receive any payments upon resigning and, if so, what were they?
- (c) whether the Director of Nursing was appointed as Deputy Chief Executive approximately two weeks before departure from office and, if so, the reasons why?

Answer

- (a) From 2002, the following suspensions took place:

Employee Group	Number of Staff in Employee Group
4 Manual Workers	512
2 Social Workers	45
1 Civil Servant	642
1 Residential Child Care Officer	72
2 Medical staff	90
11 Nurses	966
Total 21	Total 2327

(The number of staff in the Social Worker category is an approximate because of how the term “Social Worker” is defined, complicated by the fact that Social Workers are paid as Civil Servants).

The reasons for the suspension and the outcome are listed in the table below:

Employee group	Reason for suspension	outcome	Length of suspension	Year
Manual Worker *	Under police investigation (alleged misuse of computers)	Ongoing	3.5 years	2002 ongoing
Nursing	Gross Misconduct (Patient abuse)	Resigned when given penalty	5 months	2002

Social Worker	Gross Misconduct (Professional standards)	Resigned whilst suspended	6 weeks	2002
Manual Worker	Gross misconduct (theft of HSS property)	Employee resigned before disciplinary hearing	1 day	2002
RCCO	Standards of child care	Written warning	12 weeks	2003
Nursing	Gross misconduct (alcohol abuse on duty)	Dismissed	TBA	2003
Medical staff	Performance issues	Referral to NCAS	3 weeks	2004
Medical staff	Performance and medical concerns	Still under investigation	13 months	2004 ongoing
Nursing	Gross Misconduct (Inappropriate Behaviour)	Dismissed	6 weeks	2004
Medical Staff	Professional standards	No case after police investigation	11 months	2004
Nursing	Professional Standards	No case after police investigation	13 months	2004
Nursing	Gross misconduct (patient abuse)	Dismissed	2 months	2005
Civil Servant	Gross misconduct (misuse of email)	Suspended while working notice period	4 weeks	2005
Social Worker	Gross Misconduct (Performance issues)	Dismissed	6 months	2005
Nursing	Gross misconduct (Patient abuse)	Resigned when given penalty	4 weeks	2005
Nursing	Gross misconduct (Alleged patient abuse)	Dismissed	12 weeks	2005
Nursing	Lack of duty of care	Written warning	5 weeks	2005
Nursing	Under Police investigation	Ongoing	12 months	2005 ongoing
Nursing	Professional Standards	No case	5 weeks	2005
Nursing	Inappropriate	No case	5 weeks	2005

	Behaviour			
Manual Worker	Gross misconduct (alcohol abuse and non-attendance)	Resigned whilst suspended	2 weeks	2005
Manual Worker	Gross misconduct (abusive language towards a patient)	Written warning	5 months	2005

* This is a complex States of Jersey Police investigation. It has been directed by the H.M. Solicitor General that disciplinary action cannot take place until the investigation is completed.

- (b) The States of Jersey entered into a mutual confidentiality clause with the previous Director of Nursing which is, by definition, legally binding on both parties.
- (c) The Director of Nursing was designated as “Deputy Chief Executive” on 18th November 2005. This designation was limited and very specific. The Director of Nursing would act as formal deputy when the Chief Executive was absent from the Island, either on annual leave or on States of Jersey business. Such a designation was a formality as the Director of Nursing has acted in this capacity since the Chief Executive was appointed in May 2004. Further, the Director of Nursing would act as formal deputy when a number of managers, who were of the same level of authority, came together on a project which “cut across” the organisation. In such circumstances, the Director of Nursing would have accountability for the success of that project. (In the event, no such project was actioned).

Needless to say, to comply with best governance practice, the name and designation of the person substituting for the Chief Executive when he is not present should be formally known and that person held accountable for the discharging of the Chief Executive’s duties during that period. On a specific theme, the Major Incident Plan formally identifies a leadership role for the Chief Executive, or a designated deputy, should a major incident occur.

The designation of deputy in these circumstances was not a remunerated responsibility and was additional to the current duties of the Director of Nursing.

2.3 WRITTEN QUESTION TO THE MINISTER FOR SOCIAL SECURITY BY DEPUTY G.P. SOUTHERN OF ST. HELIER

Question

Would the Minister inform members –

- (a) of the names of the 23 respondents to the minimum wage questionnaire conducted by the Employment Forum referred to on page 5 of P.282/2005 – draft Employment (Minimum Wage) (Amendment) (Jersey) Regulations 200-?
- (b) of the two other ‘*issues of importance*’ relating to the training rate and therapeutic work referred to on page 6 of P.282/2005? and,
- (c) of the ‘*issues arising within certain organisations*’ over the Codes of Practice on the training rate and therapeutic work referred to on page 7 of P.282/2005?

Answer

- (a) I am not aware of the names of individual respondents to the minimum wage review conducted by the Employment Forum. The Forum, as always, conducted its review at the direction of the former Employment and Social Security Committee, but independently and confidentially. On the basis of the responses received, the Forum presented the former Committee with a recommendation of the minimum wage rates for April 2006. The Committee did not receive copies of individual responses and it would be improper to release identities of respondents who gave their opinions in confidence.

As the Deputy is aware from previous questions, the Employment Forum has an extensive database. All of those on the database were given the opportunity to respond and the replies can be categorised as from the following respondent types; 12 employers, 2 employees, 4 employer associations, 4 trade union or staff associations and 1 'other' respondent.

- (b) The final question of the Forum's questionnaire asked respondents to provide any other comments that they would like the Forum to consider in relation to the minimum wage. The 'issues of importance' referred to were, as stated, therapeutic work and the minimum wage trainee rate.

One respondent raised the matter of supported employment work placements and suggested that therapeutic work is a special issue which should be monitored and possibly reviewed in more detail. The Forum accepted this comment and agreed to review the matter. The relationship between employment legislation and therapeutic work is very complex and there is already a code of practice dealing with this subject, (attached at Appendix 1); the Forum may need to assess its suitability in future.

Another respondent made the point that, in some trades, there is not an 'approved' course of study for that specialist area, for example, one provided by Highlands College. There has been concern that employers will have to pay the full rate of £5.08 if they cannot meet the code of practice which sets out the requirements justifying payment of the trainee rate, (attached at Appendix 2). However, the code provides that specific written Ministerial approval may be requested if a course does not appear to meet all of the criteria.

At the time of the review, the codes had been in force for less than 4 months and the purpose of the November 2005 consultation was specifically to seek views on the uprating of the actual minimum wage rates, to provide a decision at the earliest opportunity, allowing businesses time to adjust if new rates were approved.

The Forum would be reluctant to make a recommendation for change when only one comment has been received on each issue and consequently would require further research into these matters. The Forum may undertake further consultation in future, assessing the coverage of the code and the additional written approval system, when test cases are available on which to base considerations.

The Minister is confident that the Forum will consider the two issues when appropriate during 2006.

- (c) The Social Security Department was already aware of some such issues arising in relation to both the trainee rate (particularly in trades and hospitality) and therapeutic work (in various different industries). A small number of queries have been received relating to the

codes of practice on these topics where employers have requested some assistance in understanding whether they meet the requirements of the codes, and what action should be taken should they not meet the criteria.

A record has been kept of each of these queries so that when it is time to review the two codes of practice, there is some evidence on which to base consultation and amendments. It was considered that a full review of the content of the codes would not have been feasible during a specific interim review of the minimum wage.

Both codes of practice were issued in June 2005 and it was not considered practical to review them at such an early stage of implementation. The Forum will be seeking evidence from interested parties in a future consultation and will ask the Department to contribute by providing details of the issues that have been raised.

DRAFT CODE OF PRACTICE

Therapeutic Work and the Employment Law

Introduction

1. Under the terms of Article 9 of the Jersey Advisory and Conciliation (Jersey) Law 2003, the Employment and Social Security Committee is empowered to issue or approve Codes of Practice providing practical guidance for the purpose of promoting the improvement of employment relations. This Code is intended to provide such guidance on therapeutic work and the Employment Law.
2. The provisions of this Code are admissible in evidence and may be taken into account in determining any question arising in proceedings before the Employment Tribunal or a court. Failure to observe any provision of the Code does not, of itself, render a person liable to any proceedings.
3. Whilst every effort has been made to ensure that the summary of the relevant statutory provisions included in the Code is accurate, only the Employment Tribunal and the courts can interpret the law authoritatively.

Section 1 – Aim of the guidance note

This code is intended to help individuals and organisations understand how the Employment Law applies in relation to ‘therapeutic work’. It is intended to provide guidance on what constitutes employee status for individuals undertaking therapeutic activity to ensure that they are not adversely affected by confusion about the legal position.

Some of the work designated ‘therapeutic’ for benefits purposes is similar to that undertaken in open or supported employment. People undertaking this work are potentially entitled to the protections offered by the Employment Law. The basic principle, consistent with the provisions of the legislation, must be that an individual should be considered an ‘employee’ unless the employer can demonstrate otherwise.

- The Employment Law only applies to “employees”. So the key question is whether or not any particular person is an “employee”. If not, then the provisions of the Employment Law do not apply. “Employee” has a legal definition and depends on the existence of a contract.
- Usually, employees have written contracts of employment so it is a straightforward matter to establish their status. But the definition of “employee” says that people can count as employees if they have an oral contract or an implied contract. This leads to some ‘grey areas’ where status may be disputed. One such grey area is the issue of people doing work (or work-like activities) for therapeutic reasons.

This is of particular importance in relation to payment of the minimum wage as the onus is on the employer to ensure that they are complying with the requirements of the Law by paying the appropriate minimum wage and maintaining adequate records.

Section 2 – The Legal Position

Who does the Employment Law apply to?

It is important to note that there is nothing in the Employment Law, or the Minimum Wage Regulations, that make any reference to a worker's productivity, ability or effectiveness. There is no distinction between the non-disabled and disabled, and there is no reference to 'therapeutic work' or 'therapeutic workers' anywhere in the legislation.

It follows that the criterion for determining whether a person with, for example, a disability or mental health problem is entitled to the protections contained in the Employment Law will rest on precisely the same criterion as for any other person; namely – is he an employee? In addition to the usual tests that would be applied by a Tribunal in determining employment status, this Code provides four criteria that the Tribunal may consider.

This note does not attempt to provide a full analysis of the legislation. Rather, it explains which provisions of the Law are relevant to the issues of therapeutic work, explores some difficult areas and attempts to provide clarity as to whether an individual should be treated as a 'client' or an 'employee'.

The definition of an employee

Article 1 of the Employment (Jersey) Law 2003 defines a worker as someone who is an employee (that is, someone who works under a contract of employment, including a contract of apprenticeship) or anyone else who works under some form of personal contract for somebody else, and is not genuinely self-employed.

The usual tests to decide whether someone is an 'employee' are difficult to apply in the case of therapeutic work, as the focus of the 'work' is usually rehabilitation, reintegration and training, rather than on producing 'outputs' for the employer.

Jersey's definition of 'employee' goes wider than the UK definition of 'employee' to include those defined as 'workers' in the UK. This was a deliberate choice, taken because the Committee wanted to ensure that people such as agency workers, casual workers and workers on short term contracts would still be entitled to the provisions of the Employment Law, even if their contracts were not contracts of employment in the traditional sense.

How to recognise an employee's contract

The Law specifically states that a contract can be express (either oral or written) or implied. It is important to emphasise that an employee may have a contract without having it in writing. The difficulty of establishing the existence or otherwise of verbal and implied contracts is long-standing and is an inevitable result of the many and varied forms of working arrangements that exist. Much of the case law in the field of employment law and contract law in other jurisdictions has centred on this difficult question.

The right to be paid at least the minimum wage is expected to be of particular concern to those involved with therapeutic work because that right is more likely to impact directly on their arrangements (and employees themselves are more likely to enquire about) than some of the other employment rights which will also apply (depending on number of hours worked), but tend to have an impact only occasionally, such as the right not to be unfairly dismissed.

In attempting to establish employment status, the assumption will typically be that the person is an employee, and the burden is on the alleged employer to show that he is not. This reversal is

intended to ensure that an employer cannot avoid his obligation to meet the provisions of the legislation by being non-co-operative or pleading an absence of documentation. However, the following section provides further information that may be taken into account by the Tribunal in determining whether there is employee or client status in therapeutic work activities.

Section 3 – ‘Therapeutic work’ and the Employment (Jersey) Law 2003

To recap, why is the notion of ‘therapeutic work’ a particular problem?

- There is no reference in the minimum wage legislation to a worker’s productivity, ability or effectiveness.
- The legislation also makes no distinction between disabled and non-disabled people, or between people with mental health problems and other people, and contains no reference to ‘therapeutic work’.
- The basic criterion for determining whether anyone is entitled to the minimum wage and the protection of the Employment Law is simply - is he an employee?

‘Therapeutic work’ is not a legal term. It is used to describe a number of arrangements whereby people who have problems functioning in the normal labour market are nonetheless given the opportunity to undertake some form of work-like activity, for which they may receive payment. They are often in receipt of benefits as well. It follows from the legal position described in Section 2 that if a person with, say, a disability or mental health problem is involved in work-like activity under an arrangement that is an explicit or implied employee’s contract, then they must be paid the minimum wage and are entitled to the other protections of the Employment Law.

The Employment Tribunal

When the Tribunal or the courts look at whether the Employment Law applies to an individual, the provisions of this Code are admissible in evidence and may be taken into account in determining any question arising in proceedings. In the absence of further evidence presented to a Tribunal, the basic position is set out in (a) to (c) below;

(a) If there is no consideration (usually the payment of money or the giving of a benefit) from the employer and no obligation placed on the individual undertaking the therapeutic activity or the work then there would not be a contract between the two parties. The underlying point is that there has to be a mutual obligation between the individual performing the activity and the employer paying a reward in return for that activity. It might be possible to pay genuine expenses and occasional ‘ex gratia’ payments to the individual without creating a contract of employment, as long as no expectation of payment for the activity was created and no obligation was placed on the person carrying out the activity.

(b) If money is paid by the employer to an individual, there may still be no employment contract if there is no mutual obligation between the parties i.e. the individual is genuinely not obliged to perform duties and the employer is genuinely not obliged to provide the activity or pay the individual. However a payment is often indicative of a contractual relationship and any payments made will be carefully scrutinised by the Tribunal and courts. If they are genuinely not linked to a mutual obligation between the parties then it is unlikely that a contract will be inferred and the Employment Law will not apply;

(c) If the two factors are combined, so that the individual is paid money or given a benefit by the employer over and above expenses and is obliged to perform an activity in accordance with the employer’s instructions, then there will almost certainly be a contract between the two

parties and the individual will be an employee. In such circumstances, it is possible that the Employment Law will apply, even where the activity has genuine therapeutic value. Expenses could be paid to those undertaking therapeutic activity at a flat rate if they represent a fair and reasonable estimate of out of pocket expenses (including travel and subsistence) where it would be otherwise administratively cumbersome for the provider of the therapeutic activity to calculate individual expenses. Therefore a figure which represents genuine average expenses for a group of people undertaking therapeutic activity would be acceptable. But if a person is paid more than expenses and is obliged to perform an activity in accordance with the employer's instructions, the individual is likely to be covered by the Law, if the following four criteria are not taken into consideration.

Four Criteria

Set out above are the basic facts that the Tribunal would consider in considering employment status, however the Tribunal may also take into consideration the provisions set out in this code of practice. Due to concerns locally regarding the employment status of therapeutic workers and their potential entitlement to protection under the Employment Law, particularly the requirement to pay the minimum wage, it is recognised that some clarity is required for therapeutic work schemes and their clients.

It is considered that there may be a greater problem locally than in other jurisdictions due to the different types of schemes and the way they are administered. It is possible that some therapeutic schemes in Jersey would become unaffordable or unsustainable if no provision is made when the Employment Law comes into force, or if there is uncertainty as to their obligations and therapeutic workers' rights under the Law.

As the Law currently stands, it appears that therapeutic workers would generally **not** be exempt from the Employment Law if the basic position and guidelines that are provided in the UK were to be applied in Jersey. This is partly due to the fact that clients working in local schemes are often given a 'contract', are paid a 'wage' and are expected to attend for certain hours per week, which gives the impression of 'employment'. However the following four criteria may also be taken into account by the Tribunal, which provides more certainty as to client/employee status:

All four of the following criteria should be met for the activity **not** to be considered as 'employment';

1. The activity is demonstrably focused on needs of the individual rather than needs of the organisation (however it is permissible to derive some benefit from the activity, such as selling any output to offset costs). The activity should be intended and designed to serve the needs of the individual rather than the organisation.
2. The tempo of the activity, and of any output or delivery target, reflects the needs of the individual rather than those of the organisation.
3. The individual is referred to the activity and monitored/supported by a health or social care professional, (e.g. a GP, social worker, occupational therapist, charity worker).
4. The arrangement is agreed with the individual and not made over his/her head.

The onus should be placed on the business or scheme to arrange their administrative affairs, either within the Employment Law where required, or to be able to provide clear evidence that the four criteria are met. It is important that those responsible for therapeutic work schemes do not simply

change the 'labels' and terms used in their relationships with clients/employees, however if the four criteria are met, terms and conditions may still be provided and a payment of some sort could still be made (e.g. reasonable expenses) without the client becoming an "employee" with entitlement to protection under the Employment Law.

The intention of introducing the four criteria is to balance concerns for the protection of vulnerable workers against the intention of the schemes designed to help in the provision of training, reintegration, work skills and experience. Employers and therapeutic scheme organisers can use the Code of Practice to arrange their work practices and the Code may be referred to a Tribunal as a test of employment status.

However, it must be noted that the facts of different cases will vary and the Employment Tribunal and courts will have to consider those facts in detail, as well as any case law that has developed. In cases of doubt, independent legal advice should be sought.

Section 4 – Types of support and Benefits available

Workwise

Workwise is part of the Work Zone at Employment and Social Security. The aim of Workwise is to help people who have a special employment need into suitable employment. This may be in open employment or within a sheltered work environment. Training opportunities can be arranged and advice offered about any aspect of getting a job.

- Open employment is where you carry out an ordinary job and earn the going rate for the job.
- Sheltered employment is for those people who, because of their special need, are presently unable to work in open employment. Training and relevant work is provided in a sheltered environment such as Acorn or Oakfield.

Job Coach Scheme

Job Coaches are available to work closely with individuals and, if required, will start with them in a new job, providing support as they learn their new role. The Coach provides support and liaison between the client and the employer, ensuring a smooth transition into work.

Work experience

Depending on individual circumstances, placements can be arranged to enable people to gain valuable work experience and generate a positive reference. These placements usually last for about six to eight weeks.

The Therapeutic Work Scheme -Benefit entitlement

Usually, people who are receiving benefits from the Employment and Social Security Department, are prohibited by law from working. However, it is recognised that after a long illness it may be necessary to return to the workplace gradually.

The scheme is designed for those people who are on a long-term benefit. It enables a person to undertake work of a therapeutic nature and receive a wage (up to half the standard rate of single benefit), and still retain their Sickness or Invalidity Benefit. This must be approved by the Employment and Social Security Department before the individual starts work. One of the aims of

the scheme is to assist people back into work and to enable them to gradually stop receiving benefit.

On 1 October 2004 legislation came into force which provided for new forms of Incapacity Benefits. Under the provisions of the new legislation, any person in receipt of Long Term Incapacity Allowance can work without any restrictions; some will undertake work of a therapeutic nature, other will be doing a normal job. Should a person in receipt of Short Term Incapacity Allowance or Incapacity Pension wish to undertake work they will be required to transfer their benefit entitlement to Long Term Incapacity Allowance.

Other Groups who may be able to help

Jersey Employers' Network on Disability - JEND

There is a growing number of employers in the Island who are committed to providing real jobs for people who have a disability. Employers work in partnership with Workwise in maximising employment opportunities for people with a disability. JEND is an organisation which helps employers access potential employees who have a disability.

Jersey Employment Trust - JET

The Jersey Employment Trust (JET) supports the progress of people with disabilities into sustained supported open employment, while continuing to provide on-going training, support and personal development for all those who fall under their remit.

In partnership with other agencies, JET provides a range of complementary training, development and sheltered work; equipping clients with the skills (vocational and social) necessary for supported open employment.

These include Workforce Solutions Ltd., Sunflower Nurseries and Oakfield Industries Ltd.

Interwork Agency

Interwork is the starting point of job development for people who, because of a disability, cannot compete for jobs. Interwork will collaborate with employer and employee to explore job opportunities, develop competence and maintain agreed levels of performance. By working with Interwork the employer will be showing respect for the right of the disabled person to be employed.

Jobscope

Jobscope is a therapeutic workscheme which provides structured occupation for people who suffer from various mental illnesses. An occupational therapist assesses the functional level of clients in relation to work needs and provides advice and support to workscheme employees and work supervisors. The workscheme programme includes:

- Planning, setting up and monitoring appropriate work placements for individuals
- Offering job tasters to enable clients to make informed decisions about vocation
- Liaising with educational agencies in assessing training courses
- Advising and supporting employers about client needs

Section 5 – Frequently asked questions

Q: Why can't the States of Jersey give a definite yes or no answer in specific cases of therapeutic work?

A: Only courts and the Employment Tribunal can decide legal cases, and they do so on the basis of all the facts of the case and having heard the arguments from both sides. Neither States Members nor Officers of States Departments can make legal decisions on real cases. The Code is intended to help clarify the situation but ultimately there is no substitute for independent legal advice.

Q: Can disabled or other workers with very low productivity waive their rights to the national minimum wage?

A: No. Part 8, article 79 of the Law prevents workers from contracting out of their entitlement by providing that any provision in a contract or relevant agreement is void in so far as it attempts to exclude or limit any provision of the law or to prevent a person from bringing proceedings to the Tribunal.

Q: Does the Employment Law apply to work experience/short term tasters?

A: It may do. It will depend on whether the individual has been employed under a contract (if he gets paid for the work, is given set hours, and can be disciplined for failing to turn up, for example, he may well be employed under a contract) and whether the four criteria are met. Some individuals will be free to come and go as they wish and will not receive payment for their work, in which case the Employment Law will not apply as they will not count as employees.

Q: Does the Employment Law apply to individuals who, perhaps because of their disabilities or illness, are not productive?

A: An individual's productivity or effectiveness is irrelevant. The question is simply whether or not that individual is working under an employee's contract. If he is working under such a contract he will be protected by the Employment Law, subject to meeting the four criteria specified in this Code.

Code of Practice

Minimum Wage – Accredited training rate

1. Introduction

1. Under the terms of Article 9 of the Jersey Advisory and Conciliation Law 2003, the Employment and Social Security Committee is empowered to issue or approve Codes of Practice providing practical guidance for the purpose of promoting the improvement of employment relations. This Code is intended to provide such guidance on what qualifies as ‘accredited training’ for the purpose of the minimum wage ‘trainee’ rate.
4. The provisions of this Code are admissible in evidence and may be taken into account in determining any question arising in proceedings before the Employment Tribunal or a court. Failure to observe any provision of the Code does not, of itself, render a person liable to any proceedings.
5. Whilst every effort has been made to ensure that the summary of the relevant statutory provisions included in the Code is accurate, only the Employment Tribunal and the courts can interpret the law authoritatively.

2. Background

The acquisition of skills remains a priority for employees of all ages, especially those moving into a new sector or returning to work. A new employee who brings no prior knowledge or experience to an employer needs time to be developed and initially they may not contribute fully to the workforce.

Bearing this in mind, the States agreed that a statutory minimum wage should not become a barrier to the receipt of structured training or taking on an inexperienced employee. To achieve this and to provide an incentive for employers to train their employees, it was agreed that those on accredited training programmes and courses should be entitled to a “trainee rate” for a maximum period of one year. This provision will only relate to employees over school leaving age who start a new job with a new employer;

According to a survey carried out by the Low Pay Commission recently, only 5% of employers in the UK were using the ‘development’ rate, but it is anticipated that there could be a higher take up in Jersey for a training rate as it would apply to all employees over school leaving age. It is therefore particularly important to keep young people in mind when considering what training courses would be appropriate for accreditation.

It is difficult to define what a ‘trainee’ is, and employers could classify younger employees as trainees to justify paying them the lower rate, unless there are strict rules on what can be classed as a trainee. Enforcing such rules to ensure only ‘genuine’ trainees are paid at the lower rate could be expensive and difficult to enforce.

Inexperience at doing the job should not be justification for paying the trainee rate. If there was a dispute over hourly rate of pay, it would be up to JACS, the Employment and Social Security Committee, or ultimately the Employment Tribunal, to determine whether the training is “accredited” and the onus would be on the employer to produce the relevant records.

This code of practice outlines what qualifies as “accredited training”, but also allow flexibility to change in line with the development of new training schemes in Jersey.

3. The Employment (Minimum Wage) (Jersey) Regulations 200-

The Minimum Wage Regulations provide that ‘trainees’ may be paid at a different hourly rate. The Regulations require that a ‘trainee’ is;

1. an employee over compulsory school leaving age
2. undergoing an ‘accredited course of training’ by written agreement with his or her employer
3. in the first year of employment by that employer, in the particular job for which the employee is being trained.

After one year of employment, with the same employer, on the trainee rate, employees will become entitled to the full rate of minimum wage.

An ‘accredited course of training’ is defined as a course of training that is approved in writing by the Employment and Social Security Committee as an accredited course for the purpose of the Regulations. Any training course that meets the requirements of this code of practice is deemed to have met the written approval of the Committee. However, where there is uncertainty as to whether the provisions of this code have been met, a written request may be submitted to the Committee, with appropriate and detailed documentation about the training, asking if the Committee will give it’s written approval.

4. Requirements

In addition to those requirements provided in the Regulations, (i.e. points 1 to 3 above), the following requirements must be met in order to justify the payment of the trainee rate.

- Employers must keep a copy of the agreement for three years from the end of the training period and be able to produce it on request.
- Training must be of a sufficient quality and duration to enable the employee to reach the required standard and to complete the course successfully.
- Participation on an accredited training course may be at or away from the workplace but must be primarily during the normal/contractual working hours for that employment and must be paid.
- There must be a formal qualification at the end of the training that is a locally or nationally recognised and certified qualification, although the qualification does not necessarily have to be attainable within one year and the employee does not necessarily have to achieve the qualification within that year.
- There must be some supervision of the training.
- The trainee rate should only be payable while the provision of training is ongoing, i.e. the maximum duration that the trainee rate may be paid is either the time taken to successfully complete training, or one year, whichever is the shorter. Even if the training is not

successfully completed within the year, the employer is not entitled to pay the employee for a longer period than one year.

- The training should be provided at no cost to the employee
- The training should be of relevance to the job for which the employee is being trained.

5. Course types, providers and qualifications

Any of the following count as ‘accredited training’ for the purpose of the Minimum wage trainee rate, as long as the requirements described in section 4 are also met;

- i) training that is recognised and accredited by a national or international exam board, e.g. City and Guilds.
- ii) a course which leads to a National Vocational Qualification (NVQ); or to a General National Vocational Qualification (GNVQ), or equivalent;
- iii) a course which leads to a GCSE or A level;
- iv) an “access” course for entry to higher education;
- v) In-house company training which has been certified as including at least 50 per cent of the requirements in terms of whole units of one or more S/NVQs by the awarding body or similar suitably qualified independent organisation.
- vi) a course designed to assist persons whose first language is not English to achieve any level of competence in English language.
- vii) a course for basic literacy in English, basic mathematics, or a course in independent living and communication for those with learning difficulties, which prepares them for entry to the other courses above.
- viii) any course that is included in the Economic Development Committee’s Training and Employment Partnership ‘Skills Strategy for Jersey’.
- ix) a training course that does not fit into the above categories but meets the requirements outlined in section 4 and would meet formal verification tests of validity, e.g. would meet criteria and inspections in line with the UK’s Learning and Skills Council or Adult Learning Inspectorate. In this case the employer must be particularly vigilant in maintaining adequate records to demonstrate that the training and its outcomes meet these criteria and should apply in writing for the Committees’ approval of the training scheme or course.

2.4 WRITTEN QUESTION TO THE MINISTER FOR TREASURY AND RESOURCES BY DEPUTY G.P. SOUTHERN OF ST. HELIER

Question

Will the Minister inform members what justification lies behind the decision to maintain the system of payment of income tax in arrears under the new ITIS scheme, and in particular explain –

- (a) what consideration, if any, has been given to alternatives to the '*special transitional arrangements applying to years 6 and 7*', as outlined in answer to a question on 29th November 2005, as former President of the Finance and Economics Committee, wherein the taxpayer has a reduced tax bill to bring them into line with others paying tax on the previous year's income, and if not, why not?
- (b) what, if anything, has prevented the adoption of a system, whereby all new entrants to Jersey income tax continue to pay tax on current income?
- (c) what '*complexity and significant administrative costs*' are involved in a transfer to PAYE, as outlined in answer to a question on 29th November 2005, as former President of the Finance and Economics Committee?
- (d) what difference, if any, in tax returns is produced in the long-term (over 50+ years) between a 'tax break' in years 6/7 for all new entrants to ITIS, as proposed, or a gradual phasing out of all those paying tax on past income? and,
- (e) whether any legal advice has been received on this subject?

Answer

- (a) The only alternative considered was for all new entrants to remain on a current year tax paying basis throughout their working lives. It is considered that would be inequitable as well as leading to the possibility of a challenge under Human Rights legislation. For example, under such a permanent 'dual system' a situation could arise where two brothers, one who had joined the workforce prior to the introduction of ITIS and the other who had joined after the introduction of ITIS, would be on two different bases of paying tax until they retired - even if all their other personal and domestic circumstances were identical. To prevent such inequality, and such a permanent 'dual system' for at least 40 years, and the possibility of a challenge under Human Rights legislation, the transitional provisions for years 6 and 7 were introduced. In his question, the Deputy refers to a taxpayer having a reduced tax bill during the transitional period. In fact, it is the effective rate that is reduced during these two years, and these reduced effective rates during the transitional period will collect the correct amount of tax which that individual is liable to pay. The individual in question does not escape or avoid any of his properly due tax liability. In addition, the introduction of PAYE, whether gradually, as envisaged by the Deputy, or instantaneously, will create a system which is more complex and administratively difficult than the ITIS system, which is a simplified form of local tax collection. For all these reasons, it was decided to have the year 6 and 7 provisions for new entrants.
- (b) The increased complexity and administrative costs that would be incurred in the gradual change to what would effectively be a PAYE system, albeit taking some 40 years during which a 'dual system' would be in operation, would add to administrative costs both at the Income Tax Office and employers.
- (c) When a PAYE system, such as that in the U.K., is in use, the moment any change occurs in a taxpayer's personal circumstances, that taxpayer will immediately contact the Income Tax Office to have a new and revised tax coding issued so that he pays less tax the following week or month. In other words, an instantaneous response would be required from the Income Tax Office to ensure a revised coding was issued within the week. That does not happen with ITIS as a taxpayer is paying the tax for the previous year. With PAYE, therefore, the Comptroller of Income Tax would need many more staff than he

currently has to handle all that constant and significant additional workload. Even more importantly, employers would have a significant additional administrative and resource cost placed upon them, at a time when Government is trying to reduce red tape and other constraints on business. In addition, the shift from the old system of paying tax in a lump sum at the end of the year to a PAYE system would require taxpayers to pay two tax bills in one year. This is because they would be paying tax from January on a PAYE system but would also have to find the money to pay the previous years tax bill in the September of the first PAYE tax year. Finally, it was not thought appropriate to have a 'dual system' of existing and new taxpayers in existence for some 40 years under ITIS. For all these reasons, PAYE was rejected by the former Finance and Economics Committee.

- (d) There is no 'tax break' during the transitional years 6 and 7 as a 'tax break' suggests a taxpayer has escaped or avoided a tax liability properly due. All that happens is that the effective rate is reduced over these transitional years to collect the tax over a longer period of time thereby allowing the transition to take place. The taxpayer does not escape or avoid any of his properly due tax liability. The Comptroller will be happy to explain the matter further, with examples, if the Deputy cares to contact him. I am unable to answer this question, therefore, as the premise on which it is based appears to be inaccurate.
- (e) No formal legal advice has been obtained on this subject as the former Committee considered the options open to it and made a decision based on the arguments for and against both systems.

2.5 WRITTEN QUESTION TO THE CHIEF MINISTER BY DEPUTY G.P. SOUTHERN OF ST. HELIER

Question

In relation to R.C. 18/2005 of the former Policy and Resources Committee - States Employees Engaging in Political Activities: draft proposals, presented to the States on 22nd March 2005, would the Chief Minister, inform members –

- (a) whether he will, as the former Policy and Resources Committee had stated, bring forward a report to the States for further consideration on the issue of States' employees engaging in political activities and, if so, when?
- (b) whether the response following consultation to the proposals contained in R.C.18/2005 has been broadly positive and supportive?
- (c) whether a legal opinion has been received on whether the limitation under Article 17 of the Civil Service Administration (General) (Jersey) Rules 1949 '*No officer shall take a public part in any political manner*' is a disproportionate limitation of the right to freedom of expression contained in Article 10.1 of the Convention on Human Rights and, if so what this states; if not, why has no legal opinion been sought?
- (d) whether consideration is being given to suspending Article 17 and similar Regulations applying to other public sector workers as outlined in Schedule 1 of R.C.18/2005, pending States consideration of a new set of rules that are compliant with Human Rights legislation?

Answer

- (a) Yes. Following a recent meeting of the States Employment Board, and subject to the approval of the Council of Ministers, it is my intention to bring forward a Report and Proposition to the States on these matters as soon as possible.
- (b) Yes.
- (c) The former Human Resources Sub-Committee has discussed this question with the Attorney General and others. The view of the former Sub-Committee was that imposing restrictions on political activities of public servants will not violate the European Convention on Human Rights so long as the restrictions are prescribed by law, pursue a legitimate aim and are proportionate to the objective to be achieved. The former Sub-Committee recognised that some might take the view that the current overall ban, for example in respect of civil servants, might be considered disproportionate. The issue is therefore where to draw the line in future. This is what the States Employment Board's Report to the States on these matters will be seeking to identify. In presenting proposals, the States Employment Board will take all relevant human rights considerations into account.
- (d) As noted in my answer to question (a), this issue is being actively progressed, and a report and proposition will shortly be presented to the States for their consideration. It is important that agreement should be reached on the right way forward, and it would be inappropriate to introduce temporary measures in advance of the report and proposition.

2.6 WRITTEN QUESTION TO THE MINISTER FOR PLANNING AND ENVIRONMENT BY DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT

Question

With regard to the property 'Lerzardrieux', Rue de la Houquette, St. Clement, and questions asked of the former President of the Environment and Public Services Committee on 29th November 2005, would the Minister inform members –

- (a) whether any further actions have been taken to assess the new building's visual impact particularly from the north, south, east and west elevations and, furthermore, to determine whether it obscures the Mont Ube lighthouse from the south?
- (b) whether any further actions, such as on site measurements, have been taken to confirm the height of the new building and, if so, how far this exceeds the height of the original building; if not, would the Minister confirm that this will be undertaken and reported to the States and that steps will be taken to reduce any dimension not consistent with the submitted plans? and,
- (c) whether the former Environment and Public Services Committee considered the visual impact of the new building and, if so, why it permitted the building to be of increased height?

Answer

- “(a) Having visited the site and its surroundings, I agree with the Deputy that the building currently under construction is far more prominent from surrounding views than its predecessor. In my view, the building does not obscure the light on Mont Ube lighthouse, but does affect views from the south and south west, Pontac and the north.

- (b) The photographic evidence and the approved plans demonstrate an increase in overall height of 2.1 metres. Although the sloping roof is considered to reduce the perceived height of the building, its dark mass is still prominent. The roof is only partially pitched and therefore has a considerably lower height than a fully pitched roof. As far as I can ascertain, the surrounding foliage does not appear to have been cut.
- (c) The application was approved in its present form in August 2003, save for a modest revision which does not affect the building's impact on its surroundings. Measurements of the uncompleted building taken some months ago, demonstrate that the building is being built in accordance with the approved drawings.
- (d) The application was considered by the Department and the Applications Sub-Committee. I understand that the Sub-Committee considered the impact of the building on its surroundings but deemed it to be acceptable. I was not party to the decision to approve such a conspicuous building.
- (e) If the building were to be built in excess of the approved drawing then the Minister has the legal power to direct the owner to reconstruct the building in accordance with the approved plans if the increase is considered to be unacceptable. I would have no hesitation in using those powers were that the case.”

2.7 WRITTEN QUESTIONS TO THE CHAIRMAN OF THE COMITÉ DES CONNETABLES BY DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT

Question 1

Would the Chairman inform members whether all details of the ‘commercial rate’ have now been finalised and what is the anticipated starting date for the new rate; if there is further work outstanding, what does this include?

Answer

The Rates (Jersey) Law 2005, came into force in December 2005 and provides for an Island-wide rate to be levied according to whether a property is assessed as used for “domestic purposes” or for ‘non-domestic purposes. This rate is to levy the annual Island-wide rates figure as set out in Article 20 of the Law. The ‘commercial rate’ to which the question refers is assumed to be the Island-wide ‘non-domestic’ rate.

The Island-wide rate will be paid for the first time in 2006 by all property owners and occupiers. The Annual Returns for 2006 will collect information to allow every property to be assessed according to whether it is used for ‘domestic purposes’ or for ‘non-domestic purposes’. Owners and occupiers will in due course receive a notice of the assessment and will have the opportunity to seek a review of, and appeal against, that assessment should they not agree with it.

There is further work to be undertaken before the 2006 Island-wide rates per quarter can be set. This includes –

- (i) determining the annual Island-wide rates figure in accordance with Article 20 – this can only be done once the 2005/2006 audited accounts for each Parish are available; and

- (ii) determining the total number of rateable quarters assessed across the Island – this can only take place once the Rates List for each Parish is approved (not later than 31st May 2006).

Question 2

With regard to Welfare benefit being subsumed into the Low Income Support Scheme, would the Chairman advise whether any mechanism exists to ensure that the Parishes are protected against the need to subsidise any other aspects of the Support Scheme?

Answer

The Comité understands that the proposed Income Support Scheme will replace the current welfare system and be the sole source of funding for those in need. Accordingly the Income Support Scheme must be flexible to deal with exceptional situations and one-off costs such as those which are currently funded through the welfare system and this is, the Comité understands, to be provided for through the proposed Citizens Fund. Whilst the legislative framework for the scheme has yet to be drafted we expect this to ensure that no further subsidy is required from the Parishes.

2.8 WRITTEN QUESTION TO THE MINISTER FOR TREASURY AND RESOURCES BY DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT

Question

Given that Jersey Telecom is wholly owned by the States, would the Minister advise whether the value of that shareholding or its return has been adversely affected by recent competition and, if so, is the Minister considering disposing of the asset before it reduces further?

Answer

It is generally the case that the introduction of competition and regulation into any market will have an impact upon the value of and dividend streams arising from an incumbent monopoly supplier, particularly in a mature market such as the Jersey telecommunications industry.

Despite this, the introduction of a successful and commercially focussed Board of Directors has improved the net turnover, maintained profitability and increased revenue streams flowing to the States in the guise of dividends and taxation. That Board has mitigated the effects of regulation and increased competition through efficiency measures, developing strategies to meet the threat of competition and the expansion of other markets.

However, as the regulatory framework matures, competition will pose a greater threat over the coming years. Whilst I have full confidence that the Board will continue to be successful, there will undoubtedly be a loss of market share in the local market.

This loss in market share and other pressures that may be brought to bear by the regulator will undoubtedly reduce the value and revenue streams arising from Jersey Telecom from the levels they would have experienced had Jersey Telecom continued as an unregulated monopoly.

This is an inevitable cost accompanying the significant benefits to consumers arising from the introduction of regulation and competition.

The Treasury and Resources Department is currently concluding the development of a proposed strategy in respect of the continued shareholding in States-owned utility companies, in particular Jersey Telecom, in accordance with the existing States Strategic Plan.

The threat to the value of Jersey Telecom arising from the advent of increased competition is one of several reasons why it may appear advisable for the States to sell all or part of its holding in Jersey Telecom. A mature regulatory framework as well as a choice of suppliers would enable the States to do so whilst leaving the consumer with adequate protection.

Whilst competition and regulation will have an impact on the value of and the future revenue arising from Jersey Telecom to the States as shareholder, the value of future dividend streams is the key factor in determining the amount that a prospective buyer will be prepared to pay for the company. For this reason, whether or not it sells Jersey Telecom, the States will suffer any impacts of competition on the profitability of the company, although the degree to which it does so may well vary.

Any disposal of the shareholding of Jersey Telecom will require the approval of the States Assembly in accordance with the terms of Article 32(5) of the Telecommunications (Jersey) Law 2002.

2.9 WRITTEN QUESTION TO THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES BY DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT

Question

With regard to the recent announcement by the Minister that he proposes to replace car-park scratch cards with barriers, would he advise –

- (a) whether such a decision has since been made formally and, if so, when?
- (b) whether any motorists have been consulted about the change and, if so, how many and when?
- (c) what criteria, if any, has been used to assess the superiority of barriers against scratch cards?
- (d) whether any assessment has been carried out in relation to the potential for queues at the exits and, if so, what does this conclude? and,
- (e) whether any assessment has been carried out to determine the security of money held in pay machines and any additional time taken by motorists in using a pay machine before exiting a car park similar to those installed at Jersey Airport?

Answer

I can confirm that no decision has yet been made to replace scratch cards with barriers in car parks. It is one option being considered and some preliminary analysis has been undertaken into the implications and feasibility of the proposal. I can assure the Deputy that, prior to any decision being made to change the method of charging for parking, the questions that he has posed will be taken into account and the public consulted.

2.10 WRITTEN QUESTION TO THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES BY DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT

Question

With regard to the recent announcement by the Minister that he proposes to replace car-park scratch cards with barriers, would he advise –

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- (c) what criteria, if any, has been used to assess the superiority of barriers against scratch cards?
- (d) whether any assessment has been carried out in relation to the potential for queues at the exits and, if so, what does this conclude? and,
- (e) whether any assessment has been carried out to determine the security of money held in pay machines and any additional time taken by motorists in using a pay machine before exiting a car park similar to those installed at Jersey Airport?

Answer

I can confirm that no decision has yet been made to replace scratch cards with barriers in car parks. It is one option being considered and some preliminary analysis has been undertaken into the implications and feasibility of the proposal. I can assure the Deputy that, prior to any decision being made to change the method of charging for parking, the questions that he has posed will be taken into account and the public consulted.

2.11 WRITTEN QUESTION TO THE MINISTER FOR ECONOMIC DEVELOPMENT BY DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT

Question

Would the Minister inform members of his strategies for rejuvenating the agriculture and tourism industries, together with timescales and costings?

Answer

I should start by saying that all policies within Economic Development are being reviewed and where necessary updated as part of the Strategic Plan drafting which is being worked on by the Council of Ministers. Over the next few weeks I will be prioritising the political objectives for the departments and setting out policies to achieve sustainable and well balanced economic growth for now and the future.

The Agriculture, Fisheries and Tourism sectors are important not only to the economy, but to the community, in terms of the way the sectors support and enhance Jersey's culture, the environment and heritage. The department will work in close partnership with the Ministers for Education, Sport and Culture, and Planning and Environment in reviewing these areas.

Agriculture

The agriculture remit will be formally delegated to one of my Assistant Ministers for the reasons set-out in my declaration of interests statement. An announcement on that will be made later this week, after I have consulted the Chief Minister. Currently, various agriculture matters are being handled ably by both Assistant Ministers for Economic Development.

It would be inappropriate for me to answer this question. I will ask the Assistant Minister with responsibility for agriculture to set-out his answer to this part of the question when he has been appointed later in the week.

In the meantime, I am advised that I can confirm that the Department is implementing the Rural Economy Strategy (P.112/2005) which was adopted by the States on 19th July 2005. Costings are shown within the Strategy document.

Tourism

In the weeks since being elected I have already had a number of meetings with Tourism Industry representatives regarding the revitalisation of the tourist economy as one of the big challenges within the portfolio.

The Tourism Strategy for Jersey needs to evolve to reflect the objectives of the States Strategic Plan. A revised policy will supersede the most recently published Tourism Strategy document of the former Economic Development Committee published in the autumn of 2004.

The need to revitalise the Tourism Industry has been recognised by the Industry itself. There are now many excellent examples of innovation within the sector now coming to fruition. Significant levels of investment are currently taking place. These are strongly supported by the Economic Development Department which recognises that future success will depend upon a partnership approach between the public and private sectors.

I support a well thought out co-ordinated approach to developing a world class waterfront for the economic and cultural benefit of the Island. It is encouraging to see brands such as Radisson and Center Parcs showing great confidence in the Jersey brand.

There is an important opportunity to develop off season business, building a new client base and attracting younger professional couples to a new form of Jersey leisure experience.

The inclusion of Jersey Harbours and Jersey Airport within Economic Development will ensure full integration of transport, tourism and economic development strategy; for example, a strategy where variations in landing charges are used to facilitate growth in visitor numbers during periods of lower demand in the season is planned to be introduced in the late spring of 2006.

Realignment of staff and financial resources within the Economic Development Department will ensure that greater focus is placed on identifying key customer attractions and ensuring that these are connected with accommodation and travel providers so that they can be marketed in an integrated way.

The Tourism Development Fund provides a significant opportunity for government funding for facilities which are capable of generating future growth. A report has been commissioned through OXERA, the States economic consultants, to establish how the Tourism Development Fund might best be used in the future to leverage private sector investment to the overall benefit of the Industry.

The Island branding project, which is being managed between the Chief Minister's Department and the Economic Development Department, should enhance Jersey's international standing and, therefore, provide better opportunities for our export industries. The branding project will enhance the sense of pride within the community and lead to a more distinct and single minded positioning for all of our products.

There are excellent opportunities ahead for the tourism industry in Jersey. The strength of our brand and geographical location of the Island are positive factors which will contribute towards future success. However, tourism in the future will be different. Our customers are seeking new experiences and higher quality offerings and we will work towards this success by ensuring that our product development and marketing strategies are geared up to meeting those customer expectations.

Oral Questions -

3.1 The Deputy Bailiff:

The first question is one which Deputy Southern will ask of the Chief Minister.

Deputy G.P. Southern:

What progress has been made in connection with the establishment of a Population Office as outlined in P25 of 2005 "Migration Monitoring and Regulation"? In the light of this, when will a proposition be lodged for consideration by the States to provide for employers to control their workforce under the proposed system of entitled, licensed and registered only categories?

Senator F.H. Walker (The Chief Minister):

The Population Office has now been established and it incorporates a Regulation of Undertakings Office and the housing law section of the Housing Department. In addition, a head of the Population Office has recently been appointed and he is already working with the office on the development of a 2006 business plan. He will take up his post full-time in mid-March and it is expected that the business plan will be published shortly thereafter. A considerable amount of work remains to be done including drafting legislative changes, policy implementation and the introduction of new procedures. The business plan will include a detailed timetable of activity including the presentation of a report and proposition to the States for their consideration.

3.2 The Deputy Bailiff:

Any supplementary questions? If not, we will move on to question 2. Senator Norman will ask a question of the Minister for Economic Development.

Senator L. Norman:

What action, if any, is the Minister proposing to take to ensure that the agreement made between the States of Jersey and the States of Guernsey on 26 August 2004 to give equitable access to Channel Island waters for local fishermen is implemented without further delay?

Senator P.F.C. Ozouf (The Minister for Economic Development): The Senator may know that following the meeting he attended in Guernsey in November, a letter was received by the Chief Minister, Senator Walker, from his opposite number in Guernsey. This letter sets out how Guernsey wishes to proceed with the reference to the agreement - the Vanguard Agreement - referred to in the Senator's question. It is clear that the fundamental principles of the Vanguard Agreement remain valid but common ground needs to be found on the type and numbers of access licenses that each side would like implemented. I am in discussions with the Chief Minister about the reply that the Jersey government will make to Guernsey. That letter will press firmly for the re-establishment of access for those Jersey fishermen that have previously fished in waters around

Guernsey but who are now excluded. I am in the process also of establishing contact with my opposite number in Guernsey and for the sake of the Jersey fishing industry I will pursue this question of access as vigorously as I am able.

3.2.1 Deputy R.G. Le Herissier of St. Saviour:

Could the Minister inform us whether the approaches taken are likely to unblock this major diplomatic problem that we have had for a couple of years?

Senator P.F.C. Ozouf:

I do not have a crystal ball. What I do have is a firm view that this matter must be resolved in the earliest possible course, and I agree with the underlying sentiment that the Deputy makes, that this is a problem in the whole arrangement of business between Jersey and Guernsey. It runs very deep and we must work to resolve these matters to the satisfaction of our Jersey fishermen and, I hope, to the satisfaction of the Jersey authorities too. We will do our best but this is not easy.

3.2.2 Senator L. Norman:

Could I just ask if the Minister is committed to the agreement inasmuch as towards the number of Jersey registered vessels which were agreed by the appropriate Guernsey Minister that should be allowed to have licenses to fish in Guernsey waters? Or is he planning to reduce the number that was agreed in 2004?

Senator P.F.C. Ozouf:

The Senator has a much deeper understanding and a long-standing set of information on this issue than I do, but certainly I have been briefed in-depth about this issue of the number of boats that were negotiated at the time of the Vanguard Agreement, and I see no reason to change Jersey's position from that. That is the negotiating position that we start with. The Chief Minister has indicated that I am to lead the negotiations with Guernsey on this but I will be keeping him and the Council of Ministers... and drawing on the experience of other Members such as Senator Norman, to assist me in this difficult issue and resolution. But, no, the position has not changed.

Senator L. Norman:

I am grateful to the Minister and assure him of my support to ensure that the Vanguard Agreement, as he calls it, is implemented in its entirety, Sir.

The Deputy Bailiff:

The question was ...?

Senator L. Norman:

I was just being decent and respectful to the Minister, Sir.

3.3 The Deputy Bailiff:

Very well. We will see whether that attitude continues generally. **[Laughter]** We come to the third question which the Deputy of St. Martin will ask of the Chairman of the Comité des Connétables.

Deputy F.J. Hill of St. Martin:

Would the Chairman advise whether Criminal Record Office checks were being carried out in respect of candidates for all posts including Connétables, Procureur du Bien Public and other honorary police positions? If not, explain the reasons why and what steps, if any, will be taken by the Comité to review the current procedures.

Connétable K.P. Vibert of St. Ouen (Chairman of the Comité des Connétables):

I welcome the opportunity, not only to reply to the Deputy but to inform the public that the current procedures will continue. Namely, that a criminal record check will be carried out on all persons standing for election to the Honorary Police - including Connétable and Procureur du Bien Publique - and that the results of such checks will be forwarded to the Attorney General's office as has been the case since the Holland Inquiry.

3.3.1 The Deputy of St. Martin:

Could I just have confirmation that these checks will be carried out prior to the elections and not after? Thank you.

The Connétable of St. Ouen:

It is not carried out prior to the election. It is carried out prior to the swearing-in. But the Connétables are in consultation with the Attorney General to allow a sufficient amount of time to be made available so that checks could be made prior to the actual nomination meeting.

3.3.2 Deputy R.G. Le Herissier:

On a point of information, I wonder if the Connétables could tell us whether people do indeed make a statement which is subsequently checked as part of that CRO check. A statement affirming whether or not they have convictions.

The Connétable of St. Ouen:

What the Connétables has suggested to the Attorney General is that, at the time of nomination, all candidates for nomination to the post should make a declaration as States Members do at the moment, and that at that time the President of the Assembly - the Connétables or someone else - would be able to inform the Assembly of any offences which have been declared.

3.3.3 The Deputy of St. Martin:

Could I ask the Chairman if he would confirm whether the suggestions made now or being spoken about this morning are in line with the Centeniers Association's report which they made, I think, 2 years ago following an inquiry into the recruitment of an officer who did have a criminal record?

The Connétable of St. Ouen:

At the moment, Sir, the Comité des Connétables are awaiting the drawing-up of a list of offences from the Attorney General, and once that has been drawn-up we will proceed with all speed.

3.4 The Deputy Bailiff:

We move to the next question which Deputy Le Herissier will ask of the Minister for Economic Development.

Deputy R.G. Le Herissier:

Would the Minister confirm whether the move to postal corporatisation is proceeding to schedule and on what date the planned incorporation will take place?

Senator P.F.C. Ozouf:

Postal incorporation is proceeding according to the current timetable. I would remind the Deputy and the Assembly of the statement made by the last President of the Finance and Economics Committee, on 25th October 2005, which set out the timetable for incorporation. The President then noted that while it had been intended to bring incorporation of Jersey Post in on 1st January 2006, this had not been possible because of the decision of the previous Chairman Designate, that a potential conflict of interest prevented him from committing at that time to Jersey Post. As a result of that, Mr Mike Liston was appointed as Chairman Designate; however, given the limited time remaining in the previous States session, the Finance and Economics Committee decided that

incorporation of Jersey Post would take place in the first quarter of 2006. As a consequence of this change to the incorporation timetable, P.205 of 2005 of the previous EDC Committee was withdrawn and will be replaced in due course by an amended, though similar, proposition reflecting the new schedule. The lodging arrangements for propositions are such that we will be seeking a debate on 14th March 2006 and, if that is successful, the approved incorporation will proceed on 1st April 2006.

3.4.1 Deputy R.G. Le Herissier:

Having brought a fresh mind to the situation, is the Minister happy with the conditions under which corporatisation is proceeding? For example, the never-ending increase in local postal rates versus the vast sums being accumulated via fulfilment. Is he pleased, Sir, with the fact that a whole series of Chinese walls - admittedly at the start with good reasons for being erected - have led to an immensely costly local service and an immense accumulation of funds in other areas?

Senator P.F.C. Ozouf:

The Deputy would expect me to, of course, say that I remain committed to that because I was not only a member of the Finance and Economics Committee that progressed this whole matter, but I also was the Member that brought the setting of the independent Competition Regulator Authority which set up, for the first time, independent regulations. So, yes, I remain committed and I remain of the view - even taking a fresh approach - that incorporation is the best thing for Jersey Post in whatever circumstances. Of course he is right when he says that there are some challenges or when he suggests that there are challenges for Jersey Post. I need to tell him though that fulfilment is actually being of benefit to Jersey Postal consumers. Because of the good level of profitability from that business, that means that high postage charges have actually lessened as a result. If we were to lose fulfilment, I have to say to the Deputy that it is likely, in my view, that postal rates would have to rise. In any event, incorporation is the best structure for the postal service, that they should be on a commercial footing and that they are absolutely independently regulated, which is best practice all over the world.

3.4.2 Deputy R.G. Le Herissier:

Is the Minister, Sir, aware that the elimination to all countries I think, bar the United Kingdom, of the printed paper rate - and indeed the surface rate - has created enormous problems for people, for example, who use eBay or other internet exchanges? It has created enormous problems and was seen by those people as a fairly minor matter in terms of the finances of the post office which has had an utterly disproportionate effect on people who are trying to trade out of the Island.

Senator P.F.C. Ozouf:

I do understand that issue, but I have to say that it does not make any difference; that is not an issue which turns on incorporation. Incorporation: we are turning a States department into a corporate body and I think the comments that he makes are the same, whether or not we would be continuing as a States department or continuing as a body. The issue fundamentally is 'What is the regulatory approach to the postal services?' and I am satisfied, and indeed confident, that the JCRA (Jersey Competition Regulatory Authority) is able to deal with these issues.

3.4.3 Deputy G.P. Southern:

Is the Minister content that there are no outstanding issues around the position of Jersey Post and the fulfilment industry yet to be resolved which may get in the way of incorporation?

Senator P.F.C. Ozouf:

It is an excellent question because the fulfilment issue is one which covers the whole portfolio within Economic Development, and indeed this morning I have been in discussions with officials concerning the fulfilment policy as it relates to the Regulation of Undertakings. I will be delegating

the responsibility for the former Postal Committee to the Constable of St. Lawrence shortly so that there is a split responsibility in the department, with those issues concerning fulfilment in Jersey Post being for the Constable to deal with, and for myself remaining with the knotty issues concerning fulfilment which must be addressed, and are in the process of being addressed. But I say exactly the same thing to the previous comments. The changes that we must make concerning Jersey's fulfilment policy do not change the fact of incorporation.

3.4.4 Deputy R.G. Le Herissier:

Would the Minister promise to look into the whole issue of surplus mail on the basis that for relatively minor savings it has had, as I said, a disproportionate impact on a certain group of people and is utterly against the trend of people who are trying to set themselves up - for example, as sole traders and using the mail system to do so - a thing which is done on a vast scale by the likes of, for example, Amazon.

Senator P.F.C. Ozouf:

I am happy to look at it. I am not sure whether I would need to say that I need to research and have a better understanding of some of the fundamental issues, but it does not change the issue. The question was whether or not incorporation is going to proceed, and incorporation proceeds whether or not there are ongoing reviews about surface mail and issues of regulatory approach. I am happy to look at it, but as far as I am concerned it does not change the timetable.

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

This may be a small deal in comparison to the other questions, but is the Minister aware that the slippage from 1st January 2006 to incorporation is going to cost the Parish of St. Helier a considerable amount of money in lost rates? This on the basis that the post office, as we all know, has been operating for some years now a very successful stationery shop which competes with the High Street. Does he not think it is time for the post office or his Committee or department to pay something in lieu of those lost rates to the Parish this year?

Senator P.F.C. Ozouf:

The Constable will well remember the views of a Deputy of St. Helier on this very issue and impressed repeatedly at the time with the then Deputy Crowcroft, that there should be - and it was right that there should be - rates payable on States companies or States *de facto* companies. The fact is that the previous administrations of both the Postal Committee and EDC attempted I think - I am advised - to make some changes in this but the law prevents us from making such payments, I am told upon legal advice. I am happy to look at it again but, yes, fundamentally the Minister is absolutely aware that delaying incorporation is costing St. Helier ratepayers. He understands that.

3.4.6 Deputy P.J.D. Ryan of St. Helier:

What is the Minister's view on the basic principle that normal Jersey consumers that buy postage stamps - old age pensioners - would be subsidising a small number of entrepreneurial business people to have a lower postage rate? I am referring to the surface mail that Deputy Le Herissier was referring to. What is the Minister's view? Does he think that this is an acceptable practice, that Jersey Post would in fact have slightly higher postage rates in order to subsidise a small number of business people?

Senator P.F.C. Ozouf:

The general approach that I take to this is one that I have held for a number of years, which is fundamentally that there should not be cross-subsidisation of services. There should not be cross-subsidy within the postal service. It should not happen and it has now ended in relation to telecoms. So, the short answer is no, and those are the principles and the guidelines which are, I think, enshrined in the arrangements that this Assembly has approved in relation to the regulatory

approach of the JCRA.

3.4.7 Deputy R.G. Le Herissier:

Could the Minister confirm that, rather than look at cross-subsidisation, it would have been much more valid for Jersey Post to have looked at encouragement and growth of that business as a way of making it more viable?

Senator P.F.C. Ozouf:

I am certainly going to have to understand exactly some of the subtext that is coming out in this knotty issue of surface mail, and I am happy to do that. Fundamentally, I think that it has to be said that Jersey Post has actually been business-like - perhaps too business-like, perhaps too entrepreneurial - in relation to some of its activities that are causing some of the issues that we have got with Jersey fulfilment. In my responsibilities as Minister for Economic Development - with those additional responsibilities of Jersey Post - I am determined to ensure that Jersey Post is brought in to the collective responsibility that it has as far as being a state-owned entity as regards the integrity of the Island, and there are knotty issues concerning fulfilment. No doubt this will raise its head again in questions without notice.

3.5 The Deputy Bailiff:

We come now to a question which Deputy Southern will ask of the Minister for Economic Development.

Deputy G.P. Southern:

What progress has been made in securing ferry services on the southern route for the coming tourist season, and what consideration, if any, has been given to reviewing the 'open seas' policy followed by the former Economic Development Committee as recommended in the OXERA report, dated July 2004, regarding the viability of ferry services?

Senator P.F.C. Ozouf:

I thought I had given up the poisoned chalice, Sir. **[Laughter]** I answered a number of questions at the emergency question that was laid at the last sitting and since then I can inform the Assembly that there has been a number of actions and developments. I repeat that it is important to get this issue right. The sea links of Jersey are absolutely vital. Before the Christmas break I met both the senior management of Condor and Sogestran. I got out of the meetings with Condor various assurances on service and prices, and following an informative meeting with the newly appointed Managing Director of Emeraude and the Sogestran Finance Director, I set a deadline for the end of January for Sogestran to report to me on their future intentions. I can also say that yesterday I spoke on the telephone with Monsieur Jean Paul Jerome, the Managing Director of Emeraude - the newly appointed one - and the news was encouraging. He explained that Sogestran remained committed to the Island, that there is an affection for Emeraude within the Island and that they are making strenuous efforts to return to the route. They explained that various lessons have been learnt from the experience of the last couple of years. They have carried out market reviews and various options are in the process of being discussed with their Board in France. I can say for my part that my department will do all we can to secure their return to the route on a level playing field basis. At the same time I recognise - and I think we all must - the continuing service on the route by Condor. I advised the States of our intention to make a decision on the future policy for sea transport by the end of February. This remains the timetable. I will be asking the Council of Ministers to consider this matter at its meeting on 9th February and we will be publishing our intentions shortly after. I have also arranged the meeting with my Guernsey counterpart on this matter - and his officials - on 23rd January, and I have also sought advice from the Law Officers, OXERA, JCRA and the Harbours Department. I am also very happy to discuss the matter with the Scrutiny Panel whose interest in this whole subject I certainly welcome. I think that is all I will say

at the moment.

3.6 The Deputy Bailiff:

We come then to a question that Senator Norman will ask the Minister for Education, Sport and Culture.

Senator L. Norman:

Would the Minister confirm that there are no circumstances whereby persons with a record for sex offences or violence may be employed in the education service?

Senator M.E. Vibert (The Minister for Education, Sport and Culture):

I can confirm that all applicants for post within the Jersey Education Service are subject to a comprehensive screening procedure. This includes a criminal records check undertaken by the States of Jersey Police which references both local and national data. My department also checks 'List 99' which is held by the Department of Education and Skills in the UK and includes names of individuals excluded from employment as teachers. There are no circumstances in which a person with a known record for sex offences or violence would be employed locally.

3.6.1 Senator L. Norman:

I am very grateful for the assurance. I wonder if the Minister could confirm that the checks for 'List 99' do include all potential employees of the education staff such as teaching assistants, librarians, cleaners, caretakers, supply staff and so on. That not only is 'List 99' checked - which appears to have been at least partially ineffective in the United Kingdom - but also the sex offenders register which is held by the Criminal Records Bureau.

Senator M.E. Vibert:

All the checks at present that are carried out with records held by UK police are undertaken on our behalf by the States of Jersey Police, though there are moves afoot to enable the Department of Education in Jersey to undertake them directly. All staff who apply for employment within the department that have connections with children and access to children are checked in a comprehensive screening procedure.

3.6.2 Senator S. Syvret:

Is the Minister for Education aware that an extensive child abuse scandal took place at a local school in the 1990s and that the headmaster of the day, rather than being sacked or quite possibly prosecuted, was in fact given a substantial pay-off with the blessing of Senator Norman's Education Committee; and that one of the teachers who had to resign in disgrace was subsequently employed by the Harbours Department of which Senator Norman was the Vice-President?

Senator M.E. Vibert:

I am uncertain how to answer that question, Sir. What I can say is I am aware of what took place in the 1990s. My children were at the school concerned at the time and I was very concerned about what happened. The principal malefactor concerned was prosecuted. He did not have a previous criminal record but he is now on 'List 99' and would never be employed within our service again.

3.6.3 The Deputy of St. Martin:

The Minister mentioned procedures. Could I ask the Minister if the same procedures are carried out in respect of other areas within Education Sport and Culture - and I am looking at possibly areas like the arts or culture or heritage? Thank you.

Senator M.E. Vibert:

As I said in a previous answer, in all areas where there is regarded to be access to children and

involvement with children, the checks are carried out and that is within all areas under my department's control.

3.6.4 Deputy R.G. Le Herissier:

I wonder, Sir, if the Minister could give a definition of what is "violence" or what offences does it embrace; and secondly, Sir, bearing in mind the Soham Inquiry - and I have got ambivalent views about what happened - what is done about people who may have accumulated - as was the case there - a series of no court appearances but who, nevertheless, have been subject to a series of serious allegations which did not result in successful prosecutions? Thank you, Sir.

Senator M.E. Vibert:

I am sure the Deputy has as good a knowledge of what the definition of "violence" is as myself. I take it to be the normal meaning of the word "violence". As for the procedures that led up to the employment of someone with warnings, as in the Soham Inquiry, we rely on the local police who not only give us information that they have checked with the criminal records but they also inform us of any local intelligence they may have of complaints made, et cetera, on a confidential basis. We take whatever steps we can to ensure that anyone with a known record or concerns that have been raised about offences of a sexual nature or a violent nature, are brought to our attention and we do not - as has been apparent in the UK recently - have a system of discretion. We operate a policy whereby we do not employ anyone who has a known record.

3.7 The Deputy Bailiff:

We will move to the next question which Deputy Le Herissier will ask of the Minister for Health and Social Services.

Deputy R.G. Le Herissier:

Would the Minister confirm whether staff in the health service enjoy full protection in terms of whistle blowing?

Senator S. Syvret (The Minister for Health and Social Services):

Yes. All Health and Social Services staff are covered by the Corporate States of Jersey policies, namely reporting serious concerns at work and bullying and harassment; both of which can be found on the States intranet Café Cyril web site. These policies provide a secure and, if necessary, anonymous means of expressing concerns at work regarding the conduct of others. I have been advised by the Chief Internal Auditor of the Treasury that there are no records of concerns being raised by Health and Social Services staff using either of these routes. Doctors, nurses, social workers and professions allied to medicine have strong protection when whistle blowing as they have, in fact, a professional responsibility to report any concerns that they have in the workplace. This is particularly important in the post Harold Shipman environment. If, for whatever reason, reporting internally within the Health and Social Services organisation was not deemed appropriate, all health professionals will have a duty to report externally to the Nursing and Midwifery Council, the General Medical Council or other appropriate professional bodies. Additionally, Health and Social Services has recently entered into agreement with NCAS, the National Clinical Assessment Service, to provide external expertise in supporting alleged poorly performing doctors. Should Health and Social Services doctors or nurses find themselves the subject of whistle blowing, as well as receiving appropriate managerial guidance, they are also entitled to support and representation from the British Medical Association and the Royal College of Nursing respectively.

3.7.1 Deputy R.G. Le Herissier:

I thank the Minister, Sir. I have raised this issue before as he knows, and I wonder if the Minister could confirm that one of the aspects that deters people who wish to whistle blow, as the phrase has it, is that they do indeed have to see people in the Civil Service hierarchy. I wonder if he could

confirm whether that is the case and whether he feels that should be changed.

Senator S. Syvret:

As I explained there is an over-arching States of Jersey policy on the subject outside of the ambit and control of Health and Social Services to which staff can report concerns in complete confidence, security and confidentiality if that is their wish. So that degree of protection does exist. If the Deputy is asking me, "Do I think that goes far enough?" personally no, I do not and this is why I am preparing a proposition that will seek the agreement of the Assembly to establish a Jersey version of the United Kingdom's Public Interest Disclosure Act.

Deputy R.G. Le Herissier:

I thank the Minister and I look forward to that.

3.8 The Deputy Bailiff:

We come next to a question which the Deputy of St. Martin will ask of the Chief Minister.

The Deputy of St. Martin:

On 8th February 2000, which is 6 years ago, the States approved P.197 of 1999 - the Draft Human Rights Jersey Law 200-. To date the law has not been brought into force. Would the Chief Minister explain the reasons for the continued delay and whether this is having any negative implications for the Island, and give some indication as to when the law will come into effect?

Senator F.H. Walker:

The delay in implementing the Human Rights Jersey Law is because it has been necessary to make significant changes to a considerable number of other pieces of legislation. The final changes to legislation address the requirement for additional court sessions and provide for due legal process for the detention of individuals. It is hoped that the necessary amendments can be made within the next 2 months and that the Human Rights Law can then be brought into force shortly thereafter. The exact timeframe is subject to the States adoption of the amendments that will be lodged in the near future, and to Privy Council consideration of these amendments. I am not aware of any substantial negative implications for the Island. The United Kingdom government is satisfied that every reasonable step is being taken to bring the Law into effect at the earliest opportunity. I have recently discussed this position with the Lord Chancellor and I am pleased to report that the progress being made by Jersey was noted favourably, and in this respect we are certainly well ahead of both Guernsey and the Isle of Man.

3.8.1 Deputy R.G. Le Herissier:

I wonder if the Chief Minister could confirm that there are issues with the legal profession who are not prepared to buy-in to the concept of 24-hour courts and that this problem is far from being resolved. Thank you, Sir.

Senator F.H. Walker:

The information I have is that ways around this problem have been agreed and we now await the necessary proposed legislation before bringing it to the House.

3.8.2 Senator S. Syvret:

Could the Chief Minister confirm to the Assembly that if, in fact, the Crown Dependencies were not compliant with the European Convention on Human Rights, it could indeed cause significant difficulties for the Islands, and indeed I think perhaps the Isle of Man is shortly to experience some difficulties of this nature.

Senator F.H. Walker:

I can indeed confirm that, and that is why I think all members of the Council of Ministers - certainly I know the Minister for Home Affairs and myself - are very anxious that we should complete this process and introduce the Law at the earliest possible opportunity. Senator Syvret is quite right when he says there may be difficulties in another Crown Dependency but certainly we do not have the same problem. I would also point out, of course, that although the legislation is not in force, it has already had a major impact within the Island, both in the public sector and the private sector where due regard is being paid to it.

3.8.3 Deputy R.G. Le Herissier:

For a long time we were told that there were two laws - or the absence thereof - holding it up, namely (I think), RIPA (Regulation of Investigatory Powers Act); and the Police and Criminal Evidence equivalent law. These have obviously been dealt with yet we keep getting new laws - or out of date laws or inappropriate laws - trawled-up or brought out the of the woodwork. Can the Chief Minister assure us, Sir, that a proper check has been done on all Jersey laws and we are ready to go?

Senator F.H. Walker:

I share the Deputy's frustration. I believe I can give him an assurance that a proper check has been done and that when this last outstanding piece is dealt with we are indeed ready to go. That is the advice I have and it is very much the intention of the Council of Ministers - particularly the Home Affairs Minister - that that is how we should proceed.

3.8.4 Deputy G.P. Southern:

If I may refer to the written answer given today in response to a question I set on this issue, and noting the due regard which is given by many States departments and many private individuals acting as if the Human Rights Law were actually in force - even though it has not been brought into force - does the Minister consider that it really is inappropriate to introduce temporary measures to mitigate against the current practice of the States forbidding political activity to all of their States employees? Surely this is a disproportionate reaction to the rights of every person on this Island to freedom of expression and political activity.

Senator F.H. Walker:

I do not agree that interim measures are appropriate and I think my written answer spelt out exactly what we are doing in this process. I believe that is right and we will be looking to adhere to the timetable I suggested in my answer.

3.9 The Deputy Bailiff:

We will move to the next question then which the Connétable of St. Helier will ask of the Minister for Home Affairs.

The Connétable of St. Helier:

Would the Minister inform Members how the levels of anti-social, disorderly and violent behaviour recorded in recent months, particularly in St. Helier over the Christmas and New Year period, compared to previous years and what additional steps, if any, the Minister is taking to review standards of community safety in the Island?

Senator W. Kinnard (The Minister for Home Affairs):

The overall number of assaults reported to the police in the last 3 months of 2005 increased by 4 per cent compared with 2004. Taking the whole year into account there has been no change in the overall level of violent crime reported to the police in 2005 compared to 2004. The number of calls to the police control room between the hours of 8.00 p.m. and 4.00 a.m. seeking a police response to incidents of violent crime and public order in St. Helier in the last 3 months of 2005

was, in fact, 8 per cent down on the same period in 2004. The number of arrests for disorder offences in the last 3 months of 2005 showed no change over the same period in 2004. Overall the number of arrests for disorder offences over the whole year also remained unchanged from 2004 to 2005. There was a slight increase in the number of arrests over the recent Christmas period but the police expected a busier Christmas period this year because Christmas Eve and New Year's Eve coincided with Saturday nights. There were 14 grave and criminal assaults in the streets, pubs and clubs of St. Helier during December which is the highest level of such offences in one month since March 2002. I am, however, pleased to note that the police have identified and interviewed or charged the suspects in all but 2 of these incidents. So, while I believe that we are not seeing a sudden dramatic change in community safety, I am also acutely aware of the concern surrounding the issue of street violence and disorder and, therefore, Sir, I would just like to bring Members up to date with the initiatives that are already under development. The Jersey Police Policing Plan for 2006 has as its highest priority street violence and disorder, and it sets out a number of policing activities to deal with this. A new shift system was introduced on 1st January 2006 and the new pattern has been designed with the express purpose of putting more officers on to the street at times of peak demand such as Friday and Saturday nights, with up to 2 overlapping shifts available if needed. This could provide up to 70 per cent more officers patrolling the streets during critical periods than has been possible in the past. At the same time, Sir, we should guard against the idea that more police resources are the only answer to the problem of alcohol-fuelled street violence and disorder. The government needs also to address the social and cultural issues underpinning this growing tendency to drink to excess, and about 80 per cent of people arrested by the police after 9.00 p.m. have indeed been drinking. There needs to be a commitment of all stakeholders to address the contributory causes that underpin the problem. There needs to be full political commitment to the alcohol strategy which was approved in 2004. Also improved late night transport services from St. Helier to disperse crowds at closing times; a review of licensing arrangements to avoid the build up of crowds also; a new legislation, Sir, in...

The Deputy Bailiff:

Minister, you are taking a long time to answer this.

Senator W. Kinnard:

Sorry. There is new legislation, Sir, which has been developed to give police more powers to deal with these issues, and also we have a whole strategy - the Building of a Safer Society Strategy - that is a partnership approach between Health, Housing and the Home Affairs Ministries which indeed deal with a number of projects such as Detached Youth Worker Project, alcohol liaison, nurses and so on. There are an awful lot of things actually under way and under development at this moment to deal with these issues. Thank you, Sir.

3.9.1 The Connétable of St. Helier:

While commending the Minister and, through her, the staff involved for the range of initiatives outlined - and particularly the new shift system that has been appreciated by the Honorary Police of St. Helier - does she not agree that the enforcement of existing legislation in relation to the presence of drunk people on licensed premises would go a long way to tackling the problem we have of this 80 per cent of crime which is related to alcohol abuse?

Senator W. Kinnard:

As I outlined, I do not think it is just an issue purely of positive policing. I think there is a wider issue about the culture that we have in the Island and our attitude to alcohol consumption, and I believe that the only way that we can deal with the issue is if we have a concerted multi-agency partnership approach in dealing with it. There are other initiatives that I know that the Constable is aware of and indeed has been involved in discussions under Operation Mistral* and I hope indeed to work with him and others to see these issues through to completion and no doubt also, Sir, a

review of the licensing situation and the enforcement of licensing laws will be encompassed within that project. Thank you, Sir.

3.9.2 The Deputy of St. Martin:

I do not know whether the Minister can answer my question, but I will have a go at asking it. In an attempt to reduce accidents over the Christmas period, around 6,000 motorists we are told were stopped and checked about their alcohol consumption. Now, in an attempt to reduce burglaries over the Christmas period, is the Minister able to tell us how many - possibly thousands - of pedestrians and motorists were stopped to check to see whether they had housebreaking implements. In an attempt to reduce the levels of drug abuse, et cetera, over the Christmas period, how many thousands of motorists and pedestrians were stopped over that period to check about their levels or whether indeed they had drugs or alcohol on them. Also in an attempt to reduce assaults over the Christmas period, how many thousands of pedestrians or motorists were stopped in connection maybe with their possession of offensive weapons.

Senator W. Kinnard:

I do detect a certain degree of facetiousness in the question. I make no apology at all for the number of individuals who were stopped during the campaign of drink driving. But indeed it is not just about drink driving. It is about substance misuse, so it does actually encompass misuse of other forms of intoxicants. Indeed, Sir, I think that public safety is an important issue which we should not make light of and clearly there is a difference between stopping people to check whether they have been abusing alcohol or other substances, and stopping many motorists to see whether or not they may be going "equipped" as it were. I do not see that the examples are the same and so I do think that it is very important that we take this matter very, very seriously. It is not all that long ago, Sir, that it was felt quite acceptable for people to get into motor cars when they had consumed quite a large amount of alcohol. Our attitudes today have changed significantly to that and I think that it is important that we do not lose sight of the kinds of behaviour that were felt to be acceptable before and were a danger to the public. I think that, Sir, some of the criticisms in this area are really rather unfounded.

3.9.3 Deputy S.C. Ferguson of St. Brelade:

Just a short one, Sir. Statistics: in the Minister's police plan for dealing with the problem she talks about a 70 per cent increase in street policing. What is this in terms of numbers?

Senator W. Kinnard:

Where we have talked about a potential 70 per cent increase in terms of officers patrolling the street, that is to do with the number of officers at a peak time. The shift systems previously meant that we had shifts of officers which were out on the streets in equal times during the day as to the night, and quite clearly it has been identified through a number of studies that most of the calls or crimes that are committed are, in fact, taking place after dark. So, what we are trying to do there, Sir, is to ensure that we have more officers out at times when they are most likely to be required. In terms of the numbers, Sir, off the top of my head I do not have the shift patterns in front of me, but it is a matter of ensuring that there are the availability of potentially 2 back-up shifts during the night if necessary. But I am more than happy to get those figures to the Deputy later on today. The detail of that is obviously in the organisation of the shifts and I personally, without notice, cannot give her the figure.

3.9.4 Deputy P.V.F. Le Claire of St. Helier:

In other countries, responsibility for people's injuries can be traced back to the individuals within bars that have been serving alcohol to people that have succumbed to injuries and claims. Will this initiative be investigated in the future by the Minister in tandem with the alcohol strategy in educating and enforcing responsible serving of alcohol so that people who are served in pubs and

bars by the staff who then go on to commit or become victims of serious injuries, are then able to go back to the staff - as with cigarette sales to minors - and prosecute not only the bars but the staff themselves?

Senator W. Kinnard:

I believe that most of the licensing issues do not come under this Ministry. A lot of them actually come under the area of Economic Development. But clearly, we are keen to work with other Ministries and indeed through Operation Mistral* and also through our “Building a Safer Society Strategy.” It is very important that we bring all of the resources together to address this issue. As I have said, Sir, we are responsible particularly in the area of positive policing but we cannot just leave it to the police to deal with this problem. It is much wider and certainly I think that during the review of licensing issues which I know will be taking place as part of Operation Mistral*, that indeed a number of these issues will be certainly discussed and hopefully addressed. But, at the moment, I cannot give him assurance of exactly what those outcomes will be. It is a matter of working in partnership with others to ensure that we have appropriate qualities to deal with the issues that concern the Deputy. Thank you, Sir.

3.9.5 Deputy J.B. Fox of St. Helier:

I would like to ask the Minister basically 2 questions in one. There is a lot of talk about crime statistics and as the Minister will know the British Crime Survey indicates that there are many crimes - like malicious damage, street crimes, et cetera - that are never reported to the police but cause a great deal of fear of crime to the public. I was seeking assurances - and I am pleased to hear about the latest policing improvements, et cetera. Are we still visiting various organisations - whether they are social gatherings such as W.I.s, et cetera - answering people’s concerns and giving them good sound advice? That continues in the marketplace for people that are involved in pubs, in businesses, et cetera, so that it actually helps society to have better knowledge on the way of reducing the crime risk and... **[Interruption]** I am coming to it, Sir... reducing the crime risk. It is an important area, Sir. Reducing the crime risk and also giving greater opportunities for reporting of such offenders to, again, apprehend those that are causing the distress to society. Thank you. Sorry it is a bit long.

Senator W. Kinnard:

Thank you, Sir, I will try to answer that. Yes, indeed, there are a number of crimes that never get reported, of course, and certainly our recent victimisation survey undertaken by the previous Home Affairs Committee identified a similar trend in Jersey as there is certainly in the United Kingdom. There are opportunities, of course, for sound advice to be given and indeed if anyone is asking for advice we are obviously very keen to give it. Our Community Safety Officers engage in such activity. It obviously depends on the range of crimes that we are trying to deal with, and certainly I would be more than happy to talk to any groups and take any officers as necessary if there is a desire to have more knowledge. Prevention of crime is always far better than having to deal with it afterwards. We can always do more of this work. It is a matter of having to resource it, but certainly it is a very positive way, I think, of dealing with allaying fears, addressing people’s concerns and actually finding out what people really think on the street. It can be done through a range of activities. One is like the “Victimisation Survey”; another is the “Police Satisfaction Survey” that we do. But equally too, I am more than happy to go out to speak to groups at any invitation whatsoever. Thank you, Sir.

3.9.6 The Connétable of St. Helier:

I would like to press the Minister for a more adequate answer to my earlier question. Much as I applaud the range of holistic initiatives and strategies and partnerships that she is talking about, they do not hold up much hope to the tourism proprietor who is trying to run a business in the evening economy in St. Helier, or the resident who is frightened of going out at night. Is the

Minister aware that under existing legislation - and ancient legislation at that - her officers are able to go into a pub and if there is somebody blind drunk in it, that pub - through the good officers of the Crown Officers - can be closed? That would send out a short, sharp shock message to the industry that they must police themselves better.

Senator W. Kinnard:

I realise that this is a very important issue and it is certainly one that will be taken-up, and indeed the Connétable is a member of the group of Operation Mistral* and he will have every opportunity to raise this issue and for us to discuss it and to find a way of dealing with this point. I certainly welcome that opportunity. As I say, at the moment I cannot give a definitive answer as to what the outcome of that will be, but the Constable, himself, will be part of that move, addressing this issue. Thank you, sir.

3.9.7 The Deputy Bailiff:

Very well, Deputy de Faye.

Deputy G.W.J. de Faye of St. Helier:

Is the minister in a position to instruct the police force to carry out the sort of request made by the Connétable of St. Helier, or do these matters fall under operational issues over which she appears to have little control?

Senator W. Kinnard:

Obviously, whenever there is an issue to be dealt with it is a matter of resources being applied most effectively and efficiently. That, of course, is a decision on the day and on the hour of the operational head of the force, the Chief Officer of Police. Indeed, it is not for me to say: "Tonight you will go off and go to this particular pub and arrest anyone inside that pub who is under the influence of alcohol." It is a matter of setting a policy and setting the guidelines. Indeed, that is the way in which we will develop the policy under things like 'Operation Mistral*' and then that sets the policy within which the operational decisions are taken out on a day-to-day basis. The Deputy is entirely right, that we have to be very careful not to encroach into operational issues, because, indeed, in the operational areas it is those with the appropriate training, and skills, who have the ability to make those important snap decisions when they need to be made. It is not, I think, the place for the Minister of Home Affairs to interfere in that professional decision-making. Thank you, Sir.

3.9.8 The Deputy Bailiff:

I see one final question. [Aside]

Deputy K.C. Lewis of St. Saviour:

I am very concerned about the apparent ease that youngsters seem to have access to alcohol. Could the Minister assure us that anyone - individual or business - caught selling alcohol to juveniles, would be vigorously prosecuted?

Senator W. Kinnard:

Well, obviously, Sir, the matter of prosecution is not within my hands. The Police can, hopefully, catch people; people can be arrested, charged, and so on; but then how they are dealt with is a matter for the Court. But, clearly, this is a concern to us all. Indeed, that is why I have said that it is not just a matter of policing, it needs the commitment of the whole of the Government - all of the stakeholders - to things like the alcohol strategy which seeks to deal with these issues. I think, Sir, that sometimes we pass these marvellous strategies, which are very, very good, and we sometimes forget that they need constant review, constant vigilance. We must ensure that they continue to work, certainly, through the "Building of Safer Society Strategy", which I mentioned earlier on in

my answer. That is one of the things we do. We keep all of those policies - like the detached youth worker project and so on - under review, to ensure that they are hitting the targets; to ensure that they are delivering what we expect them to deliver. I think that - certainly, where the alcohol strategy is concerned - it would be as well for my other stakeholders in this, to review exactly where they are in their commitment to it. Thank you, Sir.

3.10 The Deputy Bailiff:

I think that concludes matters on that question. So, we come then to a question which Deputy Pitman will ask of the Minister of Education, Sport and Culture. Deputy?

Deputy S. Pitman of St. Helier:

Thank you, Sir. Would the Minister inform Members whether there are any plans to fund, or develop, a floating youth café facility permanently moored at the waterfront; if so, what consideration, if any, has been given to health and safety issues?

Senator M.E. Vibert:

Thank you, Sir. I congratulate the Deputy on her maiden question in the House. The Youth Service, together with the St. Helier Youth Committee and Waterfront Enterprise Board, is seeking to replace the highly successful "Move On Café" - presently located in the old Harbour Office near the Weighbridge - with an alternative facility when the current lease terminates. The café has proved to be a valued youth facility. In view of the limited provision for youth in St. Helier, its replacement is of great significance. One option which is under consideration is the purchase of an historic vessel to be statically located at the end of the old harbour, near the steam clock, and fitted-out to provide appropriate facilities. A group has been established, under the leadership of the Youth Officer, to develop a detailed business case, which will include consideration of health and safety issues. Of course, the proposal will not proceed unless the necessary health and safety issues can be met. It is intended that young people will be fully involved in the development of the business case, as the provision will be for them and they will play a major role in its development and management.

3.10.1 The Connétable of St. Helier:

Could the Minister inform us why the decision was not taken to replace the "Move On Café" - which I agree has been a very valuable resource for young people - with alternative youth facilities before it was closed down? Why not find a place within the Island site, or Transportation Centre, particularly now as we hear the proposed art gallery is not going ahead within the Island site?

Senator M.E. Vibert:

Work has been going on to look for an alternative ever since we knew we would have to move out. A number of premises have been looked at. They are all very expensive, because every building has an alternative use. Many would not be so well located and would probably require extensive investment in them to be made fit for purpose. The idea of an historical vessel, statically located, has been put forward. Initial discussions have indicated that it would be well received. This is the idea that is being pursued at the moment, as something that can be delivered reasonably quickly and replace the "Move On Café" as soon as possible.

3.10.2 Deputy S. Pitman:

The Youth Service is already severely under-resourced in terms of staffing: would the Minister clarify how such a facility will be supervised?

Senator M.E. Vibert:

All the areas in my department, I am sure, could do with more investment. The previous Education, Sport and Culture Committee, under my presidency in fact, increased the funding for the

Youth Service by somewhere in the region of £250,000 over the 3 years, in ongoing funding. But, yes, I would like more resource for the Youth Service. We currently staff the "Move On Café." We would look to staff any replacement for that in a similar way. Also, we are looking for people to help us in establishing such a café. We have the support of the Waterfront Enterprise Board who may, if it goes ahead, purchase the vessel for us, and other bodies have indicated their support. So, we will endeavour to engender as much support as possible outside our own budget, but we will be aware of the necessity to include resources for the staffing of the café - if an alternative is found - as we had for the "Move On Café."

3.10.3 The Connétable of St. Helier:

I am going to press the Minister for a more satisfactory answer to my earlier question. He mentioned the 2 issues of expense and location in finding an alternative to the "Move On Café": would he not confirm that the Island site area is owned by the States and, therefore, the expense would be limited and the location could not be better for young people?

Senator M.E. Vibert:

Whether the area is owned by the States or not it also has a cost to it. It is a cost, as I said, because it has an alternative commercial use. I am serious about this: what would help is if the Parish of St. Helier made a greater investment in youth than it currently does, as it houses many of the young people on the Island. The St. Helier Youth Committee does great work, but I think that if the Parish looks to itself and was prepared to put more in, then we could work in greater partnerships, as we are in other parishes now who - *pro rata* - are putting a great deal more into their youth provision than St. Helier currently.

3.10.4 Senator S. Syvret:

Will the Minister for Education accept the point that, really, something has gone very, very badly wrong in this process when we have the old Harbour Office - a building owned by the people of Jersey - that was perfectly satisfactory for youth, in an ideal location, that has now been handed over to WEB who want to turn it into another pub or something of that nature, which the Weighbridge area needs like a hole in the head. It is absolutely absurd. That building should have been retained for youth work. Can the Minister not accept that fact?

Senator M.E. Vibert:

Can the other Minister please, Sir, accept that WEB is a wholly-owned body run by this Assembly? We set its targets. We tell it what to do and we gave instructions to WEB to provide a transportation centre, at no cost to the public. That is what they are doing. WEB are working with us to seek to find an alternative because the plans for that transportation centre, unfortunately, do not include a youth provision.

3.10.5 Senator P.F.C. Ozouf:

Is the Minister aware that the gallery, which has been spoken about, was proposed by the Arts Trust and that the business case that was given showed that there was going to be a return to WEB on a commercial footing? Is he aware that any replacement for the gallery must be on a similar basis, following the promises that were made by the Arts Trust that a gallery would materialise? Unfortunately, would he agree with me, that it has been of great regret and not a good situation for the Arts Trust that, in fact, the gallery was never progressed?

Senator M.E. Vibert:

I regret, Sir, that the gallery proposal, that was brought forward by the Jersey Arts Trust, did not materialise. In fact, it never seemed to get off the ground to any great extent. That caused its own problems in the fact that, at first, it was thought it might, and I think WEB reacted accordingly. But, yes, Sir, we have to be aware of the commercial value and the instructions we gave WEB of

delivering the transportation centre at no cost to the public.

3.10.6 The Deputy Bailiff:

Final question.

Deputy J.B. Fox:

Would the Minister agree that there are a lot of different projects that have been examined to find suitable youth facilities in St. Helier, not only for drop-in cafés, but for skateboard parks and other facilities? Would the Minister also recognise that what has been said already, in relation to commercial values, must also recognise that there is a community involvement that must be fulfilled as well? A guarantee has been given, by the previous P&R Committee, that a decision will be found by the end of this year, otherwise I am sure that the Constable of St. Helier, and the Deputy of St. Helier, will be returning to look at the big warehouse on the New North Quay, if no other alternatives can be realistically found. Thank you, Sir.

Senator M.E. Vibert:

I would like to thank my Assistant Minister with responsibility for youth for his question, of which he gave me no notice whatsoever. But, yes, as the Deputy knows, we have looked at lots of projects in the area - and in the town area - which we are trying to be involved in. Yes, community involvement is essential. I believe that it is essential that we have a youth facility in that area. We are currently looking at the provision of an historic vessel. If that does not prove possible, we will look at something else in the area. But, I am adamant that we must have a replacement youth facility in that area. We will go back and carry on until we do get one.

Questions to Ministers without notice -

4 The Deputy Bailiff:

Deputy Baudains is, unfortunately, ill, so he is unable to pose the last question to the Minister for Planning and Environment. So, that means we come to questions to Ministers without notice. This, of course, is the first occasion on which this will take place. Given the time is limited, I do remind both questioners and, in particular, Ministers, that both questions and answers must be concise. In addition, I intend to ensure that a variety of Members as possible can ask questions. That means that, by and large, it will not be possible to have follow-up questions because we must share it around Members. Clearly, follow-up questions can arise, if there is a dearth of other Members who have to ask questions. It has been drawn to my attention that there was just a question by an Assistant Minister of his own Minister. I certainly would deprecate that, in the space of quarter of an hour. This is intended for non-members of the Executive to hold the Executive to account.

Senator P.F.C. Ozouf:

I was trying to raise a point of order.

The Deputy Bailiff:

I know you were, yes.

Senator P.F.C. Ozouf:

I was just going to ask whether or not my Assistant Minister can answer my questions?

The Deputy Bailiff:

Yes. I am grateful for you having risen to raise it. I hope very much that Members will understand that this is not the purpose of this question time. Very well. So, we will start, therefore, with questions to the Minister for Economic Development and the Constable of St. Helier.

4.1 The Connétable of St. Helier:

Thank you, Sir. As the only surviving member of what used to be called the Tourism Board I am very concerned to find out what plans the Minister has for, possibly, re-launching a Tourism Board involving members of the industry; also, his plans for the Tourism Development Fund?

Senator P.F.C. Ozouf:

I am in the process of allocating responsibility to myself, and my Assistant Ministers, of the wide portfolio that exists. I said earlier that Constable Fisher has already been given responsibility for the Postal Committee and I am delighted that Deputy Maclean is also taking responsibility for Harbours and Airport. Tourism I will be discharging to a large extent myself, although Deputy Maclean has a very vital role in sorting out related tourism matters. I have not made any absolute decisions about the TDF and the Board, but some sort of advisory body is going to be set up. I note, and I welcome, the request by the Constable to be involved in that. He has an important role as far as developing tourism is concerned.

4.2 The Deputy of St. Martin:

Some months ago the former President of EDC informed Members that it was proposed to relocate the Milk Marketing Board from Five Oaks to Howard Davis Farm. Indeed, plans were displayed because Members, I know, went to see them. Will the Minister give an update on the progress made and whether the Cabinet difficulties on Howard Davis Farm have been resolved?

Senator P.F.C. Ozouf:

[Aside] I would say to the Deputy, in my Declaration of Interests I have declared that my father, who is also a Member of this Assembly, is a dairy producer. I do not think it is proper that I discharge the responsibilities of anything to do with the JMMB (Jersey Milk Marketing Board) for that reason. But there will be an announcement - as I made in my written answer today - that one of the complete responsibilities of the dairy matters will be passed to one of my Assistant Ministers following a discussion in a couple of days. I would ask, respectfully, that he hold that question over to the Assistant Minister for that. I know he is looking bemused about that, but it is not only an issue of economic development, it is an issue for the Planning Department too.

4.3 Deputy A.D. Lewis of St. John:

Could the Minister clarify Jersey's position with the UK Government in respect of the film industry? We are told that there are some serious objections from the UK Government. What exactly are these objections, and at what level from within the UK Government have they come?

Senator P.F.C. Ozouf:

This is an important issue, which has commanded the attention of the previous Finance and Economics, Policy and Resources and Economic Development Committees. A policy was set out which sought to have careful regard to the UK position, that, effectively, off-shore jurisdictions, such as Jersey and Guernsey, were being used by UK retailers in order to circumnavigate VAT (Value Added Tax) arrangements. This is in contrast to Jersey-based businesses, of which Members will be aware of some that are perfectly legitimately set up to sell CDs locally and further afield. These objections have been widely circulated in the media. I was, in fact, interviewed by the Radio Four programme, together with the previous President of Economic Development on this very issue. We were very concerned about the reputational issue for Jersey on this issue. With legal advice from the Solicitor General, I am in the process of discussing a revised policy for fulfilment, which will be published. I am also going to discuss this with the Chief Minister, as the objection to this policy has come from the highest levels within the UK Government. That is why we must be careful. Certainly, threats have been made for the UK Budget, et cetera. But we are working on it and I will be making an announcement on fulfilment quite shortly.

4.4 Deputy S. Power of St. Brelade:

Is the Minister aware of increasing public disquiet with the difficulties and cost of getting to St. Malo by sea? Is he aware of the fluctuating prices, the non-availability of timetables, the changes in schedules without notice, and the apparent form of boycott of the route now by members of the Jersey public? Does he not think it appropriate to investigate obvious public disquiet by commanding the one operator on the route, at the moment, to explain why there is this high level of public disquiet? Thank you, Sir.

Senator P.F.C. Ozouf:

I have received a lengthy email from Deputy Power, this morning, on this subject. I would say to him, with the greatest of respect, I do not need him to tell me about the public disquiet on this issue. I understand very well the issues concerning the sea routes. Indeed, I repeat the commitment that I have given to attempt to resolve these issues. There are difficult issues. He is well aware of discussions. I know he is aware of discussions with Emeraude, and I know that matters are progressing. As I have said in my answer earlier, I spoke to the Acting Managing Director of Emeraude. I am confident that they are putting their house in order. They will be submitting to me plans by the end of January. I also re-state the position that we will be dealing with this overall policy issue. I will be taking that to the Council of Ministers in February.

4.5 Deputy S.C. Ferguson:

Returning to the fulfilment industry, again, Sir. Would the Minister not consider that the reaction of the UK Government is somewhat of an over-reaction when the change in retailing that is coming is a result of market forces? Is the Minister also aware of the fact that Guernsey has French companies using Guernsey as a base for a fulfilment industry? Perhaps the whole thing should be looked at in the context of the overall market conditions.

Senator P.F.C. Ozouf:

There is quite a history to fulfilment in Jersey. Members will be aware, for example, of flying brands that have been operating in the Island for a number of years. I was not aware of French activity in Guernsey. I am acutely aware of the importance of a level playing field concerning the whole fulfilment sector. While we do have legislation that we can use in order to influence the fulfilment sector, namely, the Regulation of Undertakings [and Development] Law - I will be using the Regulation of Undertakings Law to influence and to ensure that resources in the Island, particularly labour resources, are properly used for the benefit of the whole community - I am aware that Guernsey may not have such arrangements. Indeed, I have discussed this with officials this morning. We will be in communication with the UK Government again concerning this fulfilment issue setting out exactly what we plan to do. There are some aspects of the fulfilment industry that are good. There are some aspects of the fulfilment industry which are of great benefit to us. We have seen falling employment levels because of it and that is a good thing. On the other hand, we must be guarded not to allow the Island to be used as a post box and to be used as lacunas around arrangements for VAT, which brings the Island into disrepute. So, it is a careful intelligent balance that must be struck. I am trying to reach that.

4.6 Deputy D.W. Mezbourian of St. Lawrence:

Would the Minister inform the House on his support of tourism, especially with events such as the Battle of Flowers and Battle of Britain, and the level of financial support they will receive this year and also in the future? Thank you, Sir.

Senator P.F.C. Ozouf:

I have inherited a position whereby the events-led budget was cut by the previous Committee. Indeed, the previous Economic Development Committee - a budget which has been approved by this Assembly - had its budget cut. I think it is a budget of around £7 million. It was cut by

£500,000. The previous Committee did, indeed, make cuts of the Events Budget of the order of £350,000. They reduced it by £110,000. I have to say that, in the latter days of the previous administration of Economic Development, there was a change of heart in relation to some of these issues. I was concerned about that. I believe that event-led tourism is absolutely vital - for the avoidance of doubt - for Jersey. I will be giving it my full support. As relates to the Battle of Flowers, I have inherited a position where the budget is going to be for 2006... I think it is an unchanged budget. I will confirm to the Deputy exactly what it is, but there are no budget cuts for the Battle of Flowers. I would additionally add that I think we are going to have to invest in the Battle of Flowers, certainly in the night-time parade aspects. I am looking forward to some meetings that I am holding in the next few days with the officials from the Battle of Flowers to develop their strategy. I think it is important that we develop event-led tourism - Battle of Britain, Liberation Day, Battle of Flowers - all vitally important, and that is going to need some investment.

4.7 Deputy A. Breckon of St. Saviour:

The last question of the Economic Development Committee gave an undertaking to this House, during the debate on the Resource Plan, that a report would be produced by February on an Ombudsman scheme for the Financial Services Commission. Could the Minister tell me if any work has been done on this? If so, if we will, indeed, receive a report in February?

Senator P.F.C. Ozouf:

I am advised that work is undergoing. I have not seen any of it myself yet. The Deputy will know that I am generally supportive of the concept of a Financial Ombudsman. I will await the report and advise the Assembly, and the Deputy, whether or not there is going to be any delays by the Department in that report. I am sympathetic to what the Deputy has said.

4.8 Deputy R.G. Le Hérissier:

Would the Minister outline from whom he is receiving advice in respect of ferry policy and whether, indeed, the position of International Transport Adviser, occupied by Mr. Colin Powell, still exists as a position within the department?

Senator P.F.C. Ozouf:

It is a position that still exists but, of course, I am advised by a number of officials. For the first time, as Economic Development Minister, I have also the responsibilities in respect of harbours and airport - Deputy Maclean is dealing with that. So, we are trawling far and wide for development of our policy. I would also remind the Deputy that I said in the Assembly, at the last sitting, that I was certainly alert to the OXERA report. Indeed, my previous track record of support for OXERA is well known. I think they made a good report.

4.9 Deputy G.P. Southern:

[Aside] The Minister's predecessor, Sir, the President of EDC, announced his intention to withdraw subsidy from school milk. Is it the Minister's intention to review this decision and in what timescale?

Senator P.F.C. Ozouf:

I would refer the Deputy to the answer that I gave to the Deputy of St. Martin in relation to milk matters, which will be handled by one of my Assistant Ministers.

4.10 The Deputy Bailiff:

Deputy Power is wanting to ask another question if nobody else does. Deputy Power.

Deputy S. Power:

Can I ask the Minister, again? I referred in my last question to increasing public disquiet. I asked

him to consider whether he would command the existing operator to a meeting with him to discuss that increasing disquiet. He did not answer that question.

Senator P.F.C. Ozouf:

I am not running a nationalised industry. I have various powers at my disposal in relation to encouragement at meetings. I get the impression that Deputy Power is no great fan of Condor. I have to say that I must be entirely even-handed and fair in my approach concerning these operators. I have met with Condor. I have got assurance from them in relation to price. He knows that. If there is any suggestion that they have not abided by the undertaking, under the conversations that I had, then I am willing to listen to that. But, I want to get ferry services right for the long-term. I want to get the policy right when we deal with this matter in March for the long-term. I do not want to lurch from one crisis to the next in relation to sea routes. I am determined to get it right. We can have lots of public meetings, but what I need to do is to get the policy right on good advice, sound advice. I also need to know what the operators are going to do, both of them.

4.11 Deputy P.J.D. Ryan:

What is the Minister's reaction to the recent highly inaccurate and misleading publicity in the *Jersey Evening Post* regarding an alleged large increase in the costs from Jersey Post for delivering the Consumer Council's newsletter in 2006?

Senator P.F.C. Ozouf:

I am pleased the Deputy asked that question. **[Laughter]** I am advised of a letter that I have received from officials at Jersey Post concerning that. I understand that it is not exactly as the report was given in the *JEP*. I understand that the Consumer Council was given a service, at the same price that had previously been offered. It was a similar service, effectively, as I understand it - I stand to be corrected if necessary. The Consumer Council leaflet was given out individually. Jersey Post was offering a replacement of that service, the previous one being heavily subsidised - his views about cross-subsidisation are already known. The Deputy shakes his head, but it was being subsidised. What they offered was to circulate the Consumer Council magazine in a polythene envelope, together with other material addressed to the householder. I am also advised that Deputy Breckon has not contacted Jersey Post following representations that they made in December. Now, there has been a letter sent to the *JEP* setting out the position. I will review that again. But, so far, with the information I have, I am satisfied with the approach that Jersey Post has made.

4.12 Deputy C.J. Scott Warren of St. Saviour:

I would like to ask the Minister - although I realise there are dangers with cross-subsidisation - whether there might be a case in this situation for the high profits from the film industry to be used to subsidise the high increases in postal rates for small packets and, as has just been said, the costs for the Consumer Council leaflet. Has that been considered?

Senator P.F.C. Ozouf:

My general approach on cross-subsidy is that it is not a good idea. That is the general tone that you are going to hear from me in my discharging of responsibilities as Economic Develop Minister. I cite, as a recent case in point, the legal services that are charged in conveyancing. There has for a long time been a scale fee, which has camouflaged an inefficiency in the system. The inefficiency of the system is that Jersey's conveyancing system must evolve. It must modernise. Since the scale fee has gone there are now lower fees in place. There is also pressure for the first time to change the conveyancing system. Now, cross-subsidy is a bad thing. It masks inefficiency, ineffectiveness and bad management. I do not agree with it as a general point. There are certain exceptions to that; one of which is Universal Service Obligation which I intend to set policy for; Telecoms; and Postal, in perhaps a more forthright way than has been previously done by the

previous Committee. But, generally speaking, it has to be proven that there is a jolly good reason why you would allow for Universal Service Obligation and cross-subsidy. Generally speaking you will find me saying, repeatedly, "No".

The Deputy Bailiff:

I am afraid the time expired while Deputy Scott Warren was asking her question, but in hallowed fashion, according to television programmes, the question having been asked the answer had to be given, but that concludes the time allowed for that matter.

The Deputy of St. Martin: Before we move on, could I just make an observation: I compliment Senator Ozouf on the way he answered this morning. I think today has been a learning exercise. But I think, possibly, we will have to address the issue whereby it will not only be Senator Ozouf who will find himself in a position where he will find himself conflicted, and knowing whether it will be fair to ask an Assistant Minister a question which, really, should be answered by the Minister. Maybe this is something which PPC (Privileges and Procedures Committee) will have to look at to see how we can overcome this problem. From my own viewpoint this morning, I personally thought the question was general and it could have been answered. But, again, I think it is a learning exercise and what has happened to Senator Ozouf will probably happen to other Ministers as well, during the course of question time.

Senator P.F.C. Ozouf:

May I just say, Sir, I do apologise to the Assembly that I cannot answer those questions, but I have set into my Declaration of Interest that I will not comment or influence anything to do with the dairy industry. It would be wrong for me to comment, generally. You will have an Assistant Minister - one of my capable 2 Assistant Ministers - dealing with agricultural matters. I am sure that the Deputy can ask an oral question on that issue. I will pass it to them at the appropriate time.

Questions to Ministers without notice -

5. The Deputy Bailiff:

Now we come to questions to the Chief Minister. Who wishes to ask a question of the Chief Minister?

5.1 The Connétable of St. Helier:

Would the Chief Minister confirm that he still wishes to send out a message about the States bearing down on public expenditure? In this case, how does he account for the recent advertisement for another Chief Executive Officer for a States Department, in excess of £100,000, when the last one was made redundant? Surely the whole point of redundancy, and the sizeable payoff that usually accompanies it, is that you do not seek to fill the position again?

Senator F.H. Walker:

I can confirm that the onus is very much on bearing down on States' expenditure. It was not so long ago that the Constable of St. Helier congratulated what was then the Policy and Resources Committee, and the team, for the actions taken. In relation to the specific point he raises, the previous head of Planning and Environment was given voluntary early retirement. The savings were paid for. The savings were accumulated, as we said, at the time. The reason was that the States, at that point, decided to merge both Planning and Public Services, as they were then known. We certainly did not need two Chief Officers in one department. According to the State's decision we have now de-merged: we have gone back to 2 departments. There is absolutely no doubt in my mind at all that the Planning Department, which is one of the most important departments in the whole of the States, requires a very able, and capable, Chief Officer. Hence the advertisement and hence the salary offered.

5.2 Deputy G.P. Southern:

The Chief Minister has made a public commitment to increased emphasis on a social justice agenda over the coming years. Will he ensure that such commitment is turned into something concrete by ensuring that there is sufficient law drafting time assured for such projects over the next 3 years?

Senator F.H. Walker:

Finding law drafting time and resources is always a difficult issue because there is always more need than there is resource to meet it. But I can assure the Deputy that social issues - social justice as he termed it in his question - are very much at the top of the Council of Ministers' agenda. Although we have yet to take decisions, I am very confident that adequate law drafting time will be made available.

5.3 Deputy R.G. Le Hérisier:

Can the Chief Minister outline what his thinking is in respect of collective responsibility for the Council of Ministers?

Senator F.H. Walker:

I did this. This is already in the public arena because I made it very clear, both in my speech, I think, and certainly in the documents I presented for the election of Chief Minister. Basically, the collective responsibility is that any Minister may disagree with his colleagues. A minority of Ministers - any one individual - may disagree. If he or she does, then they have a choice: they either merely record their dissent, or not, as they wish. If they wish to take it further, providing they advise me and their colleagues that they will publicly dissent from a decision and/or even bring a private Member's report proposition to the States, then they are at liberty to do so. That was clearly spelt out in my submission and has been fully agreed by the Council of Ministers.

5.4 Deputy S.C. Ferguson:

I wonder if the Chief Minister could confirm whether or not the human resources policy has been changed? There do appear to have been jobs where people have been appointed without advertisement. There appear to be a number of jobs where the description has been tailored, and appears to be with a particular applicant in mind.

Senator F.H. Walker:

I am afraid, without any indication of which specific post the Deputy is referring to, I am unable to answer that specifically. All I will say, very clearly, is there has been no change in policy.

5.5 Deputy P.N. Troy of St. Brelade:

Sitting in Deputy Rondel's chair, I thought I should, perhaps, consider asking the Chief Minister a question. This is something that I was looking at prior to becoming an Assistant Minister. I would like to state that, during the Budget debate, I asked the Health Minister why respite care at Secker House had closed and why current service provision on the McKinstry Ward does not meet the previous standard of facilities received at Secker House? The Health Minister would not give an assurance, at that time, that additional funding would be coming forward to improve facilities. So, I would like to ask the Chief Minister: does he consider it acceptable that respite care should continue at a reduced level of service? Would he consider requesting a report? If in agreement with me that the service provision has decreased, will he then exert pressure on the Health Minister to bring forward increased funding to this area to improve facilities?

Senator F.H. Walker:

I will gladly ask for a report. The problem of funding, of course, is that there are many examples of where we would want to improve the service offered. It is a question of prioritisation, as we well

know. The States has agreed to overall levels of spending. We are doing our very best to provide the best possible service - certainly in the core social areas - within that level of spending. The Council of Ministers is having a 2-day meeting this week, where we will be looking to prepare the first draft of the next 5-year strategic plan. Of course, resourcing, and the ability to fund key social issues, will be top of that agenda but I will, as the Deputy has requested, ask for a report on the respite care.

5.6 The Deputy Bailiff:

I had seen Deputy Southern, before you. If nobody else wants to... Deputy Southern.

Deputy G.P. Southern:

Will the Minister inform Members what progress has been made in securing adequate, and prompt, legal advice to Scrutiny Panels?

Senator F.H. Walker:

I, and the Chief Executive, together with the Attorney General, met the Chairmen's Committee last week, which the Deputy is well aware of because he sat on it. The Deputy will be aware that we are currently awaiting a letter from the Chairmen's Committee, so that this can be discussed by the Council of Ministers with a view to providing the prompt legal advice that the Scrutiny Panels must have, which we specifically said, "would have".

5.7 Deputy R.G. Le Hérisier:

Following on from Deputy Ferguson's question: could the Chief Minister define the difference between a Director of Procurement and a Director of Strategic Procurement, particularly given that it was a policy, quite recently, that procurement would be sent back to the departments. Presumably, there no longer exists a department?

Senator F.H. Walker:

The difference between a procurement manager and a strategic procurement manager is the word "strategic". [Laughter] The Deputy is quite right that there was, once upon a time, a considerably subsidised, and resourced, procurement department which was not achieving the savings it was set to achieve and it was closed down. What we need to do now, and I believe we have the right way forward, is ensure that we have a "slimmed-down" procurement scenario where we can save the States genuine money. What we are looking to save is £5 million a year. The total spend of the States is something like £80 million in this respect. With the facility we are setting up, we are looking to save £5 million a year. I believe we will achieve it.

5.8 The Deputy Bailiff:

Any other questions? Yes, Deputy Mezbourian?

Deputy of St. Lawrence:

I would like to know what is the Chief Minister's view of the response "No comment" when given by his Ministers to questions asked by members of the public?

Senator F.H. Walker:

I am not, generally speaking, in favour of "No comment", at all. I am not aware of a specific instance that the Deputy is referring to. Sometimes, I know from personal experience, it can be suggested in the media that a Minister - or previously a President or a States Member - has refused to comment, simply when they have not been contacted or they have not been contactable. But, generally speaking, I am not in favour of "No comment." I believe the public, even if a full and detailed answer cannot be given, are entitled to some sort of response to a legitimate and genuine question.

5.9 Deputy G.P. Southern:

If I may return to my previous written and oral questions, to press the Minister: could I draw his attention to the comments made in his answer to my written question? The former Human Resources Sub-Committee recognised that some might take the view that the current overall ban, for example in respect of civil servants, might be considered disproportionate (this is a ban on any political activity). Given that other departments and other Ministers are acting as if Human Rights [Law] is in place, surely, if it is possible that such an overall ban on any political activity could be recognised as disproportionate, it would be appropriate to remove that ban forthwith, as soon as possible?

Senator F.H. Walker:

I have already given that answer in writing and, also, earlier replied to another question from the Deputy. I do not think I can elaborate on the position, merely to reiterate that we are making rapid progress and a report and proposition will be before this House very shortly.

5.10 Deputy R.G. Le Hérisssier:

Following on from the “Yes, Minister” answer, quite frankly, I want to see if the Chief Minister could define the role of a Director of Strategic Procurement designed to promote the cause of procurement, as per the job ad?

Senator F.H. Walker:

His job is to buy things better and cheaper.

5.11 The Deputy Bailiff:

Any other questions? Well, if no other Member wishes to ask a question I will draw it to a close, but I am anxious that Members should have a full opportunity. Deputy Le Hérisssier?

Deputy R.G. Le Hérisssier:

Well, I think it is wrong. The Chief Minister is an important person and we need to know, can he tell us, Sir, what he sees as his 3 most important priorities?

Senator F.H. Walker:

Again, I think I made that very clear when I put forward my submission for the election of Chief Minister. The top 3 priorities, if the Deputy is referring to overall policy, as I made very clear, certainly we have a very big social agenda. We have got to protect the economy and protect the environment. Those are the 3 main policies but, of course, there is much detail to be added to those. That is why we are now beginning, as the States have instructed us to do - in fact it was begun last week with the Assistant Ministers in a very valuable meeting - but we will be meeting, as I have already said, for 2 days this week to move on the strategic plan process. Of course, that will make our priorities abundantly clear. The States will have the opportunity of not only scrutinising them but agreeing or disagreeing with them as they wish. But, I can assure the Deputy that social items are very much at the top of the agenda.

5.12 Deputy G.P. Southern:

Is the Chief Minister aware that the current expansion in the fulfilment industry, with its emphasis on a low skilled and largely immigrant workforce, runs directly contrary to his own migration policy?

Senator F.H. Walker:

No, I am not, and the Deputy is inaccurate because the vast majority of people employed in the fulfilment industry are local people.

5.13 The Deputy Bailiff:

Yes, Deputy Southern, I can see Senator Ozouf is bursting to ask a question. **[Laughter]** Well, stop him please, this is primarily for non-members of the Council of Ministers. So, Deputy Southern, yes?

Deputy G.P. Southern:

Once again, can the Minister clarify - I see signalling about zero, it is not true zero because I have seen the figures - that when he refers to local employees he is referring to locally qualified under the 5-year-rule and not under any 14-year-rule or anything bigger?

Senator F.H. Walker:

Yes.

5.14 The Deputy Bailiff:

Does any other Member wish to ask a question? Well, Senator Ozouf?

Senator P.F.C. Ozouf:

Has the Chief Minister been asked the questions that he thought he would be? If he has not been, what were the questions that he thought he was going to be asked, and what are the answers? **[Laughter]**

Senator F.H. Walker:

I anticipated that the Minister for Economic Development would make such a hash of his time that I would be asked a load of questions about the economy.

5.15 Deputy J.J. Huet of St. Helier:

I would just like to get something clear in my mind: is the Chief Minister expecting questions from Assistant Ministers, or not?

Senator F.H. Walker:

That is really not a matter for me, I think. I am quite happy to field questions from any Member of the States. I think it is a question, though, of making sure that, as the President has said, questions without notice is of the maximum value to non-executive Members of the States. Generally speaking, I would expect to field the majority of questions, certainly, from people who are not either Ministers or Assistant Ministers, but I am quite happy, personally, subject to the rulings of the Chair, to take questions from anyone.

The Deputy Bailiff: If I may add there, certainly, of course, Assistant Minister, under the Standing Orders any Member may ask a question of the Chief Minister and, therefore, that is a right, but the Chair has to select if there are more people who want to ask questions than are available. In my judgment the Chair should, on the whole, give preference to Members who are not part of the Executive but, in default, the Chair will accept questions from members of the Executive.

5.16 Deputy J. Huet:

In that case, may I ask a question, Sir, to the Chief Minister? **[Laughter]** It relates to the question, previously, about employing somebody for planning. Was the Chief Minister not aware... or maybe I have got it wrong. I was under the impression when the 2 departments combined, that they would eventually re-split again. Maybe I did not understand it. So, if we knew they were going to re-split, why did we get rid of one to employ another?

Senator F.H. Walker:

We believe that the decisions reached and the way the job has been specified now, will serve the Island well - and, indeed, better - from a planning perspective in the future. One of the requirements of the post is that the Chief Executive should themselves be a capable and thoroughly experienced planner.

The Deputy Bailiff:

Very well, the time has expired in relation to the questions of the Chief Minister, so that brings that matter to an end.

PUBLIC BUSINESS

6. Deputy C. Labey:

During public business, I wonder if it would be more prudent to take some smaller items first before mine so I can start after lunch, because it is 12.20 p.m. now. I am not entirely sure whether I will be finished speaking by our usual lunch hour.

Senator M.E. Vibert:

Could I say too that I have already indicated to the Greffier, and I will give notice to Members, that I will be proposing the adjournment at 12.45 p.m., which is the traditional old time that the States adjourned to give the new States Members an opportunity to express their view on what should be the length of the lunch adjournment. If they did agree it would mean an even shorter time for the introduction.

The Deputy Bailiff:

Well, first of all, for the sake of formality, I confirm there are no matters under J or K, so we come to public business. I was minded to ask the Assembly whether, at this stage, they were willing to accept the request of the Minister for Treasury and Resources, that the Draft Finance Law, Third Reading, should be added to the list? It seems to me desirable, on the whole, that Members should at the beginning of public business have decided all the matters that are going to be dealt with so that people can plan. So, does the Assembly agree to that matter being added and, also, the request of the Minister for Planning and Environment, that projet 281 be added to the list?

Members:

Yes.

The Deputy Bailiff:

Very well. So those are added. Now, in terms of short matters then, if Deputy Labey's request is to be met, can anyone offer anything by way of a short matter, the Draft Law Revision Amendment Law, is that fairly short, Minister?

Senator P.F.C. Ozouf:

I am advised that the Minister for Treasury and Resources is going to a doctor's appointment and is probably not in the Assembly, so I am sure the Assembly will understand that he may not be there to deal with that matter. I could deal with it if you wanted.

The Deputy Bailiff:

Very well.

6.1 Senator W. Kinnard:

I would be quite happy to take the Draft Police Force (Amendment No. 9) (Jersey) Law. I think that is a very straightforward matter.

The Deputy Bailiff:

Let us take that one then: projet 268, and the Greffier will read the Act.

The Greffier of the States: Draft Police Force (Amendment No. 9) (Jersey) Law 2003 (Appointed Day) Act 2000. The States in pursuance of Article 4 of the Police Force (Amendment No. 9) (Jersey) Law 2003 have made the following Act.

Senator W. Kinnard:

The purpose of this draft Act is to bring the Police Force (Amendment No. 9) (Jersey) Law 2003 into force 7 days after the Act is made. The 2003 Law serves to amend Articles 1 and 5 of the Police Force (Jersey) Law 1974. Under that Law, as it stands, only honorary police officers from the Parish of St. Helier have the jurisdiction to charge a person with an offence under the Customs Law, at the Customs Custody Suite at Elizabeth Quay. The facilities necessary to deal with a person who is suspected of carrying drugs internally are located at the Custody Suite, at Elizabeth Quay. Therefore if, for example, a person is detained on arrival at the airport, and is suspected of carrying drugs internally, they are transported down to the facilities at Elizabeth Quay. The difficulty arises, Sir, when the person is due to be charged, as the offence occurred in St. Peter, rather than in St. Helier. In the past, the person has had to be transferred back to the Parish where the offence occurred, or be transferred to police headquarters for charging. The 2003 law will amend the 1974 law to give honorary officers, from any Parish, the jurisdiction to charge a person with any offence under the Customs Law at the Customs Custody Suite at Elizabeth Quay. In the example given, therefore, it would enable an honorary officer from St. Peter to come down to Elizabeth Quay to charge the individual. Sir, I believe this is a most sensible amendment. Therefore, I have pleasure in proposing the Act, sir.

The Deputy Bailiff:

Is the Act seconded? [**Seconded**] Does any Member wish to speak on the Act? Very well, all those in favour of adopting the Act kindly show. All those against? The Act is adopted. Sorry, Constable Murphy?

6.2 Constable D.J. Murphy:

Since Deputy Labey's proposition does refer to a planning situation whether in fact we might take P.281, which is in fact the Planning Applications Panel membership.

The Deputy Bailiff:

Yes, very well. Minister, are you in a position to proceed with that one? Very well, then if the Assembly agrees we will move to P.281, which is "Planning Applications Panel: membership", by the Minister of Planning Environment, and I will ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion to appoint, in accordance with Article 6(c) of the Island Planning (Jersey) Law 1964, as amended, on the recommendation of the Minister for Planning and Environment, the following persons as members of the Planning Applications Panel, with immediate effect, for a period of 3 years: (a) the Connétable of St. Peter as a member; (b) the Deputy of Trinity as a member; (c) the Connétable of St. Saviour as a reserve member; and (d) the Connétable of St. Helier as a reserve member.

The Deputy Bailiff:

Yes, Minister.

Senator F.E. Cohen:

The States recently agreed to amend the Island Planning Law to set up a Planning Applications Panel. This law now requires me to nominate the Panel's members. The Panel effectively replaces

the former Planning Applications Sub-Committee, which has performed the function of determining planning applications since 1996. The law provides that the Panel be chaired by an Assistant Minister. I have appointed my Assistant Minister, the Connétable of St. John, as Chairman. I am required to nominate 2 members who will normally sit with the Chairman to determine planning applications. I am further required to nominate 2 reserves to sit on the Panel, in the event of absence or conflict of interest. I am delighted that the Connétable of St. Peter and the Deputy of Trinity have agreed to serve as full members of the Panel, and that the Connétables of St. Saviour and St. Helier have agreed to serve as reserves. I move the proposition.

The Deputy Bailiff:

Is the proposition seconded? [**Seconded**] Does any Member wish to speak on the proposition? Very well, all those in favour of adopting the proposition kindly show. Those against? The proposition is adopted.

6.3 Senator F.H. Walker:

If it helps - if we are looking for more business - in the absence of the Treasury and Resources Minister, I believe that I have the ability to take P.279 on his behalf, which I would have thought would be non-contentious, as it is the Third Reading of the Finance Law as already approved by the House.

The Deputy Bailiff:

Greffier, is that right: can the Chief Minister propose it?

The Greffier of the States:

Yes.

The Deputy Bailiff:

Well, thank you, that is a good idea. So, we will move then to the draft Finance Law (P.279), Third Reading, and the Greffier will read the principle.

The Greffier of the States:

Draft Finance (Jersey) Law 200-. A law to prescribe the standard rate of income tax for the year 2006; to amend further the Customs and Excise (Jersey) Law 1999 so as to increase duties on alcohol, tobacco, hydrocarbon oil and vehicle registration; to amend further the Stamp Duties and Fees (Jersey) Law 1998 so as to revise some of the provisions in respect of judicial and probate fees and for connected purposes. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following law.

Senator F.H. Walker:

I think all I do is move the Bill in Third Reading.

The Deputy Bailiff:

Very well. Do you want to explain briefly for new Members what it relates to? Not the detail, but simply what it is in connection with.

Senator F.H. Walker:

It is the Finance Law that the States agreed in the form of the Budget. It is the law that enacts much of the decisions taken by the States in the Budget debates on 6th December, I think, last year.

The Deputy Bailiff:

Is it seconded? [**Seconded**] Does any Member wish to speak on the Bill in the Third Reading? Yes, Deputy Scott Warren?

Deputy C.J. Scott Warren:

Because it is a while back I am not certain this was not asked during the First Reading, but could the Chief Minister explain how the Stamp Duty - this is being backdated and is coming in from 1st January this year - will work on rental properties if an agreement has already been signed?

The Deputy Bailiff:

Deputy, this is a debate on Third Reading, which means one must really speak to the principle. That is a matter which would be dealt with at Second Reading at the time the Bill was debated. But the Chief Minister is on top of the position, no doubt.

Senator P.F.C. Ozouf:

I am perfectly happy, as the former Vice-President, Finance and Economics, to clarify the issue in some remarks on the principle. The issue is Stamp Duty. She is talking about rental agreements or 9-year leases. So, it is only 9-year leases that are covered by this issue, so it is not anything else. But, of course, Stamp Duty provisions come into force on a certain day. If there is a lease of over 9 years, which requires to be registered, then they will accrue to the normal statutory arrangements. If the position falls exactly in the registration of rental agreements - in exactly the same way as sale properties - it is not retrospective. I believe I am right that there is power to bring it in with the Acte Operatoire. So, even though the issue has been debated by this Assembly, the new fees are already in force and they are being administered by the appropriate authorities.

The Deputy Bailiff:

Does any other Member wish to speak on the Third Reading? Thank you. Then, all those in favour of adopting the Bill in Third Reading kindly show. Those against? The Bill is adopted in Third Reading.

6.4 The Deputy Bailiff:

Deputy Le Claire, would you be willing to take the draft Emergency Powers and Planning Amendment Law at this stage?

Deputy P.V.F. Le Claire:

If I might, Sir. I do not intend to speak for long at all.

The Deputy Bailiff:

Thank you. In which event I will ask the Greffier to read the preamble.

The Greffier of the States:

Draft Emergency Powers and Planning Amendment (No. 2) (Jersey) Law 200-. A Law to amend further the Emergency Powers and Planning Jersey Law of 1990. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following law.

The Deputy Bailiff:

Deputy, before you begin, I think it would be right that I vacate the Chair here. No doubt people may wish to speak about the Bailiff's position. I happen to know the Bailiff has no objection at all to this Bill but nevertheless I think it is right and proper in case people wish to speak about the Bailiff's position, that I vacate the Chair and hand over to the Greffier. I think that means I will probably return after lunch.

Deputy P.V.F. Le Claire:

In putting the amendment before the Assembly today, I am very pleased that the Council of Ministers has accepted it. I did not realise at the time that I proposed it that the Council of

Ministers actually were entrained to take this stance. In my view it is only right and fitting, given the recent examples in world history of emergencies that are befalling the planet, that in a time of crisis the overall responsibility - and more importantly, the accountability - of the individual in charge should be an elected position. I would like to praise the work of the Bailiff in the past and also the other officers - who may in the future have their roles reassigned - in what they have done. I believe there is still a lot more to be done and rather than kicking around at the edges of what may be or may not be adequate at this time... I did not want to make a long speech. I do have confidence in Senator Walker to take forward the issues which I believe he quite rightly and clearly understands need attention, and in proposing the Chief Minister for this position, and the House having given the trust of its authority to the Chief Minister - Senator Walker - I hope that he will undertake to move forward and progress the issues so that rather than a case of ability, accountability bears fruit. It would be wholly possible in any given emergency for people in the future to look for compensation and, therefore, culpability in respect of whether or not people's functions have been carried out, in my view have - and will run in train - the same responsibilities and duties as the Minister currently holds. I put the amendment to the Assembly, Sir, and will answer any points that are made.

The Greffier of the States (in the Chair):

Is the proposal of the principle seconded? Does any Member wish to speak on the principles of the draft law? Senator Walker?

Senator F.H. Walker:

As the Council of Ministers comments make abundantly clear, the Council of Ministers does support this proposition and, indeed, it was the proposal of the previous Policy and Resources Committee that the Chief Minister should take over the Chair of the Emergencies Council from the Bailiff and, of course, I am very pleased to be able to do so. Can I reiterate Deputy Le Claire's thanks and congratulations to the Bailiff for the work he has done as Chairman of the Council? I do not know how long he has been Chairman. I know it is for some considerable time - probably since he was appointed as Bailiff - and it is not always the easiest task, or the task as easy as many Members might believe it, and I would like to publicly thank him and congratulate him for doing an excellent job. But I think this proposition is timely; I think it is appropriate. Things do move on and, as we know, the whole world has moved on in terms of the type of emergency and indeed the risk of certain emergencies occurring and I think it is right that the position now is taken by someone who has full political accountability. I can inform the House that a great deal of progress has been made on our planning for dealing with emergencies and there is what I might call a re-invigorated approach at officer level, led by the Chief Executive, and the House will be seeing, in the not too distant future, the results of that. I can assure the House that we are very much on top of the likely emergencies that could strike Jersey and, where practical, have plans to deal with them. I noted Senator Syvret's comments in *The Jersey Evening Post* a couple of days ago about the lack of evacuation planning in the event of a nuclear emergency and he is quite right. But I have to say that at this point all the advice is that trying to evacuate Jersey in a situation where there may be virtually no notice of a nuclear emergency is just absolutely impossible. But we have other means of staying on top of the likelihood of nuclear and other emergencies and are planning for them and the House will be receiving information on this, so far as this is sensible to publish it, because quite clearly one does not publish one's reaction to all types of emergency, particularly if they are involving terrorism. But there will be much more to come from the Emergencies Council in the near future. Of course I am happy to support the proposition.

Deputy C.H. Egre of St. Peter:

I do have some interest in emergency management in Jersey. In fact I did write a thesis some 10 years ago on risk analysis and emergency management in this island. I have no problem at all and am reassured by the information passed on by the Chief Minister, and I would concur with his

views that we must look very, very carefully at the “risk” management, and that is the prime word we are looking at - the “risk” management and how we mitigate those risks on this island. I look for his assurance, and the assurance of the proposer, that this risk analysis is carried out at academic level and not emotional level, because the way we deal with those are very, very, very important. The risk areas which I would perceive which need to be looked at, without going into too much detail: aircraft accidents, shipping accidents and - certainly the big one for the economy - La Colette. These are all issues that go beyond pandemic 'flu - these are things that are of great risk to us - and the nuclear incident that may or may not occur. I look to the reassurances that we hope we have been given from the Chief Minister.

The Greffier of the States (in the Chair):

Deputy Fox. I remind Members that we are discussing the Chairmanship of the Council. We are straying somewhat in to an emergency planning debate.

Deputy J.B. Fox:

As we are straying, can we stray for one second longer and add economic key point security and strategy security to that list. It is very important not just to have the academic side. We need the strategic side and I can quite happily advise anybody on that as it is one of my subjects.

The Greffier of the States (in the Chair):

I call on the proposer to reply.

Deputy P.V.F. Le Claire:

I would like to thank the Members that spoke. Senator Walker, thank you very much, Chief Minister, for your endorsement of the move. I do appreciate that, perhaps, I pipped the Council at the post - it was not my intention to do so - and I am just glad for once that I am running in train with what is actually going on. As was said, the distribution of information of continuity training where it is actually appropriate is something that I welcome, and forward planning, as discussed by Senator Walker, is something that gives me faith in the situation. I do take on board his point that it is impossible to plan for every emergency but nevertheless it is good practice to set ourselves and train for some of the things like accidents at sea, in the air, and in a recent episode at La Colette - where we saw the ammonia spill - we had fantastic response and co-operation from the United Kingdom. We had some wonderful work done by the St. Helier Honorary Police and by the services of the fire department, and the ambulance and police departments. They all came together to work extremely well to tackle what was a considerable emergency at La Colette at the time, and there was a full statement made by the then Deputy Wavell on the issue. I do take on board also the economic and strategic security issues that were mentioned by Deputy Fox and I have spoken before about this with Senator Walker in relation to business continuity. I believe Jersey has got its own facility in making sure that if there is an emergency, business - especially the finance industry which we are so dependent upon - has the ability to continue to operate through our ability to give them the continuity to do so. So, I make the amendment, Sir, and I thank them.

The Greffier of the States (in the Chair):

I put the principles to the draft Law... all those Members in favour of the document, kindly show. And against - the principles of the draft Law are adopted. Now, I must remind Members at this stage that under the new procedures in Standing Orders that when the principles of a draft Law or draft Regulations have been adopted, the Presiding Officer must turn to the Chairman of the relevant Scrutiny Panel to ascertain whether the Chairman wishes the matter to be referred to scrutiny at this stage. I do not see the Chairman of the Corporate Services Panel in the Assembly. Is there a member of the Corporate Services Panel? It is my understanding that there is not a wish to refer it to the Panel. Is it your understanding, member, that the...

Senator J.L. Perchard:

We have not discussed it. No, Sir, I do not think so.

The Greffier of the States (in the Chair):

Very well, if you do not wish the matter referred to scrutiny, therefore we can proceed and I can invite Deputy Le Claire to propose Articles 1 to 3 and remind Members that Article 2 will come into immediate effect with the change of ministerial government.

Deputy P.V.F. Le Claire:

Yes, please, Sir.

The Greffier of the States (in the Chair):

Are the Articles seconded? Does any Member wish to speak on any of the Articles? I put the Articles. Those Members in favour of adopting them, kindly show. Against? The draft is adopted in Second Reading. You propose it in Third Reading, Deputy?

Deputy P.V.F. Le Claire:

I do, Sir.

The Greffier of the States (in the Chair):

Does any Member wish to speak? I put the draft in Third Reading. Those Members in favour of adopting it kindly show. Any against? The draft law is adopted in Third Reading?

LUNCHTIME ADJOURNMENT

7. Senator M.E. Vibert:

As this is the first regular sitting of the new States I would like to propose that the States adjourn in a few minutes time - at 12.45 p.m. - and reconvene at 2.30 p.m. The previous Assembly decided when revising Standing Orders in a relatively close vote that the regular lunch hour for the States should change from the tradition of 12.45 p.m. to 2.30 p.m. and should be curtailed from 1.00 p.m. until 2.00 p.m. I believe it is only right for the new Assembly, with a considerable number of new Members, to decide for themselves whether they believe that is the right amount of time in a break between the morning and afternoon sessions. Previously and traditionally the break was used not just for allowing people to break their fast to have some lunch, but also for meetings arranged at short notice and for presentations to all States Members, and I thought it was a very useful time for those things to be done in and enable Members to get out of the Chamber and have a breath of fresh air, if necessary. I have no great strong feelings one way or the other on it, but I thought it was wrong that a previous States should bind the current States with its new Members in this way and I am proposing we adjourn at 12.45 p.m. and return at 2.30 p.m. so the new Assembly can give its view whether it wishes to do that or whether it wishes to abide by the Standing Orders agreed by the previous States. Even though it is only a one-off, I would regard a vote on today's adjournment as a precedent of whether States members would wish for the 12.45 p.m. to 2.30 p.m. lunch hour to continue in future. So, Sir, I propose the adjournment.

The Greffier of the States (in the Chair):

Is the proposal without notice seconded? Perhaps I could just remind Members from the Chair that Standing Orders do indeed provide a default lunchtime of 1.00 p.m. to 2.15 p.m. Senator Vibert has correctly mentioned that he is entitled to do this, but also he has correctly mentioned that this is clearly for today and it would not bind future sittings. Does anyone wish to speak on the proposal? The Chairman of PPC.

Connétable D.F. Gray of St. Clement (Chairman of the Privileges and Procedures

Committee):

States and the new Members are all fully aware - or should be - of the Standing Orders of the States and they have been put in to force by this Assembly. It seems wrong that 'on the hoof' so to speak, *ad hoc*, a decision should be made to alter the Standing Orders when they are proper Standing Orders of the States. I would suggest that if the new Members - or any Member - does not like the new arrangements then a proper amendment should be brought forward and not an *ad hoc* decision made. So, I would ask Members to reject this proposition.

Deputy R.G. Le Herissier:

I would like to support Connétable Gray. It is a most astounding proposition in the sense that we had the whole argument over overseas aid, for example. We had the whole argument over associated issues: were we binding the future House, just to cover the last minute with a total 'off the hoof' thing. As the Constable said, review everything, let it bed down; this was done for reasons that need to be explained to Members if we are going to have a proper debate, but to try and sneak it in in this way is unbelievable and utterly unprofessional, and I am ashamed, Sir, of the Minister for doing that. We should deal with 500 things if we wanted. We could be here all the time unwinding decisions. It is totally ridiculous. The idea was to speed-up the lunch hour, to deal with Members' aversion to having meetings imposed upon them and making the lunch hour a slightly more compact affair so we could deal with business a bit more expeditiously. That was the idea, Sir, and I am absolutely appalled at the Minister.

Senator P.F.C. Ozouf:

The Dean in the service earlier on said that we were not perfect [**Laughter**] and some are more perfect than others. But Senator Vibert is absolutely using his right in this Assembly to move this proposition and he was also right to point out that it was a finely balanced vote when we had it. There were some of us that did not agree with it, and that is our right. The right to disagree with it was founded on the view that it was a sensible arrangement for the States to adjourn shortly before lunch and then come back at 2.30 p.m. in order to give time for Members for meetings; for meeting outside constituents, for speaking engagements and all the rest of it. Frankly, it is ridiculous that the States rises at 1.00 p.m. when there is going to be also in new Standing Orders an obligation - and I think there was previously - for Members to be in their seats at all times unless there is a compelling reason not to do so. So, arrangements for luncheon meetings at 1.00 p.m. I have speaking engagements in the next few weeks on States days which I am going to have to leave. It is a crazy state of affairs and not sensible. [**Interruption**] But the Senator is absolutely right to point out that this will give an indication. It was a sensible arrangement to break at 12.45 p.m. and move at 2.30 p.m. and I hope that Members of this Assembly will continue that sensible arrangement and support Senator Vibert in his proposition and send a clear message that the new arrangement will not work.

Deputy G.W.J. de Faye:

It may well be that we will talk ourselves through until 1.00 p.m. [**Laughter**] but I have to say that should we not adjourn now, what exactly are we going to do anyway?

Deputy R.C. Duhamel:

Just a quick point, Sir. It is allowed by Members of this House to set aside Standing Orders at any point in time and this, indeed, is what is being suggested.

The Greffier of the States (in the Chair):

I call Senator Vibert to reply.

Senator M.E. Vibert:

I think that Deputy Le Herissier rather 'over-egged the pudding' in his condemnation. In the debate

on Standing Orders - afterwards - I indicated at the time I would be seeking the views of the new House, and quite rightly, what I am seeking to do is by proposing it today, to get the views of the new House and then would, as a member of PPC, propose a change to Standing Orders so that it would revert to 12.45 p.m. to 2.30 p.m. If it is overwhelmingly defeated today, there is no point in pursuing that issue. It is not an enormous issue, compared with some of the ones Deputy Le Herissier made, but I believe that the previous States should not have bound the new States in this way. I believe it is up to the new States to give an indication of their thinking with a vote today, and then Standing Orders can be amended if the House agree, if necessary in the future. I maintain the adjournment proposition, Sir.

Senator J.L. Perchard:

Just a point of order: the proposition was quite specific that we adjourn at 12.45 p.m. Is it *ultra vires*?

The Greffier of the States (in the Chair):

I think we will take it that, if the proposition is adopted, we adjourn immediately. Perhaps the important thing now is whether the States return at 2.15 p.m. or 2.30 p.m. Senator Vibert has made his proposition and I will ask the Greffier to open the voting.

Members present voted as follows –

POUR: 29		CONTRE: 20		ABSTAIN: 0
Senator S. Syvret		Senator T.A. Le Sueur		
Senator F.H. Walker		Senator B.E. Shenton		
Senator W. Kinnard		Senator J.L. Perchard		
Senator M.E. Vibert		Connétable of St. Mary		
Senator P.F.C. Ozouf		Connétable of St. Clement		
Senator T.J. Le Main		Connétable of St. Helier		
Senator F.E. Cohen		Connétable of Trinity		
Connétable of St. Martin		Connétable of St. Brelade		
Connétable of St. Ouen		Deputy A. Breckon (S)		
Connétable of St. Saviour		Deputy J.J. Huet (H)		
Connétable of St. Peter		Deputy R.G. Le Hérisier (S)		
Connétable of St. Lawrence		Deputy G.P. Southern (H)		
Connétable of Grouville		Deputy S.C. Ferguson (B)		
Connétable of St. John		Deputy of St. Ouen		
Deputy R.C. Duhamel (S)		Deputy of Grouville		
Deputy of St. Martin		Deputy of St. Peter		
Deputy P.N. Troy (B)		Deputy J.A. Le Fondré (L)		
Deputy C.J. Scott Warren (S)		Deputy S. Pitman (H)		
Deputy J.B. Fox (H)		Deputy K.C. Lewis (S)		
Deputy P.J.D. Ryan (H)		Deputy of St. Mary		
Deputy J.A. Hilton (H)				
Deputy G.W.J. de Faye (H)				
Deputy P.V.F. Le Claire (H)				
Deputy D.W. Mezbourian (L)				
Deputy of Trinity				

Deputy S. Power (B)				
Deputy A.J.H. Maclean				
Deputy of St. John				
Deputy I.J. Gorst (C)				

The Greffier of the States (in the Chair):

Accordingly we will adjourn and return at 2.30 p.m.

RECOMMENCEMENT

APPOINTMENT OF MINISTERS, COMMITTEES AND PANELS

8. The Deputy Bailiff:

Before we come to the Deputy of Grouville's proposition, Deputy Duhamel, would this be a convenient moment to return to the question of the members of your Panel: the Chairmen's Committee?

Deputy R.C. Duhamel:

Yes, Sir, I think it would. There has been a slight change and I would like to nominate Deputy Roy Le Herissier and the Deputy of St. Ouen.

The Deputy Bailiff:

The nominations there are the Deputy of St. Ouen and Deputy Le Herissier. Does any other Member wish to nominate any other person to be on the Committee? Very well, does everybody agree, therefore, that those two persons will be elected? Very well.

NOTIFICATION OF LODGED PROPOSITIONS

9. Senator P.F.C. Ozouf:

Before Members continue on public business, Members have on their desks a copy of Draft Companies (Amendment No. 1) (Jersey) Regulations 200- (P.4/2006). Do I need to lodge this now?

The Deputy Bailiff:

Greffier, has this been lodged? Very well. We note that that has been lodged then.

Senator P.F.C. Ozouf:

I give advance notice that I will be asking for lifting of Standing Orders later on in public business for asking for a debate in 2 weeks time.

PUBLIC BUSINESS

10.1 The Deputy Bailiff:

We come now to Field 571, La Rue Du Puits Mahaut, Grouville (P.147) in the name of the Deputy of Grouville, and I will ask the Greffier to read the proposition.

The Greffier of the States:

"The States are asked to decide whether they are of the opinion to request the Environment of Public Services Committee or the Minister for Planning and Environment to refuse to grant permission for the development of Field 571, La Rue Du Puits Mahaut, Grouville, which is currently in the countryside zone and in agricultural use, for commercial development."

Connétable J.B. Germain of St. Martin:

Could I declare an interest, Sir, before we start.

The Deputy Bailiff:

Very well

Connétable J.LeS. Gallichan of Trinity:

Likewise, Sir, can I declare an interest.

The Deputy Bailiff:

Deputy?

Deputy C.F. Labey of Grouville:

It gives me no pleasure to bring this proposition to the States Assembly today. My proposition and the petition are requesting the States to ask the Environment and Planning Minister to refuse permission for a shellfish processing unit and staff accommodation to be built on Field 571, La Rue Du Puits Mahaut, Grouville - the application of which has already been submitted to the department. It gives me no pleasure because the company making the application, Jersey Oyster, is trading in one of our traditional industries. It is run by 2 local hard-working men and their business helps diversification in our economy; something I very much support. The company is supported by Genuine Jersey and the Soil Association, so I should like to make it absolutely clear from the outset that I bring this proposition to the assembly from a totally unbiased angle. If, however, anyone was to dispassionately ask if a 2-storey high industrial unit of 29,500 square feet - that is nearly 30,000 square feet and 25 feet high - should be built on an agricultural field that harvested potatoes last year, in the countryside zone which, if built, will contravene virtually every relevant policy laid down by this Assembly, the answer would surely have to be no. If it is yes, or even maybe, one would have to ask the purpose of the Island Plan, and that is the issue that we have to keep in the forefront of our minds. That is the issue we are dealing with, by my proposition. Not only is the application for a fish processing unit - with all the noise, smells, waste disposal and drainage problems that will bring - but it is also for an accommodation block housing 24 people and resident parking for 16 cars. On the accommodation point alone, the application has got to be questioned. After all, if you or I or any other Jersey person wanted to build a house with a bedroom, bathroom, hall, living room - as each of these 12 units of accommodation are - in the middle of a working agricultural field in the countryside zone, the answer would be no. We would not even be given the time of day by the Planning Department. Yet because it is for business, with questionable benefit to our economy and environment, it is considered. It is not as if the staff have to live on site to attend livestock as was historically the case with these kinds of applications. The staff all currently live on the applicant's existing farm in St. Martin and are vanned down to the shellfish concessions on the beach. The 2 directors of the company will not be living on this site, and it is intended that this fish factory and staff accommodation will stand alone in the middle of a green field. I am sure Members will all realise by now that when a petition attracts 400 signatures in under a week against the application, feelings run very high. Members will also have read the summary of the residents' concerns that was sent to them last week which sets out clearly the impact this development would have on the character of the area. The irreversible effect on the landscape; the irreversible effect on the biodiversity of the countryside; the implications and the Island-wide precedent that would be set of allowing 12 double units of permanent accommodation to be built in the countryside zone; and the volume of increased traffic that would be brought to this rural area. Town Deputies who voted against Sunday Trading on 20th July 2005 - Deputies Le Claire, Huet, Fox, Martin, Southern, Hilton and Senator Le Main - believed that their constituents were entitled to one day a week peace and quiet, away from the noise, delivery trucks and lorries. The fishing industry not only operates 7-days a week, but its times are determined by the tide. That means any time of the day or the night, 7-days a week. So, if it is good enough to vote for peace

and quiet for town residents, then it is surely good enough for people living alongside this factory who bought houses alongside green fields. What about the impact to the environment? The processing unit will encourage the increase of vermin that is already a problem in the area with the nearby chicken farm. But there will be an increase in noise, already an issue and source of complaint where the farm exists at the moment in St. Martin. Local marine biologist, Andrew Syvret - and I know there have been emails flying around recently of which I only received one at lunchtime - stands by everything he says and is willing to back them up to the Aquaculture Association because I spoke to him at lunchtime. So, if anyone is in any doubt, he can back up all his arguments with facts. But he is of the opinion that the aquaculture along the south-east coast is at saturation point now, when in 2004 the production of Jersey Oysters reached 720 tonnes. One has to question the need, therefore, to hugely expand operations on land. It is not just a case of bringing all the facilities together; it is expanding them as well. One has to question a land-based operation this size anyway when an oyster farm producing 1,000 tonnes of oysters in Ireland manages with a unit less than half the size. While the trebling of the Island's oyster production in recent years may be welcomed in economic terms, it is critical to maintain the equilibrium between the economic return of the industry and sustained conservation of the marine environment. The marine biologist was recently asked of a suitable beach route for heavy tractor and trailer use direct from La Hocq to La Rocque, because the 2 concessions are there, which will no doubt have a huge impact on the erosion of the quality of habitats and protected species and fragile ecology of the marine environment. Let us not forget either the Royal Bay of Grouville is a RAMSAR site. There are international conventions which we are legally bound to demonstrate to the global conservation community that we are protective of environmental degradation of such areas. Tourism want to expand their moonwalks and make use of Seymour and La Hocq towers. How does this sit with the increased beach traffic that will be generated from such activities? These inter-tidal shoreline concessions are leased from the Crown to fish farmers at modest rents on Jersey standards. The assumption being, I presume, that fish farming is a local and traditional industry. Of course it is, in artisan scale, but I am not so sure it was ever envisaged that these concessions would be discounted for big business. What of course is clear is that a coastal zone management strategy is long overdue and it is very welcome that one is currently being consulted upon. What is not so good is that the Jersey Aquaculture Association has offered no comment on this application to date; just criticism of the marine biologist's opinions. So, what are the environmental and economic considerations to Jersey and - I use the words stated in the Island Plan - where is sufficient justification to override the presumption against development in the countryside? Personally, I cannot see any environmental advantages. It is not as if this is an agricultural unit that the surrounding green hedges will be trimmed and the good husbandry of the land and the land kept green, and our countryside maintained in exchange for a whacking great shed on part of the unit. So what about the economics? Fish farming barely generates 0.04 per cent of our GDP (Gross Domestic Product). Following the introduction of 'Zero 10', the company - like all other companies - will not pay any tax. The company employs about 2 local staff. It may even cost the Island by way of health, education and other benefits for the workers. But I am not going to stand here and say it has no economic benefit to the Island. Of course it does, but let us be realistic about it. What we have to also consider is if it is appropriate that we, the States, get sucked-in to the possible difficulties of a company having to drive an inconvenient distance to various premises when the top of the slip would be more convenient in both time and money; when if truth be known, La Colette - an industrial site for an industrial sized operation of this sort - would be a better option, especially given the final destination of the product is St. Helier harbour. But commercial rates are expensive and an agricultural field a far more economic option to the company. The Constable of Grouville and I have spent many a meeting and time with the company over the past 6 months when the Economic Development Committee were not interested. We spent time looking at other possible sites but really it is not for us to go down the path of bargaining one part of the Parish with another, or bartering one green field site with another. I flag up now that neither is it acceptable for government to be drawn into a bartering type situation, whereby a reduced scale of unit might be

approved after the initial shock of the first application, in order to achieve a supposed compromise. There must be no compromise on this site because the principles and policies behind building a small unit are exactly the same as building a large one. While we may all have a desire to help the company, it is for the businessman to take risks. If their position becomes difficult they may have to seek the help of Government. What cannot be expected is that we concede the countryside, especially when it is priceless, for the cut and thrust of profit. Government has its policies and we have to decide whether a private industrial unit in the middle of the countryside zone is what we are permitted to concede - that is it; that is the issue. I do not believe the application meets the needs of the Island Plan policies, C 1, 2, 3, 6, 13, 15, 16 and 17. I am now going to read, if I may, Policy M5 in that document, which is the section on fishing and fish farming: "The Planning and Environment Committee will endeavour to safeguard the marine and land resources, forming the basis of fishing and fish farming industries through policies for marine conservation and control of development. Proposals to provide facilities and infrastructure, which are essential for the fishing and fish farming industries will normally be supported, provided that [and this is the bit that was missing from Jersey Oyster's letter to States Members that was sent on 11th January] the development will not unreasonably affect the character and amenity of the area, will not have an unacceptable visual impact." If Members are in any doubt they have a look at the plans and scale drawings I have put up in the coffee room outside: "Will not have an acceptable impact on a site with special interest, or building or local interest; makes use of existing buildings where possible; is appropriate in scale, form, massing, density and designs for site and its context; will not have an unreasonable impact on public health, safety and the environment by virtue of noise, light, odour, fumes or waste production; will not lead to unacceptable problems of traffic generation, safety or parking and is in accordance with other principles and policies of the plan. Proposals which do not satisfy these criteria will not normally be permitted." Personally, I believe the application fails on 7 out of 8 in these restrictions. In fairness to the company, field 571 was the last one of their 4 choices, which they put to the Planning Committee of the day, when they sought the initial guidance on which might be the more acceptable unit from a planning point of view. There are also other government policies in place, such as the Countryside Renewal Scheme and the 2005 to 2010 Strategic Plan that demonstrate the recognition of the demands made on our infrastructure and acknowledge the political desire to preserve and enhance our countryside. Concessions have in the past been given to our traditional industries to show our support of them, but the time has surely come when we have to recognise how these industries have changed. Gone are the days of small scale farms, fishing boats and land-based cottage industries. They have been replaced by large sheds, industrial plants, offices and depots serviced by P30 articulated lorries, which usually travel at very inappropriate speeds down our very narrow country lanes. While appreciating time has moved on and business has got to move with the times, I'm not so sure either that the knee-jerk reaction is supporting the industry by throwing planning policies out of the window in order to allow industrial estates to be built all over the countryside is progression. What it clearly demonstrates to me is that government has not moved with the times. It is no longer the right or fair way to support these kinds of industries. It certainly does not support the environment and any energy problem we may have in the future - but that will come given the price of oil and the problems with gas. We have got to preserve our good fertile agricultural land. Once it is built upon it is gone for ever. If government truly want to help our traditional industries - and can I make it perfectly clear I do - then we must get our act together. That means offering good proper means of support and offering it now, before it is too late. We must exempt these industries from vehicle registration duty on tractors and stop the exorbitant harbour dues that are charged at the harbour. We have the ridiculous scenario of handing out £3 million in subsidies, and clawing £1.5 million back on the harbour. How ridiculous is that? How much help are we giving? We can look at giving discounted rents on industrial sites. Why not? Senator Ozouf is shaking his head - why not? Why have we got to allow building over the land, why not allow discounted rates on industrial sites for industrial size units? Yes, it is down to money - that is it, that is absolutely right - it is down to money. Harbours and Airport should be giving priority to our fishing industry instead of the

fulfilment industry. It is time for a more holistic approach to the encroachment of our countryside. It is time we devised realistic ways of helping and supporting our traditional industries, without having to break most of the rules and policies laid down by this assembly. This should be an issue for the Economic Development Department, where proper robust help initiatives and support are put in place. It is not an issue that the Planning Department should have to grapple with, or indeed the States Members made to feel they are not supporting the economy if they do not barter with or concede our countryside. Sir, I make my proposition.

The Deputy Bailiff:

Is that seconded?

Connétable D.J. Murphy:

[seconded] May I reserve my right to speak as well? Thank you.

Senator J.L. Perchard:

Firstly, before I share my views on the Deputy of Grouville's report and proposition, may I thank you through the Chair, Sir, if you would be so kind as to extend my thanks to the Bailiff. I would like to thank the Greffier and his team and the Officers of the States and Members for making me feel so welcome and helping me so that I know my way around the States and helping me to become a useful Member, I hope, of the Assembly. Sir, we are being asked today by the Deputy of Grouville to request the Minister for Planning Environment, as she said, to refuse permission for any commercial development on field 571 Grouville. We are being asked to support a proposition that instructs Planning and Environment not even to consider revised plans for a shellfish unit on field 571, should they be amended and submitted sometime in the future. We are being asked to pay only lip service to the States of Jersey Strategic Plan as well as the Economic Development Plan, Sir, on growing the rural economy. These Plans were considered and approved by the States only last year; Plans which are meant to and should provide this House with a sound sense of direction for the future. Today, Sir, the new Assembly has its first opportunity to encourage, promote and support real diversification in our economy. However, instead we are being asked to instruct the Minister for Planning and Environment to refuse permission for a development that would do just that. We are being asked to pick selectively from the Island Plan, a Plan that not only appears to butt up against itself with regards to policy but also clearly overlaps on policy, such as development in a countryside zone. Sir, I think we must be clear that the Island Plan does allow for and accept the requirement for this type of development in the countryside zone. Quite rightly as well, as it recognises that some development will be required from time-to-time to support rural activity. A new farm building or a shellfish processing building are surely excellent examples. With the Jersey Oyster Company we have a progressive, traditional Jersey business that requires little from their government, other than planning permissions: planning permission to construct premises that are hygienic, safe and compliant with the demands of modern working practices; premises that will enable this company to satisfy the demands of the more sophisticated retail customer. They wish to build and pay for their own premises - premises that will allow and encourage their business to become more efficient and profitable. Can I remind Members, Sir, that this business is not seeking financial support from the States, or a development grant, of the sort available to its competitors within the European Union. It seeks only permission to build its own premises under the terms and conditions of the Island Plan, a plan that does recognise the concept of developing the rural economy. In our Island it is hard to find better examples, other than agriculture, of rural activity than fishing and fish farming. The Island Plan, Sir - and quite rightly in my opinion - supports the principle of sympathetic tourism and leisure-related development in the countryside zone. The proposal from the Jersey Oyster Company should be seen as a positive and something that is good for Jersey. Not only does it create income for the Island from exports but it will also encourage eco-tourist activities of the exact type that we need to encourage. Sir, the company is not looking for favours from Government but simply an opportunity to carry out the

work of its own business. I would like at this stage, if I may, just go back a few steps and say a little about the in-principle planning application that has been submitted by the Jersey Oyster Company and the reason for today's debate; and also address some of the issues raised by the La Rocque residents in their letter to States Members. I would like initially to comment on one misconception that has been referred to regularly. I feel the term "processing unit" was perhaps a wrong one for the company to use when submitting this planning application. While grading and sizing and cleaning are undoubtedly a process, the word conjures up images of around-the-clock production lines. I have researched this matter and I believe nothing could be further from the truth. The operations carried out by the company are no different from the grading of potatoes, tomatoes, daffodil bulbs or any vegetables and it would require no more time. I am informed, Sir, that the only machine that would operate night and day would be a cold store unit used for the shellfish, which is standard equipment that can be found refrigerating bulk foodstuffs in central St. Helier or on most farms. I understand the operations on site would not, as has been suggested, be operating 24 hours a day, 365 days a year, by any means. I have to say, Sir, I am impressed with the design of the proposed building, as it appears to have been deliberately designed, where possible, not to look like a typical agricultural shed. The unit has been designed to eliminate what potential nuisances there may be, with all the washing and grading and packing of shellfish being undertaken inside behind closed doors. It should be remembered that the company currently operates without noise or odour problems, only feet away from houses - I have researched this from the immediate neighbours - in facilities that were not purpose built, Sir, and where all the loading and unloading of shellfish is currently undertaken outside. If permitted to relocate, there are many potential benefits for this company; particularly that they will be only 200 yards from the slipway entering its main place of work - the beach. At present the distance from the company's main shed in a small lane at Fliquet to the slipway at La Rocque is over 5 miles. Whatever Members' particular concerns are about traffic - be they safety for pedestrians, noise from tractors and trailers, pollution, congestion or slow moving vehicles driving through built-up areas - the new site does promise benefits in that area. The company's vehicles have to travel to the beach, regardless of where the company is based. It is common sense that a 200 yards one minute journey is preferential to a 5½ mile 20 minute journey. Sir, I would just like to mention, to produce a tonne of oysters ready for the market, ready for sale, the trips to the beach are very frequent. You do not go to the beach, harvest the oysters, pack them and take them to market. You take the large ones; you take the smaller ones back so they re-grow. The mileage per transit is immense. You do not just grow oysters all at the same size. I believe that we should support this company, sir, to relocate for a number of other good reasons. They need up-to-date premises to continue to move their business forward. I am told that large UK multiples regularly express interest in purchasing Jersey oysters, but until the company has facilities to meet the supermarket packing requirements these outlets are not accessible to them. The Jersey Oyster Company currently works from 3 separate premises, all of which are rented. Its main packing shed and staff accommodation are only on a 2-year rolling lease. Without any security of tenure, this type of short-term lease simply does not offer the secure operating environment a company like this really does need. I am advised by the directors of the company that field 571 was identified as a suitable site, as the Deputy for Grouville said, only after many months of research. It is pure coincidence that of all the sites investigated this one appears to be the most practical for the company's purposes. I am told it is the only site that is currently available in the area and that an agreement has been reached with the present landowner to purchase the field, subject to planning permission being granted. Other sites that I believe were investigated and rejected on the advice of the Planning Department include: the company's current location at Rozel in St. Martin, a site in the green zone; a field adjacent to the St. Catherine Lifeboat Station and La Crete Quarry - both of which are designated as areas of outstanding natural beauty under the Island Plan. Previous to field 571 being selected, I understand all the landowners in the La Rocque area were approached - but to no avail. Members may be aware that following the company's application last summer a small working party was set up - as the Deputy has referred to - with the purpose of identifying a more acceptable site for this development. As I

understand, the group included a director from the Jersey Oyster Company, the Deputy of Grouville, the Constable of Grouville, Senator Le Main, our Director of Planning and the Case Officer. I understand that every landowner in the area was revisited, so that the working party could be 100 per cent sure that no suitable alternative sites were available at all. Other agricultural sites, as well as glasshouse sites, were considered, none of which were deemed suitable or indeed available. Sir, if approved, the new facilities would allow for the grading, cleaning, bagging and storage and dispatch of both oysters and mussels. The cleaning and washing of shellfish would be undertaken with fresh water. I am told the volumes required for this operation are not large, as the new systems allow for the recycling of water. As all water would be from a closed-circuit system, there would be no risk of pollution to the surrounding countryside. A recycling system will enable the company to use as little as 5 per cent of its current water usage. Also, and very importantly, I understand that at no time are any chemicals used in the grading or washing process. There are no plans to pump seawater into the facility and, consequently, there would be no discharge of water back to the sea. The water systems used in both the washing and storage lines would be completely self-contained. Separate tanks would serve these 2 lines and in both cases it will be impossible for water to be discharged either onto surrounding fields or accidentally into the sewer. I am advised by the States Environmental Officer, who I have spoken to - that is our very own Environmental Officer - that it is considered as no risk to the marine environment. It is deemed unnecessary that the proposed development would require an environmental impact assessment. The scale of the planned unit has been questioned. On that subject I would like to make the following observations: as I have already mentioned the company currently operates from 3 separate locations. The required size of any new building has been calculated by amalgamating the square footage presently available in the 3 locations. It is, I understand, also proposed to load and unload all shellfish inside the new building, avoiding any potential nuisance. Sir, Members will be aware that this application also includes a requirement for staff accommodation. I would like to remind members that at this moment in time this company has only made an in-principle application and have, I understand, on numerous occasions stated that they will look again at this part of their application. Their requirement for some staff to live on site I am told is unlikely to change but the plans can, and I believe should, be modified to incorporate the accommodation as part of the main building. This is an area in which I expect the Planning Department will have a keen interest. The Deputy of Grouville's proposition, Sir, is clear but I fear it is not just about field 571. It has ramifications that will prove to be a test case for commercial development on agricultural land inside the countryside zone. Should we support the Deputy's proposition today and the application is rejected, on the grounds raised in the proposition, then any future application will quite likely fail - for exactly the same reasons. If the Jersey Oyster Company were able to, by chance, find another field and make another planning application, objectors would simply have to cite the same arguments as the Deputy of Grouville to win the day, as a precedent will have been set. Consistency of decision will dictate that any debate on a similar application, objected to on similar grounds by a similar number of people, will have to come the same conclusion. In essence, if we say no today to the Jersey Oyster Company they will have little or no chance of realising their future plans. The States have approved the 2002 Island Plan and the policies and procedures for dealing with planning applications. I have to admit to being confused as to why the Deputy of Grouville should seek to override these established procedures. Islanders expect and deserve fairness, openness and consistency when dealing with planning applications. They do not, of course, expect well-intentioned States Members to ride roughshod over normal planning procedures. However, the Deputy does correctly quote the Island Plan which indeed states that the countryside zone will be given a high level of protection and there will be a general presumption against all forms of new development for whatever purpose. Of course she quoted selectively. She omitted to quote Policy M4 titled "Shoreline Management", parts of which state: "Fishing for shellfish, wet fish and fish farming are important economic activities which need safeguarding and supporting." M4 also states: "It is also important that the industry is assisted in terms of its land-based needs such as access, servicing and cold storage." Also, Sir, as the Deputy quoted,

Policy M5 titled, "Fishing and Fish Farming" is quite clear when it says: "Proposals to provide facilities and infrastructure, which are essential for fishing and fish farming industries will normally be supported, provided that the development ...". The Deputy went on to list the prerequisite, I will not repeat it. The Jersey Oyster Company has addressed, I think, Sir, most of the conditional points raised in Policy M5 probably as best they can. The building will not be invisible; the development will undoubtedly have some affect on the area. I do know the proposal includes new hedging around the entire site with one-third of the field being planted-up with native woodland. The Deputy also omitted to quote Policy IC12 titled "New Industrial Development in the Countryside", which clearly outlines the form of development that will be permitted in the countryside zone. There is little doubt that the type of development proposed by the company can comply with the demands of IC12. The Deputy also forgot to quote Policy H14 titled Staff Accommodation: "The provision of staff accommodation, where there is a proven need for such accommodation is generally supported, subject to being in accordance with relevant guidelines and standards and all other principles and policies of the plan. In exceptional circumstances it will be necessary for staff to be accommodated at their place of work, which is outside the built-up area. In such cases staff accommodation should normally be provided through the conversion of existing buildings or temporary buildings. Temporary buildings should be removed when no longer required for staff accommodation. In exceptional cases, the Committee will consider new buildings to meet proven need." Sir, this Island Plan is more than a guide. It is the authority, it is the blueprint and it is the bible when it comes to planning matters in our Island. Yes, policies within the Plan do overlap. However, the Island Plan does clearly allow for and recognises the need for development of this type in the countryside zone. Of that there is no doubt. Perhaps, Sir, the Deputy should not be attempting to override the Island Plan by dictating to Planning and Environment as to what they must do with this particular application. She should, if she feels strongly about development in her parish, seek to amend the Island Plan by asking the States to rezone field 571. If she really does feel so strongly, perhaps the Deputy should be making the case for field 571 to be included in the green zone. The Deputy, in her report, praises the company that has submitted this application when she describes them - and she did again today - as an excellent local enterprise. She goes on to say that she would be the first to recognise that fish farming and agriculture are important economic activities in Jersey and give far more to the Island than just their economic value - and that they need safeguarding and supporting. Well, Sir, here is our chance to safeguard and support one of our traditional industries in a meaningful and practical way. While I welcome the Deputy's warm words of support for what she calls, "An excellent enterprise", I am afraid her warm words are just not enough. This company needs premises; it needs modern premises in which to manage the demands of a modern marketplace. Sir, I ask members to picture, if they would, a scene at La Rocque, a picture of dark mussel poles in lines standing proudly in the sand with workers busily taking advantage of the outgoing tide. Or perhaps a different scene: a scene of the magnificent Jersey cow proudly displaying her newborn baby calf in a lush field of Jersey grass. Or perhaps a Côtîl scene, Sir; a Côtîl Scene of at Portelet perhaps, of the farmer proudly displaying his first harvest of Jersey Royals. These are not images staged for the benefit of the tourism calendar; these are genuine examples of rural activity in Jersey. This is what happens in the countryside. This, I imagine, is the sort of countryside that the Deputy and her 402 signatories wish to return home to after their busy day. Well, I sincerely believe that unless our traditional rural industries are supported in their effort to modernise and encouraged to produce sufficient volumes of high quality food, which is competitively priced, there will be no future for any type of rural activity in Jersey. The pictures I described just a moment ago will become simply images of the past. To conclude, Sir, I ask Members to reject this proposition, on the grounds that, in seeking to override current planning procedures, it ignores much of the policy within the Island Plan and pays only lip service to the States of Jersey policy of supporting growth in our rural economy. Sir, I believe the States must be consistent and fair at all times. There are long-established procedures and methods used when dealing with planning applications. In the interests of good government we must stick to them. I respectfully ask members again to reject this proposition.

Connétable D.J. Murphy of Grouville:

In starting my speech, I would like to draw Members' attention to an email that was circulated on 16th January, which was sent by the directors of the Jersey Oyster Company to every member, except for Deputy Labey and me. This alleged that information contained in the circular sent by the La Rocque residents was factually incorrect. I do speak for the Deputy on this; we know of no reason or that any of the facts in there were incorrect. I would like to make that clear from the start because this came at the very last minute. It was obviously designed to throw us off our track and to sway the other Members in favour of the plant. The other mention in that email was that the rumours were flying around about a proposed sale. Well, I have heard the rumours as well - I am sure we all have - and I feel we discount them in the same way that we discount any other rumours that we hear in Jersey. So, we will leave that I think; it is not really material to the case. The Deputy marshalled her argument extremely well. We have had all the facts pro and con and it is now up to you to decide - through the chair, Sir - whether you wish to respect the countryside zone or not. This will be a landmark decision for the future. You heard of the loophole that exists in the Jersey Island Plan, in which the applicants are seeking to exploit. This, however, has safeguards built into it and these show, without doubt, that in my opinion the intention of the planners was certainly not to encourage this type of development but to actively discourage it. The members have heard the Deputy read out to you Policy M5, "Fishing and Fish Farming." The 8 conditions are against the actual building in the countryside zone - this plan is in contravention of 7 out of 8 of these conditions. So, I will leave you to work it out from there as to when this plan was drawn up, as to whether they were in favour of development within the countryside zone or not - I think not. Therefore, there is no justification to override this principle. Sir, you will have all received the letter from the La Rocque residents, which sets out their position clearly and factually. Now, I am sorry to say that I have received comments ranging from nimbyism... - well why not, if your life is threatened, if your surroundings are threatened is that nimbyism? I do not think so. On the other hand, I have had people saying, "Oh, some of the people on that petition do not live in La Rocque". Well so what? Is there any person, Sir, in this Chamber who has not signed a petition in which they did not have a direct interest but which they felt strongly about? I think that is not an argument at all. I am just glad to say thank goodness to people out there who do care enough about the Island to get involved in something which has no direct relevance to their lives and to take an interest in the protection of the zone. Now, there are 2 other points I should like to make at this stage, which have not been covered; one is traffic. When the original proposal was presented an increase in traffic of 1,000 movements per year was forecast. I have done some homework on this and there is no doubt about the fact that with 12 units of accommodation attached to it, it is going to generate not 24 movements per day but something like 8,760 units per annum, which is a huge strain on the roads of that area. They are not green lanes but they certainly look like green lanes. Now, the other question I have to ask is that the other fish farm in the area - which produces slightly less than this proposed fish farm - has a shed there that is perfectly ample for its needs and which is supplying very many retailers and wholesalers in France and the UK and is only one-quarter of the size of the proposed shed. Well, why do we need a shed 4 times the size for about 25 per cent extra output? We all know from the letter from Andrew Syvret that in fact he does not have an optimistic view of the eventual expansion of the fish farming in Grouville Bay. I am told that what is happening now is because of the amount of oysters being farmed down there, there is not enough food in the chain for them to feed properly. So, you are going to have a law of diminishing returns here, where the expansion of fish farming will - if not end - certainly tail-off. With the size of the shed, if I were a cynic I would suggest that this is a case of asking for too much and then settling for what you can get. We have already had a contentious decision in Grouville, with regard to the countryside zone, where some land was earmarked for Grouville School playing fields and ended up - because somebody has drawn a line across it - as part of a building site. This is carelessness and also, I think, an extremely bad decision on behalf of the old Planning Committee. I also would like to take up the point the Deputy has made about the lack of assistance given by the previous Economic

Development Committee. I approached the then President and asked him, "Can you help these people? Why not get a joint situation together with Planning and identify sites, which you can then offer to these people to use?" Any other country in the world, if they have a company wishing to develop will try to identify sites to help them, not hinder them. They will go and say, "Right, okay, here. There are some old greenhouse sites, there are loads of other places they can go". The La Crete Quarry one, I think that perhaps the Senator was mistaken there - it is not a site of natural beauty or special interest. It was in fact discussed quite deeply, but the company thought it would be slightly too small for their ambitions. Now, of course, if they had scaled down the size of the shed perhaps it would have fitted in there okay. I am asking you to thwart the position because we must stop the countryside zone being violated. We have got the situation where we already had one violation in Grouville, we have another one coming up, I believe, where another countryside site has been earmarked for an application and we shall obviously fight that as well. We fought the case for the Grouville School site through the States and the States backed us up. The House backed us and said, "No, this should not happen." I would ask you now to back us up again and say this should not happen. Thank you, Sir.

Deputy C.J. Scott Warren:

"A rejection next week will leave us with nowhere to go and a very uncertain future", write the representatives of the Jersey Oyster Company in their letter recently sent to States members. I do agree that the shellfish industry is worth supporting on the right scale and in the right location, but not at any cost to the local residents, the local community and the local environment. Members of the States Assembly, in 2002, signed up to the Island Plan because of its policies and safeguards. We were given strong assurances about the weight of the safeguards in the Island Plan. I believe that there is no justification: "To override the presumption against development in the countryside." I also believe that 402 signatures cannot be ignored. The safeguards of the Island Plan were the reason why States Members felt able to endorse the Plan. I quote from that proposition that the countryside zone: "Will be given a high level of protection and there will be a general presumption against all forms of new development for whatever purpose." This is clearly not the right site. Land-based needs have to be weighed up against the wellbeing of the local community and the local environment. I therefore urge members to support this proposition. Thank you, Sir.

Deputy J.J. Huet:

I think I was born cynical. What would you think that they would have in common with milk and oysters? Could you personally think of anything in common straight away? Well, I am going to tell you what I think they have in common. We had a green field up at Five Oaks many years ago. It was allowed to have a commercial use on it and the Milk Marketing Board was built - fine, lovely, milk marketing, great, no problems. A few years later, "It is not making a profit, it is too big; we need to go somewhere smaller. So, where could we possibly go that is smaller? Well, we could go to the States Farm in Trinity at a peppercorn rent. Yes, that is a brilliant idea; we will pay off all our debts." And guess what? "We have got this site that we have got the Milk Marketing Board on but it is too big. We cannot just have half of it; no, no, we must sell it. Because it has got a commercial value on it, it is going to go for a lot of money. It is not going to go back to green zone." So, why have I got it in the back of my head that this large site, which is too big (what they are asking for, for what they need) - what if it does not work? What will happen? Oh, maybe they could go up to Trinity as well. What do we have left then? A huge massive site in Grouville, with loads of accommodation on it: car parking, a garden, a woodland site. Well this then, at this stage, will be worth a small fortune. Well, Sir, I am sorry, I am really cynical and I do not believe that the Island Plan was put through for this. This is a way around the Island Plan. I know I am not going to make some friends in this Chamber but I think you have to be honest and I think this is a con. They are putting in for it exactly the same way. They have put in for double the size of what they need - they do not need that size - and when they go away they will be left with a very nice, very valuable site. This will be getting my vote, not the other, Sir. Thank you very much.

Senator P.F.C. Ozouf:

It is often been said, since I have been in this Assembly, that the Assembly as a whole does not make a very good Planning Committee. It does not, because a number of people with highly charged emotional views with some prejudices, like the speech that we have just heard, do not make for good planning decisions. Now, the Deputy of Grouville is entitled to represent her constituents. She is entitled to - and presumably she has done - she has balanced the interests of her residential constituents. I know she cares a lot about agricultural and fisheries issues; she has spoken in this Assembly many times in her absolute support of them. Obviously she has taken a view that she favours the residential constituents and she is bringing a proposition to the Assembly for that. Our job, normally, is to take all the factors and balance them and come down onto a balance, weighing the arguments one way or the other. Now, I make no criticism of what the Deputy of Grouville is doing - that is exactly what her job is. We have higher responsibilities in understanding the trade-offs, in understanding what the options are. We must make decisions of the whole interest of the Island. Now, the other thing I must do - because nobody else has done this yet - is to remind the Assembly what this proposition is and is not about. I hope I am not going to be accused of teaching any of the new members how to suck eggs - or whatever the expression is - but unfortunately, for some Members, this is not a binding planning decision. Let us be absolutely clear. I am pleased that there is nodding because in fact I have been there before. I have had the previous Deputy of St. Peter and other people coming before this Assembly convincing, in a highly charged emotional way... asking the Planning Committee to do a certain thing. The Assembly going fully behind the Deputy at the time but the reality sinks in, when you have - as a member of the Planning Panel - to weigh all those issues under the legal responsibilities of the Planning Law and interpret the policy. So, in those nodding of heads that I have just noted, when we perhaps end up in the situation that this Assembly is persuaded by the Deputy of Grouville's emotional arguments and then the Planning Committee have to deal with the proper job... I make no view about which way it would go, but in the event that they would have to grant consent I hope Members will remember that it is the Planning Panel that have to make the decision and make those judgments. Sometimes those judgments will be different from that of this overall Assembly, because it is very important. Now, there has been a lot of comment made about the policy, against all sorts of policies. Well, I am in error probably: I should have brought the Island Plan with me this afternoon and I should have read out the policies that are applicable in these circumstances. It is not right to say - I would respectfully submit to the Constable of Grouville and the Deputy of Grouville and a couple of the other speakers so far - that this is against policy. This Assembly passed a policy which said that where there is a proven agricultural need, which this I believe covers... The policy does not say agriculture and fisheries but I think the departmental advice - which I accept - is that that policy kicks-in for agriculture and for agriculture and fisheries issues. I am simplifying it massively, but where there is a proven agricultural need then other policies are set aside. It is a really difficult issue. Frankly, if this Assembly does not like that policy - and I know that a number of members have difficulties with it - well then it is going to have to be changed. If we do not as an Assembly want that proven automatic need as a way of guiding the Planning Panel, then this Assembly will have to convince the Planning Minister to change it. What it is important to remember is an applicant is entitled to submit an application based upon a policy which has been passed and approved by this Assembly on the basis of proven agricultural need. They are entitled to do so. Legally - because it will then be challenged in court properly under the appeal mechanism - they are entitled to make representations to say, "Yes, we think that this fits." I will come onto this in a moment wearing an Economic Development hat, but I can see that there is a need. Now, I am not a slave to that by just saying if it is agriculture it must be approved. I cite the example of a sheep farm; no, not proven agricultural need. It will be interesting to see how the Deputy of St. Martin will vote this afternoon because, of course, he has been strongly of the view: "There is a policy, I have got a sheep farmer, and I must get a planning application." I wonder whether he will be processing the same way when there's proven agricultural need - he will be, no

doubt, enthusiastically supporting that policy. Certainly, if he is consistent he will be. The fact is that the Planning Panel must judge and make an assessment whether or not there is a need. They must not be a slave to it, it is not automatic, but I would say that there is an agriculture need. I am not convinced about the accommodation, I have to say, in my own view - that is a personal view. I am certainly convinced that there is an agricultural need, which could potentially trigger the Committee to say yes. The fact is that other sites were considered. I did not look at this in great detail because it was dealt with by Deputy Hilton, when she was on the Planning Committee. She will no doubt wish to address the Assembly on that. She is shaking her head but I am pretty sure that she was involved in this at an earlier juncture and no doubt her comments will be important. Members involved in the planning function will know that there have been extensive attempts to find alternative sites. I have spoken to the Planning Officer in the last couple of days and I have been reminded of the fact that there were extensive attempts to find alternative sites. The answer was that there was not one, and Members must be aware of that. That is going to be a matter for the Planning Panel to consider. We should be aware of the fact that there was a very intensive and long-standing attempt by the applicant to find alternative sites. That is an important issue which must weigh in the planning considerations of this issue. Now, setting aside the planning issues - of which as an Assembly I think we do a terrible job - I think the message that will be sent out of this is confusing and unclear, to say the least, and the proper job in weighing the considerations, as I have said, must be done by the Planning Panel. I want to just separate that issue by saying that there has been mention of various different economic development issues here. While I will be handling fisheries issues myself - as Economic Development Minister - the Deputy of Grouville in her opening remarks made a number of suggestions about help for agriculture, which I have noted and I will deal with. She noted Harbours and Airport, harbour due charges - I would say nothing really to do with the debate, with the greatest of respect, Deputy, through the Chair. There is an issue which obviously has to be dealt with but is not really a relevant factor in deciding whether or not we should have a planning consent in relation to this. The fact is that fishing is important. It is a diversification. This Assembly has not only passed an Island Plan which gives specific exemptions and permissive potential in the Island Plan for development, we have also passed a Rural Economy Strategy and have been encouraging our agriculture and fisheries industry to diversify and to find markets in which they can do things and sell things to keep what is important as a cultural industry within Jersey. There is clearly a message that is inevitably going to be sent out, in turning down this proposition, that we are not supporting this particular sector. In this particular sector these are individuals who have been pioneering in trying to secure a future in agriculture. I have to say I am not persuaded, upon advice, by the comments made by Mr. Syvret who has made comments about the unsustainability of this practice. I am advised that that is not the view of the department; that is one particular, very ecologically and well-respected individual but he does not have a monopoly on advice to this Assembly in respect of the sustainability of that particular sector. As I am told, that sector is good; it has significant potential or growth and we should be supporting it. We should certainly be celebrating the fact that for once we have got a sector that is exporting something without subsidy and driving success for Jersey outside the Island. We should be supporting that. It is strange that, of course, we find ourselves in a very difficult position of finding a sector that is working but then we cannot find any way to carry out their activities in terms of planning decisions. There are trade-offs. We cannot simply say no on all occasions. The Deputy of Grouville's arguments were very much on the basis that this should not be a planning problem, it was an economic development issue. The reality is that the planning function has got an economic role to play; they have to allocate scarce resources, they have to identify where certain activities can take place on the Island. This is part of an application that falls within a policy which says we shall give, if a proven need, we shall allow planning permission for certain activity. So, I am afraid to say that I do not accept that the planning function does not have an economic role to play - it does. This is precisely that economic role of planning in its function, having to weigh-up the arguments. I will be supporting the proposition because I must and I am confident and I am happy to support the fishing sector. **[Interruption]** I will not be supporting the

proposition, I am sorry. I will be not supporting the proposition. The message that this Assembly sends out is not really the end of the story. It is the Planning Panel that should properly be doing that. We are not the Planning Committee, we are not the Planning Panel; it is for them to judge all of the issues. I want to send a message to the Planning Panel that I support agriculture and I support fisheries. I encourage them to make a decision in view of the policies which have been passed and use, if they are persuaded, the permissive nature of that policy in order to grant a consent if they believe it. I believe the alternatives have been looked into and alternative sites have not been found. I would urge Members not to engage in emotional debate, simply protecting the countryside out with the rest of the policies that we have to judge in the overall Island interest.

Deputy P.N. Troy:

The Deputy stated that accommodation on site may be an issue. Yes, that may be the fact on the basis that there is accommodation on another site elsewhere. She also stated that the size of the application to planning is excessive. Also, of course, she does not want to see anything there at all. I think that the Deputy has made an error today, because she had clearly put the cart before the horse. We have today appointed the members of the Planning Applications Panel. Before they even sit to consider this application, I believe this is not the full process at the moment. The officer's advice has been given but the application has not been fully made, I understand, at the moment. If that is the case, before the Panel even sits, we the States are being asked to refuse this application. To be asked to reject the application is clearly a procedural error. The Deputy has brought a proposition to the States, which is totally incorrect. To ask us to consider the application before the Panel is absolutely wrong. I would hope, Sir, that States Members recognise that this proposition is procedurally incorrect. On that basis I am going to ask, Sir, that we move onto the next item.

Deputy C.J. Scott Warren:

Could I make the comment that I do not understand that it can be procedurally incorrect to discuss any matter in this Chamber. Sir.

The Deputy Bailiff:

One moment. The speaker has asked whether we can move on to the next item of business. I have to decide whether that is an abuse of procedure or a depression of a minority. We have only had 6 speakers, so I think it is premature. I therefore rule it out. The next speaker is Deputy de Faye.

Deputy G.W.J. de Faye:

On occasions there comes a time when you need to draw a line in the sand and this is such a time. I am old enough to be able to recall a time where, as a young boy growing up at La Rocque, there was no fish farming. There were no poles and there were no racks of shellfish. The issue of introducing fish farming at the time was a very serious one and was highly contentious. I have to say, on reflection, I am quite sure that if local people at the time and the States Members of the day had understood that to introduce licensed shellfish farming in the Royal Bay of Grouville brought with it an enormous industrial shed, it would never have started in the first place. I think we should bear that in mind. We have gone through one phase of shellfish farming and here, quite literally, we are at a second generation of shellfish farming. It is inappropriate for the House to be discussing planning matters; that is why we have a Planning Minister and a Planning Applications Panel. I do not relish their job. They constantly have to face difficult issues. I take this opportunity to warn the Planning Minister that in this respect - in respect of agricultural sheds and agricultural accommodation, used and derelict glasshouses - he has a particular problem. If I was not going to bring it up on Committee, I have reached my breaking-point on putting up with the shambles that exists in the Planning Department's capacity to deal with planning issues involving agricultural sheds of whatever type they happen to be. I am sorry that my wrath happens to fall upon this particular group of applicants, but the House should bear in mind that there is not enough

planning going on in Planning. If you want to understand what I mean by that, it is a fact that some 500 yards from where this proposed site for this enormous shed is, lies a vast tract of virtually unusable glasshouse where the glasshouse proprietor has struggled for so many years within the glasshouse industry. He is now basically obliged to run a farm shop. We know, do we not, that the likelihood is that when the oyster business finally goes under for one reason or another - disease, retirement - this will be a small housing estate because that is what farmers do with agricultural sheds. They do not have pensions; they have agricultural sheds. When they retire and the agricultural shed falls out of use, it becomes 5 houses. This will be the same story. That is why I say to this House and I warn in advance the Planning Minister, this is the time to draw a line in the sand because you have an unbelievable mess on your hands. This is a symptom of it. This shed should not be built in the Countryside Zone; of course not. There are dozens of other sheds, some of them probably currently functioning but in the current tricky climate of agriculture about to fall out of use; some probably out of use but, of course, have not been able to get access for oyster fishery projects because the rental being demanded will be too high. Because that is what goes on: "I am sorry, no, I am after change of use for my shed for light storage and I do not want anyone putting an oyster fishery in here. I will not get enough money". We have had a litany of applications over the years with one shed down the road getting a change of use, the farmer virtually next door saying: "I cannot get hold of a shed so I need to build a new one." It has become a standing joke at Planning as far as the Committee I served on was concerned. The same applies to agricultural accommodation. This application concerns agricultural accommodation as well. Now, I do not see that there is a great deal of point in discussing the detail of the planning issues because, quite frankly, the Panel and the Minister can do whatever they wish. The Panel and the Minister actually have the ultimate discretion to override even Green Zone land if they felt that was appropriate. We can enmesh ourselves in how many levels of the Island Plan have been overruled and how you balance that against the perceived assistance for a growing industry - help will normally be provided - because that will be something for the Planning Applications Committee to struggle with. What we need to do as a House is to send a broad message to the Planning Minister and say: "Please sort this all out before we go any further because as likely as not there is a shed right now that will be entirely suitable." This question of the magic search that has been going on like a lost tribe of Israel wandering around the island to try and find this missing shed; we have hundreds of the things. The Department and Economic Development and the businessmen have all been incapable of finding one shed, so yet again another bit of our precious land has to disappear under concrete. It will not look too clever, will it, when the Emergency Council in 10 years time, after the big disaster happens, says: "We need every scrap of land to grow food on" and we have covered it all over with incubating housing estates lurking under their agricultural shed embryonic state. No. The time has come to draw a line in the sand and I urge Members to draw that line today.

Senator L. Norman:

I live in St. Clement, a parish which has been grossly abused by previous Planning Committees, including the one on which the last speaker sat. **[Laughter]** Living in that small parish of St. Clement, I have every sympathy and every understanding for the Deputy of Grouville and the Constable of Grouville, but even more so for the residents of the La Rocque area who, quite understandably, are nervous and worried about any potential commercial development in their vicinity. In many ways, this is a difficult debate; or easy, depending on your point of view. Because whatever the decision is today, it will be the Planning Applications Panel and the Minister who will make the final irrevocable decision - a decision made with all the information available to them. I expect that decision, unlike ours, will be made objectively, dispassionately and fairly: fair to the applicant and fair to the residents of the area. The Deputy of Grouville undoubtedly made a very good speech but, in my view, I do not think she made a very good case. That is because her case was based on emotion and assumptions which were made without evidence. Now, Sir, if this were last year and we had Senator Ozouf's Planning Committee still in office, then I might be

persuaded to support the Deputy **[Laughter]** - safe in the knowledge that that Committee's policies and decisions were as a matter of course diametrically opposed to the wishes of the States and, therefore, would pass the plans for development simply because the States were opposed to it. Or that is the impression that we were given. However, Sir, the new Panel has yet to be tested. In fact, they have yet to be appointed and elected, so we do not know how much notice they will take of States decisions. For the moment, I cannot take the risk. I will vote against the proposition and give the Panel the opportunity to deliberate on the application on its own merits; as I say, objectively, even-handedly and without any undue pressure. To vote against this proposition is not to support the development; but to vote against this proposition, rather, is to give the Applications Panel the ability to do its job fairly and objectively.

The Deputy of St. Martin:

I like to think I am going to be consistent. I am the Deputy of St. Martin. I see the Connétable has declared an interest. I do not know why he has declared an interest but that is something for himself. I know Mr. Luce and at no time have I ever spoken to him about his application. I can see him up the top in the Chamber there, but I speak as I wish to. I say that the present operation in St. Martin is not conducive to its present location. I also say that I have been involved in dealing with a number of complaints from residents in the area; complaints about noise, traffic, smell and water run-off. I think Senator Ozouf is aware of it, as indeed has been Senator Syvret, because emails, etc, were sent to them. It has also been a subject of investigation from the Environmental Health Department and there has been insufficient evidence to go along with any prosecution. We want to make that absolutely clear. That being said, I am sure that the owners of the establishment in Rozel would agree that their present location is not conducive to their operation. Certainly, it is not sustainable if they wish to carry on in business. Their present premises were designed as potato sheds. That is the problem and that is the difficulty Environmental Health have had coming to terms with them. I think they have a lot of sympathy even from those people who are affected by the problems they have. It is a case of having a good business in the wrong location and also not being the adequate premises. What the company does want and requires is a purpose-built facility. Of course, the problem they have is finding the right location for that facility. If they can find the right location, I think Environmental Health and Planning, etc, will ensure that they do comply with all the regulations. That being said, I think all the noise, the other inconveniences, etc, will be eliminated. I can fully understand the concerns of the people in Grouville. I do spend a considerable amount of my time either supporting an application or opposing one, and I am fully aware of a number of the planning policies. Any application, as far as I am concerned, almost seems to be a lottery. If the Committee is minded to support something, it will use that part of the policy that says: "This is why we should have it". If it is minded to oppose it, it then uses that part of the policy that says it is not minded to support it. Even though you can - as indeed Senator Ozouf knows - put up a very strong case, supported by EDC and supported by all the people in industry; Planning, if they wish to, can still choose to ignore an application. As I say, it is a lottery. Again, when we do make a decision, I think the Committee has to be fully aware of all the evidence that is before it. One of the difficulties we have today is we are trying to make a decision without all the matters put before us. I do not think any of us could ever give support to this application - or even oppose it - if we have not been on the site. I would ask those Members who do vote for it whether they have visited the site because I think it is very important they should have done so. I think Senator Ozouf has reminded us what the proposition was all about. It is requesting the Planning Applications Panel to refuse an application for a development. Again, it is only a request, but whatever the decision today, it will concentrate the minds of those who have to make the decision. I believe that Planning should have an unfettered right to make any decision without any influence from others, particularly from this House. This particular proposition is proposing to put an influence on a Committee before it has even sat to consider all the facts. In fact, what we are doing is we are appealing to a Committee to reject an application before it has even considered the case. Now, I always believe if we are going to appeal, we should appeal against a decision after

that decision has been made. I agree with Deputy Troy, we are putting the cart before the horse. If indeed we oppose this proposition today, we are really telling or requesting the Planning Committee to make a decision which we ourselves have not made with all the facts before us. I know Senator Ozouf wants to know which way I am going. I would have thought he would know by now. I am going to oppose the proposition simply because I believe that the Committee should make that decision themselves with all the facts before it. If indeed they do approve the proposition - or the application - then it is beholden on us then to make the appeal knowing the reasons why they made that decision. If we did not agree with that decision and we have all the facts, then of course we can come back to the House. I shall be opposing the proposition. Thank you.

Deputy C.J. Scott Warren:

On a point of order, there is no right of appeal. If we brought this after to the House, there would be the obvious thing of compensation being...

The Deputy Bailiff:

I think that is the second speech, is it not?

Deputy C.J. Scott Warren:

Well, Sir, I must point out the new Planning Law has the provision by a former States Assembly - and again by the one before this - amended to a limited right of appeal, but we do not have the funds to do that. Had we had the funds, the Deputy may not have felt it necessary at this stage to bring this proposition. Thank you.

The Deputy of Grouville:

Just on a point of clarification because this point has been made over and over again: the fact that I am out of sequence and I should not have brought it now. This proposition is attached to a petition. I have a duty to bring it to this Assembly.

The Deputy Bailiff:

I think that is a matter for your reply, Deputy, yes. Senator Cohen.

Senator F.E. Cohen:

Thank you, Sir. This matter is the subject of a current application. I am concerned not to prejudice that application in any way. I therefore do not propose to actively participate in the debate. I will listen carefully, but there are a few points that I think I should bring to the attention of Members. The first is that there has been a suggestion in various emails circulating that a lack of aquaculture strategy is relevant. I have been advised by the department that this is not an issue. The application deals with the shore-based buildings, and aquaculture strategy would be part of the sea-based activities, which are subject to a specific permit. The department has advised me that the new buildings proposed will not in themselves increase the sea-based activities. In the event that the oyster company wish at a future time to increase their sea-based activity, that will be assessed at that time on the basis of an aquaculture assessment. It is also relevant that on 30th December 2004, while there is a caveat, the department advised the applicant: "The Sub-Committee considered there is sufficient justification in your proposal to override the presumption against development in the countryside" under, I think, the then Deputy Dorey. It is also important that Members understand the size of the units proposed. There seems to be some discrepancy here. The current plan - which is on the wall over there - is for an industrial unit of 2,172 square metres, which according to my poor maths is 24,000 square feet. On top of that, there is a residential building which I estimate to be in excess of 5,000 square feet. The other relevant figures are that the distance from the proposed industrial unit to the nearest house is 110 metres and from the proposed residential unit to the nearest house is 70 metres. Thank you.

The Deputy of St. Martin:

On a point of order, I really am in a little difficulty here. I just wonder whether the Members of the Planning Committee, who are going to make the decision, should be taking part in something before they are aware of all the facts. That is why I feel very uncomfortable about the whole debate. I come back again supporting what Deputy Troy was saying. We are appealing to someone before they have made an application. Surely that may in some way influence their decision if they have prejudged the issue, Sir. I am just wondering if it went before a court of law what standing it would have. I feel a bit uncomfortable.

Deputy P.N. Troy:

Would you accept a proposition now to move on to the next item from a Member?

The Deputy Bailiff:

You have already made it, Deputy, therefore you cannot make it again. Now, does any other Member wish to speak?

Connétable T.J. du Feu of St. Peter:

As just a newly-elected Member of the Planning Applications Panel, I would like to inform the House, Sir, that I have no intention of voting for or against this motion because I feel that the applicants themselves, and also the objectors, deserve absolute maximum consideration. In doing so, I feel then - and only with that course - can we apply fairness to both sides. That is the reason, Sir, why I shall be abstaining.

The Deputy Bailiff:

Thank you, Constable, that is very helpful. Deputy Hilton.

Deputy J.A. Hilton of St. Helier No. 3:

I was heartened to listen to Deputy Hill speech. In the past, Deputy Hill and I have been involved in various appeals and we have had our differences, but I think he spoke a lot of sense - as did Senator Ozouf - with regard to the fact that we are sat here considering an application when, indeed, the Planning Panel have only just been put in office this afternoon. For my own part, I went up to the Planning Office on Friday morning and spent 2 or 3 hours looking through the file because it has been quite a while since I left the Planning Committee. I was involved in the very early days in a meeting with the Director of the Jersey Oyster Company in my capacity as Vice-President of that Committee. He asked to meet me to explain the difficulties that they were encountering and to show me round his site. I duly met with him. We did not talk about any sites at all. What I suggested to him was that when he had had a look at various sites available that he made an application or ask for advice of the Planning Officers in the normal way, and for the application to be processed as it should normally be processed. I have to say I have a great deal of sympathy for the company. They are endeavouring to consolidate their operations on one site. It makes absolute sense that that site is located near where the majority of their business is carried out. I would just like to mention for the Assembly's benefit that, in some of the correspondence in the file that I read on Friday, there was a letter from the Environmental Health Officer to do with this site. He said that in his opinion an opportunity for the applicant company to apply for a new building on their existing premises was not going to be suitable because of the location of those premises. The Environmental Health Officer did go on to say that he would support an application on this particular site because of the fact that it is only 200 metres away from the beach and that as long as sufficient safeguards were put in place, as previously mentioned in his correspondence with regard to noise reduction, the department felt that this was the correct place for it to be sited. As I said, I do have sympathy for them. I understand that they have been looking for a great length of time. I met with them back in June 2004 and I believe that they should be supported; this is a local

business. But I really do not think that Members should be making a decision this afternoon on this proposition if they have not been to the Planning Department and looked at the file and if they have not been out to the site. For my own part, I went to the site on the weekend. It is literally only a couple of hundred metres from the beach. It is on a good road. To me, it does make sense, but I really do not think we should be here this afternoon considering the facts when I suspect that there are Members here who have not had the benefit of reading the file and visiting the site. I cannot support this proposition this afternoon because I believe that is the job of the Planning Panel with all the information in front of them. Thank you.

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

The proposition seeks to refuse to grant permission for the development of field 571 for commercial development. I have met with both of the parties involved, if you like, and have heard some of the issues and concerns of both sides. To be frank, I am finding this an extremely difficult decision to resolve. On the one hand - and I think as we have all expressed today - I too do not favour development in the countryside. But on the other, I want to be able to support agriculture and, indeed, that was part of my leaflet - my manifesto - when I was elected as Deputy. I think one of the difficulties that we all have is that we are slowly losing touch with the realities of farming. What we may regard as a pretty countryside is what farmers might, if you like, regard as their factory floor - albeit in the open air. This will mean from time to time that farmers will require extra facilities in which to store equipment and to operate from as their needs change. What happens when those facilities are no longer required is a different matter and could perhaps, some would suggest, be part of future planning obligations. From a business perspective, also as we have heard, the proposal makes economic sense. It brings the operating units together and I understand it allows more efficient use of the same amount of space as is currently occupied on 3 separate sites. Most importantly, the main reason that the business wants to move is that it only has a 2-year rolling lease and does not, therefore, have any certainty over its longer-term operations. It could be given notice tomorrow and not be able to do anything about it. This site will give them more certainty over the longer-term. I do rather feel in making this speech that I am damned if I do and damned if I do not. As some Members will know, I am one of the objectors to a rather large development on the Marsh in St. Lawrence and yet I cannot fully support this particular proposition which seemingly is seeking to protect countryside in another part of the island. However, I do think there are some important differences between the 2. The St. Lawrence issue has a variety of technical matters as well as a question of the sheer size of the development. The Grouville building is for an agricultural purpose on agricultural land. While I do accept there may be issues about yet more agricultural buildings on the landscape and possibly abandoned greenhouses and agricultural sheds elsewhere - which are not, apparently, for sale and that would be nice if that could be addressed - at the end of the day the question must surely be do we support agriculture. There are also certain environmental concerns that have been raised about the impact of the mussel and oyster operations in the Royal Bay of Grouville and within a RAMSAR site. However, it is my understanding that the company has been allocated its final site from which it can operate. Certainly, the owner of the company has stated to me that as far as he is concerned he has been told that he will not be able to expand out of the areas already allocated. Now, the point about that is this development does not appear likely to have any greater environmental impact upon the seashore than will result from the existing operations of the company. If there is an environmental issue to do with the impact of all of the oyster and mussel operations in the area, then perhaps this needs to be addressed - but separately as well - as it will have a direct effect upon what is going on at the moment. This particular application will not impact on that. The concerns of the residents are understandable and I do agree with them the proposed building is large, particularly when we have a separate accommodation block, which we can see on the right-hand side of the plans. It is my understanding that the owner of the company has taken this concern on board and is perfectly prepared to include the accommodation in the main shed, thus completely removing this separate building. On balance, I feel that the proposition goes too far. It calls for no commercial

development in this field; yet what would happen, for example, if the chicken farm which is next door to this field wished instead to expand its own activities into field 571? I would have thought that would also represent commercial activity and hence commercial development. If the proposition were to request a reduction in the scale of the proposed development, I would support it. But it does not. I would urge the representatives of Grouville to see whether there can be any compromise which might satisfactorily resolve this issue, but I rather suspect this is not a possibility. To conclude, I am afraid I cannot support the proposition as presently worded because I consider it to be too far reaching. I do ask the Planning Minister and the Planning Application Panel if they would reject the current application in favour of one without the accommodation block and thus one on a smaller scale with appropriate landscaping to mitigate the impact on the residents of the area. I cannot support the proposition as it is currently worded. Thank you, Sir.

Connétable R.E.N. Dupré of St. John:

For obvious reasons, I too shall be abstaining in this debate. The application will come before the Applications Panel and will have to be considered. We will then do so with all the facts to hand. That is something that we will have to determine when we have all the facts.

Deputy R.G. Le Hérisier:

I think, Sir, there have been some very good speeches and I would like to congratulate people like Deputy Le Fondré and, in fact, Deputy Labey and Senator Perchard for setting us off.

The Deputy Bailiff:

Deputy, you are a former President of Privileges and Procedures. I am sure you know she is the Deputy of Grouville.

Deputy R.G. Le Hérisier:

Indeed, Sir. I would like to substitute that congratulation and replace it by congratulation to the Deputy of Grouville. But what worried me, and I think it has come out in the debate as her argument proceeded, she put forward this sort of rural bucolic paradise of small farmers running around with one cow in the backyard and not much else happening and a world devoid of noisy tractors and big sheds. But farmers, Sir, obviously have to operate within, as we have heard - maybe it is overdone - a much harsher economic environment. I have had a similar issue in our parish where we are finding it difficult to bring home the bacon, so to speak. I really think, Sir, we cannot on the one hand encourage people like the gentleman - Mr. Luce from the Fisheries - to diversify. We can see there, Sir, an example of a person who is clearly enormously entrepreneurial; who is struggling at this very moment with the whole Emeraude thing, for example, and finding all sorts of constructive ways around that. I do not think, Sir, we can erect a policy which says: "We are going to support people like you" and then put forward planning opposition based on some kind of mythological picture of where agriculture should be. I think that is grossly unfair. Although I have been very impressed by the moderation of both sides here so far, I really think Mr. Luce and his company really deserve a fair crack of the whip. That brings me, Sir, to my total agreement with Deputy de Faye - but he was on the Planning Committee and I have raised this issue of agricultural sheds. We know that some people, as Deputy Huet said, are manipulating this, and we have one or 2 little cases in St. Saviour, for example, in that regard. We know they are manipulating the agricultural shed situation. But again, Sir, I think it is grossly unfair until the Panel has sat. Why should we penalise one person who happens to have come along at the wrong time, so to speak? Why should they have to carry the burden for that defective policy? Surely that should be the Planning Committee, if anybody. Why switch the whole burden for what has gone wrong on to one individual who has been caught in the crossfire? My view is, Sir, while I am very impressed by certainly the opening part of the Deputy of Grouville's arguments, I really feel for fairness to be done this has to proceed forth to the Planning Panel and hopefully they will call all the right sorts of evidence and deal with it at that level.

Deputy J.B. Fox:

I was part of the Planning Committee and the Planning Sub-Committee when the Island Plan was brought together and brought to the States. We had a tentative inquiry at that stage in relation to oyster farms and proposals that, in fact, came to fruition. What we did not obviously have at that time was any immediate indication of where and when there would be a requirement for land-based facilities, although it is quite clearly recognised that there would be a requirement for land-based facilities. The bit I find very difficult today is that this is a planning process and it is important that the process is allowed to go through. It is also a process that - I half suspect from what I am hearing from the debate - is that what is put in the planning proposals at this time may or may not have very little resemblance to what actually might come out of the other end of it. The problem is my gut reaction is I would like to vote for this proposition but I recognise that if I do so I am going to be voting for something that could have repercussions throughout the industry in the future. Having said that, I spent 3 years on planning and I agree there are some very ingenious people at finding ways not to use an already existing unit and so they have to have another one. There are also families who cannot possibly have it on a relative's farm because the relatives for some reason or other will not let them have it. Again, it is most unfortunate because what happens at the end of the day is that some piece of our open countryside ends up by being built on. On the other hand, what I do not like to see is being able to go past a farm and see a building and then you have a huge clutter of pallet boards and everything else that suddenly materialise in full view without any screening. I would have much preferred to have seen them nicely enclosed in a clean building, etc. Deputy Le Fondré's comment was you are damned if you do and you are damned if you do not. I think we are all going to go through that process today whatever decision we make. I feel as though I cannot support this at this present time. I too would have much preferred that the planning process would have gone further down the road for the best interests of both parties. Clearly there is an impasse at the moment and I too am a lover of the countryside, but I also recognise that - once we agreed the 'in-principle' that there should be an extension of an old industry into a new emerging industry - there would be a need for shore-based facilities. It is ironic that it has turned out that we are being asked for a decision before the actual planning process is complete. Thank you, Sir.

Deputy P.V.F. Le Claire:

I would like to congratulate the Deputy of Grouville for bringing forward to the Assembly a proposition that was based upon the feelings and desires of a large number of people in Grouville. To bring a proposition based upon a petition is a difficult thing and no doubt many of us will be experiencing that ourselves in the time to come. I would like to support the residents of Grouville and I would like to support the Deputy and the Constable of Grouville, but unfortunately, because of the wording of the proposition as so many other Members have spoken about, it seems to be subverting the process. I would like to go on record as believing that the development of the accommodation is not something that should be approved in my view. As Senator Perchard pointed out, if the processing of these shellfish are to be undertaken in the same manner as any other agricultural process with the grading, cleaning and storing, then perhaps, as suggested already by Deputy Le Fondré, there may be some obligations in the future or some restrictions placed upon the development so that if that is no longer a viable aquaculture it can return to agriculture. Therefore, unfortunately, I will not be able to support this proposition.

Deputy S.C. Ferguson:

It seems to me, Sir, that there have been enough arguments raised for a re-think on a number of issues, some of which will involve the Minister for Economic Development. We have heard mention of the greenhouses up the road. Why are they not appropriate? We have heard mention of the long lease. We have also heard mention of a report by a marine consultant raising doubts as to the sustainability of oyster stocks when farmed intensively. If it is not sustainable, then are the

economics of the whole project consistent? This is a large project and I am not at all certain whether it is going to be involving States money in the form of grants. If the economics are inconsistent, then obviously I will subscribe to the cynicism mentioned by Deputy Huet because I really am totally unclear at this point in time as to whether this whole project is actually viable. I have a number of questions and I know technically it is a planning issue, but I think the whole thing should be looked at in the round for a proper decision. Thank you, Sir.

The Deputy of St. John:

I am a great supporter of economic diversification and I would like to see this scheme succeed. However, I visited the site and I have met with some of the residents and I can quite see their point. So, coming on to Deputy Le Fondré's point, you are damned if you do and damned if you do not. It is a difficult one to vote on. I do have some questions on the business aspect of the scheme though. I understand that the shellfish in question, one gets about £1,000 a tonne for them. They want to produce, I believe, perhaps 1,000 tonnes with the site that they are wanting to develop. I am not an accountant, but that is a million pounds. Now, the investment on this site must be quite significant, so I would like to find out more about the business proposition itself to see if it is - to pick up on Deputy Ferguson's point - sustainable or viable. These are questions which Deputy Ferguson has and I am sure others do, too. Without that information, it is difficult to make a fully informed decision on this proposition. Like others, I am concerned for residents, but I am also concerned that we do not lose an opportunity to diversify our economy and take advantage of an opportunity for our aquaculture industry to move on. There are arguments strongly for and against and I am going to struggle with the decision, like many others. Thank you, Sir.

Deputy K.C. Lewis:

I think in my opinion Senator Ozouf is absolutely correct when he says anything that we decide today regarding field 571 will not be legally binding on Planning. But as has been said in this House 1,000 times before, we are where we are. I think the people of Grouville would like us to send a sharp signal to planning that this development is too big. Thank you, Sir.

The Deputy Bailiff:

Does any Member wish to speak? Very well. I call upon the proposer to reply.

The Deputy of Grouville:

May I say thank you to everyone who has contributed to the debate. I would not say it was necessarily a good debate but I welcome most of the points made anyway. I will touch on some of them in general terms. The confusion here - and Senator Perchard was the first one to bring it up when he said, "Why is she bringing this to the States in this way?" - can I remind Senator Perchard this is a democracy. It is a debating chamber and we have every right, every democratic right, to bring whatever we like to this Assembly for debate. That is exactly what I am doing here today. I am doing more than that, in actual fact. There were 400 signatures on a petition that was given to the Constable of Grouville and myself in July. We have an obligation to bring the petition in a proposal to this Assembly for debate. That is why it is being brought here today: because we live in a democracy. It is how Senator Perchard is sitting where he is over there. So, that is the first point. The second is I fully acknowledge this is one element of the planning process. But the planning process is made up of lots of different elements. Just because there has been a democratic - a little more than usual democratic - element to making the decision or having it placed before the planning process does not make it wrong or incorrect. In fact, those Members who have not been in this Assembly that long will not know that this is the right way round because had I brought this petition to this Assembly after the planning permission had been given or after permission in-principle, then it goes on to the Solicitor General's desk for the next 2 years because we have got ourselves in a complete and utter mess. So, this is the correct procedure. It is the correct way of doing it and I am sorry, Deputy Troy, you do not like democracy but here we are. This is the

procedure. **[Laughter]** Now that I have got that off my chest, I will go on to my next point that Senator Norman raised about me giving an emotional speech that was not factual. Well, I have to say I disagree entirely. Yes, there might be a touch of emotion in it, but I sighted the Island Plan...

The Deputy Bailiff:

Deputy, I am sorry. I am being alerted by Senator Perchard he wants to raise a point of order, provided it is, indeed, a point of order?

Senator J.L. Perchard:

It is exactly that, Sir. Thank you to the Deputy of Grouville for giving way. I did question why the Deputy brought the proposition to the States in this way. I said if she really did feel strongly about field 571 she should have brought a proposition to the States to rezone it into the Green Zone. It was just the tactic I questioned. Thank you.

The Deputy Bailiff:

I think that is a clarification rather than a point of order.

The Deputy of Grouville:

Yes, absolutely. Well, I shall tell the Senator why I have not sought to rezone it: because I see in black and white in the Island Plan all the restrictions - the 8 restrictions that I read out - and I feel that this application contravenes 7 out of the 8 of them. In fact, I was asked at lunchtime: "Why do we need to bring things here in the Assembly? Why do we have to discuss them? Do the residents not trust the planning process?" **[Laughter]** Well, I am sorry, but does anybody here trust the planning process? Because I certainly do not and with what I have heard here today - and I am sorry because there is a new Environment Minister and a new Panel and this is no slight on you, please believe me - no, we do not. Senator Perchard has read certain elements of the Island Plan and I went on to read the "provided that" and it contravened every one. Not only does it contravene huge swathes of the Island Plan, but it also contravenes elements of the Strategic Plan and the Countryside Renewal Scheme. Is it any wonder that we cannot be taken seriously and people do not trust the process? However, I wish the Planning Panel all the very best of luck and I hope, whatever the outcome of this debate, they will take this as one element of the democratic process that has gone on. Obviously they will take on board all the other factors that are presented to them. The third point I would like to make is Senator Ozouf said: "The Deputy of Grouville is doing this. She has to really favour the residents, her constituents." Well, no, Senator, I have my principles, I have my mandate and I favour the countryside. That is why I am representing and I agreed to represent the residents in this. If I disagreed with them, I would not be representing them. I feel that we have an Island Plan. We have a Countryside Zone. I am not seeking to override it. No, I am not, Senator Ozouf. Sorry, through the Chair. I do not seek to override the Island Plan. I feel that it is written in black and white, all the restrictions are there, but we go back to this thing, trusting the planning process. As Deputy Scott Warren quite rightly said, we have no form of appeal. How do people get to express their feelings about an application if it is not through their elected representatives? When in this whole process are they meant to object to it? So they have come to us and here we are objecting to it. Feelings run very high and not surprisingly because they too have read the Island Plan and they cannot see how it is even being given the time of day. But that is for the Planning Panel. A technical point I would like to take up is this agricultural need. I would like "agriculture" defined because, as I said in my opening remarks, "agriculture": we have put up with these whacking great sheds dotted about all over the countryside. Deputy Le Hérisier, I do not see agriculture in rose-tinted spectacles. I most certainly do not. I see it in P30 articulated trucks and large depots. I am a realist. But "agriculture", how do we define this? This aquaculture does not keep fields green. It does not cut hedges. It does not do any of those things that agriculture does. I would like the Planning Panel, when they consider it, to consider exactly how they define agriculture. To end, I would just like to make a point. It is amazing, is it

not? We are meant to be thinking corporately now. We are meant to have an overview of everything and not to think in our silos. I was amazed at Senator Ozouf's change of heart now he has gone from wearing his Environment and Planning hat to his Economic Development hat. Because I would like to end by reading, if I may, part of a foreword by Senator Philip Ozouf **[Laughter]** that is written...

Senator P.F.C. Ozouf:

I stand by every word. **[Laughter]**

The Deputy of Grouville:

Well, we will see, will we not? Sorry, through the Chair. It is written in the report called *The State of Jersey*, which was produced by the Planning and Environment Department last year. This is what Senator Ozouf said when he was President of that Committee, not Economic Development as he is now. He says: "Our natural environment is more precious and fleeting than any of us truly realise. In Jersey, we are particularly blessed to live on an island of such breathtaking beauty. But that splendour brings with it an onerous responsibility. It is our collective duty to make sure we preserve and enhance our natural environment for future generations. The quality of our environment is absolutely fundamental to our lives, often in ways we aren't aware of until it is too late." I maintain my proposition and I ask for the Appel.

The Deputy Bailiff:

The Appel is called for so I invite Members...

The Deputy of Trinity:

Excuse me, Sir. Just to mention that I will be abstaining, being a member of the Applications Panel.

The Deputy Bailiff:

Thank you very much. Very well. The Greffier will open the voting for or against the proposition of the Deputy of Grouville.

Members present voted as follows –

POUR: 21		CONTRE: 21		ABSTAIN: 6
Senator S. Syvret		Senator L. Norman		Senator F.E. Cohen
Senator F.H. Walker		Senator T.A. Le Sueur		Connétable of St. Saviour
Senator W. Kinnard		Senator M.E. Vibert		Connétable of St. Peter
Senator T.J. Le Main		Senator P.F.C. Ozouf		Connétable of St. Helier
Senator B.E. Shenton		Senator J.L. Perchard		Connétable of St. John
Connétable of St. Mary		Connétable of St. Ouen		Deputy of Trinity
Connétable of St. Clement		Connétable of St. Lawrence		
Connétable of Grouville		Deputy R.C. Duhamel (S)		
Connétable of St. Brelade		Deputy of St. Martin		
Deputy A. Breckon (S)		Deputy P.N. Troy (B)		
Deputy J.J. Huet (H)		Deputy R.G. Le Hérisier (S)		
Deputy C.J. Scott Warren (S)		Deputy J.B. Fox (H)		
Deputy G.P. Southern (H)		Deputy of St. Ouen		
Deputy S.C. Ferguson (B)		Deputy P.J.D. Ryan (H)		

Deputy of Grouville		Deputy of St. Peter		
Deputy G.W.J. de Faye (H)		Deputy J.A. Hilton (H)		
Deputy D.W. Mezbourian (L)		Deputy P.V.F. Le Claire (H)		
Deputy S. Pitman (H)		Deputy J.A. Le Fondré (L)		
Deputy K.C. Lewis (S)		Deputy S. Power (B)		
Deputy of St. John		Deputy A.J.H. Maclean		
Deputy I.J. Gorst (C)		Deputy of St. Mary		

The Deputy Bailiff:

There are 21 votes *pour* and there are 21 votes *contre*. **[Members: Oh!]** There are 6 abstentions. The Bailiff quite properly no longer has a casting vote. Therefore, the proposition is lost.

Deputy J.J. Huet:

Can we not ask if anybody would like to change their vote, Sir? **[Laughter]**

10.2 The Deputy Bailiff:

The next item of public business is the Draft Sexual Offences (Jersey) Law 200- (Projet 196). I will ask the Greffier to read the preamble.

The Greffier of the States:

The Draft Sexual Offences (Jersey) Law 200-, a law to amend the law relating to sexual acts and for connected purposes the States, subject to the sanction of Her Most Excellent Majesty and Council, have adopted the following law.

The Deputy Bailiff:

Yes, Minister, do you wish to propose the principle?

Senator W. Kinnard (Minister for Home Affairs):

Yes, thank you, Sir. Members will recall that this draft law was lodged for debate in September 2005 by the then Home Affairs Committee and originally set down for debate prior to the move to ministerial government. However, in light of the large amount of business that had to be dealt with in the run-up to the Island elections, the matter was deferred. I am, however, bringing this matter to the States early in the new session as it is a necessary prerequisite for Jersey to comply with its own Island Human Rights legislation. The *Projet de Loi* will have the effect of making consensual anal sex lawful whether between 2 males or a male and a female from the age of 16 upwards to the same extent that consensual vaginal intercourse is lawful. The current situation in relation to anal intercourse is that it is unlawful at any age between a male and a female irrespective of whether or not it is consensual, while in respect of 2 males, it is currently lawful provided that both are aged 18 or over and the act is consensual. The principal basis for wishing to change the current legislation is that the European Court of Human Rights has made several rulings to the effect that any law that has different ages of lawful consent for homosexual acts and heterosexual acts is in breach of Articles 8 and 14 of the Convention. Article 8, the right to respect for private and family life, reads as follows: "Everyone has the right to respect for his private and family life, his home and correspondence." It further states that: "There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and as necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." Article 14 deals with the prohibition of discrimination and provides that the enjoyment of the rights and freedoms set forth in the Convention: "... shall be secured without discrimination on any grounds such as sex or other status." When the Human Rights (Jersey) Law 2000 comes into force, it would be possible for this

discrepancy in the age of consent to be challenged directly in our Jersey courts. It is clear from the several cases that have been heard before the European Court of Human Rights that our existing legislation would be found to be in breach of both Article 8 and Article 14, making law reform absolutely necessary. When deciding to lodge this draft law, Sir, it was noted that most member states of the Council of Europe recognised equality of treatment in relation to the age of consent. Three possible courses of action were carefully considered in order to make the law consistent with the Convention rights, namely: to increase the heterosexual age of consent to 18 years in line with consensual homosexual activity; or to fix the age of consent for both types of sexual activity at another age, for example, 17 years; or to a lower age of consent for homosexual activity to 16 years in line with the course of action that has been taken by England and Wales. It is, in fact, the last option that the Committee at that time considered to be really the only feasible one. In terms of consensual anal intercourse between women and men, this ceased to be a criminal offence in England and Wales in 1994 by virtue of the Criminal Justice and Public Order Act 1994. The view taken at the time was that private sexual activity of consenting adults was not a matter for the criminal law. When it approved the draft law, the Home Affairs Committee also took the same view. Consensual anal intercourse between males and females will, therefore, cease to be an offence in Jersey, thereby bringing our law into line with that of England and Wales if the States so approve. I propose the preamble, Sir. Thank you.

The Deputy Bailiff:

Is the principle of the Bill seconded? [**Seconded**] Yes.

The Deputy of St. Martin:

Could I point out Deputy Baudains is back. I know he is alive; he is not sure if he is kicking yet. [**Laughter**] Can I raise the *défaut*, Sir?

The Deputy Bailiff:

Very well. Yes, we noticed that he has recovered. Deputy of St. Ouen.

Deputy J.G. Reed of St. Ouen:

Thank you, Sir. Firstly, I do recognise the need for sensitivity when speaking about this subject. However, I will be using terms that, although specific and used within the law, some people might find offensive. I would like to assure all Members and listeners that I will aim to keep the use of such language to a minimum. I am extremely concerned over the proposals included in this proposition and the reasoning behind it. The main reason given for the proposed changes revolves around the views expressed by the European Court of Human Rights. Their view, we are told, regards any differential treatment under the criminal law on account only of a person's sexuality to be contrary to the Convention. Worse still, the report suggests that the present law - which provides that a homosexual act between males cannot be classed as private when more than 2 people take part or are present - constitutes a breach of the Convention and, therefore, will no longer apply in a draft law. I will come back to this later. I would first like to focus on the current sexual offences law. This clearly states vaginal intercourse is lawful between a male and female from the age of 16 upwards if it is consensual. Anal intercourse between 2 males is lawful from the age of 18 upwards if it is consensual. Finally, anal sex, as we have already been told, at any age between male and female is unlawful. The first point I would like to make is that there is a definite difference between vaginal and anal intercourse. Vaginal intercourse has always been classed as a natural act and the method used by a male and female to reproduce. Anal intercourse, on the other hand, is considered totally unnatural. Because of this, it was deemed necessary to protect individuals and, equally, underline the morality or otherwise of that act; hence the reason for the law. It is impossible, therefore, in my view to draw any comparison not only with the 2 distinctly separate acts, but also with the age at which those acts are lawful. It may be the case that the European Court of Human Rights has determined that any law which provides for a different age of

consent is in breach of certain Articles of the Convention. However, as I have said before, we are talking about 2 totally different acts and I do not believe that this in itself is a reason for altering our current law in the manner proposed. There are, as the report suggests, other ways which could be used to make the current law comply. However, these are not elaborated on within the report so we have no understanding of consideration that was given to them. We can, for instance, raise the lawful consensual age for vaginal intercourse from 16 to 18 in line with the lawful age for males who participate in anal intercourse. By following this course of action, we would be able to negate any problem with the European Court. The report states, as I said before, that it was considered by the Home Affairs Committee at the time and yet they give no reason for dismissing this idea. I am equally perturbed to read that the Minister is suggesting in her proposition that another facet of the law needs to be changed: the current law that provides that a homosexual act between males cannot be classed or will not in future be classed as private if more than 2 people are present or taking part. This restriction, as we have already been told, does not apply to the heterosexual act. The report then goes on to suggest that to address this we just amend the law accordingly. I totally disagree with the proposed change to this part of the law and vehemently oppose it. How can anyone suggest that it is possible to ignore the real differences between these 2 acts and the consequences of them? Are we really expected to legitimise what is regarded by many as a totally unnatural and unacceptable act? As elected States Members, are we not expected not only to set proper and defensible moral standards, but to protect those who may not be able to protect themselves? Should we not be concerned about our young people being exploited by the more mature members of our society? This part of the amendment, if passed, will make it acceptable and lawful for a 16 year-old boy to be subjected to anal intercourse by more than one person at any one time. This cannot be right. Furthermore, we are all aware that although the current law states that vaginal intercourse is lawful between males and females from the age of 16 upwards, there are a number of cases where children - and I repeat, children - as young as 12 and 13 are sexually active. Local statistics provided by the Brook Centre show that 23 per cent of all their clients are under the age of 16. The total number of their clients at the Brook Centre per year is a staggering 7,000. That is right: 7,000 youngsters under the age of 25, of which 1,600 are under 16. The reason why our young people are attending Brook Centre is that they are sexually active and seek a wide range of free services and facilities, which Brook currently provides. These include counselling, contraception, the morning-after pill, pregnancy tests, sexual infection testing and, finally, referral to antenatal or termination of an unwanted pregnancy. Approximately 1,300 morning-after pills are given out each year, of which 400 are given out to girls under 16. If this is the case based on existing law, we must surely accept that with the proposed changes boys as young as 12 or 13 could and will be taking part and subjected to anal intercourse. It is a fact that although we are aware of the existing law being broken - or, worse still, ignored - the Minister is asking us to lower the age based on the reason solely of parity. Surely we should be ensuring that current laws are implemented in a proper manner and related issues addressed prior to agreeing to any changes. I ask States Members how they can reconcile the fact that when it comes to smoking we have recently raised the legal age to 18 and yet we are being asked to reduce the minimum age at which anal intercourse can be practised. How can it be right that a young person under the age of 16 cannot be treated for a minor injury, or even given Paracetamol, at the hospital without the parent's permission, and yet can be referred by a doctor and have a pregnancy terminated without the need to even notify the parent, let alone gain the parent's consent? We argue that a young person needs protecting on the one hand but are being told to reduce that same protection on the other. Both issues revolve around the health and well being of that person. Also, both laws are there to give guidance to that same group of people. Yet, we choose to treat those 2 subjects totally differently. Why? Surely we must first aim to address the underlying issues linked to the current law before we amend the existing one. The Minister suggests that there is no other alternative but to agree the law. In my view, those alternatives have yet to be fully explored and must be before any alterations to this law are agreed. We only have to look at the large list of countries included in the appendix which the Minister drew our attention to, to see that governments throughout the world have elected to support a different

view to the one proposed. Members might suggest that I am taking the moral high ground and that I should rather be considering the question solely on equality. However, I cannot in all conscience reconcile the fact that we are considering making equal 2 separate and very different sexual acts. Furthermore, while current laws are ineffectual, how can we even consider amending them? During my research on this subject, I looked at what advice the Brook Centre gave to our young people. One of the first comments they make is that puberty and body changes can continue up to the age of 18 - not 16. They also say that when individuals start to develop sexual feelings it is natural that the individual can feel mixed-up about their own sexuality. Finally, the advice given to boys regarding feelings towards other males is that it is important that individuals do not feel pressurised in any way when it comes to deciding their sexuality. All this advice points to leaving the age of consent at 18, the recognised age of adulthood. I hasten to add governments throughout the world recognise that as the age of adulthood. By promoting a younger age of consent, we will be doing just the opposite. Indirectly, we will be not only condoning but legally allowing adults to place pressure on these susceptible young children or young people at an age when some will not even have reached puberty. Even worse, with the way we are implementing and exercising the current law, young 12 and 13 year-old boys could and will be targeted. The other area of concern relates to sexually transmitted diseases. At a time when there is already a marked increase in the incidence of sexually transmitted diseases among our young people, do we really want to exacerbate the problem further? What about the concern about AIDS (Acquired Immune Deficiency Syndrome)? Has this been forgotten? Do people not realise that the highest risk of being infected by AIDS is through anal intercourse? Another concern is that one in 10 young women under the age of 25 on the Island have Chlamydia. This, if untreated, leaves the infected woman infertile. So, what is the level of HIV (Human Immunodeficiency Virus)? Sadly, we are currently unable to provide this full information as there is no surveillance programme. Members should ask themselves where are the comments from our Health Department regarding the proposed amendments and the consequences? Do States Members realise that the Minister of Health is proposing that from this year treatment for all sexually transmitted diseases will be carried out at the hospital rather than allowing Brook Centre to continue to treat clients on their own premises? Does this really make sense? One must remember that Brook's clients not only receive individual treatment but also are counselled and given guidance on many other associated matters. This is carried out, by the way, by fully qualified doctors who have been carrying out the work for the last 2 years. We desperately need a full review of the current situation, including the current laws, so that as an Island we can address properly all of these matters. Age of consent laws are all about protecting young people from being sexually exploited by adults. Let us as a Government, as a whole, send out a clear message that we are going to do just that. I would ask fellow States Members not only to reject this proposition but to demand that the Home Affairs Minister and also the Health and Education Ministers collectively review all areas, including the current law, and bring forward for consideration a new policy - not only on all the issues that I have raised, but equally on sexual health and our attitudes towards under-age sex practised by our under 16 year-olds. I ask you to reject this proposition, and I would like to propose a reference back. Thank you.

The Deputy Bailiff:

What is the ground for your reference back?

The Deputy of St. Ouen:

The grounds for my reference back are based on a number of issues: one, that the current law is not being exercised; therefore, it is improper and wrong for the Home Affairs Minister to recommend alterations to the law while we know and in full knowledge of children under the age of 16 involved in sexual activity on the scale I commented on earlier. Also, we have not in the report been provided with full information on the other alternatives which have been commented on by the Home Affairs Committee and, equally, are adopted in other countries. Finally, the other area was that we have had no comments from either the Health Department or the Education

Department on this matter. Thank you.

Senator M.E. Vibert:

On a point of information as a previous President of Education, Sport and Culture, we did pass on comments that the Legislation Committee were dealing with the issue at the time.

The Deputy Bailiff:

First of all, is that seconded? **[Seconded]** The Standing Orders are now slightly different. Whereas previously there was a general discretion in the Chair, it now says: "A Member of the States may propose without notice a reference back in order that (a) further information relating to the proposition can be provided to the States." The Deputy has explained the further information which he requests. Accordingly, it seems to me that...

Senator W. Kinnard:

Can I just say that I was going to address all of those points as to why we made the decision that we made to lower the age to 16. There is a limit as to how much one puts in a report and certainly I intended to address all of those issues in the summing-up. Indeed, if the Deputy had contacted me I would have been happy to provide it for him.

The Deputy Bailiff:

Minister, I am sorry, the time to say that, then, is in the debate which I am just going to allow, which is on a motion to refer back. So you can make those points as to why it should not be referred back. Anyway, we now have before us a proposition duly seconded, which I accept, that this matter be referred back. Does any Member wish to speak on the reference back?

Senator S. Syvret:

I think it would be quite cowardly and, frankly, pointless to refer this proposition back. Many Members of the Assembly are clearly opposed to the proposition. Therefore, the correct thing to do - the courageous thing to do, the honest thing to do - if that is the way you feel, is simply vote against it. Frankly, to refer this back is just further time wasting and shenanigans - political ducking and diving that will serve no real benefit. If Members are opposed to the proposition, vote against it. I must just comment on some of the comments made by the Deputy concerning Brook and Health and other aspects of sexually transmitted diseases in society. It is certainly true that sexually transmitted diseases are a problem. It is not true to say that there is no monitoring of them. There is a significant element of monitoring of at risk groups in the Island for things like HIV and hepatitis. Perhaps what the Deputy is referring to is a programme of unlinked, anonymised testing whereby everybody in the Island - whoever submits a blood sample to the hospital for testing for all kinds of illnesses and ailments they may have - would have a portion of that blood taken, anonymised and tested for sexually transmitted infection such as HIV. Obviously such a policy can only really be introduced with the consent of the community and that is why we are going to have to engage upon a detailed public consultation programme. It also is not correct to suggest that all of the testing and treatment currently carried out by Brook at clinics is going to come to the Hospital. We have had over the years and months some disagreement with Brook over the type and scope and scale of tests that they do. Brook, after all, is a small charitable organisation with limited facilities and it cannot, I feel - and this is the experts' view, too - truly become a total stand-alone substitute for the clinics that are provided in the Hospital. Nevertheless, Brook of course does have a very, very important role to play in the Island's sexual health strategy and we are in discussions with them as to what is the appropriate split of work in this field; that which lies with the hospital, and that which may lie with Brook. We will hopefully come to agreements and conclusions on those questions in the near future. The point I wish to make, Sir, is really the matter has been referred back. I do not really think that is an honest way for the Assembly to go forward. I just think you should make a decision on it one way or the other. If Members feel that strongly about it,

then they should vote against it.

Senator M.E. Vibert:

I wish to concur with the sentiments expressed by Senator Syvret. I am sure I - along with a number of Members of this Assembly - wish we did not have to make this decision; wish we had not been asked to make it. But it is our duty as States Members to make it. I do not believe that the information asked for by Deputy Reed in his reference back would make one iota of difference to anyone's decision on this issue, whether they vote for or against. It will simply put off having to make that decision and I believe that to do so is a dereliction of our duty. We are elected as States Members to make such decisions. We may not like having to make them but it is our duty. One of the items of further information Deputy Reed asked for was, for example, Education, Sport and Culture's response to the proposition. We were asked last year. We submitted it because it was then the Legislation Committee asking us. I can summarise; I will not read it all. It was that the then Committee was of the opinion that: "Any amendment to this legislation should be a matter for the conscientious consideration and determination of individual Members of the States." This is what I was referring to before, our duty: "We recognise that clearly any amendment to legislation in this area may have implications for the programmes of study for personal, social and health education - PSHE - which are taught in our schools, which cover sexual health, etc, and, of course, we would adjust and recognise any States decision. But the main message in our schools is for young people to make informed decisions and to understand these matters." I think that States Members should be cautious of accepting what may seem to be an easy way out - a way of not having to make the decision today. We will have to make this decision whether we like it or not, and patently some of us do not like it. I feel there is nothing to be gained by putting off the making of this decision. It is up to all our consciences to decide and I believe we should make that decision today. Thank you, Sir.

Deputy P.V.F. Le Claire:

I think the Deputy of St. Ouen has made quite an exceptional speech today. **[Interruption]** Excuse me, Sir. I apologise for the phone being on, Sir. It is now off. It is not a question of making a decision today and having the courage to make that decision today. It is a question of having the courage to make the decision when it comes to the Assembly and that that decision before us is the right one. Some of the issues around the age of equality that the Deputy raised in relation to the recent raising of the age of smoking purchase to 18, and also in comparison to that of consumption of alcohol, surely in the overall scheme of human rights must weigh up eventually in our overall consideration in the issues of morality when weighed against that Article of the Human Rights Convention: the right of the individual. Therefore, I think there is more of an explanation required in determining why it has not been placed before us as to having the option to make lawful anal sex with people of 18 as explained by the Deputy. I think that to rush forwards and approve this or throw it out is a lose-lose situation. The opportunity that he has provided the Ministers is an opportunity to reflect upon the issues and to come back for a decision then. Then, when the decision comes back, as other Members will, I also will not shirk my responsibility in making that decision. But I do not want to be forced into making a bad decision.

Deputy J.J. Huet:

What I was going to say is I know how I voted last time; I have no problem with the way I voted and managed to receive quite a number of anonymous nasty letters. What I would like to ask you, Sir, I seem to remember when we were in this Chamber last time and we discussed this - I seem to have it in the back of my mind - we were told though some of us voted against it, we were actually told we could not. Even if we did vote against it, the UK would say that we had to carry it out. Now, I am sure I have a reasonable memory for things like this, so the vote did go the other way last time. I am almost sure that we were all told it does not really matter how you vote, you will be made to fall in line with the UK. Now, I am not a lawyer and I would like to ask if I was correct

and, if I was correct, will the same thing be applicable now?

The Deputy Bailiff:

It may well be. The Minister will deal with that in due course perhaps or one of the other Ministers. I saw Deputy Lewis.

Deputy K.C. Lewis:

I think that has just been touched on by Deputy Huet, the fact that there are certain human rights compliance issues here. Could we ask for a legal opinion from the Solicitor General, if she would be so kind, as to what the ramifications would be if we became non-compliant.

Miss S.C. Nicolle, Q.C., (H.M. Solicitor General):

The ramifications of being non-compliant are that, as the current position is, the European Convention on Human Rights extends to Jersey, but the Jersey law on human rights has not yet been brought into force. The distinction that makes is that the provisions of the Convention are not enforceable in the domestic courts. That is, somebody who felt aggrieved by the provisions would not be able to bring an action in the Royal Court but a complaint could be made to the European Court of Justice and would be dealt with in that Court in accordance with the provisions of the European Convention on Human Rights. That includes those provisions which are set out in the report which is attached to the proposition.

The Deputy Bailiff:

I think one of the questions was whether there was a risk that the United Kingdom would legislate separately.

The Solicitor General:

If the question is whether the United Kingdom would legislate for Jersey, the answer is that that is a question of constitutional law upon which there are differences of opinion at very much higher levels than my own. There are, in fact, articles by experts in back-numbers of the Jersey Law Review, which I would be happy to give Members the references for. **[Laughter]** Indeed, if the Bailiff, who was the editor, was here, I would add that Members can also subscribe at very reasonable rates to the Jersey Law Review. **[Laughter]** I am not trying to be facetious. The fact is it is an open question. It is one for dispute and it is one on which very eminent constitutional lawyers do differ: the power of the United Kingdom to legislate for Jersey. Therefore, it is not one on which I can give an absolute yes/no answer or, indeed, a yes/no answer at all.

Senator S. Syvret: Could I ask the Solicitor General to expand upon this? Suppose that the UK Government did feel obliged due to their commitment to the European Convention for Human Rights to intervene in the island's affairs and legislate for the Island, that would precipitate something of a constitutional crisis.

The Solicitor General:

Well, as to whether it is a crisis I would not like to say. It would certainly give rise to a constitutional test case of very significant proportions.

The Deputy of St. Ouen:

Please, Sir, I just have one quick question for the Solicitor General. Could she please just confirm that Guernsey, Alderney, Sark and the Isle of Man currently have the same laws as we have? So if the UK was to actually look to us, there are other islands that would equally be at fault.

The Solicitor General:

Unfortunately, I cannot say what the position is, though it may well be that it is set out in the

comparative table in the appendix. Yes.

The Deputy Bailiff:

Can I just make it clear, too, that we are at the moment debating the question of a reference back. The issues mentioned may well be very important as to whether the Assembly does or does not vote in favour of the proposition, but for the moment we are concerned with the reference back which would, therefore, lead to delay but not to a decision one way or the other. Now, does any other Member wish to speak on the reference back? Deputy of St. John.

The Deputy of St. John:

I hope that I have this right with the reference back, but my concern is the Chief Minister yesterday in a presentation went on a lot about our international personality. I would be very concerned if we suddenly get dragged through the Human Rights Courts and other courts because of not acting on this proposition today. I think we should be concerned about that. We are working very hard at our international personality at the moment and I hope that we do not get this wrong. I also have some information here, if I am at liberty to give it at the moment, from the British Medical Council which may have some bearing on Members' decision. Am I able to give it?

The Deputy Bailiff:

Well, I think if this is for or against the proposition then you should wait and bring it up at that stage. At the moment the Assembly is debating whether to send this back to the Minister for further information. Only if what you have to say is relevant to that decision should you make it now. You certainly would be able to bring it up when the debate is on for or against the main proposition.

The Deputy of St. John:

Well, I would urge Members to try and make a decision today and not reference it back, Sir.

Deputy G.W.J. de Faye: I strongly support Senator Syvret when he says this is not something we should refer back. I am really disappointed at the approach that some Members are taking and I feel that it is partly spurred by the fact that we are here at 5.30 p.m. and would it not be jolly convenient if we can put this all off to another day.

Members: Oh!

Deputy G.W.J. de Faye:

I think that there is a sense here that referring it back will somehow roll the clock back on this, that somehow if we push it away today it will disappear under a carpet somewhere where we do not have to deal with this for a while. The facts are - I hasten to remind my colleagues in the Assembly - that we are going to be passing human rights legislation, that this is an issue important to many people who have strong views on either side, that times have changed and that there are in Jersey young people who are gay - who do not think they are gay because they are young and confused, they are gay. This legislation is extremely important to them. They are also bright and intelligent young people and trying to put this off will simply mean it will be one of our own young people taking us to the Court of Human Rights to establish their own rights in this matter. I do not believe that a reference back is going to be of any help at all. Incidentally, may I point out, where are the amendments? There are none. If everyone was so concerned about this issue and the age of consent and should it be 18 or 16, where are the amendments? They are not there. This is essentially a legal issue that is bound upon us because of our relationships with the United Kingdom and Europe. I think the report is absolutely clear that in terms of the rulings made by the Court of Human Rights, we have no choice at the moment other than to get on with it and decide it appropriately.

Senator P.F.C. Ozouf:

Do we need more information? The translation of the Le Geyt Code of 1694 at Charing Cross is worth a read. It describes the world of the 17th century, the world of criminalisation of all sorts of things. Thankfully we have moved on from the 17th century. We have also moved on from the Victorian era of a denial of the existence of homosexuality. Jersey is a modern, tolerant, liberal society; at least that is what I think it is. Since I have been elected, there have been various different attempts to out me as an individual. Unlike perhaps in the UK, my privacy has been protected and I am grateful for that. I have never hidden and never will hide my own sexual orientation. It is simply not a political issue. I have, unfortunately, in the lead-up to this debate received homophobic insults from various different people and that experience has perhaps led me to the conclusion that there is a requirement for some sort of statutory criminalisation of racial and other forms of abuse, of which homophobic issues happen perhaps more than some people would believe. This issue was debated in the UK in 1999. A universal age of consent was supported by many institutions: Barnardo's, Children in Need, most of the child support agencies - all for good reasons. Sexual orientation is a complex issue. It is not an issue of choice. Homosexuals are not different to heterosexuals in their activities or feelings. I would say to the Deputy of St. Ouen, because he has made a number of suggestions that we need more information about things, intercourse of whatever kind without consent is illegal. We do not need any more information about that. The Deputy of St. Ouen said, "We should not send a message to pressurise young people". That is right. That is absolutely right. The age of consent has to be equal. We do not need more information. We have to agree this proposition. Those are our international obligations. Those are our moral obligations. I hope Members will reject any attempt to refer this proposition back for more information and I hope they go on to support the proposition. It is really quite important.

Senator W. Kinnard:

I am in a bit of a difficult position, I think, Sir, because obviously the reference back is on the basis of a requirement for more information, which indeed I am more than happy to give. I suspect that I may well be speaking at some length and I know that, indeed, ordinarily we do expect - if we are not necessarily going to conclude business quite quickly - to break at 5.30 p.m. and come back tomorrow. I am in the hands of the House. I am more than happy to speak and provide that extra information that the Deputy has asked for, but it is a matter of how long the debate is going to go on thereafter.

The Deputy Bailiff:

May I ask how long you plan to speak for?

Senator W. Kinnard:

Well, Sir, I should imagine it will be about 20 minutes.

The Deputy Bailiff:

Does the Assembly wish to proceed? Carry on, at any rate, to the end of the reference back debate? Very well.

Senator W. Kinnard:

Okay, thank you, Sir. I suspect, Sir, that the debate will probably be had now on the reference back because...

The Deputy Bailiff:

Not if I have anything to do with it. **[Laughter]**

Senator W. Kinnard:

Oh right, okay. Well, I will try my best.

The Deputy Bailiff:

Because it is clear that matters on a reference back are to be confined to the merits of the reference back.

Senator W. Kinnard:

Right, Sir. Well, obviously I was asked how did the Home Affairs Committee actually decide to take the course that it took in suggesting the age of 16? Well, Sir, it is quite clear from the proposition that we looked very carefully at most member states of the Council of Europe recognising the equality of treatment in respect of the age of consent. Mostly that is, I think, round the ages of 15 and 16. We also took on board, Sir, the recommendations of the British Medical Association and their concern that the existing law as it stands might inhibit efforts to improve the sexual health of young homosexual and bisexual men between the ages of 16 and 18 years. Also, we took on board the support of the Royal College of Psychiatrists, the support of also a number of other groups and authorities in the United Kingdom, some of which have been mentioned by Senator Ozouf: NSPC, National Children's Bureau, Barnardo's, Save the Children, NCH Action for Children, The Royal College of Nursing, Family Welfare Association, National Union of Teachers, national AIDS charities, National Association of Probation Officers, British Association of Social Workers, the All-Party Parliamentary Group on AIDS and Brook, and so on. In addition, we were also passed the proposition, it having been already consulted upon by the Legislation Committee. Of course, therefore, Education, Health and Legislation had been consulted prior to the lodging and, indeed, given their approval. The Community Relations Trust also was given an opportunity to comment. So, Sir, indeed we did take on board a lot of those issues. We also looked very carefully, Sir, as is perhaps touched upon in the report, on the issue of whether we should equalise the age at 16 or at some other age. We carefully considered the raising of the age of consent. Of course, the merit in that is we then create an equal age of consent, but really that is where it stops because there were an awful lot of problems with it. There is little doubt that teenagers are sexually active by the age of 16. Certainly there is a lot of large-scale research. Indeed, the Deputy himself pointed to some research locally to show that teenagers, indeed, have their first sexual experience at - on average I believe - 15 years, 3 months. The effects of raising the age of consent to 18, Sir, would be to further criminalize up to one half of the cohort of young men aged under 18. That is if we were to raise it to 18. If we were to raise it to 17, about one-third of young men would be criminalized. It seems to me that so many people in that circumstance who are already in a sexual relationship would be criminalized and it would make it unworkable. Law enforcement bodies - and I have to say this as the Minister of Home Affairs - could not possibly make the enforcement of criminalizing acts between consenting people between the ages of 16 and 18 a priority. It would also place the police in an impossible position in relation to very many young people and undermine the relationships that have developed very positively between police and young people. Only young men, Sir, with a change as suggested to 17 or 18, would be criminalized in terms of unlawful sexual intercourse because young women are not considered to commit the offence. It seems to me, Sir, also that it is not only impractical but not desirable either to criminalize all young people between the ages of 17 and 18. Sixteen is an age at which, of course, many people can leave school. Thankfully many of our young people now go on to higher education, but at 16 young men and women are, of course, beginning to establish their own independent lives. Besides, young heterosexuals can marry at 16, so raising the age of consent would mean that we would have to raise the age of marriage and that would have lots of other knock-on effects, inheritance laws, and so on. Girls of 16 or 17 who became pregnant, therefore, would not be able to marry the father of their child. By raising the age of consent either 17 or 16 for anal intercourse would, indeed, I think, lead to many young people - if not actually subjected to prosecution - having that standing over them as a Sword of Damocles. I find it difficult to believe, Sir, that any such prosecutions could

serve any useful or necessary public purpose in the circumstances. I do strongly think that proposals such as this - which would end up criminalizing an awfully large number of young people who are currently in very happy, positive sexual relationships - could be capable of challenge under the Human Rights Act if we were to seek to do that. I am also a bit suspicious, Sir, that the argument for raising the heterosexual age of consent only tends to arise when we are discussing equalising the age of consent when we are talking about homosexual acts. The issue really, Sir, is not about what is the right age because most people, I do believe, think that 16 is the right age. If it is not, then why did we not at another time have another proposition to change that? The issue is not about what is the right age, but it is about whether the law should treat young gay men differently or whether the same law should apply to everyone. In this context, Sir, I do believe that arguments about changing the age are something of a red herring. We have been perhaps also given the spectre of sexual predators and the vulnerability of young people. Indeed, Sir, doing my research for this Project, I did look at the Hansard material about the debate in the House of Commons. There were a series of amendments there. Indeed, one of the amendments was to make it an offence for a man to have sex with a boy or girl, for instance, aged 16 or 17 if that man was in a position of authority and influence and in a position of abusive trust and so on. Indeed, there were some very interesting arguments there and I am one that will always support anything that will really protect young men and women from sexual abuse, whether that abuse is homosexual or heterosexual. But by merely raising the age of consent or refusing to lower it as well for homosexuals really will not achieve anything about dealing with the rather difficult and distressing issue of abuse of young people. In fact, Sir, there can be no justification, I think, in a situation where this kind of problem of sexual abuse is associated merely with the subject of homosexuality because some 66 per cent of males who are convicted of sexual offences against boys indeed are heterosexual not homosexual. The issues around exploitation and sexual abuse are indeed, in this context, different issues - issues for another day. I will explain why. They should not ride on the back of a simple reform about equalising the age of consent. This simple amendment here today is not the right vehicle. These issues are complex and distressing matters and issues such as sexual exploitation and abuse deserve standalone consideration. Indeed, many of the issues of concern will be covered in the new Sexual Offenders Law which is due to be lodged later this year. There is also, Sir, a growing body of evidence about abuse. Indeed, that body of evidence shows that there is no evidence that a higher age of consent actually protected, for example, vulnerable young men, particularly those in care, when the age of consent was 21. Indeed, many of the reports that have come out about abuse of young people in care, that abuse went on when the age of consent was, as I say, 21 or 18. There is no connection, no direct connection, between age of consent in this issue and increased vulnerability of young people in care or otherwise. I have also had raised with me the health issues. Have we looked at the health issues? Well, of course, Sir, we did consult. As I mentioned, in fact, the Legislation Committee consulted with the Health Committee on some of the health issues. Indeed, we all know that unprotected sex of any form does carry health risks for boys and girls, whether they are gay or straight. Boys and girls risk HIV infection if they have unsafe sex. In the case of heterosexual sex, of course, girls also risk unwanted pregnancy and boys risk becoming a father. We do not use the criminal law to try to prevent young heterosexuals aged 16 and over from taking those risks. Instead, we use education and information. Equally, we should use education and information rather than the criminal law to prevent young gay men aged 16 and over from taking unnecessary risks. The criminal law just does not stop young people having sex, but it is difficult, of course, to carry out an effective HIV prevention or sexually transmitted disease prevention strategy if the activity in question is also a criminal offence. That is why in 1994 the British Medical Association announced its support for the equal age of consent at 16. Sexual practices were mentioned as well. Indeed, I think I said in my opening speech that, in accordance with Article 8 of the European Convention, the Committee did not feel that it was appropriate for them to take such a prurient interest in people's private activities between consenting adults. I have also been asked why we did not provide any information about issues around immaturity and vulnerability. Well, Sir, I did in the report refer to the British Medical Association research.

Indeed, when they considered evidence on biological development, what they actually said, Sir, was that researchers now believe that adult sexual orientation is usually established before the age of puberty in both boys and girls. The purpose of the age of consent legislation is to protect vulnerable young people from sexual exploitation and abuse, but there is no clear justification for a differential age for homosexual male activity and other sexual activity. Unwelcome sexual attentions of a seriousness warranting criminal prosecution are equally offensive whether the victim is a man or a woman. The same law should apply to all. The Department of Health and the Medical Research Council found that, indeed, also if we are looking at age of first homosexual sexual experience - we are dealing with this issue about information on vulnerability - they found that by the age of 16, 50 per cent of young men had had their first homosexual experience. By the age of 18, 90 per cent had done so. The mean age for the first homosexual experience was 15.7. This is in the UK. We do not have quite the dedicated research here in Jersey to be able to give the figures for Jersey, but I think that culturally we are very similar. Indeed, Sir, 60 per cent of those first homosexual encounters were with a partner within 2 years of their own age and the activity was not only hoped for but actively sought. So, Sir, we are not talking, I think, here about the concerns that are suggested, that by lowering the age to 16 that suddenly there will be a whole cohort of young people between the ages of 16 and 18 who will be subjected to the unhealthy attentions of older sexual predators. There is absolutely no evidence from the research - this is not me speaking, Sir, this is the BMA - that younger men are seduced into homosexuality. The more accurate picture is that gay men are aware of their sexual orientation before 16 and, indeed, as we have seen, seek partners their own age. It is also the case, Sir, that the Royal College of Psychiatrists have also rejected the developmental arguments for an unequal age for young men. Indeed, it was way back in 1957 that *The Wolfenden Report* actually said there that they also found that the argument that is often put forward about this vulnerability, particularly of young men, and the need to protect them was an argument that could be carried too far: "That there comes a time when a young man can properly be expected to stand on his own feet in this as in other matters and we find it hard to believe that he needs to be protected more carefully than a girl does." They went on to say that the medical witnesses that were called before them were unanimously of a view that the main sexual pattern is laid down in the early years of life and that it was usually fixed by the age of 16. Many held that it was fixed much earlier. Then, some 40 years later that evidence was corroborated by all medical opinion in the 1994 British Medical Association published report as I have referred to already, Sir. The British Medical Association has also said that extensive research does not indicate that men aged 16 to 21 are in need of special protection because they might be recruited to homosexuality. As we have also seen, Sir, responsible professional opinion overwhelmingly rejects the argument that young boys between 16 and 17 need special protection, and I have listed the whole list of those organisations involved with the welfare of young people. It seems to me, Sir, also that it is worth pointing out what the NSPCC actually said just prior to the debate on this issue of equalising the age of consent at 16 years. What they said is: "Continuing discrimination stigmatises young people growing up gay and hinders them from developing a positive self-identity. Young people should be helped, not prevented from coming to terms with their sexuality. There must, of course, continue to be adequate protection under the criminal law for young people of either sex, but the NSPCC does not believe that there is a case for making any distinction in this respect between homosexual and heterosexual activity." The European Commission of Human Rights has also ruled in 1997 quite clearly that they will not tolerate an unequal age of consent. Indeed, they go on to say in their report on that issue that: "Even if as claimed in some parliamentary debates that there may be certain young men for whom homosexual experience after the age of 16 will have influential and potentially disturbing effects and who may require protection, the Commission is unable to accept that it is a proportionate response to the need for protection, that is, to expose to criminal sanctions not only the older man who engages in the homosexual acts with the person under the age of 18, but the young man himself who is claimed to be in need of protection. The Commission cannot accept that this could in any event constitute an objective or reasonable justification for inequality of treatment under the law." Some of the issues

were raised, I think, on matters of morality and, of course, the arguments for equality do not..."

The Deputy Bailiff:

I think the matters of morality are for the main debate. At the moment, Minister, it is simply a question of the reference back.

Senator W. Kinnard:

Okay. There is much information obviously that we sought to look at and, indeed, our overwhelming consideration of this research - which is very easily accessible anyway - was that the overwhelming majority of childcare organisations support it and support the move. Medical opinion supports the change. Indeed, Sir, I do believe that public support for equality is growing. There have certainly been lots of polls in the United Kingdom to show that that is the case. Obviously we do not have the facility to conduct such polls so readily in the Island. As I say, Sir, I think when it comes to these kinds of matters, we are socially and culturally very, very similar. I think that such research does bear some clear extrapolation to the situation in Jersey. Certainly, what polls in the United Kingdom have shown, Sir, is that one conducted in February 1999 asked the public about the issue of reducing the age of consent to 16. Sixty per cent said that they supported it; 66 per cent said that there, of course, should be an equal age for consent for everyone; and 54 per cent said that they would set it at 16. Now, that was an NOP survey, but there have been other surveys that have shown, Sir, that the number of people agreeing to equal rights in this matter have grown since 1991 to 1995. In 1991 it was 65 per cent; 1992, 71 per cent; 1995, 74 per cent. I think there is a body of cultural change that has understood what these issues are about, Sir, and know that we must move with the times. I could go on much longer, but I will probably keep it for the rest of the debate, Sir. The one point I would like to make to Members is this is not an issue that can be shirked. We have to deal with it because if we do not deal with it someone else will deal with it for us. The way in which it will be dealt with for us could happen in 2 ways. We could suffer the embarrassment of not being compliant with the European Convention. Indeed, I do not know if many Members remember the hoo-ha over birching and so on quite a long time in our history, but it did our international reputation no good whatsoever. Forgive what I am going to say, Sir, it was used as a stick to beat us for many years and decades afterwards. I have to say, if we do not deal with it here, as I say, somebody else will. Our international reputation will suffer. Indeed, we intend to bring into force the Human Rights Law. It is far better that we bring into force the Human Rights Law with these pieces of legislation, which really are a prerequisite, actually having been dealt with. Otherwise, they will be dealt with. One of our own local people will bring a case to our own courts. There is already a case in Europe at the moment. If it comes to our own courts, looking at all the case law and precedents - there has certainly been enough of it now - I cannot see that our courts could make any decision other than to say that our existing law in this area is in contravention of both Article 8 and Article 14. Then, what would happen is the principal law would be struck down. That in itself is an incredible embarrassment. Frankly, we would have to then reform the law in any case. It seems to me far more sensible and far less painful to do it now while we can without having to, if you like, hang our dirty washing out in the public for all and sundry to view. Thank you, Sir.

The Deputy Bailiff:

I am going to call upon Senator Cohen next - I have seen him - but can I just remind Members this is a debate about whether to reference back or not. It is a fairly short and simple issue and unless Members really feel they have something useful to add they might like to exercise restraint. Now, Senator Cohen.

Senator F.E. Cohen:

This is about equality in our society and compliance with standards set by our international partners. To maintain the differential between homosexual and heterosexual sex is unacceptable.

The only options are either to lower the age of consent for legal homosexual sex or to raise it for heterosexual sex. I am not aware of any medical evidence to support maintaining a differential. I cannot see that a further delay will achieve anything.

The Connétable of St. Ouen:

Can I bring us back to where we are this evening as an Assembly? We had made a ruling that we would rise at 5.30 p.m. unless for exceptional circumstances.

The Deputy Bailiff:

Well, I was hoping, Connétable, that we might get to a vote very shortly.

The Connétable of St. Ouen:

Well, can I say, Sir, that the Comité des Connétables are meeting with the assessors at 7.30 p.m. at the Town Hall. In my own case, I have the paperwork at home and I have to get back for it. Can I propose the adjournment?

The Deputy Bailiff:

Well, shall we just see whether any other Member wants to speak? Does any other Member want to speak on the reference back?

Deputy J.A.N. Le Fondré:

Briefly, Sir. I came to this debate fairly open-minded, I will say - just to get it straight - initially, absolutely in favour of bringing in non-discrimination in some shape or form. Where my reservations began was actually listening to other Members over the last few days, which coincided with personal views which I was not going to express. But I was rather interested as to options B and C, which was to increase the age of consent overall, and what were the ramifications of that. I will also say that comments have been made that, to be honest, they felt the information provided in the paperwork we have had was somewhat lacking in substance in certain areas. That does not mean necessarily I am going to vote against the final proposition at the end of the day, but I must admit in terms of the reference back I would prefer to see further information on why options B and C are not considered feasible. Thank you, Sir.

The Deputy Bailiff:

Does any other Member wish to speak on the reference back? If not, then I will call upon the proposer to reply. In those circumstances, Connétable, do you wish to maintain your proposition to adjourn now or are you willing to allow the matter to proceed as we only have one more speaker?

The Connétable of St. Ouen:

I am prepared to maintain my proposition because if the reference back fails we will then carry on with the debate.

The Deputy Bailiff:

No, I think everyone is agreed we would then adjourn. Right, Deputy of St. Ouen to reply.

The Deputy of St. Ouen:

I will try to be as brief and concise as I possibly can. However, I must tackle a number of issues. First of all, I am appalled some States Members suggest that it is simply delaying tactics. I think it is wholly inappropriate to suggest that. Also, would those same States Members be aware of the current problems that we have implementing our existing laws? The whole purpose of the reference back was to ensure that all of the issues mentioned in the report and the ones that I have raised are dealt with. Are we supposed to be - as is suggested by some States Members - bullied and threatened by the fact that a European court might choose to believe that some of our laws

might be inconsistent with human rights when we are being provided with evidence - proper evidence by the Home Affairs Committee, if you look at the appendix - of many, many countries with all sorts of different conclusions to the same problem that we are being asked to consider today. Interestingly, most of Australia has chosen 17 as an age...

Senator W. Kinnard:

I was not aware it was under the European Court of Human Rights jurisdiction.

The Deputy of St. Ouen:

I am not giving way. I am only repeating information that has been provided by the Minister herself, Sir. Madagascar has chosen 21, for instance. I will not repeat them all, but we have a whole range of issues. We also know, quite rightly - it has shown us here - Jersey, Guernsey, we have the same law. Alderney, Sark, their laws state 21. Republic of Ireland, 17. That is close to home. Isle of Man, 16, 18, same as we are. There are obviously other countries that are faced with the same sort of difficulties. I am not saying and I am not promoting necessarily one particular option. I am saying that we need to properly understand why we are reaching a particular decision and the information that has been provided for us is not here. We also are not aware whether the efforts of the Education, Health and Home Affairs Ministries are actually working. As I have spoken about earlier, and I am not repeating myself, I have highlighted that there is a very large proportion of our young population on this island that are practising sex underage. That is fact. You will not fiddle with that. You will not affect that. You will not address that issue just by bringing the age of homosexuality from 18 to 16. However, this must be addressed. We cannot just bury our heads in the sand and say because of some human rights issue, "Oh, well, we will just agree to 16. We will allow everything else to go on." Therefore, the conclusion is that the 12 and 13 year-old girls will reflect the new 16 year-old age for boys so we have 12 and 13 year-olds practising sex, anal sex. Consultation: who have you consulted? **[Interruption]** Sorry, excuse me. I know, Sir, you have not consulted anybody. We do not understand and we have not been told by the Minister for Home Affairs who she has consulted. She has read and commented on various Medical Associations and so on and so forth. They are not here. This Island needs to be consulted. The parents, where are the parents' views in this? Where are the doctors' views in this? Where are the Brook Centre views? Where are ACET's views? All of these issues are related, I am sorry to say, to what is termed by some as a simple proposition. We cannot carry on allowing, as I say, the law to be broken. Not only the law to be broken, but there are many cases, I am told, that are referred currently to our Child Protection Unit and nothing is ever done. Nothing. These are serious...

Senator S. Syvret:

Could the Deputy explain precisely what type of cases he is referring to?

The Deputy of St. Ouen:

The types of cases involve children between the ages of 12 and 14 having sexual relationships with adults over the age of 25. Now, these...

Senator S. Syvret:

I am sorry, on a point of order, Sir...

The Deputy of St. Ouen:

Sorry, Sir, I will not be interrupted. The Health Minister should know his subject and if he does not...

Senator S. Syvret:

I do. **[Laughter]**

The Deputy of St. Ouen:

Then I suggest that he needs to find the information for himself.

The Deputy Bailiff:

First of all, let me see if it is a point of order because the Deputy is not giving way.

Senator S. Syvret:

The Deputy is giving information to the States that is simply inaccurate and incorrect and it is an important point germane to the debate. When young people below the age of consent - females the Deputy has referred to - are found to be having sexual intercourse with males who are older than them, a view is taken by the relevant protection agencies. If, for example, a 15 year-old girl is having sex with a 16 or 17 year-old boy, a particular view is taken of it. If, on the other hand, it is a man older - of the age of 25 or over as the Deputy suggested - that would certainly be regarded as a child protection issue and the relevant references to the police force would take place.

The Deputy of St. Ouen:

Yes, Sir, that is what I have just said. **[Laughter]** The cases have been referred to the Child Protection Agency and nothing has been done. **[Interruption]** I will not give way again, Sir. The Minister is quite at liberty to contact... and I will give him the names of the people that I have spoken to who have informed me of these particular cases. There were 3 last year.

The Deputy Bailiff:

Let us come back to the need for reference back.

The Deputy of St. Ouen:

Sorry, yes, Sir. The Minister of Health suggests the issues are complex and I totally agree. We have already seen that. But they are all directly related - and I underline this fact - to the proposed amendment. Equally, I would like to point out to this Assembly that we felt strongly enough about a certain issue in this Island relating to our disadvantaged young people that we commissioned and included and collaborated with and - through I think it was 3 or 4 departments - instigated a report which Kathie Bull carried out for us. The consequence of that was that we reviewed entirely our attitudes and the way that we dealt with this group of people. Now, this is the thing that I want to happen. This is why this particular proposition needs to be referred back. Because we have the ability now before we tinker round the edges and bury our heads in the sand for yet another time, that we can properly address the situation for the benefit not only of our young people but of the Island as a whole. I speak as a parent and as a parent I expect that this Assembly actually faces this concern, addresses it in a proper and mature manner and will benefit everybody. It might be that 3 or 4 months down the line we might be facing a proposition which comes to a similar conclusion to that which is provided today, but I do believe that we are all entitled not only as States Members but as an Island as a whole, to believe and recognise that our department and our people, our Ministers responsible for these areas consider properly all these issues before we change the law. Therefore, I ask States Members - in fact, I plead with States Members - please support this reference back. It will be for the good not just of our young people but for the Island as a whole. Thank you.

The Deputy Bailiff:

You ask for the Appel?

The Deputy of St. Ouen:

Yes, Sir.

The Deputy Bailiff:

The Appel is called for and the matter is for or against the proposition of Deputy St. Ouen that this matter be referred back for further information. The Greffier will open the voting. Have all Members had an opportunity of voting? The Greffier will close the voting.

Members present voted as follows –

POUR: 19		CONTRE: 32		ABSTAIN: 0
Connétable of St. Mary		Senator S. Syvret		
Connétable of St. Peter		Senator L. Norman		
Connétable of St. Lawrence		Senator F.H. Walker		
Connétable of Grouville		Senator W. Kinnard		
Deputy R.C. Duhamel (S)		Senator T.A. Le Sueur		
Deputy J.J. Huet (H)		Senator M.E. Vibert		
Deputy of St. Martin		Senator P.F.C. Ozouf		
Deputy G.C.L. Baudains (C)		Senator T.J. Le Main		
Deputy P.N. Troy (B)		Senator B.E. Shenton		
Deputy of St. Ouen		Senator F.E. Cohen		
Deputy of St. Peter		Senator J.L. Perchard		
Deputy J.A. Hilton (H)		Connétable of St. Martin		
Deputy P.V.F. Le Claire (H)		Connétable of St. Ouen		
Deputy J.A. Le Fondré (L)		Connétable of St. Saviour		
Deputy D.W. Mezbourian (L)		Connétable of St. Clement		
Deputy of Trinity		Connétable of St. Helier		
Deputy S. Power (B)		Connétable of Trinity		
Deputy I.J. Gorst (C)		Connétable of St. John		
Deputy of St. Mary		Connétable of St. Brelade		
		Deputy A. Breckon (S)		
		Deputy C.J. Scott Warren (S)		
		Deputy R.G. Le Hérisier (S)		
		Deputy J.B. Fox (H)		
		Deputy G.P. Southern (H)		
		Deputy S.C. Ferguson (B)		
		Deputy P.J.D. Ryan (H)		
		Deputy of Grouville		
		Deputy G.W.J. de Faye (H)		
		Deputy S. Pitman (H)		
		Deputy A.J.H. Maclean		
		Deputy K.C. Lewis (S)		
		Deputy of St. John		

The proposition for the reference back is lost 19 votes in favour, 32 votes against.

ADJOURNMENT

Senator S. Syvret:

In that case, Sir, shall I propose the adjournment and that we reconvene at 9.30 a.m. tomorrow morning?

The Deputy Bailiff:

Yes, the adjournment is proposed, so 9.30 a.m. we will resume debate on the main proposition.