

STATES OF JERSEY

OFFICIAL REPORT

TUESDAY, 21st NOVEMBER 2006

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

APPOINTMENT OF MINISTERS, COMMITTEES AND PANELS

1. The Bailiff:

We come to the appointment of Ministers, Committees and Panels and I have to invite nominations for the Chairmanship of the Health and Social Security and Housing Scrutiny Panel.

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

I would like to nominate Deputy Breckon, thank you Sir.

The Bailiff:

Is that nomination seconded? **[Seconded]**

1.2 Deputy A.E. Pryke of Trinity:

I have great pleasure in proposing Deputy Le Hérissier as Chairman of the fifth Panel.

The Bailiff:

Is that nomination seconded? **[Seconded]** Are there any further nominations for...?

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

Yes Sir. I would like to nominate the Deputy of St. Ouen.

The Bailiff:

Is that nomination seconded? **[Seconded]** Are there any further nominations? Very well, as Members will know, Standing Order 120 provides that if more than one person is nominated as Chairman of the Scrutiny Panel, I have to invite each candidate to speak for up to 10 minutes and after each candidate has spoken up to 20 minutes may be allowed for Members to question him or her. So, Deputy Breckon having been the first Member to be nominated, may I invite Deputy Le Herissier and the Deputy of St. Ouen please to withdraw to the Le Capelain Room where officers of the Scrutiny Panels will be there to shepherd you until the time comes to invite you back to the Chamber. Deputy Breckon, I could perhaps advise you before asking you to address the Assembly that the Greffier will sound a bell after 9 minutes and then a final bell after 10 minutes. Would you like to address the Assembly?

1.4 Deputy A. Breckon of St. Saviour:

Thank you Sir. As I look at the back of Deputy Fox's head I am reminded of a former life. It seems many years ago, Sir, but I have done spells on the Health and Social Services Committee with former St. Saviour Connétable Jack Roche. Recently, I was on the Social Security Committee that has just expired, as it were. I have done a spell on the Housing Committee; and I do have some general knowledge of these issues, although I would not claim to be an expert in any of those areas. As well as having a knowledge, Sir, I believe I also have an understanding of some of the issues and where they, perhaps, cross-over. I should say that I did enjoy the involvement in that former life with the Committees and perhaps I would enjoy looking at it in a little bit of a different way. maybe I would even suggest that I would know where to look - to use a Council of Minister's term - to find some quick wins. I come to this, Sir, with no fixed agenda; with no baggage; and I believe it should be policies and not personalities. That is my belief in doing this. There are a number of sub-panel reviews underway, including G.P. out of hours which is nearing completion; the Overdale is again nearing completion; and there is some cross-over and generally these things are working well, but they also put a bit of a strain on the system. The Health area, Sir, does have the biggest budget, with income of £15.6 million and expenditure £143.1 million. It is a critical area for the community and there are some very emotional areas sometimes which attract media

attention. I do not believe that we should play politics, Sir, or a game of political football. But when the need arises then we need to look dispassionately at subjects but be aware of the emotions and the passions involved. And be aware also, Sir, that it is a people's service: they have a reliance on this service and I think we should be respectful of that because sometimes, in Health, it is when people are at their lowest ebb and it is the duty of us all to have a duty of care and concern in that area. There should be no sides here, at all. What we should do, Sir, is to aim to achieve that all receive the greatest benefit from the service and I believe that Scrutiny has a role to play in that. The areas covered by Health and Social Services are wide and far-ranging, and they have some strategic aims and objectives. But I would, Sir, respectfully suggest that they are tempered with the fact that we are dealing with people here, and while benchmarking is a useful thing to have, you need to be aware of people's expectations. The major thing is that the strategic aims proposed by Health between 2001 and 2005 in regard to improving health and social care are now drifting away as it were, and the main driver is the plan that has been produced - the new strategy - called "New Directions." That would incorporate some of the objectives contained within the business plan. What Health is doing, Sir, is creating both demand and need, and in 2003 the University of Birmingham Health and Services Management Centre recommended that the service required between 3 per cent and 5 per cent real growth in the next 5 years. Now, some of this has happened but not all of it. But I would suggest, Sir, that as well as wise spending there needs to be proper accountability within agreed protocols. So it is not just a case of ongoing growth: it is a case of how that is achieved. Of course it does touch on people because they have a level of expectation of the delivery of these services. Also, Sir, the staff is vital as over 2,200 staff in many areas provide many services 24 hours a day, 365 days of the year. So as well as accountability and benchmarking, it is important to realise, I believe, the sensitivity of these areas and any reviews should bear this in mind. I believe that most of what I am saying, Sir, is about us working together for the common good - no spoiling agendas - and I believe Scrutiny can play a part in the development of Health and Social Services and I believe, Sir, it dovetails into Employment and Social Security. In a former life, Sir, I was a member of that Committee for very nearly 2 years and also Industrial Disputes Officer since 1995 - a position I thought that had expired until yesterday I got a telephone call saying there were some problems at the Airport and what could I do about it. The major change for Social Security will be next year with the income support. Again, a sub-panel is reviewing this and there would be no intention, Sir - if I am involved - to change any of that. They would continue and they have already made an interim report. I would respectfully suggest that this is an area where Members all need to give attention because it is a very important area because we are moving from something we know to something we do not quite know yet. There has been talk of losers and winners. There is £20 million set aside for phasing; we have the G.S.T. factor; and there is a range of benefits and allowances in and out of work, and the word integration has been used, Sir, and that is very important - that needs to happen. Employment numbers: again, to the population that is an issue and it links with housing, and it probably deserves some scrutiny. Also, there are a number of measures within Employment and Social Security for performance and success criteria based on the Strategic Plan and I am sure, Sir, that they are worth a look. But again, there are no personalities issues: it is about policy and the progress of it hopefully. In regard to Housing, Sir, there are a number of policy areas under development - the Housing Law and the Population Office; the Shared Equity Law; there is a Property Improvement Plan; and there is the debate that we have not had on the management of public property and whether we have an agency. In general terms, Sir, in these areas I think that it is important for a Scrutiny Panel to cover this area, which is over £260 million and involves over 2,400 people, and these are whole-population issues and people have a reliance and an expectancy of the services. The only thing I would say, Sir, I give the House the assurance that if elected I will treat the position with respect. As I said earlier it is about policy and principles, not personalities; and I have no personal agenda whatsoever. Thank you, Sir.

The Bailiff:

Thank you, Deputy. Do any Members wish to question? Deputy Ferguson.

1.4.1 Deputy S.C. Ferguson:

Obviously there will have to be consideration given to risk areas and the question of priorities. Which areas broadly would you consider scrutinising in order of priority?

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

Could I just raise a point of order? It might also be helpful because I was talking to Deputy Breckon whilst the Deputy was giving her question. I could not help but notice there may have been a problem with the timing of the bell. As I was sitting next to Deputy Breckon, I did notice that in response to that he did flip over a page of notes that he was going to make in his speech. Obviously we have not had the benefit of that particular page. Could I just clarify whether there was an error or not, and if there was might the Deputy be allowed to give us the information that he would have done under different circumstances?

The Bailiff:

If the Deputy would like another 2 minutes to address the Assembly he certainly may have them.

Deputy A. Breckon:

I should say I had not timed this to the minute, Sir, but I did just have a number of bullet points if it is okay to do that. This followed on from the possible Housing policies and matters coming forward. It was just general points about health, social security and housing; about them being important areas of everyday life, something for us all to be aware of and we all should share the commitment and values that the people need. The Ministers have much to do and Scrutiny, I believe, should inform this process, not frustrate it. The thing I did miss - which is probably important - if elected I would view membership as being open with anyone who expressed an interest being considered. Thank you, Sir.

The Bailiff:

Thank you very much. Now, Deputy Ferguson, would you mind repeating the question you put through the chair, please?

Deputy S.C. Ferguson:

I talked about the risk areas and questions of priority. Which areas broadly would the Deputy consider scrutinising first in order of priority?

Deputy A. Breckon:

The Deputy mentioned risk and priority but, as I did say in those few words, there are some matters that are already being worked on; Overdale being one and G.P. Out-of-Hours being another. Also, there is the Income Support; a group has been set up. Regarding risk, the Income Support has to be a big risk area because it is a major change from where we are at the moment. As regarding priorities, that would be something for a panel when appointed to sit down and discuss. It would not be necessarily for the Chairman of it to give all the agenda, but perhaps to guide it.

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

Would the Deputy advise the House how he imagines he would be able to build an effective working relationship with the Ministers involved in the panel?

Deputy A. Breckon:

I think over the years I have worked with many people inside and outside the House. I do not have a problem working with people, and if we are talking about the business of government, then we

should get on and do it and, as I said, we should set aside the personalities. Senator Le Main is not here; Senator Syvret is, as is Senator Routier. I have worked with them all before and I do not see the Ministers being a problem. Some people in the department might have different ideas about Scrutiny but I think if we can set the agenda at the senior level we can work together. I do not think working with people is a problem if you have the same goals, and I think that is what we must do.

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

The Deputy has already experience of heading up the Dairy Scrutiny Panel. Can he say what lessons he has learned from that experience in working together with Ministerial colleagues?

Deputy A. Breckon:

The Dairy Panel was a joint review with the Chief Minister and the Dairy Scrutiny Panel, which I chair, and I think it has been effective but, of course, the final result will not be known until we have the debate and how that information informs the States and the community and the dairy and everybody else about the way forward. I think it has been a learning curve. The terms of reference were agreed between the Panel and the Chief Minister and I think it is effective use of public resource. I do not think there is anything to be gained by Ministers doing review and Scrutiny doing review which overlaps, and I think this is one area where hopefully the outcome will prove this to be effective. I would like to think from that, Sir, that more policy and development is shared with Scrutiny and the Ministers rather than presenting a paper and saying: "What do you think about this?" So I think there is some benefit in joint reviews in all sorts of policy development areas.

1.4.4 The Deputy of Trinity:

Could the Deputy comment if he feels that the Overdale Inquiry proved to be a good example of Scrutiny?

Deputy A. Breckon:

It will be a good example if the findings are good enough to stand public scrutiny and Ministerial scrutiny because the outcome may differ from what has happened. But it would be a good review if it had influence on what happens in the future because, again, it is a delicate area. We are talking about the care of the elderly; and not just the care of the elderly, but the family have concerns and when people find themselves in these situations they do not necessarily want a review. They want somebody to do something, so any scrutiny process must try and influence what happens in the future. If it does, then it is good. If it does not, then it is useless.

1.4.5 Deputy F.J. Hill, B.E.M. of St. Martin:

The Deputy has been very successfully involved with the Consumer Council for a number of years. Would the Deputy be stepping-down from the Consumer Council if elected Chairman of the 5th Panel and, if not, which of the 2 would take priority of his work?

Deputy A. Breckon:

I think it would be presumptuous, Sir, to say that I will be doing anything until this election is over, and then if I do not get elected it is not a factor and if I do I will have to consider the other things that I am doing, including Economic Affairs Scrutiny Panel. So, everything is on the agenda, as it were.

1.4.6 Senator J.L. Perchard:

If the Deputy is successful he will by right take a seat on the Chairmen's Committee. Is the Deputy satisfied with the way the Chairmen's Committee is conducting itself at the present and could he suggest to the House any improvements he may try and impose upon them?

Deputy A. Breckon:

I was told that I would receive copy by email of the Chairmen's Committee deliberations. That has not happened, but I did get some yesterday. Although they are posted and I do look at the agendas to see what is there for discussion, it could be a difficult area because we are still on a learning curve. If elected, one of the things that goes with it is a seat on the Chairmen's Panel, so I think it possibly would be better to try and influence outcomes from inside rather than criticise from outside. It is, as I said, a difficult area and there has been some tension at times between Scrutiny itself and between the Council of Ministers on things like terms of reference and Standing Orders and the law and the interpretation of that, so I think the Chairmen's Panel has a long way to go. I think it has a profile problem: it needs to come out a bit, but I think some of these issues are being worked on. I think rather than be too critical from the outside, if elected it would be something to do from the inside.

1.4.7 Senator B.E. Shenton:

The Deputy mentioned the word 'accountability.' Is that something he believes in or just a sound bite used at election time? Because certainly I have not come across any accountability since I have been in the Chamber.

Deputy A. Breckon:

It is accountability to whom, Sir? I am a member of the Public Accounts Committee so in that sense there is the accounting accountability. There is also the fact that we have to answer to the public in how we do that, and hopefully that is happening because that is what the changes in Ministerial government were supposed to be about: about being more accountable for the actions that we take. People were nominated in different areas to do that and if it is not happening we now have a Business Plan with a set of aims and I think the Chief Minister has said these are more than performance targets; these are things that have to be met and somebody will be accountable for that. I think that is where Scrutiny can get involved in whichever department it is; look at things that have arisen from that Business Plan and make other people accountable, but do it in a constructive way.

The Bailiff:

If there are no other questions for Deputy Breckon, I will ask the Greffier or the Chief Usher to arrange for the next candidate, Deputy Le Hérisier, to return. Deputy Breckon, would you be kind enough to withdraw to the Le Cappelain Room? Deputy Le Hérisier, may I please advise you that the Greffier will sound a bell after 9 minutes and then a final bell after 10 minutes. May I call upon you to address the Assembly?

1.5 Deputy R.G. Le Hérisier of St. Saviour:

Why should I do a job that has very little fame and glory? I have always been interested in social policy. I have a background in social policy. I do have a background; I do not talk about it too much. Having left Jersey and having left university, I went into the Prison Service. I trained as an Assistant Governor in the Prison Service. I worked in the Youth Offenders side of the service. I then moved to academia. I moved to the University of Ulster, where I taught social policy. I came out of the university and I went to the Canadian service, where I went back into correctional services. I worked in staff training and management development and basically organisational change. Then I did something I would never have been allowed to do in Britain: I moved into Probation Services. I worked in the north of the city managing a probation office. Having finished and having really decided, I suppose, that my interests lay more in academia, I went back to academia. I went to work in Africa where I taught public policy in central Africa. After another break in the service, I went to Hong Kong, where I was principal lecturer in public and social policy at the City University, which was a new place which was very much part of their expansion in higher education. Again, it was fascinating to work in another environment which obviously had

a very different approach to social policy. It was capitalism rampant in Hong Kong but there was a lot of work to do. It was a very open place but yet a very traditional Civil Service in many respects. Overall I found it very fascinating and probably because it was such a place that was so much against my basic values in many respects. To that extent I found it a very exciting place to work in. I then came back here. I worked in Highlands. I taught - I worked in their business department - but I eventually left and moved into what I thought was semi-retirement (some people would have said: "Well, that is what you have been all the time"). I ended up teaching on the degree where they do a very... well, they did. Until this year they did a very high emphasis upon social policy and I remain very interested. So I have always had that background; I have always been interested. I have always thought about the issues and I think in those particular environments, having worked for a long time both in the practical environment and in the academic environment, it gave me a very good overview of the issues and it also gave me a very good intro to the kind of skills that are involved. As regards Scrutiny here, I think I have been very associated with it. I see it very much as the absolute complementary side - as I will argue in a later debate this morning - of the government. I am not of the view that it has been misinterpreted. I think it has been misinterpreted because people on many sides of the fence are trying to cope with it, and that is as much Ministers as the people on Scrutiny. It is the easiest thing in the world to say: "They are a bunch who cannot focus, they are struggling, they are doing this" but that in my mind is only at best half of the picture. I am on 3 Scrutiny Panels. I am on the Environment Panel, which has been highly educative. We have some very strong arguments, which cannot be wrong in my view. To me it has been a new field and I have really enjoyed it - although occasionally, it has to be said, we have strayed - but I have thoroughly enjoyed a new field and testing out the issues. I am on the Dairy Panel, which is a so-called fast inquiry, fast being the 'unoperative' word because it is an experiment also in working with the Executive. I think there are some real issues there. I think it is good that we have got ourselves involved, but I have real questions about how you work with the Executive, how you keep yourself separate from the issues so that, so to speak, when the day of judgment arrives you have not got over-involved. I think there are real issues there particularly with an issue that almost is unravelling itself in the nicest sense as we go. I think it can work but we have to think very carefully about it. The third one is Overdale. It has been called by one or 2 people useless. I think quite the opposite. It is a fast Scrutiny and it was one of those very much in line with the kind of Scrutiny models we studied in the U.K. It was one of those which was drawn up in response to public concerns. That does not mean by its nature it is a populist kind of study; quite the opposite. It means there are deep concerns, some of which are not fully articulated and a Panel gives them the chance to do that, as well as to look at the immediate issues, which was the nature of the move. Back to the 3 areas: Health, well, there is a major new policy paper appearing, the *New Directions* paper. There are a whole range of papers have appeared over the years, and in my view in terms of priorities... although I do not think it is up to a Chair to say: "This is what I want to do." They can bring certain skills; they can bring, as I have just indicated, certain experiences, but ultimately I do not think it is up to them. Certainly what I would see was care of the aged, I think this is a major, major issue. We are seeing the tip of this in the Overdale study. We have seen it with the Parish move out of that particular aspect of welfare. It is a major issue and I think even now we are probably under-estimating its many manifestations. I think social services are a very important issue. We came late to the party and there is some good work being done in developing social services. But in a service that has a major emphasis on community... and I have worked in a service where we had community services and institutional services, and you could always be accused of what was called the concrete edifice complex, which was a rather complex way of saying: "All the money goes into buildings." That is always an issue where you have got those kind of services working apparently together with each other. But social services I think is a very interesting issue. I think another interesting area is health promotion because I think that is an area, either from a P.A.C. (Public Accounts Committee) point of view or a Scrutiny one, where some fundamental questions have to be asked. It is a fast-changing field. We rely on it a lot, as we will no doubt when smoking comes up later. We continually talk about education, public persuasion which

often means public propaganda, and we have to ask some very fundamental questions about what is a very expensive unit. Social Security, in a way, is settled although I am sure the Minister would not say that. The Low Income Support System is obviously coming in. There are still certain areas to be discussed about the extent of administrative decentralisation, for example, but I would also like to look at broader insurance with the Health Minister and department. I am very keen on the whole notion of a continuum of insurance and we have heard some absolutely frightening tales from people about paying for their residential and nursing care, for example, and we have really got to stand back and say: "What are the financial implications?" Partly bound up with the tax issue is our reluctance to have high taxes, but that is a major, major issue and I want to look at the whole issue of insurance. We have a model that works but maybe it is overdue for reform. Another area that interests me - I know there is some very good work done on employment services but again I think we have to look at that in more detail - is how they relate to agencies, how they measure their effectiveness and how the specialised side of it, like the Employment Trust, works. I know they do very good work but again they are very costly and we have to keep looking at that. I am very impressed with a lot of the work that goes on in Social Security. I am one of the fans, although I do agree that much of the devil will lie in the detail of Income Support. On Housing, I would not pretend to be an expert on Housing although I have worked on housing degree. What I would say, Sir, obviously much is going to hinge on the new paper, which we eagerly await and which is apparently in the works, because that is obviously going to change the nature of housing provision. I think the relationship between the States and Housing Trusts, while some people see that as a buried issue, I think it is manifesting itself in different ways in terms of the setting-up a whole series of management centres, for example, and the costs that are implied. Then I think there are probably issues that are more P.A.C. orientated or Comptroller and Auditor General orientated: issues like maintenance and vexatious issues which strike me have yet to be fully resolved. I know people are now working on them with a new energy. Rent arrears, for example. So, in terms of my overall approach, Sir, my view of Scrutiny - and it is very trite to say this - is an evidence-based process which tries to reach its conclusions on the basis of evidence and where (which is very, very difficult for politicians) we park our biases and prejudices. It has been easy to criticise Scrutiny because it is characterised unfairly as the second division team, but remember, it is a long-term process, Sir. It is one that by its very nature is always in tension with Ministers and with the Council. They make the cultural transition. They have a strong desire to control and a strong desire - and this is only politics, there is nothing to be terribly critical about - to be seen in a favourable light. We are the people not who bring the bad news but who bring the rather solid, sometimes dull and boring news. I think this situation will calm down as we get involved in formulating policy and contributing to debates. Thank you, Sir.

The Bailiff:

Thank you, Deputy. Now I invite questions. Deputy Ferguson.

1.5.1 Deputy S.C. Ferguson:

If we look at the risk areas and the question of priorities, which areas broadly would you consider in order of priority for Scrutiny?

Deputy R.G. Le Hérisier:

As I said earlier, I am not one of those who believes in giving a prescriptive view, but as far as I am concerned the broad priority has to be in each case the business plan of each department and then the major policy document that underpins the business plan: *New Directions* in the case of Health, and the new Housing document. With Social Security it is less clear because they have pushed through an enormous amount of reform and doubtless there is a period of consolidation. I would very much say, with the major policy document, *New Directions*, in Health, that I would follow that with care of the aged. I would follow that with social services and, to a lesser extent, health promotion. Thank you, Sir.

1.5.2 Deputy D.W. Mezbourian:

Would the Deputy advise the House whether he believes that the relationship with the Ministers involved with this new Panel would need to be for him perhaps different to the relationship he has with them as a private Member?

Deputy R.G. Le Hérisier:

I do not think it need be that different because as a private Member - and this is what undoubtedly makes me unpopular in certain quarters - I am by training, as I have tried to suggest in background... and certainly if you operate in a service like Corrections you have to be fairly forceful otherwise you are going to end up very much as the junior partner. I think it is the job, if I may say to the Deputy, Sir, to be questioning but to be questioning in a professional way. I do not think the relationship need change. Clearly you cannot be over-familiar with people and clearly I am aware, for example, in one case I am accused of having some kind of personal vendetta against a person. My view is in those circumstances your priority is always to behave with utter professionalism, to ask questions in a professional way, to be able to prove that the conclusions reached came from the evidence and, if they did not, to admit that, and to act generally in that kind of manner. Thank you.

1.5.3 The Deputy of St. Martin:

Scrutiny, like the Executive, has been very much a learning curve and there have been some successes and there have been some failures. Would the Deputy assess Scrutiny to date and what improvements, if any, would he be looking to make?

Deputy R.G. Le Hérisier:

Well, it is a very exciting process, I have to say, and I have thoroughly enjoyed it. We have had our moments and clearly there has to be reform. I would say one of the first reforms probably has to be much more dialogue, but dialogue in a structured sense with the Council of Ministers. At the moment we get on the grapevine negative comments of one kind or another. But much more dialogue, I would say, with the Council of Ministers because I think they will see where we are coming from and we, hopefully, will see where they are coming from. I would say issues like the confidentiality of information have to be looked at in much more detail. I think we are fairly good at that, but clearly there are people who still do not for various reasons trust us. I think we probably have to have tighter codes in that regard. I think, Sir, we have to be more organised as to how we look at the Business Plan and the Strategic Plan. Obviously this was a learning year but there were mistakes made, we were not up to speed in some respects, and I think we have to have a much more systematic approach as a group of panels. So, that is another area. I think also - and this came out at Scrutiny's recent away day - the communication to Scrutiny members; we have some incredibly committed people, people who have real drive and enthusiasm for the process and they have to feel part of it. They have to feel that the Chairmen's Committee is not some group of people determining policy, which it is not. Its mandate does not allow it to do that, but that is the perception. They have to feel that they are part of that process, and that has to be worked on very, very strongly. I think those are enough reforms for the moment.

1.5.4 Senator F.H. Walker:

The Deputy said that he believed in more dialogue between Scrutiny and Ministers, and I think we would all concur with that. He also went on to express concerns about the current Dairy Review, which is one of those areas where there has been a tremendous amount of dialogue between the Scrutiny Panel involved and me as the Minister responsible. Could he clarify his position on that?

Deputy R.G. Le Hérisier:

I have had several discussions with the Chairman of the Dairy Review in this regard. I have no problem, Sir, with a review looking at a current policy, but I think what we have to be very careful

about... It is a learning process, quite frankly, because I do not think we have ever gone into a review where there is a review actually looking at a policy which is unfolding in front of our eyes and where the main stakeholder - as the Chief Minister well knows - the producers, for example, last Friday afternoon, have very strong views: views that are not necessarily compatible. What I am saying is we have to build-in some breathing spaces. I think that is what I would have learnt from that. I have no problem with the principle of working together. We have to build-in breathing spaces. We have to ensure that our hearings are separate from consultations that the Chief Minister may wish to have with the groups and that they are properly transcribed. All that is going to mean is probably going to be a more delayed process because I know there are people, because of the state of morale in the industry, who want some very quick answers, but I am afraid, Sir, it is probably going to be a lengthier process than we thought. So, to come down to the Chief Minister's point, Sir, it is not that I object in principle to what we are doing, but I think we have to be very careful indeed, much more careful about how we handle it.

1.5.5 Senator P.F.C. Ozouf:

I have heard the Deputy being highly critical of the former Health and Social Services Committee and, indeed, on occasions, the current Minister. Could he summarise his criticisms of current health policy and how would that criticism inform his choice of reviews if he was successful?

Deputy R.G. Le Hérissier:

I would like to think, Sir, that the criticism - and this is another issue I mentioned earlier - is about policy; and it should be about policy. I would like to think that there would be vibrant, robust and, quite frankly at times, very, very difficult debates because I do not like what I am seeing with Ministerial... but I am sure it is a growing pain, where people are getting away with quite superficial examination of policies. There needs to be a much tougher thing. But as regards my criticism, I would prefer not to put it in that way but I will because the Minister insists. I would like to see money accountability much tighter, although that is essentially for P.A.C. and the Comptroller and Auditor General to look at, but I would like to see that. I would like to see management structures looked at. I have had several meetings - very useful meetings - with the Chief Executive who has called me in and explained various positions when I have questioned the proliferation of positions. We have had some very interesting debates, but I would like to see that looked at. I would like to see real energy and, of course, I am partly to blame and I will be blamed because I was on the Health Committee, as you know, for a time. I would like to see real energy put into issues like care of the aged where I think we really have to face the fact that massive problems are building-up. I do not underestimate the problems Health are facing. Public expectations are increasing all the time. The cost of healthcare is increasing all the time. The public are much more vocal about what they want from Health, so I certainly accept that particular view. There is always going to be an immensely difficult balance to achieve. I also want to look at other units that have been the Cinderellas, perhaps, of the service because they cannot get... as I said earlier, like social services and like, to a lesser extent, health promotion.

1.5.6 Deputy J.A. Martin:

Would the Deputy just clarify for the House where he sees the involvement of Scrutiny starting? I am a bit confused. Is it always after the development of policy or does he see a place for sometimes Scrutiny being involved in the process and development of new policies?

Deputy R.G. Le Hérissier:

I would only see the development of new policy as falling out from the review of old policy because I think our task - and I might be taking the slightly traditional view - is to examine policy and formation. I would say the ideal point; I do not see any problem and I know some Panels have done a very good job of this, sitting down with the Ministers and saying: "What ideas are going around in your Ministry? What are you thinking about?" and that is excellent because it gives you

an idea of what is happening. My view is the major intervention should be at the so-called Green Paper stage when the options are being put on the table by a department and Minister and Scrutiny can talk to the options. So, in other words, it has not firmed-up but there is quite a bit of research been done; quite a bit of the work has been done, but no way has it firmed-up at that point. That is when, in a sense, the process should be stopped and Scrutiny should get, so to speak, on board the moving train and get involved.

1.5.7 Deputy G.P. Southern:

The Deputy is starting to sound a little to my ears like an alternative Minister. How will he avoid falling into the trap of being pulled into creating alternative policy?

Deputy R.G. Le Hérisier:

It strikes me if you are looking at a policy and you start coming to the conclusion that the policy by its very nature is a defective policy, you have to draw this to people's attention. I think you will see more of that because part of the problem with Scrutiny in the last year - or part of the fog that has been created around it - is that it has had to jump on moving trains. It has had to deal with policies which have been settled a long time and, as we used to find even in the old States let alone the new one, it is very difficult to stop that train and say... as an example that affects Deputy Southern, Sir: J.T. (Jersey Telecom) privatisation. It is very hard to say: "Well, look, I am sorry, at some point in the dim and distant past this was not thoroughly evaluated and we have ended up with the wrong option", for example. So, yes, I think there will be times when you will say in a report, having analysed current proposals: "Well, look, I think we got this wrong. I think you really need to go back to fundamentals because you have started off from the wrong point."

1.5.8 Senator P.F.C. Ozouf:

The Deputy has been in this Assembly for 7 years and held a number of quite senior positions, and he has a reputation for somebody who speaks well. Could he tell me what are his top 3 things that he has delivered over the last 7 years as evidence of his ability to deliver something as opposed to speak?

Deputy R.G. Le Hérisier:

Yes, I would like to thank the Senator for that. I think we got the States of Jersey Law through. That was a Law that embraced about 120 amendments. It embraced a vast number of sub-issues like conflict of interest and so forth; the Scrutiny system. It involved the whole reform of the Assembly, so in terms of 3 items I think there were 120 items in that. I think even though I have been criticised from here to kingdom come, we had the courage - misguided, naïve, simple - in the face of some pretty bizarre opposition and some pretty bizarre alliances. We had the courage to push the States of Jersey reform and I at least had the guts to stand up there and push it, even if I was totally misguided and wrong, instead of the namby-pamby, shilly-shallying, dodging, that I found with other people. We at least had the guts to put it forward, even if it did not work out. Thank you, Sir.

The Bailiff:

If there are no other questions for the candidate, I will ask the Greffier to ask the final candidate to come into the Chamber.

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

In this interregnum, can I just point out, in case anyone is wondering, I am not asking any questions of any of the candidates because whoever the successful candidate is, I will obviously have to be working with them or at least trying to.

The Bailiff:

Deputy, while you catch your breath may I just advise that the Greffier will sound a bell after 9 minutes as a warning that your time is about to expire, and then finally after 10 minutes. Then, of course, there will be 20 minutes of questioning to follow that. So, if you are ready, may I call upon you to address the Assembly?

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

The first thing that I would hope to assure Members is that I do not think they are even going to hear the bell. Sir, I have been a Member of the States for the last 4 years and in that time have endeavoured to take full advantage of all opportunities to further my understanding of the way our government operates. I fully support the new system of government and want to play an active part in developing the Scrutiny function. I believe Scrutiny is an essential part of government designed to enhance the decision-taking process whilst at the same time providing the community with a greater degree of understanding and trust in the way the Island is run. It is all about engaging with the public, addressing their concerns and ensuring that any new or existing policies developed by departments are fit for purpose. Scrutiny's main aim must be not only to hold the Executive to account, but to help improve the quality and effectiveness of public services. To underpin this aim, I would plan to have 3 key objectives which in time can be clearly monitored and measured. My first objective would be to create an effective Scrutiny body. To do this, one needs to be able to scrutinise constructively the Executive policies, administration and expenditure. This, in many instances, is only possible if there is a good working relationship between the Panel and the relevant departments and Ministers. My aim would be to develop that relationship, which should be one of mutual trust and recognition of each other's roles and responsibilities. To be successful, the Panel has to work as a team, and I would seek to select Members who share that view. I believe my role as Chairman, if elected, would be to ensure that Members are at all times accurately and effectively briefed and encouraged to play a full part in the Scrutiny process. Part of the success of any team obviously includes the support staff, and I would aim to ensure that clear guidance is provided to those officers, maximising the potential of the resources available. My second objective would be to investigate issues of local importance. This is clearly at the centre of any Scrutiny function and one which I believe to be extremely important. To achieve this, members of the public will need to be engaged in a meaningful way. I would propose to develop a dialogue with interested parties and organisations, creating a platform on which issues can be debated. I will do this by developing a greater understanding of the role of Scrutiny and also how it can improve the decision-making process. To achieve this goal, it would be my intention that the Panel - as I have said before - work closely with the relevant departments and Ministers to develop a provisional programme of work to cover the next 12 months. My aim would be to arrange meetings with Health, Social Security and Housing to discuss the departments' individual business plans. In turn, these plans would be used to determine the Panel's work programme in part for 2007. I am aware that there are a number of extremely important issues to be considered by the individual departments next year, such as the implementation of the Income Support Scheme, the redesign of the Island's Health and Social Care System, and the introduction of a Shared Equity Scheme, to name but a few. It is, therefore, extremely important that a balanced and prioritised work programme is created. Prior to finalising the Panel's work for 2007, it would be my intention to seek the public's view, thereby ensuring that the greatest benefit can be gained from the proposed topics to be reviewed. The programme would also need to be able to respond flexibly to events and issues that come up during the year, and I would intend to ensure that sufficient time is allocated within the work programme to allow for this. It is my view that in certain circumstances the use of sub-panels can be both appropriate and beneficial and I would propose to take advantage of this option if it was deemed appropriate by the Panel. The final objective would be to raise the profile and reputation of Scrutiny. I will work closely with members of the Chairmen's Committee to develop a greater public understanding of Scrutiny and the part it can play in the government of this Island. I will aim to work with the Council of Ministers to improve communications between the

Ministers and Scrutiny, thereby maximising the benefits Scrutiny can offer. For my part, I will endeavour to ensure that all sectors of the community are included in this process and engaged in a meaningful way. Consultation must, in my view, be a 2-way process. One simply cannot ask a question without being prepared to listen to the answer. My aim in carrying out any review would be to present reports that are focused, authoritative and evidence-based, as I firmly believe that this will ultimately lead to improving the public's trust in government. I do not stand in front of you with any preconceived ideas or political agenda other than to see our government become more accountable to the people of this Island. I am passionate about our Island and have a genuine desire to see Scrutiny establish itself as a useful and effective element of government which benefits the whole community. In conclusion, I want to ensure that the public services are responsive to the needs of our Island residents and delivered in an efficient and cost-effective manner. I want to develop a greater public understanding of the services provided and promote best practice within all departments, especially in the areas of delivery. Basically, I want Scrutiny to add value and be recognised as an essential part of the Island's government. If elected, I will work hard to ensure that these objectives are met and ask that you give me this opportunity. Thank you.

The Bailiff:

Are there any questions for the Deputy? Deputy Ferguson.

1.6.1 Deputy S.C. Ferguson:

If we consider the risk areas and the question of priorities, which areas broadly would you consider in order of priority for Scrutiny?

The Deputy of St. Ouen:

I think, as I have said before, I am going to use 2 methods: one to identify what the proposed business plan is and what is proposed by the departments in each area, and secondly, I will look to the public to deal with and address their concerns.

1.6.2 The Deputy of St. Martin:

The Deputy in his speech says he wishes to raise the profile of Scrutiny. Could I ask the Deputy how will he achieve that objective?

The Deputy of St. Ouen:

I think it is first of all to speak plain English: get the clear message across, encourage all members of Scrutiny to do the same. We are able to engage with the public. This is a small Island. We have relatively small constituencies that allow us to speak directly to many groups of people. I believe by speaking to interested parties, groups, organisations, we are well able to raise the profile, to get the message out exactly what Scrutiny is able to do and the benefits that can be gained from it.

1.6.3 Deputy D.W. Mezbourian:

Would the Deputy advise the House what Scrutiny review produced this year he believes to be the most effective and the reasons for that?

The Deputy of St. Ouen:

It is my view that every Scrutiny review is effective in many different ways, and I would not want to select a particular review out and hold it up as an example. I think there are many different reviews that require different attitudes, different attention, different procedures to address the issues concerned. I believe that, if I was Chairman of a Panel, I would certainly use a whole range of different methods and mechanisms simply dependent on the particular topic that was being considered. Thank you.

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

May I ask the candidate if he was successful whether or not he will continue to be the Vice-Chairman on the Public Accounts Committee and whether or not he considers this position one that requires the full attention of its Chairman? Also, whether or not he would retain a position on the Scrutiny Public Accounts Committee if he was successful as currently is undertaken by Deputy Breckon? So what I am basically asking, does he agree with my sentiments that this job is too important to share his time and responsibilities with others?

The Deputy of St. Ouen:

Obviously I considered long and hard before putting my name forward for the position as Chairman of the new Scrutiny Panel. I have very much enjoyed - if that is the right term - the time spent on Public Accounts, but I equally recognise that as Chairman of a Panel, especially this particular Panel, that there is a great deal of work and area that will need to be covered. As such, I do believe that if I was elected I would concentrate all my efforts in this area. Thank you.

1.6.5 Deputy G.P. Southern:

The Deputy has earned a reputation as being a very hard working and committed Member with passionately held beliefs. Does the Deputy believe that he can develop the required academic distance from passionate ideas to ensure effective academic scrutiny?

The Deputy of St. Ouen:

I believe passion is a good thing, not bad. Equally, I hope - and it will obviously be for Members to judge - that although I have been passionate I do focus all my attention at all times on the evidence. I firmly believe that certainly with the examples that have been set by various Chairmen that I have served under, I do feel able to, as I say, provide the... not all of the tools necessary to do the job, but all to the best of my ability certainly, Sir. Thank you.

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

The Deputy states that he believes that Scrutiny is an important part of political process and aims to develop a good working relationship with the Council of Ministers. Could I ask him how does he aim to do this and ensure that a good and healthy relationship is maintained into the future?

The Deputy of St. Ouen:

I think in part it is, as I said earlier in my speech, an understanding and recognition of the different roles that individuals are responsible for. Equally, I think that the Council of Ministers themselves at the recent communications away day recognised that there was work to be done in creating and developing a greater dialogue between the Chairmen and Scrutiny as a whole than what has happened in the last 12 months. Therefore, regular meetings; a greater understanding by all of Scrutiny's role; equally, as I say, respect, which I hope I have been able to command in this House, are all part of the overall picture to develop that relationship. Thank you.

1.6.7 The Deputy of Trinity:

Could the Deputy comment if he feels that the Overdale Review proved to be a good example of Scrutiny?

The Deputy of St. Ouen:

Sadly, I was basically given a choice recently to consider maybe going on the sub-panel of Overdale or Telecoms, and I decided that I would end up being a panel member for the Telecoms Panel. Why I say that is that I currently am unaware of the findings of that particular review, albeit that I look forward very much to see the results from that review. Obviously, if successful, that is one area that the new Panel will cover and, as such, any issues that are raised from that review will obviously be considered, I would suggest, by the new Panel. Thank you.

1.6.8 The Deputy of St. Martin:

Scrutiny, like the Executive, has been very much a learning curve and there have been some successes and some failures. Would the Deputy assess Scrutiny to date and inform the House what steps he would take or any recommendations he would like to make to improve the system of Scrutiny?

The Deputy of St. Ouen:

The message that I would give to the Deputy of St. Martin is that I have spoken to a number of individuals that have been responsible in Scrutiny - not just here but elsewhere in the world - and they are still defining Scrutiny. I think that there have been some successes. I think we have been a little bit caught off guard because although we did have a shadow Scrutiny process which enabled us to train and get experience in Scrutiny, it did not prepare us for Ministerial government and the way that the departments have developed over the last 12 months. So, I would just say that it is and will be, I am sure, an on-going project, one that has already started, one that is already developing, and one that I would assist to grow. Thank you.

1.6.9 Connétable M.K. Jackson of St. Brelade:

In view of the Deputy's demonstrated and commendable passion for various subjects, would he confirm that given the Chairmanship of a Panel that he would be prepared to relinquish some of this passion in the face of contrary views from Panel members?

The Deputy of St. Ouen:

As I said before, to be a successful Panel - and, I suggest, to be a successful Chairman - you need to develop a team. Yes, various team members will have different characteristics, different views, which is all part and the purpose, I would suggest, of having a team. You do not have a football team of all forwards. So I believe that rather than detract, perhaps - as some might suggest - from the role of Chairman, I do believe I can. I recognise that the role has a responsibility that goes with it and I would at all times seek consensus and an informed decision and Panel view rather than a separate or antagonistic approach. However, and this is the proviso, I do believe that individuals who feel passionately about something, even though it may be contrary to the Panel's own review, should have a right to forward that and promote that view within the right context. I would not be one to confine or control the Panel.

1.6.10 Deputy P.V.F. Le Claire:

I just wondered if I might ask a second question because the Deputy is giving me some thoughts as to which way I am going to vote and I am teetering at the moment. I would just like to ask what area does he consider requires the most attention - the most urgent attention - of this new Scrutiny Panel?

The Deputy of St. Ouen:

It is very difficult. As I said, I think I listed 3 areas - one for each department - that are massive areas. We have a major issue that we have accepted the introduction of G.S.T. based on a defined Income Support Scheme. Obviously that is a concern not only to the States Members in this House but others. Equally, we have the issue of an ageing population and how we are going to provide residential care for the elderly. Equally, we have the changes within the Housing Department and the possibility of forming a Housing Trading Association and how we continue to provide social housing. So there are many needs and, as I said, I think that for me the logical approach would be select the team, meet the departments, identify their plans, then seek the public view. From there, then your work programme develops. I do believe that where possible, if successful, I will try and arrange at least one review per department per year. Thank you.

1.6.11 The Deputy of St. John:

Does the Deputy not think that it is important to present a collective and mutual view and that a disputing opinion - a difference of opinion from Panel members - would weaken the credibility of a Panel in the same way that disunity sometimes weakens governments?

The Deputy of St. Ouen:

I would like to clarify what I said before; maybe reinforce it. It is not a case of encouraging independent views. It is acknowledging that at times there will be moments where individuals will have very strong views on a particular subject. Obviously, as such, the role of Chairman and, in fact, any other member of the Panel team, would be to try and address those concerns and reflect that in a report, review or whatever. However, I do believe that there will be and could be times where individuals feel passionate about something but they feel unable to support a particular view. I think that you need that flexibility to be allowed within - if you like - the team ethics, to allow that flexibility for that individual to speak out because in many ways I believe that that could enhance and increase that team view. Thank you.

1.6.12 Deputy J.A. Martin:

I would just like the Deputy to clarify his last few answers. I understand about different views. I understand about passion because I think I have been accused of being quite a passionate Member myself. [Laughter] Well, it has been rumoured. What I do not understand is we are talking about a Scrutiny evidence-based process and when it comes to writing a review does the Deputy not agree whatever opinions, whatever passions are felt, the review must always and only be based and be backed-up by the evidence collected by the on-going review? Can he just clarify that this is his understanding of Scrutiny and being the Chair of Scrutiny?

The Deputy of St. Ouen:

Absolutely. I said it in my speech; I should not have to repeat myself, I do not think, but I will say it. Evidence-based is the whole remit and role of Scrutiny, but the Deputy, like others, will have their own views. Now, I will not suggest that the report should reflect views that are not evidence-based. However, individuals must, I feel, have the ability in any debate to speak about a subject that they particularly feel strongly about. Obviously I would encourage them to look at the evidence. However, I do not feel able and I would not presume to control the Panel members in that particular fashion. Thank you.

The Bailiff:

If there are no other questions for the candidate, I will declare the question period closed and ask the Greffier to request the other 2 candidates to return to the Assembly.

Deputy G.W.J. de Faye:

I would be most grateful if in the intervening period before ballot papers arrive you would be in a position perhaps to explain to the House how we will vote.

The Bailiff:

There are no printed ballot papers, Deputy, for obvious reasons, but the ballot papers when they are distributed will enable Members to vote for one candidate. When the votes have been counted, if any of those candidates has more than 50 per cent of the votes, he will be declared as Chairman of the Panel. If none of the candidates has achieved on a first ballot more than 50 per cent of the votes, then the candidate receiving the lowest number of votes will drop out and we shall proceed to a second ballot and that will achieve the result.

Deputy G.W.J. de Faye:

I am grateful for that clarification. Thank you, Sir.

The Bailiff:

We now proceed to a ballot for the Chairmanship of the new Scrutiny Panel. I will ask the Chief Usher and Deputy Viscount to circulate the papers. I remind Members they can vote for one candidate: Deputy Breckon, Deputy Le Hérissier or the Deputy of St. Ouen. If all Members are now ready to cast their votes, I shall ask the Deputy Viscount and Chief Usher to collect them. If all Members have now had the opportunity to put their ballot papers in one of the 2 urns, I ask the Attorney General whether he would be kind enough with the Deputy Viscount to act as scrutineer.

2. Written Questions

The Bailiff:

While the votes are being counted I think we can start question time and if I return to the Order Paper, there are no matters under G or H. Under I - the written questions - the Minister for Planning and Environment will table an answer to...

Senator M.E. Vibert:

Can I propose we take as read the written questions?

The Bailiff:

Are Members content to take the written questions as read?

2.1 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE MINISTER FOR PLANNING AND ENVIRONMENT REGARDING TEST BOREHOLES FOR GROUNDWATER:

Question

With reference to the document entitled ‘Test boreholes completed successfully’ would the Minister inform members –

- (a) whether the choice of sites for the boreholes was limited to the east coast and where landowners wanted new boreholes?
- (b) what type of liner was used in the La Rocque borehole and whether the liner was damaged during drilling through the ‘plug’? If so, did this compromise the test?
- (c) whether the ‘plug’ was made of plain cement and drilled before it had a chance to harden?

Answer

(a) Before answering specific questions, it is useful to explain that the current investigation is being undertaken by the Deep Groundwater Advisory Group (D.G.A.G.). Members of this group are as follows:

Dr. Ralph Nichols (chair)	geologist
Dr. John Renouf	geologist
Mr. Lewis de la Haye	well driller
Mr. Neville George	well driller
Mr. George Langlois	water diviner
Mr Howard Snowden	Managing Director of Jersey Water
Mr Chris Newton	Director of the Environment
Deputy Sarah Ferguson	States Member
Deputy Rob Duhamel	States Member.

The investigation has been designed to categorically determine, once and for all, whether flowing groundwater streams enter Jersey.

The scientific advisors to this investigation, agreed by all members of D.G.A.G., are the British Geological Survey (B.G.S.) and E.N.T.E.C. (E.N.T.E.C. were the consultants chosen to advise the Scrutiny Panel in its review of the Draft Water Resources Law) These two professional

bodies have worked closely together and have provided a detailed experimental methodology that will provide an evidence-based answer to the question of groundwater streams entering Jersey from Europe.

B.G.S. and E.N.T.E.C. will provide a report containing all documentation and data in December 2006. The report will contain the definitive and unquestionable proof as to whether or not flowing groundwater streams enter Jersey from Europe.

All members of D.G.A.G., including the water diviners and well drillers, have signed up to the investigation and agreed to abide to the findings.

Turning now to the question of how the location of the boreholes was chosen. As detailed in the experimental methodology, the water diviners and well drillers agreed to identify the two most optimal locations and corresponding depths at which they believed streams from Mainland Europe entered the Island. No conditions were attached and the well drillers and water diviners were given an absolute free-hand to select any location on Jersey they wished.

The water diviners and well drillers spent some considerable time tracing streams and identifying the two sites that they considered represented the optimal locations for the further detailed and rigorous scientific testing.

The two locations they chose were at La Rocque and St Catherine. The landowners agreed to allow access for the drilling and pump testing on their land and we gratefully acknowledge their co-operation.

The landowners at these sites did not request a borehole. The La Rocque landowner already has a recently drilled borehole on his property. The borehole at St Catherine is within a wooded area where it has no use to neighbouring properties. Both boreholes are therefore likely to remain unused once the investigation has been concluded.

- (b) As detailed in the answer to question 2(c) the purpose of lining the upper section of the borehole is to prevent the ingress of water and so be able to obtain a water sample from depth that has not been mixed with water from shallower strata. No boreholes on the island had previously been constructed in this way – hence the need for the new test sites.

The sealing of the borehole was accomplished by cement grout which was directed into place by injecting the cement into and around the sides of a P.V.C. pipe tube that had been inserted into the borehole section. An effective seal was achieved by liquid cement grout flowing under pressure into the fractures and fissures and by a 25mm thickness of hardened cement around the outer circumference of the borehole.

The plastic liner having done its job was then dispensable. The fact that several sections of the inner plastic liner were shredded when re-drilling took place has no relevance to the seal that had already been achieved by the hardened cement.

After grouting and re-drilling through the hardened grout the borehole was completely dry. This provides conclusive and unquestionable proof that an effective seal was achieved. The attached report from B.G.S. provides further details.

- (c) The grout mix used was a mix of cement and water. The grout mix had to have a high degree of fluidity to ensure maximum penetration of the grout into the fissures, fractures and joints penetrated.

At La Rocque, the grout was left for more than 40 hours to harden before the start of re-drilling. By the time the lower section of the borehole had been drilled the grout had cured for 68 hours.

Geological samples of the drilling were sampled every half metre. The presence of hard cement chips documented just below the grouted section demonstrates, without doubt, that the grout had set hard. (again see the B.G.S. report on this matter).

Question 2

Would the Minister advise –

- (a) what experience the drillers and the B.G.S. personnel selected to undertake this work had of this type of operation?
- (b) whether there were problems with the La Rocque borehole and, if so, why he has stated 'The experimental drilling went according to plan' 'Effective seals against shallower groundwater was achieved at both sites' and 'I am delighted that both boreholes have now been completed successfully'?
- (c) why boreholes already in existence (where water was first struck below 90 metres) were not used instead of drilling new ones?
- (d) why isotopic testing was chosen and whether this method is capable of distinguishing between Jersey underground water and underground water on the adjacent French coast?
- (e) of the isotopic signature of the St. Catherine bore and state whether he has received data to compare this with the signature from water of the Granville area of France?
- (f) whether he will be investigating the provenance of the water under the Ecréhous?
- (g) whether he will be pursuing and evaluating whether any groundwater connection exists between the Royal Bay of Grouville and the Pointe D'Agon on the French coast following recent water-divining on this route?

Answer

- (a) De La Haye Well Drilling Ltd. were initially requested to undertake the drilling. Due to ill-health of staff they later advised D.G.A.G. that they were unable to do so.

Amplus Limited were therefore asked. Amplus are very experienced at drilling boreholes in Jersey have demonstrated a high level of expertise and competence.

A senior hydrogeologist with extensive experience of borehole construction gained around the world supervised the drilling and ensured that Amplus completed the borehole to the detailed specifications. In addition it was useful to have Mr. George Langlois on site during the drilling operations to take note of the operation and to agree when the depth believed to have contained the stream had been surpassed.

During drilling a detailed site diary was maintained. Comprehensive records of the geology and drill penetration rates were maintained as well as air flush water yield, water temperature, conductivity and pH. Groundwater samples for chemical and isotopic analysis were taken for each variation in penetration or water strike.

I therefore have absolute confidence that the two boreholes constructed by Amplus and documented by the B.G.S. conformed to the requirements of the investigation.

- (b) Apart from the issue of shredding of the plastic pipe at La Rocque which I have already explained made no difference to the integrity of the seal achieved there no problems were encountered. I can confirm that both boreholes conformed to the requirements of the investigation. (see the B.G.S. report for further details).

- (c) The D.G.A.G. explored this option as their first choice because of the much lower costs involved. The existence of deep boreholes is well documented and has been included in B.G.S. reports to the States of Jersey since the early 1990's.

Unfortunately the well drillers and diviners were not able to identify to D.G.A.G. any existing boreholes where they were confident of a connection to French or mainland Europe connections.

In addition, because standard borehole construction techniques do not seal off the water entering the boreholes from shallower strata it was impossible to obtain a discrete sample of just the water coming into the deeper sections of the borehole.

The air flush water yields of the two test boreholes clearly demonstrated that the majority of the water yield derived from water bearing aquifers at shallow depths. As drilling progressed the total water yield increased as new water strikes added to the cumulative total.

Boreholes in Jersey generally make use of this cumulative yield, being the sum of all water strikes as one drills deeper, as such they are mainly uncased and not grouted.

Existing boreholes are therefore compromised by surface water ingress into the deeper layers. This is the reason why the two test boreholes had to be specially constructed.

The test boreholes were grouted and sealed to the depth just above the divined depth of the depth of the streams so that if a stream was encountered its water could be sampled without cross-contamination from above.

- (d) The agreement underpinning the D.G.A.G. investigation, signed by all members, relates to the significance of differences in isotopic signatures between surface water and groundwater sampled at the depth. I reproduce this agreement here.

The agreement

Water samples will be obtained from two specially constructed boreholes to be drilled at two locations chosen and divined by the well drillers and diviners as being the most likely to yield water that had its origins in mainland Europe. Exact construction details of the two boreholes will be agreed with technical advisors of BGS and ENTEC, but in essence boreholes will be drilled to whatever depth the drillers and diviners believe is necessary, up to a maximum depth of 750 feet, and fully lined and grouted throughout the depth to avoid cross-contamination with locally sourced water.

The definitive test will compare the isotopic signature of the water sampled from the two test boreholes with that of water from the surface aquifer.

If the joint consultants BGS and ENTEC show that there is a significant difference in the isotopic signature then all parties accept that the sampled water has a different source to that of water from the surface aquifer.

If the joint consultants BGS and ENTEC show that there is not a significant difference in the isotopic signature between the sampled water and water from the surface aquifer then all parties will drop all claims of an underground water connection between Jersey and the European mainland.

A positive test would lead to further work to quantify the useable inflow of water from outside the island.

As has already been made public the initial results show no significant difference between deep and shallow water so the interim conclusion is that the deeper water has its origins on Jersey, not on the European mainland.

Isotope testing is an increasingly used scientific tool for identifying the origin of groundwater. The water molecule consists of H₂O. The stable isotopes of hydrogen (¹H and ²H) and oxygen (¹⁶O and ¹⁸O) have identical chemical properties but have slightly different physical properties. During rainfall events the heavier ²H and ¹⁸O isotopes tend to fall out as rain at a higher rate than the lighter isotopes (¹⁶O and ¹H). Thus is it possible to make maps of the isotope composition of water and use it to determine the area that groundwater originally fell as rain.

As the isotope signature of groundwater is primarily dependant upon the altitude of the land over which it fell as rain, groundwater derived from Jersey and the immediately adjacent coastal region of France is therefore expected to have similar isotopic values. Should the rain have fallen on areas of France with sufficient altitude to drive a flow of water, through rock, under the sea to Jersey, it would have a different and distinguishable isotopic signature.

- (e) As described above the experimental design is to look for differences between shallow and deep water in Jersey. Were it possible for the well drillers and diviners to identify a particular

location as the source of the water, in France or elsewhere, then it would be possible to do specific comparative tests from that location.

The well drillers and water diviners did not specify a location where they believed groundwater originated from, hence the experimental design which refers to mainland Europe and not any one locality (such as Granville).

- (f) Not as part of this definitive experiment as considerable public money has already been expended dealing with the question of primary importance – does Jersey have an external supply of water resources?

Identifying the origin of groundwater beneath Les Ecréhous could only provide information on whether the groundwater originally fell as rain on the reef or not. Whilst an interesting exercise, particularly from the perspective of the hut users, it will not provide definitive information on whether that water ultimately flows to Jersey.

- (g) As described above, a full scientific investigation has been devised by the group and delivered at some considerable public expense. I was only prepared to sanction this expenditure based on the agreement signed by all members of the D.G.A.G. as detailed above. I am committed to concluding this experiment which members agree will provide the definitive proof.



**British
Geological Survey**

NATURAL ENVIRONMENT RESEARCH COUNCIL

Clarification to questions relating to the construction of the test borehole at La Rocque, Jersey

08 November 2006

Introduction

As scientific advisors to the Deep Groundwater Advisory Group, the BGS and ENTEC have been asked by the Minister for Planning and Environment, Senator Freddie Cohen, to comment on questions raised at the DGAG meeting, 2 November 2006 concerning the construction of the test borehole at La Rocque.

A detailed site diary was maintained throughout the drilling of both test boreholes. Comprehensive records of the geology and drill penetration rate (for every 0.5m depth), together with air flush water yield, water temperature, conductivity and pH was also maintained. Groundwater samples for chemical and isotopic analysis were taken for each variation in penetration rate or water strike. These records together with the results of the chemical isotopic analyses have been used to address the questions raised.

Full documentation of the drilling and construction of the two test boreholes will be included in the final BGS/ENTEC report.

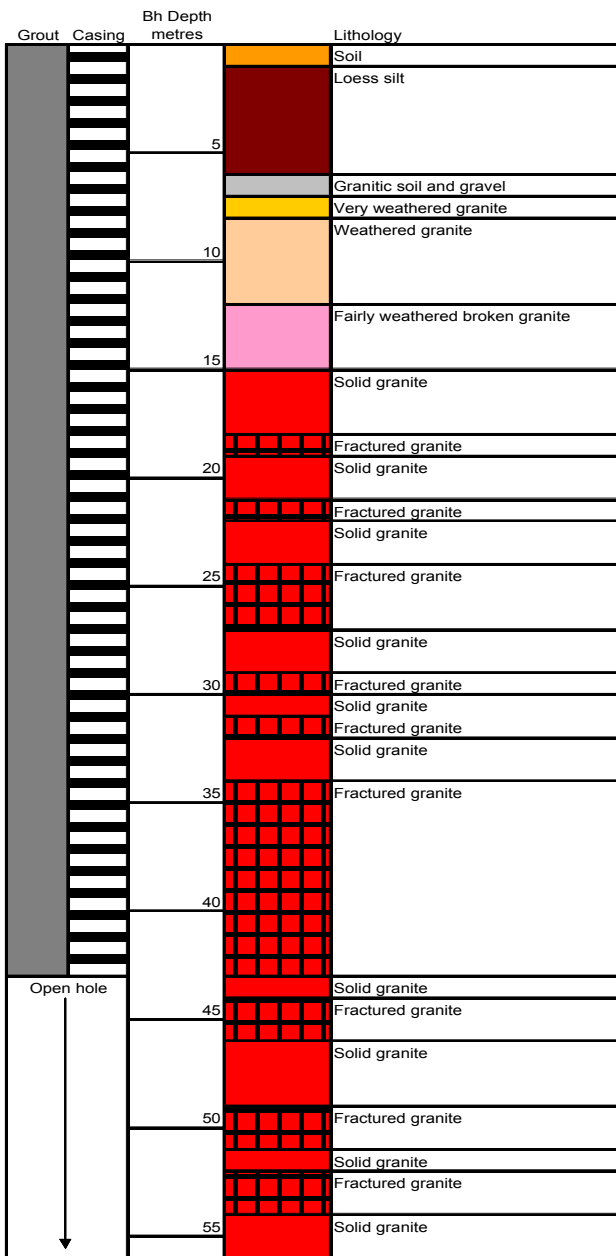
1. Evidence to prove that all surface groundwater above 43m was completely sealed off at La Rocque.

1.1 Air flush yields

The recorded variations in air flush water yield provide conclusive and robust evidence that all shallow groundwater flows, encountered above 43 mbgl, were successfully sealed out of the borehole by the grout emplaced above that depth.

Prior to grouting the borehole at La Rocque, the combined water yield arising from all fractures (the cumulative yield) was about 1 litre per second (l/s) at a depth of 10.5 mbgl, increasing incrementally between the depths of 10.5m and 43.0m to between 6.5 and 7.0 l/s. After grouting and re-drilling through the hardened grout, the borehole was completely dry until after the base of the grout was penetrated at 43 mbgl. This provides conclusive evidence that all productive fractures above that depth had successfully been sealed out by the grout.

The recorded water yield at 43.5m (0.5m below the base level of the grout) was only 0.6 l/s (Figure 1) but this gradually increased to 1.75 l/s at 55 mbgl, as an increasing number of fractures were penetrated below that depth. This much reduced air flush yield, together with the gradual incremental increase of yield with depth (Figure 1), is entirely consistent with the successful sealing off of all productive horizons above 43 mbgl and the yield solely being obtained from the deeper open section of the borehole below. Increases in yield obtained in the lower deep section of the borehole correspond closely to the occurrence of fractured horizons. There is no evidence of any rapid increase in yield, such as would be expected if the grout seal in the upper section of the borehole had failed or if an 'underground stream' were penetrated in the lower deep section of the borehole.



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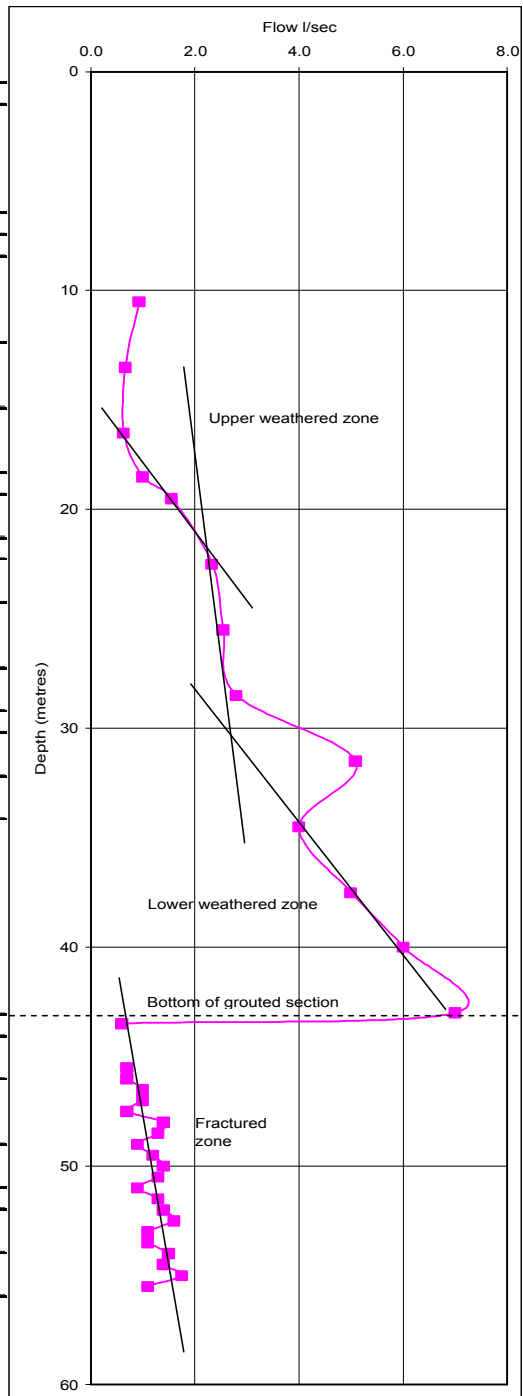


Figure 1 The geology and air flush yield of the La Rocque borehole.

1.2 Water chemistry

Groundwater was sampled for inorganic chemistry analysis at each change in drilling penetration rate and/or air flush water yield. Analysis results from the samples from 10.5 to 43 mbgl have a similar chloride concentration, this being representative of the groundwater from all of the inflow horizons encountered to a particular depth. There is little variation in concentration with depth (Figure 2). There is however a small but significant increase in chloride ion concentration for water samples obtained below 43 mbgl, likely to be indicative of an increased component of seawater. This distribution of chloride concentrations is entirely consistent with an effective seal having been emplaced above 43 mbgl, preventing flow and mixing from shallower horizons.

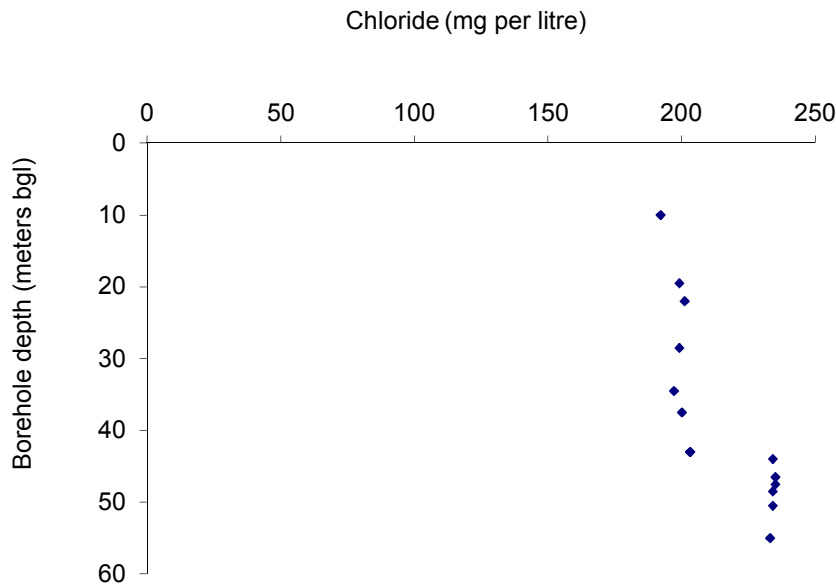


Figure 2. Chloride ion concentration with borehole depth.

1.3 Integrity of the cement grout seal

The seal emplaced in the upper section of the La Rocque borehole was achieved by pumping liquid grout under pressure, to completely fill the borehole casing, borehole annulus and all of the fractures, fissures and joints adjacent to the borehole, (from which water inflow occurred), from 43 mbgl to the ground surface. Pressure was induced by the weight of the liquid grout column within the borehole. Additional grout was pumped into the annulus, (the gap between the permanent casing and the borehole wall), to keep the borehole ‘topped up’ as grout penetrated the fractures adjacent to the borehole. Topping up continued until the grout level stabilised at ground level. Once the grout had hardened within the fractures it would be impossible to remove and would prevent any further inflow of groundwater from these horizons.

After the hardened grout was drilled out of the inside of the plastic casing, a watertight seal remained in the borehole. This comprised the grout filled fractures and a 25 mm (1 inch) layer of grout that set in the former borehole annulus from 43 mbgl to the ground surface.

2. The cement grout composition

Amplus consulted widely on the best grout mix to use to provide the most effective seal for the upper section of the borehole. After careful consideration a mix of 100 litres of water with 5 bags of cement powder was used.

Groundwater inflows occur from water bearing fissures, fractures and joints. The uncured grout mix had to have a high degree of fluidity to ensure maximum penetration of the grout into the fissures, fractures and joints penetrated above 43 mbgl, in order to completely seal out these inflows.

The addition of sand to the mix would have increased the stiffness of the grout and potentially prevented full ingress into such fractures.

A stiffer sand based mixture could also caused air pockets to occur in the borehole annulus as the tremmie pipe was removed, potentially compromising an effective seal.

3. Grout hardening

The grouting of the La Rocque borehole commenced at 1320 hrs and was completed at 1535 on 13 September 2006.

Drilling out the grout commenced at 1055 hrs on 15 September 2006.

The grout was therefore left to harden for 43.5 hours (a minimum of 24 hours was specified) before re-drilling started from the surface. Drilling inside the casing penetrated only dry hard grout.

Further, drilling of the bottom of the borehole was finally completed at 1200 hrs on 16 September 2006; a further time interval of 68.5 hours from the completion of grouting.

Rock chip samples were sampled and documented every half meter depth. The presence of hard cement chips collected from the depth interval between 43 and 44 mbgl (immediately below the base of the grout) is seen in Figure 3. This shows unequivocally that the base of the grouted upper section of the borehole (to 43 mbgl) had completely hardened and that no liquid or unhardened grout was present in the borehole.

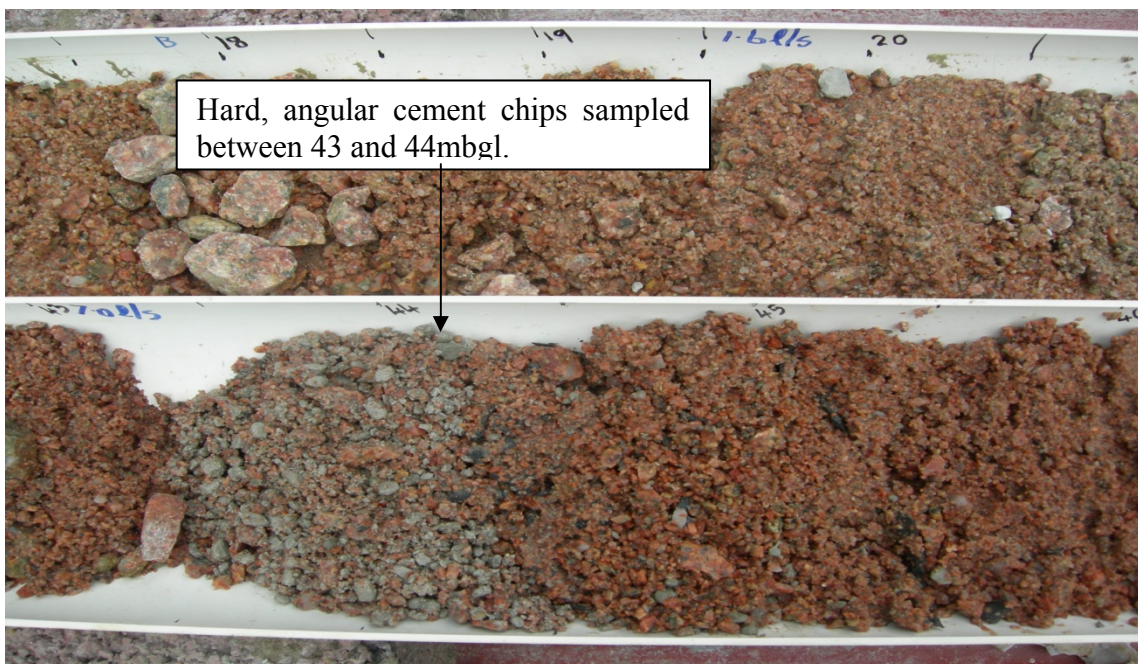


Figure 3. Rock chip samples collected every 0.5m during drilling at La Rocque.

4. The plastic casing

The grout was pumped into both the permanent casing and the annulus between the casing and the borehole wall. Therefore, no pressure differential occurred between the inside and outside of the casing and buckling of the casing was not an issue.

Damage to the uppermost 13 metres of the plastic casing did occur whilst drilling out the hardened grout. There is however no evidence that the grout seal over this section of the borehole was in any way compromised. Larger diameter steel casing was grouted into the upper section of the borehole to a depth of 10 mbgl, which would have assisted in preserving the seal. It is notable that no increase in air lift water yield

occurred following the occurrence of damage to the plastic casing, as would have been anticipated if the grout seal had also been damaged.

5. Conclusions

The above evidence clearly and robustly demonstrates that;

- 1) an effective seal was achieved between ground level and 43mbgl, thus isolating the shallow groundwater inflow horizons above that depth and preventing mixing via the borehole with groundwater encountered below that depth.
- 2) all evidence indicates that the cement grout had cured (hardened) sufficiently to provide a totally effective seal between ground level and 43 mbgl.
- 3) the isolation of shallow inflow horizons has prevented any possibility of cross contamination of groundwater samples obtained from the depths specified by the water diviners and well drillers, as being where an 'underground stream' would be penetrated. There is no possibility that the validity of the results of analytical results for chemical or isotopic analysis, for water samples obtained from the deep open section of the borehole, have been compromised by leakage from the section of the sealed borehole above 43 mbgl.

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2.2 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE ORIGIN AND USE OF THE £20 MILLION SAVINGS:

Question

With regard to the £20 million savings that were due to be made in order to help fill the 'black hole', would the Minister give precise details of where the £20 million was taken from and exact details of what it has been decided to use it for?

Would the Minister also advise what consultation took place with States' members with regard to the change of use of the £20 million and why the change was not subject to a States' debate ?

Answer

Where are the savings being made?

The programme of £20 million efficiency savings relate to the Change Programme and the detailed allocations of these savings by programme area have been agreed by the Council of Ministers as part of the Annual Business Plan 2007, and are shown at Table 4.4 on page 31 as follows -

Programme Area	2005 £' 000	2006 £' 000	2007 £' 000	2008 £' 000	2009 £' 000	Total £' 000
<u>Corporate Efficiencies</u>						
Human Resources	300	400	-	-	-	700
Information Technology	500	440	-	-	-	940
Finance	206	494	427	-	-	1,127
Procurement	150	300	750	700	-	1,900
Total Support Services	1,156	1,634	1,177	700	-	4,667
Cross-Departmental	120	120	120	120	-	480
Executive Overheads	-	-	330	330	-	660
Property						
- Revenue	-	400	500	600	-	1,500
- Capital	-	-	700	1,600	1,700	4,000
Total Corporate Efficiencies	1,276	2,154	2,827	3,350	1,700	11,307
Departmental Efficiencies	4,724	1,846	1,173	650	300	8,693
Target	6,000	4,000	4,000	4,000	2,000	20,000

These amounts have then been removed from the budgets of individual departments according to an agreed allocation basis. For example, in 2007 the allocation of the £4 million saving is made up of £3.3 million from departments revenue budgets (as shown in Table 4.1 on page 26 of the Annual Business Plan 2007) and £0.7 million as capital receipts within the 2007 Capital Programme,(Summary table C page 58).

Extract from Table 4.1 - 2007 Revenue efficiency savings

States Funded Bodies	Efficiency Savings 2007 £'000
<u>Ministerial Departments</u>	
Chief Minister	105.3
- Grant to the Overseas Aid Commission	-
Economic Development	(98.4)
Education, Sport and Culture	(340.9)
Health and Social Services	(948.5)
Home Affairs	(226.9)
Housing	5.2
Planning and Environment	(50.9)
Social Security	(32.3)
Transport and Technical Services	(192.3)
Treasury and Resources	(1,358.0)
<u>Non-Ministerial States Funded Bodies</u>	
- Bailiff's Chamber	(8.6)
- Law Officers' Department	(37.6)
- Judicial Greffe	(33.9)
- Viscount's Department	(13.6)
- Official Analyst	(4.3)
- Office of the Lieutenant Governor	(7.7)
- Office of the Dean of Jersey	(0.1)
- Data Protection Commission	(1.1)
- Probation Department	(9.8)
- Comptroller and Auditor General	(5.1)
States Assembly	(40.5)
Total Revenue Efficiency Savings	(3,300.0)
Property – capital receipts	(700.0)
Total Efficiency Savings 2007	(4,000.0)

What are the savings being reinvested in?

The Council of Ministers made it quite clear that the States Strategic Plan looks to maintain Jersey's position of pre-eminence in the international arena – "In order to compete in the face of growing competition we must protect and improve the level of services and investment in social, environmental and economic initiatives". The Council also made clear that this must be achieved within a sustainable financial framework.

This investment began with the prioritisation of savings as part of the resource allocation processes for 2005 and 2006, predominantly to growth and pressures in health and social welfare, as described in the respective budget documents. Most recently the investment in the outcomes of the Strategic Plan review were proposed and approved in the 2007 Business Plan, in Table 4.2, page 28 as follows -

Extract from Annual Business Plan 2007 Table 4.2 – Strategic Plan Outcomes

	2007 £m	2008 £m	2009 £m	2010 £m	2011 £m
Strategic Plan Initiatives					
Economic Growth Plan	1.00	1.00	1.00	1.00	1.00
Education, Sport and Culture					
Vocational and Tertiary (adult skills)	1.00	1.00	1.00	1.00	1.00
Home Affairs					
Discrimination Legislation	0.50	0.50	0.50	0.50	0.50
	<u>2.50</u>	<u>2.50</u>	<u>2.50</u>	<u>2.50</u>	<u>2.50</u>
Emerging Pressures					
Social Security					
Parish Welfare increases	-	-	1.50	3.00	4.50
Education, Sport and Culture					
Teachers Pension Deficit	1.30	1.30	1.30	1.30	1.30
Opera House Loan	0.20	0.20	0.20	0.20	0.20
	<u>1.50</u>	<u>1.50</u>	<u>3.00</u>	<u>4.50</u>	<u>6.00</u>
Impacts of Fiscal Changes					
Treasury and Resources					
Administering GST	1.00	1.00	1.00	1.00	1.00
Social Security					
Insulating those on low incomes from GST	-	1.75	1.75	1.75	1.75
Transitional costs of income support scheme	3.00	5.00	4.00	4.00	4.00
	<u>4.00</u>	<u>7.75</u>	<u>6.75</u>	<u>6.75</u>	<u>6.75</u>
Total Strategic Plan Review	<u>8.00</u>	<u>11.75</u>	<u>12.25</u>	<u>13.75</u>	<u>15.25</u>

States debate on investment of £20 million savings

The investment of the £20 million efficiency savings was highlighted in the States Strategic Plan and therefore in the States debate in June 2006, and also in the Annual Business Plan debate in September. However, the States had in effect previously agreed this principle in the 2005 and 2006 Budget debates.

In each of the 2005 and 2006 Budgets the detailed make up of the Committee allocations included savings found from both service reductions and efficiency savings. These savings enabled the real growth in priority services of health and social welfare to be achieved within overall growth in spending of 2.5% in these years.

	2005 Budget £'000	2006 Budget £'000
Efficiency savings	(6,000)	(4,000)
Service reduction	<u>(6,173)</u>	<u>(3,066)</u>
Total savings	(12,173)	(7,066)
Growth in services	13,793	9,598

The States has therefore been informed and could be seen to have had the opportunity to debate the “investment” of efficiency savings on at least four occasions.

2.3 DEPUTY R.G. LE HERISSIER OF ST. SAVIOUR OF THE MINISTER FOR PLANNING AND ENVIRONMENT REGARDING TELEPHONE MASTS:

Question

Would the Minister confirm that all mobile telephone masts for which he has given permission conform to the requirements laid down by the Health and Social Services Department?

In summary, would the Minister state those requirements and any other pertinent advice received from that Department?

Given the granting of four licences to mobile phone operators, would the Minister identify what steps were taken to minimise a proliferation of masts?

Answer

Following the receipt of the first planning applications to support new mobile phone operators on the Island earlier this year, the Council of Ministers asked for advice from Health and Social Services.

The Health and Social Services Report in April 2006 made a number of recommendations and I have insisted that all of these are followed. These were -

- “All base stations are to be subject to the scrutiny of the planning applications process to ensure compliance with internationally agreed standards;
- There should be improved consultation by the network operator with the community prior to the selection of a site for a base station;
- Emissions from base stations must as a minimum meet the ICNIRP guidelines for public exposure, as expressed in the EU Council Recommendation. However, the States should seek to ensure that Network operators voluntarily agree to comply with levels lower than international guidelines;
- Measurement of the actual levels of radiation from base stations must be undertaken following commissioning to show compliance and be a condition of the planning permit;
- Mobile Phone network operators deliver with the States of Jersey a database of information available to the public on radio base stations;
- There is cross industry agreement on the sharing of sites and masts for radio base stations wherever possible.”

I shall take these recommendations in turn, indicating steps taken to ensure that each installation conforms to these requirements.

Internationally agreed standards, and emission levels

Taking these in turn, emissions from all base stations are within internationally agreed levels in particular those specified by the International Commission on Non-Ionizing Radiation Protection (ICNIRP). This accords with the advice given by Lord Stewart’s Independent Expert Group on Mobile Phones (IEGMP) (2000). Following the moratorium I called in October, I requested everyone who was concerned over the effects of the installations on health to make their concerns known to me. These concerns highlighted various alternative levels of maximum emissions that are significantly lower than those identified by the Stewart Report. These levels do not yet appear to be backed by the scientific community at large. However emissions by base stations on Jersey are also below those levels suggested as an alternative to ICNIRP.

Community consultation by the network operator

In every case where there has been disquiet over a proposed installation I have encouraged and facilitated discussions between the phone companies and those people with concerns. I cannot require the companies to do this as a matter of statutory responsibility but all of the companies have been willing to discuss concerns. In some cases this has resulted in installations being moved, re-designed or even proposals withdrawn.

Measurement of emissions

Every planning application had a condition attached that required a report to be submitted after the commissioning of a site, which specifies what the actual emissions from the installation are. So far as I am aware, no other Government requests this verification. In every case so far, the emission levels have been below ICNIRP levels and indeed lower than the alternative levels I have mentioned above.

Installations database

A database of all the installations that require planning permission is available on the States website.

(<http://www.gov.je/PlanningEnvironment/Planning/Press+Releases/Mobile+Base+Stations+and+Masts.htm>)

Mast Sharing

Every single planning application has been individually assessed in order to minimise its impact on visual amenity. It is a requirement of the Telecommunications Policy NR12 of the Island Plan 2002 that the possibility of sharing facilities is investigated at every opportunity. Indeed there are 19 installations where the companies have co-located on buildings or existing mast structures. Of the estimated total 150 installations some 80 are on existing buildings and structures. However, there are areas on the Island where there is no existing infrastructure, and in this instance each application submitted must demonstrate any other options that have been investigated to establish the installation, including site sharing opportunities. I have then made individual judgements as to what is the best solution in visual terms and I am satisfied the best balance has been achieved.

Consultation with Health and Social Services

As well as implementing the Health and Social Services' recommendations, Health and Social Services is consulted on each application to verify the information submitted. For the application submitted and approved to date, Health and Social Services have raised no concerns. Following the commissioning of each installation, the applicant is required to carry out a post-commissioning test to verify the actual emissions at each site. Again, Health and Social Services are consulted on the post commissioning submissions – as required by condition attached to permissions – and no concerns have yet to be raised.

Since the initial concerns over the potential health impacts of the installations I have insisted my Officers work closely with Health and Social Services and this relationship has been particularly useful in assessing the submissions in response to my invitation to Islanders to raise their concerns over health and telecommunication base stations.

2.4 DEPUTY R.G. LE HERISSIER OF ST. SAVIOUR OF THE ATTORNEY GENERAL REGARDING THE TERM “TITULAR HEAD” OF THE HONORARY POLICE:

Question

Article 4 of the Police (Jersey) Law 1974 states that ‘the Honorary Police shall be under the general supervision of the Attorney General’. The term ‘Titular Head’ of the Honorary Police is frequently used. Would the Attorney General advise members what is meant by the term ‘Titular Head’ in regard to the Honorary Police?

Answer

1. The Attorney General is frequently referred to as the titular head of the Honorary Police. This is a convenient, but loose, description of the relationship that has developed over several centuries between Her Majesty's Attorney General and the Honorary Police. The expression is not to be found in customary law or in statute.
2. On being sworn to office, the Connétables and Centeniers undertake to keep the Queen's peace (*garder et faire garder la paix de Sa Majesté*) and to arrest and prosecute criminals. But they do not exercise absolute powers in this respect; the Attorney General has always had a supervisory jurisdiction over them. This is only natural because it is part of the duties of the Crown under the Royal Prerogative to maintain the Queen's peace, and because the Attorney General has authority over all criminal prosecutions in the Island.

3. This is now reflected in terms in the Oath which requires Connétables and Centeniers in the performance of their duty to abide by the directions of Her Majesty's Attorney General (*vous conformant ... aux instructions de Monsieur le Procureur Général de la Reine*). However, this amendment to the Oath in 2002 did not in my opinion do more than set out expressly what had previously been the position.
4. It was only in the latter part of the 20th century that the relationship between the Attorney General and the Honorary Police came to be set out more formally in statute.
5. Article 3(4) of the Police Force (Jersey) Law, 1974, provides that the Attorney General may give such directions as he thinks appropriate where a member of the States Police refers to him a decision of a Centenier not to charge a person with a criminal offence; and Article 4(3) of the same Law provides that "*the Honorary Police shall be under the general supervision of the Attorney General*". A number of Directives have been issued to the Honorary Police, consistent with this supervisory power.
6. Article 4(4) of the 1974 Law also empowered the States to make Regulations as to the administration and conditions of service of members of the Honorary Police including qualifications for election and matters relating to retirement.
7. The Honorary Police (Jersey) Regulations, 1977, [R&O 6480] made provision for an Association of Centeniers and a separate Association of Vingteniers and Constable's Officers, as well as provision for the investigation by the Attorney General of complaints against the Honorary Police and certain other matters relating to the Honorary Police in respect of which the Attorney General had jurisdiction.
8. The 1977 Regulations were eventually replaced by the Honorary Police (Jersey) Regulations, 2005, which established the Honorary Police Association of which every member of the Honorary Police must be a member. A decision of the Association made in accordance with its Rules binds all members of the Association. However, pursuant to Regulation 4(6), the Attorney General may set aside any decision of the Association at any time. There are a number of other provisions in these Regulations which confer duties, powers or functions on or concerning the Attorney General.
9. The supervision of the Honorary Police exercised by the Attorney General is reflected in a number of duties, powers or functions under the Police (Complaints and Discipline) (Jersey) Law, 1999, and Regulations made thereunder.
10. It is clear that the Attorney General does not exercise day to day management control over the Honorary Police of each Parish. This function is exercised by the Parish itself with its own honorary force through the Connétable and/or the Chef de Police. The commonly used expression "*titular head*" connotes a supervisory control, exercised as has been set out above.

2.5 CONNETABLE A.S. CROWCROFT OF ST. HELIER OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING THE COVENANT ON THE BELLOZANNE SITE:

Question

- (a) Would the Minister advise what progress has been made towards fulfilling the decision of the States on 13th July 2005, that 'the Committee be charged to work with the Parish of St. Helier

to undertake further research and bring forward for consideration proposals for the resolution of the present covenant on the Bellozanne site’?

- (b) Would the Minister explain his understanding of what benefits and protection for the Parish of St. Helier are currently in place as a result of the covenant?
- (c) Does the Minister regard the existence of the covenant as an obstacle in his implementation of the Solid Waste Strategy (P.95/2005) as adopted by the States, and if so why?

Answer

- (a) When the Waste Strategy was being prepared, the option of introducing some form of charge for the disposal of residual waste to pay for a new energy from waste plant was being considered. At that time, the covenant was seen as a potential obstacle in achieving a fair and equitable charging mechanism that could be applied Island wide. Following detailed discussion with the Treasury and subsequent approval by the States for the inclusion in the Capital program for the replacement of the Bellozanne incinerator, the urgency to resolve the original covenant has passed.

As it was felt that further research would require considerable resource to be devoted to it and as other elements of the waste strategy were of a higher importance, this work has been delayed and consequently, no progress has been made.

However, in the long-term interest of the Island, the relevance of the covenant, its exact meaning and impact will need to be clearly understood.

- (b) The exact meaning of a covenant and the implications it may have on the affected parties is generally a complex legal matter that has required much interpretation by legal professionals. Unfortunately, it appears that the Bellozanne covenant is one that will depend on such legal interpretation and possibly, in the longer term, a ruling by the Courts. As a result, I cannot give the Connétable any definitive explanation of the benefits and protection for the Parish of St. Helier.
- (c) I do not consider the existence of the covenant to be an obstacle in implementing the Solid Waste Strategy (P.95/2005). As there are no current plans to introduce a charge for the disposal of residual waste into a new energy from waste facility and the covenant does not prevent the waste strategy, as approved, from being implemented, further detailed work has been delayed whilst the more critical elements of the strategy are developed.

2.6 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING RESTRUCTURING OF JERSEY POST:

Question

Will the Minister inform members what steps are under consideration in the restructuring of Jersey Post following its incorporation and, in his position as shareholder on behalf of the States, what steps he will take to ensure the fair treatment of employees over redundancy terms?

Answer

I am aware that the directors of Jersey Post are currently considering a number of restructuring options, when decisions are made in respect of these options, the company will make the appropriate announcements. It would be entirely inappropriate for me as shareholder to divulge commercial information of this nature in advance of decisions by the company’s management.

As holder, on behalf of the States, of its shares in Jersey Post Limited I have asked the company’s directors to ensure the fair treatment of its employees when considering restructuring options. It should be noted that the best and most effective way of providing secure jobs is through the

continued success of the company. Any future restructuring will be undertaken to enable to continued success of the company.

2.7 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING THE POST OF RETAIL STRATEGY MANAGER:

Question

In answer to my question 3074 of 7th November 2006, the Minister informed members that the post of Retail Strategy Manager resulted from transfer from another part of the department. Will he state which part? Will he also state when he expects to be in a position to report on the 'concept capitalisation of high margins' and the impact of high rents on the retail sector?

Answer

The post of Strategy Manager – Retail sector was transferred from the Tourism section of Economic Development. The officer previously held the post of Trade Relations Manager, and this role has been merged with the post of Communications Manager at Jersey Tourism.

With regard to the question of when I will be in a position to report on the "concept capitalisation of high margins". I have no comments to make apart from those expressed in my answer on 7th November. Concerning the second part of the question I outlined a series of actions that Economic Development are taking to develop and support the retail sector, and that this process will be underpinned by ongoing consultation with the industry in order to gain a full understanding of the retail economy to inform policy making. If rental levels are highlighted by the industry as an issue that needs addressing as part of our strategy development we will develop an appropriate programme of work to identify what actions, if any, might be appropriate.

2.8 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING THE J.C.R.A.:

Question

- (a) Will the Minister use his powers under Article 9(2) of the Postal Services (Jersey) Law 2004, if he considers that it is desirable in the public interest to do so, to give to the J.C.R.A. written guidance in respect of the principles, procedures or policies to be followed by the Authority in relation to any other matter, in order to direct the J.C.R.A. to investigate and to report on whether there are potentially anti-competitive cross-subsidies in the trading conditions of -
- (i) Offshore Solutions Ltd, and
 - (ii) Promail

and indicate in what timescale a response is to be expected, and if not, why not?

- (b) Will the Minister inform members when the J.C.R.A. will respond to the request for price rises on letter mail rates both locally and to the U.K.?

Answer

- (a) The question of whether or not Jersey Post is engaging in potentially anti-competitive cross-subsidies with regard to either Offshore Solutions Ltd, or Promail, is not a matter in the first instance for me, as Minister of Economic Development. Rather, it is for the J.C.R.A., as the Island's independent and expert postal regulatory authority who has responsibility for issuing and enforcing Postal licences. As I have every confidence in the J.C.R.A. in dealing with these matters, I do not believe that the use of directions or guidance under Article 9(2) is desirable or necessary in dealing with any issue of cross-subsidisation.

- (b) As part of the conditions of the license to operate issued by the J.C.R.A., Jersey Post has an obligation to ensure that its prices are cost-justified and not excessive. I am advised that the

J.C.R.A. has indicated that excessive prices may also constitute a breach of the competition law. If the J.C.R.A. believes that the prices are in breach of these provisions, it could decide to take enforcement action, and has the power to direct that prices be reduced, if appropriate. It would also have the power to impose financial penalties if it found that the price changes were in breach of the competition law.

In common with Jersey Telecom's licence, Jersey Post is required to notify the J.C.R.A. of any price increases at least 21 days before they come into effect. They are not required to obtain approval before making the price changes.

2.9 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING INCOME SUPPORT:

Question

Would the Minister confirm the figures involving the spread of income support over income quintiles as suggested by him in debate on 24th October 2006, showing what the total cost would be if spread across the bottom, second and third quintiles rather than all in the bottom quintile?

When will the Minister bring accurate costed figures of what compensation is required for the impact G.S.T. on Income support to the Assembly?

Answer

The Household Expenditure Survey (H.E.S.) published in July 2006 described the income distribution found in the survey and split the households into income quintiles as follows -

Quintile	Part of distribution covered	Lower end of annual income
Lowest	0-20%	
2 nd	20-40%	£17,500
3 rd	40-60%	£28,000
4 th	60-80%	£40,000
5 th	80-100%	£63,000.

As indicated in my previous answer at the last sitting, my contribution to the debate on the 24th October 2006, attempted to clarify perhaps erroneous assumptions that only households in the lowest income quintile will receive income support. This is not the case as household circumstances will dictate the level of any income support not just household income. For example a family of four, living in rented accommodation with a disabled adult and paying for childcare with an income of £29,000 will get some assistance through income support provided they meet other conditions. Another assumption that needs to be dispelled is that not all households in the lowest quintile will receive income support. For example a single householder, with income of £17,000 with no housing costs and not suffering from incapacity or disability will not get income support although the household income is in the lowest quintile.

The budget for income support is £64 million a year regardless of how payments are spread across income quintiles.

My Department is currently collecting data from known beneficiaries of the Housing and Social Security Departments which will allow iterative analysis to take place to determine a variety of important parameters of the income support scheme. From this analysis, I will be working with the Treasury and Resources Minister to provide a more accurate assessment for the amount needed to protect households receiving income support from the effects of G.S.T. Ultimately however that will depend on the rate of G.S.T. and any exemptions of elements which may be catered for in the income support scheme. I will hope to have some information available by the end of January, which will be refined further as more data is collected.

3. Oral Questions:

3.1 Deputy J.A. Martin of St. Helier of the Chief Minister regarding the progress and outcome of his discussions with the U.K. Government regarding Romanian and Bulgarian nationals working in Jersey:

In his reply to my question on 12th September regarding whether Jersey had any powers to vet who from Romania and Bulgaria may come and live and work in Jersey, the Chief Minister agreed the Island could contact the U.K. Government to raise its concerns. Would the Minister inform Members of the progress and outcome of his discussions as these 2 countries will join the E.U. (European Union) on 1st January 2007?

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

There have been no direct discussions as yet with the U.K. Government on this issue and nor do I see a pressing need for such discussions. However, the British Irish Council is undertaking a work stream on migration and Jersey will be participating fully. This work would include the whole range of migration issues faced by us and other members of the British Irish Council. Jersey - and this is repeating I think something I have said in earlier answers - Jersey already restricts access to its labour market through the Regulation of Undertakings Law. We do not currently, however, discriminate between the various nationalities of the European Union. Legal advice is being sought as to the extent to which this is possible should it be desirable. It should be noted however that Regulation of Undertakings controls already in place operate successfully, with 83 per cent of jobs currently being occupied by people classified as locally qualified. These controls will continue to be applied rigorously and the fact that citizens of 2 more countries could theoretically have access to Jersey will make no difference to the numbers of job licences issued.

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

Surely, if we are to rely on the issuing of R.U.D.L. (Regulation of Undertakings and Development) licences we will be at severe risk of contravening the Human Rights Law, which the Chief Minister is about to introduce, if we were to discriminate against Members of these 2 particular countries.

Senator F.H. Walker:

That is why we have sought legal advice and there are currently no plans to discriminate against these 2 countries. Nor currently do we believe is necessary to do so.

3.1.2 Deputy J.A. Martin:

I am very disappointed in the Minister's answer that the government have had no contact with the U.K. Government, because we are now 6 weeks away from 1st January. The U.K. are in strong debate about what they are going to do about Bulgaria and Romania and in questions to me before, Sir, he said we cannot do anything different to what the U.K. do. Does he even know, Sir, exactly what the U.K. are planning to do with these 2 countries and what restrictions they are putting on them at this moment, Sir?

Senator F.H. Walker:

No, Sir, and nor do the U.K. Government.

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

Is the Minister aware, Sir, that we now have growing in Jersey a large black economy whereas many people are coming here with no jobs but are going around knocking on doors and getting jobs at half the price of what local or residents would be paid, and this is growing daily. I know it is growing daily because I am well aware, I hear it from the Community Board that I sit on.

Senator F.H. Walker:

There is much apocryphal evidence in this respect but no factual evidence. But I would also remind the Deputy that when the new migration policy is introduced - which is in the course of preparation - that everyone who wishes to have a job in Jersey will have to be registered, and that will be a requirement as approved by the House some time ago.

3.1.4 Deputy J.J. Huet:

Is the Minister saying that he does not realise that people are coming here and working without going to anybody for permission to get a job, and they are working? No matter what the Minister says these people are working here without permission. Is he not aware of this?

Senator F.H. Walker:

If they are working in contravention of the licence issued to the company for whom they are working in terms of how many non-residentially qualified people they may employ then the company is breaching the Regulation of Undertakings Law and I know that if that is brought to the attention of the Population Office then action will be taken.

3.1.5 Deputy J.J. Huet:

Another supplementary. Is the Minister not aware that we are not talking about companies employing these people? These people are going freelance, if that is the correct word. They are not being employed by companies but they are gaining employment freelance.

Senator F.H. Walker:

All I can say to that is if the Deputy has any evidence of this then she should immediately bring it to the attention of the Population Office.

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

The United Kingdom Government, I believe, were looking at whether or not they could apply restrictions on access to the 2 new countries that are accessing to the European Union through the types of labour opportunities they were able to access. So, for example, they were looking - and are looking - at certain grades of individuals that they would permit to enter the country under certain circumstances; it might be nurses, it might be doctors, *et cetera*. Given that preface to this question, may I ask the Chief Minister what vein of legal advice he has sought in respect of the legal advice that he has sought; when will that legal advice be forthcoming to the Chief Minister; and will the Chief Minister be willing to circulate that to all States' Members when he receives it?

Senator F.H. Walker:

I do not know when the legal advice will be forthcoming. Certainly it has been sought and I think the Deputy is well aware that there are considerable curtailments on how far certain legal advice can be shared. But we await the legal advice on what Jersey's position might be should the U.K. decide to discriminate against these 2 new members of the E.U.

3.1.7 Deputy P.V.F. Le Claire:

May I ask a supplementary, Sir? I believe the Chief Minister kindly indicated in the last part of his question that that was the vein of the legal advice that was sought, but I am not quite clear: could I be 100 per cent clear on this? What is the specific vein of legal advice that has been requested?

Senator F.H. Walker:

The legal advice that is being sought is whether it is possible for Jersey to discriminate against Bulgaria and Romania should the U.K. Government decide finally that they will do so.

3.1.8 Deputy G.P. Southern:

Should the U.K. Government decide to institute a quota system surely we will have to otherwise we shall be known as the backdoor entry into the U.K.

Senator F.H. Walker:

The Deputy yet again completely misunderstands the position. I do not think I should have to repeat the fact that that will not happen but we are seeking legal advice on our position should the U.K. finally decide to discriminate. To the best of my knowledge they have not yet decided if they are going to do that definitely and, if so, how. But we await those developments, and that is precisely why we have sought legal advice.

3.1.9 Deputy G.P. Southern:

If I may, Sir. The Chief Minister assures us that that will not happen. Can the Minister tell us what steps he is taking to ensure that will not happen?

Senator F.H. Walker:

I think I have already fully answered that in my earlier answer.

3.1.10 Connétable T.J. du Feu of St. Peter:

I am somewhat disappointed with the answers and I have got to ask a very simple question. When will the Chief Minister take this subject really seriously?

Senator F.H. Walker:

I cannot remember if the Connétable... yes, he was in the States when we debated the migration policy which was brought by me as President of the Policy and Resources Committee. That migration policy will ensure for the first time ever that everyone coming to work in Jersey will be registered. How much more seriously we can take the matter than that I am really not sure. If the Connétable has any thoughts on that subject I would be very pleased to hear them.

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

The Chief Minister keeps referring about people going to work. For the first time in many years, as I live in the middle of town, I get numerous - or not numerous - a number of knockings on my door with people seeking a place to live which has not happened for a long time. In the past we have people coming to the Island with no jobs and there has been nothing in our legislation or rules that prevents people from coming here to live. There are rules that restrict working conditions and we will have an immigration policy, but it is not here and it will not be here on 1st January 2007. Is the Minister, at this time, or any of the departments that he is responsible for, considering what they might do if suddenly this Island is flooded with people coming to live here without a job and how they propose to look after these people which they will have to do...

The Bailiff:

Deputy, I think that is probably long enough for your supplementary question.

Senator F.H. Walker:

The Attorney General has repeatedly advised the Policy and Resources Committee, the Council of Ministers and, on a number of occasions, this House that border controls are not legally possible, and they are not. That is the position that we have - possibly with regret - to accept. What we are doing, what we can do and what we are doing is severely restricting the number of job licences given to non-residentially qualified people. Now why would the Island be flooded with a large number of people who cannot work in Jersey? That does not seem to me to be a very attractive option for them and so long as we maintain a very strict rationing on those job licences I see no chance of Jersey being flooded with the sort of immigrants that the Deputy is referring to.

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

As Members are aware, Sir, year on year there are more and more countries joining the European Union. Coming up we have Romania and Bulgaria, in the not too distant future, Turkey. Every year 2 or 3 countries are joining the European Union. Does the Chief Minister not believe that we are now morally obliged to revisit protocol 3 and remove this anomaly from Jersey people's passports that prevent them from living and working in Europe?

Senator F.H Walker:

Again, this has been discussed on numerous occasions and I have always accepted the attraction of seeking to renegotiate protocol 3 in that respect. The problem with doing that is that if we open negotiations on protocol 3 there will no doubt be other issues which would be put to us for changes which Jersey will not find remotely attractive, and certainly the low level of inconvenience it caused to Jersey residents with the passport issue in no way, in my view, or all my colleagues' view or our advisers' view, justifies the risk - and it is a risk - of seeking to reopen negotiations or reopen the structure, and renegotiate protocol 3.

The Bailiff:

I am afraid I must curtail supplementary questioning. I will take 2 more questions. I saw Deputy Troy and finally from Deputy Martin who will close the questioning.

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

At the beginning of question time, Sir, the Chief Minister said that he had not had any discussions with the U.K., then later he said that to his knowledge the U.K. had not had made up their mind on the issue of discrimination. Where, can I ask, Sir, is he getting his intelligence from? Is it from national newspapers; would it not be better to make contact with the U.K. and start asking them questions about their policy?

Senator F.H. Walker:

I said there had been no direct discussions as yet with the U.K. Government but officials are in touch with the U.K. Government by normally the D.C.A. (Department of Constitutional Affairs) on a virtual daily basis, and would be made very well aware immediately of any immediate changes or any changes on the scale suggested here if the U.K. did decide to implement restrictions on citizens of Bulgaria and Romania.

3.1.14 Deputy J.A. Martin:

Deputy Troy did touch on something I was going to ask. I do find the Chief Minister's answer, Sir, somewhat naïve. He is talking about people... civil engineers in Bulgaria who earn 120 Euros a month, why would they not want to come to Jersey? And they are coming. We have been told in the last few months we have 700 more people employed. We have 13,000 more people registered with I.T.I.S. (Income Tax Instalment System); who are these people? Many of them are Polish; I do not have a problem. I do have a problem, Sir - like the Constable of St. Peter - that I want this taken seriously and I want a guarantee today, like the Minister did in September, that he will take steps proactively and contact someone that we are allowed to speak to in the U.K. Government and find out exactly where their position is and where it leaves us on 1st January. Our immigration policy is a monitoring device; it will not be introduced until at least June or July next year and we could already have another 2,000 or 3,000 immigrants in Jersey. I really want this question... and I want to know when we will get an answer that he will contact the U.K. Government and take this seriously.

Senator F.H. Walker:

We are taking this extremely seriously and I do agree that we will make contact with the U.K. Government. But the basic point is it will not make any difference whatsoever to the numbers of people coming into Jersey whether or not restrictions are placed on residents of Romania and Bulgaria. It will not make any difference whatsoever because it is the total number that is controlled irrespective of which particular country they may come from.

The Bailiff:

Well, I am afraid that supplementary questions on that question must be drawn to a close.

4. APPOINTMENT OF MINISTERS, COMMITTEES AND PANELS: Chairmanship of the Health and Social Security and Housing Scrutiny Panel - result of first ballot:

The Bailiff:

I can now announce the result of the first ballot for the Chairmanship of the new Scrutiny Panel. Seventeen votes were cast in favour of Deputy Breckon, 17 votes were cast in favour of Deputy Le Hérissier, 15 votes were cast in favour of the Deputy of St. Ouen. So the Deputy of St. Ouen falls out of the voting and there will be a second ballot as between Deputy Breckon and Deputy Le Hérissier, and I ask the Chief Usher and Deputy Viscount to circulate the ballot papers. I ask Members to place their votes in one of the 2 ballot boxes. If all Members have placed their votes in one of the 2 ballot boxes I again ask the Attorney General to act as scrutineer with the assistance of the Deputy Viscount. I can assure Members that the Greffier has been keeping a close tally on the time so that question time will not be curtailed at all.

5. ORAL QUESTIONS (continued...)

5.1 Deputy D.W. Mezbourian of St. Lawrence of the Minister for Housing regarding consultation with the Planning and Environment Department on the proximity of telephone masts and base units to States rental accommodation:

Will the Assistant Minister advise what consultation, if any, has taken place with the Planning and Environment Department to ascertain the proximity of any telephone masts and base units to all States' rental accommodation in the Island?

Deputy J.A. Hilton of St. Helier (Assistant Minister for Housing):

The simple answer to the question for the Deputy is none.

5.1.2 Deputy D.W. Mezbourian:

I am sure that following that response the Assistant Minister will expect me to stand up and ask a supplementary, which I am happy to do. The supplementary, Sir, is for the Assistant Minister to advise the House of the number of tenants there are who are in States' rental accommodation and to also advise the House that if no consultation has taken place with the Planning Department to find out the proximity of phone masts and base units to States' rental accommodation, is the department satisfied that there will be no adverse health implications to those tenants who may be living in close proximity to the phone masts or base units?

Deputy J.A. Hilton:

There are approximately 13,000 Housing Department tenants. Did the Deputy... **[Interruption]** If the Deputy could repeat the second part of her question?

5.1.3 Deputy D.W. Mezbourian:

Thank you for confirming that there are about 13,000 States' tenants. The second part of the question was; is the department satisfied that there will be no adverse health implications to those

tenants from the close proximity of phone masts or base units to rental accommodation, bearing in mind that there has been no discussion between Housing and Planning and Environment to ascertain how close these units are to States' accommodation?

Deputy J.A. Hilton:

My response to that question is at the current time the Housing Department only have one mobile mast directly on Housing Department premises which is due to be demolished in the New Year - which is down at Le Marais - which was placed on our properties several years ago without any consultation with ourselves. With regard to the question of whether we are satisfied that there are no health risks to our tenants, I do not feel that I am in a position to really answer that question. I think that is a question that needs to be answered by the Health Department.

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

I wonder if the Assistant Minister could just clarify the answer she has just given. In relation to masts, the number located on or in States' rental accommodation including perhaps those operated by trusts, I believe there is more than one.

Deputy J.A. Hilton:

The question to the department was about masts located in the proximity of Housing Department premises. So my answer remains the same as before. I am aware that there is one mast currently on Housing Department premises which is due to be demolished in the New Year.

5.1.5 Deputy D.W. Mezbourian:

Would the Deputy confirm then that States' tenants may take no comfort from the fact that the Health Department can confirm or otherwise that there are no adverse health implications to them should they be living in close proximity to these units?

Deputy J.A. Hilton:

I am sorry, Sir, I really do not feel that I am in the position to answer on behalf of the Health Department.

5.1.6 Senator L. Norman:

I wonder if the Assistant Minister could tell us why the mast at Le Marais is being demolished. Does the Department or the Minister have some health concerns about it?

Deputy J.A. Hilton:

Absolutely not, Sir. That is not the reason it is being demolished. It is part of the redevelopment of Le Marais phase 2. The actual premises that the mast is situated on at the moment is going to be demolished for redevelopment, and that is the only reason.

6. APPOINTMENT OF MINISTERS, COMMITTEES AND PANELS: Chairmanship of the Health and Social Security and Housing Scrutiny Panel - result of second ballot:

The Bailiff:

Before we come to the third question, may I announce the result of the second ballot for the chairmanship of the Scrutiny Panel? Twenty five votes were cast in favour of Deputy Breckon, 23 votes in favour of Deputy Le Hérissier, and I declare Deputy Breckon to have been duly elected.

Deputy A. Breckon of St. Saviour:

Can I thank Members for that support? What I did say, Sir - which the other 2 candidates would not have heard, the same as I did not hear what they said - was that, if elected, the membership of that

Panel was open to any Member who wished to express that wish to me, and that extends to the other 2 candidates. Thank you, Sir.

7. ORAL QUESTIONS (continued...)

7.1 Senator B.E. Shenton of the Chief Minister regarding the effect on the housing market of a change in (j) Category policy:

Given that the Jersey house price index stated that 8 per cent of properties were purchased by (j) Category licence holders during the third quarter of 2006, would the Minister advise the Assembly what effect the change in (j) Category housing controls has had on the increase in house price inflation? How has this change in policy affected the housing market for local residents and has it been inflationary?

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

There has been some increase in the number of (j) Category house purchases but it should also be emphasised that the great majority of purchases - 92 per cent - have been made by locally qualified people with at least 10 years' residence in the Island. The impact of (j) Category purchases is considered minimal. It is simply not plausible, in the context of large increases in local employment and real economic growth for the first time in 5 years, to ascribe the increase in house prices to a small number of essential employees purchasing 8 per cent or 30 out of 400 properties. It is important to add, however, that house prices are a supply and demand equation and that positive initiatives are being developed around shared equity and first-time buyer schemes to seek to address issues of affordability for local people as a matter of priority.

7.1.2 Deputy P.V.F. Le Claire:

The Chief Minister responded by saying in the initial part of his answer that the other 92 per cent of properties were purchased by locally qualified individuals within the Island in that quarter. May I inquire as to how many of that percentage were share transfer sales?

Senator F.H. Walker:

I have not got that information.

7.1.3 Deputy G.C.L. Baudains:

There was a recent report in the *Evening Post* suggesting that house prices were being held up by people purchasing houses who had recently moved to the Island. Would the Chief Minister comment on that?

Senator F.H. Walker:

I believe that report referred to the very top-end of the market because we had seen a recent increase over the last 18 months or so in wealthy immigrants or 1(1)(k)s coming to Jersey. But there is a shortage of supply I am informed at that end of the market and willing buyers, so inevitably the price there has gone up, but that does not affect the lower echelons of the market which are of most concern to us and, indeed, to the majority of local people.

7.1.4 Deputy G.P. Southern:

Is the Chief Minister aware that there was warning given of this in the Planning for Homes document in 2004, as I pointed out at the time, and what measures does he envisage to be in the Planning for Homes document 2006 in order to ameliorate this inequity in supply and demand?

Senator F.H. Walker:

Much work has been done to ameliorate the imbalance between supply and demand. That was recognised immediately by the Council of Ministers when the Council first took office, and one of

the high priorities for the Council of Ministers - the Housing and Planning Ministers in particular - is to ensure that we have more equity between supply and demand. But what it means is building more houses but, yet again, let us not imagine that this is to satisfy heavy inwards migration demand. This is to satisfy the needs of local people.

7.1.5 Senator B.E. Shenton:

Would the Chief Minister not agree that the change in housing controls and change in (j) Category controls would be inflationary - obviously inflationary - and that it does alter the demand aspects and it is down to the Council of Ministers' policies that house prices inflation is moving ahead?

Senator F.H. Walker:

No, Sir, I do not. House price inflation is moving ahead because the economy in Jersey is currently the strongest it has been in many years. I would also point out that house prices are moving ahead in exactly the same way in the U.K., Guernsey and the Isle of Man, all of whom also have strong economies at this point. It is an inevitable consequence of success in terms of developing our economy.

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

Would the Chief Minister not agree that if the value of homeowners' property did not increase many residents would be very concerned about our economy?

Senator F.H. Walker:

Of course that is the other side of the scale, that many local people have relied over the years on some increases in the value of their property to move up the property chain and, indeed, for other reasons. So the Deputy's point I think is well made.

7.1.7 Deputy P.V.F. Le Claire:

May I ask the Chief Minister, given that access to employment and access to housing are the 2 main issues that the Island has faced for generations, and will continue to face for generations in terms of immigration, will the Minister undertake- as he has indicated in response to my first answer - to circulate a list of the purchases that have occurred in the last 3 years to States' Members so that Members can ascertain what sectors of what markets have been active and which ones are increasing? Especially as the buy-to-let market which has been encouraged by local insurance companies of late has suffered an enormous setback in the United Kingdom, and it is, in particular, of concern to local residents that the average house price of £400,000 may be good news for the person that has got a house but is not good news for the people that do not.

Senator F.H. Walker:

I will circulate as much of the information the Deputy has requested that is available. That is, I think, all I can do. We have always accepted house prices in Jersey are high but the differential between house prices in Jersey and those elsewhere has narrowed in recent years and the time when we saw house prices galloping ahead at 20 per cent a year price increases has long gone, and thankfully so.

7.1.8 Deputy G.P. Southern:

The Chief Minister has stated that this was the inevitable consequence of success. Does that imply that he is to do nothing about the inability of many local people to buy a decent house at the £400,000 level which render it impossible, and does he not accept that this has been brought about by the imbalance in building whereby too many one and 2-bedroom flats have been built and not enough 3-bedroom houses?

Senator F.H. Walker:

I am not going to answer the second part of the question because that is much more for the Planning or the Housing Minister, but I do not think the Deputy could have listened to the answer I gave to the original question when I said, in answer to his question about supply and demand, are the Council of Ministers doing nothing? No, the Council of Ministers are doing a great deal. A great deal in terms of shared equity schemes and other house purchase schemes, witness the incredibly successful sale of previously rented accommodate at Les Marais to Jersey families, many of whom I have spoken to personally, and the plans to release considerably more - a number of several hundred more - in the very near future; plus, totally new plans to introduce shared equity into Jersey. Exactly what the Deputy would want us to do to respond to this situation and to make sure property is affordable to people lower down the income ladder in the Island.

7.1.9 Deputy G.P. Southern:

Will the Chief Minister indicate when this shared equity scheme is to be introduced and where its funding is coming from?

Senator F.H. Walker:

The final details of the shared equity scheme are yet to be resolved but it will, I am told, be introduced in the very near future. I cannot give a specific date, but it is an urgent priority for the Council of Ministers.

7.2 Deputy G.P. Southern of the Chief Minister regarding low income households in the 2004/5 Household Expenditure Survey:

Will the Chief Minister inform Members what percentage of households in the 2004/5 Household Expenditure Survey had incomes below 50 per cent of the median income of £34,000, an indicator of relative poverty levels, along with the reasons for its non-inclusion given that this figure was included in both the 1993/4 and the 1998/9 surveys?

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

The proportion of households below a given percentage of median household income is commonly used as an indicator of relative low income within a jurisdiction. As measured by the 2004/5 Household Expenditure Survey the proportion of households in Jersey with income below half of the median was slightly less than a fifth, that is 20 per cent. This is an improvement on the previous position. This result is evident in table 21 of the report on the survey. The reason why the indicator was not included is because the focus of the survey was on household expenditure rather than income. It is the Income Distribution Survey which covers income. The 2002 survey showed that average household earnings in Jersey were almost 70 per cent higher than in the U.K. before housing costs and almost 50 per cent higher after housing costs.

7.2.1 Deputy G.P. Southern:

If those figures are indeed correct then there has been an almost 2 per cent reduction in the number of people in relative poverty by that measure; the Chief Minister is to be congratulated on that, if that is the case. Would he indicate to Members what aspects of his policies could be held accountable for such a reduction in relative poverty levels?

Senator F.H. Walker:

I think the policies of the States generally which have focussed increasingly on supporting people at all levels in Jersey's society. I would also point out - I have referred to this before - that there is a totally new social policy strategy which will be out for consultation and subject to Scrutiny, of course, in the very near future and I believe that will go a considerable distance further towards addressing the needs of people who are less well-off. I also make an important point though, Sir, for all Members I think. It does not matter how wealthy a community, we could be talking about

Mustique or Monte Carlo, there will always be a percentage of people who fall into this relative low income bracket. The question is in Jersey, where is the level? As I have said in my answer, the level of earnings is very high indeed compared to the U.K. But there will always be people, if the earnings doubled on average, there would still be people who would fall below the median. That is a fact in any country in the world, no matter how wealthy they may be.

7.3 Deputy S. Power of St. Brelade of the Minister for Planning and Environment regarding the introduction of third party planning appeals:

On 13th September this year, during the debate on the Annual Business Plan 2007 an amendment relating to third party planning appeals was withdrawn by me following assurances given by Ministers that funding to introduce third party appeals would be available from 1st January 2007. Would the Minister inform Members whether it is still his intention to introduce third party appeals from that date and if not, why not?

Senator F.E. Cohen (The Minister for Planning and Environment):

At the Council of Ministers meeting last Thursday, the Council reaffirmed its commitment towards funding the provisions for third party appeals. The implementation of these provisions requires additional staff at the Planning and Environment Department as it is anticipated that the introduction of third party appeals will lead to a significant increase in appeals which simply cannot be handled within the department's existing resources. Recruiting of these additional staff is now in hand. We are advertising for new officers; we need to appoint suitable candidates and allow them to work out notice in their current employment. I can assure the House that we are implementing third party appeals as soon as is practicable. I am therefore immediately lodging the Appointed Day Act proposition with an implementation date of 31st March 2007.

7.3.1 Deputy F.J. Hill of St. Martin:

Could the Minister tell us why he thinks there will be an influx of third party appeals?

Senator F.E. Cohen:

I think it is natural process that when those who have grievances about the way applications have been determined have a new avenue open to them that they are naturally going to explore them, but please understand that we do not have any indication yet of the likely numbers of appeals that we are going to have to deal with and I think probably by the middle of next year we will know more.

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

While obviously I very much welcome this coming into effect at the end of March, does the Minister accept that there are at least one or more large applications pending that will mean that the third party will not be able, as would have been the case if it had been 1st January, to have an effective appeal because of the delay?

Senator F.E. Cohen:

I can assure the House that the department has gone to every effort to implement third party appeals as quickly as possible. It simply is not practical to implement third party appeals with effect from any date earlier than 31st March and unfortunately there may be consequences of that in relation to applications that are in the pipeline but there is really little that we are able to do about that.

7.4 Deputy J.A.N. Le Fondré of St. Lawrence of the Minister for Planning and Environment regarding Ministerial review of the proposed development of Fields 848, 851, 853 and 854, St. Lawrence:

Further to his report dated August 2006 in respect of his review of the development of Fields 848, 851, *et cetera*, in St. Lawrence in which the Minister produced 5 reasons for refusing the

application, will the Minister have regard to whether these 5 grounds for refusal have been satisfied in the event - at the time of writing the question - any future application is forthcoming on this site?

Senator F.E. Cohen (The Minister for Planning and Environment):

To answer the question fully would effectively mean that I would risk predetermining the application. As Members will appreciate, I am not able to do that but I can give a general indication of the approach I shall be taking as follows. As with all applications for planning permission the revised proposals for development on this site will be judged carefully and objectively on their merits having regard to the Island Plan and all other material planning considerations including any further representation from local residents. Members will know that I decided to refuse the previous application for 5 reasons relating to; (1) overdevelopment; (2) housing site boundary infringements; (3) education capacity, (4) noise impact and (5) design and local relevance. I will expect any new application for development of this site to properly address, to my satisfaction, the 5 reasons for refusing the previous application.

7.4.1 Deputy J.A.N. Le Fondré:

I thank the Minister for his response, but could he confirm perhaps in more general terms, if it is going to prejudice a particular application, that where a boundary has been zoned by the States in the Island Plan under policy H2 that essentially the entire development, in his view, should be within that boundary possibly with the exception of any access roads on to the site?

Senator F.E. Cohen:

I feel that that question is too precisely directed towards what is now a current application. All I can assure the House is that I will be giving very careful consideration to all the component factors relating to the new application and included in that would be any boundary infringements.

7.5 Deputy J.A. Martin of the Minister for Transport and Technical Services regarding the use of figures by the current operator in the award of the Summer Leisure Bus contract:

Just before I start, Sir, for helpfulness I have just downloaded the official Hansard that I am following on some questions, and I have circulated to all Members and hopefully yourself, Sir. Recently the Minister assured Members that the bus contracts had been awarded on an even playing field basis. In one of his answers he stated "that estimates submitted by Connex for the proposed summer service was, indeed, optimistic" and "we based their internal calculations on the known figures that are provided by the current Easy Link - Tantivy service." Would the Minister explain the use of those figures in this way?

Deputy G.W.J. de Faye (The Minister for Transport and Technical Services):

The Connex tender included an estimate of revenue for the forthcoming summer service. This was considered to be over optimistic so to ensure that both tenders were evaluated on the same basis the figure used for calculating future income was based on that supplied by Tantivy for the estimated 2006 income. This lower amount was considered to be the most accurate estimate available as it was supplied by the incumbent operator and was based upon the most recent figures.

7.5.1 Deputy J.A. Martin:

I am still quite amazed. I have been in tendering processes, or been on Committees where there have been tendering processes, and the use of cross-referencing one set of figures to award... to me the Minister uses the word optimistic by Connex, so he used the figures by the already incumbent operator and then awarded the contract to Connex who seemed to be incapable of producing realistic - the word is, Sir, realistic - set of figures. But the Minister still says that this is a proper way of looking at tendering processes. In my oral written question to you I said I think these figures were used highly immoral, even illegal, would the Minister not agree to this, Sir?

Deputy G.W.J. de Faye:

I most certainly would not.

7.5.2 Deputy R.G. Le Hérisier of St. Saviour:

Although we have questions without notice; would the Minister sum up the matter in which the tenders were considered and would he confirm that it was done in a very open-ended fashion and not on the basis of strict applied criteria to all parties?

Deputy G.W.J. de Faye:

I am very happy to confirm that the tender process was conducted with scrupulous rigorousness. One of the reasons why in the terms of the calculations applied to properly assess revenue predictions that I rejected what I described as Connex's over optimistic revenue forecast was to get what I felt to be a more accurate picture of what the value of the respective tenders were. Clearly by taking a tougher, or rather a lower estimate of future income, that would have mitigated the case to some extent against a tenderer predicting higher revenues in respect of a summer service. However, it is important to understand, I think, for all Members that in consideration of a tender a Minister and the Minister's advisers are not bound to base their considerations simply on the basis of the papers put towards them. We are able to use our own judgment as to whether we think that figures that are quoted as estimates are accurate as not. Similarly, I asked my officers specifically to work over both tenders with scenarios of revenues that were lower than predicted simply on the basis that I think it is sensible to, for example, assume Jersey may have a poorer tourism season next year than this year with the potential for a knock-on on bus service revenue and buses operating on a... I will give way to the Senator.

Senator B.E. Shenton:

Could we ask the Minister to be a bit briefer with his answers to questions please?

The Bailiff:

I did not notice that the Minister had been too wordy, but there is an obligation to be succinct.

Deputy G.W.J. de Faye:

I regret that I find I am repeating things as I have given an answer to previous questions, so clearly the message is not getting through. Let me be simple and precise. This tender process was carried out in a totally even-handed way and even the Comptroller and Auditor General, I understand, who recently assessed the process and looked at all the documents I gather has indicated to Deputy Le Hérisier that he is entirely satisfied with the way the matter was conducted.

7.5.3 Deputy R.G. Le Hérisier:

Yes, he has so advised me and I thank him for that. I wonder, Sir, would the Minister acknowledge that the logic of the contract was such that if the competitor took away more traffic from Connex it would make the Connex operation even more unviable in terms of subsidy so that any competing operator was basically faced with a situation where they could not be adventurous because they would interfere with anticipated revenues from Connex?

Deputy G.W.J. de Faye:

I believe that both the parties to the tender process offered in terms of the proposals for the summer leisure service as an adventurous concept as they thought were reasonably viable. The difficulty I think that Members may be grappling with is that the nature of the 2 types of tender was different. One operated on a low percentage of revenues but a guarantee that there would be no additional call, theoretically, on the States. The other party, Connex, already operates the main scheduled service on a service level agreement for which there is a fixed price and the States then take the

revenues. Both parties approached the tender process in the method of contract that they were familiar with and the method that was familiar to the States.

7.5.4 Deputy G.P. Southern:

I apologise for keeping the Minister on this subject; but it is obvious that his answers are not as clear as he may think they are. Is the Minister suggesting that in the tender process company A comes along with a bid with figures which are extreme and would normally be rejected as unrealisable but then, in fact, as part of the process the people who are judging the tenders alter the figures in order to give the contract to the person that previously would have been seen as unrealisable?

Deputy G.W.J. de Faye:

What the Minister is suggesting, Sir, is that the object of the exercise is to provide the best possible public transport service to the Island and that is the approach I took and that is the result that has taken place.

Deputy G.P. Southern:

That is an outrageous non-answer. That is no attempt to answer the question at all. It is an insult to this House.

Deputy G.W.J. de Faye:

Was that a question, Sir? [Laughter]

Deputy G.P. Southern:

Will the Minister attempt please, at least, to address the question?

Deputy G.W.J. de Faye:

I believe I have answered the question, Sir.

7.6 Deputy D.W. Mezbourian of the Minister for Education, Sport and Culture regarding the current available capacity at First Tower, Bel Royal and Les Quennevais schools:

In June the Minister advised Members that First Tower, Bel Royal, Les Quennevais schools would not be able to cope with the expected demand for places if development permission was approved for the then current application on Fields 848, 851, *et cetera*. Will the Minister state whether the capacity at those schools has increased and advise the current availability?

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

As will be expected, the situation is very similar to the answer I gave to a question asked by the Deputy in June. In terms of current availability, while the total number of pupils in Bel Royal School is currently just over its planned maximum there are 14 places available in specific year groups. That is an increase of 8 available spaces in specific year groups from June. First Tower School: there is space for a further 25 children. It was 27 in June so that is a decrease of 2 spaces. At Les Quennevais they currently have a roll in excess of its planned capacity but there are spaces for 7 children in specific year groups only. It was 6 in June, Sir, that is an increase of one.

7.6.1 Deputy D.W. Mezbourian:

Supplementary, Sir. Thank you. In view of the acknowledged high density of development in the west of the Island - either proposed, recently completed or near completion - what implications does the Minister foresee for the education infrastructure in that part of the Island?

Senator M.E. Vibert:

We at Education have a statutory duty to provide appropriate education for children of statutory school age and we try, wherever possible, to accommodate children in their nearest school, be that primary or secondary. Where there is not a place within the school for those children in the catchment area we try to place children in the nearest school otherwise and give parents a choice of what availability there is. When we provide information to Planning and Environment on a regular basis on the availability of school places, they take this into account when considering planning applications. When there are major housing developments we will adjust, if necessary, catchment areas for the future so as to provide the best possible fit from the schools available and the places available in those schools with the proximity of children in the area.

7.6.2 Deputy P.V.F. Le Claire:

Given that there is a large number of housing developments occurring over the Island and given the answers which the Minister for Education and Sport and Culture has provided, I wonder if he can give Members an idea as to whether or not there will be a projected surplus or deficit of places within schools overall in Jersey in the next few years and whether or not he has indications to that degree at the moment? Because surely from a planning perspective these things must be understood and it would be helpful for Members to realise whether or not we need more schools.

Senator M.E. Vibert:

I can assure that at present we have projected a surplus of places in the primary sector because we have had a bulge of children going through the school that are currently in the secondary school now, and the upper echelons of the secondary school. Unfortunately the availability of places does not always correspond with the children in a catchment area, which is the problem. But our projections on the current birth rate and the latest figures we have is that in the future, unless there is another bulge in the population in years to come, which has not occurred yet, we will have enough spaces within our primary sector and our secondary sector.

7.7. The Deputy of St. Martin of the Minister for Home Affairs regarding the establishment of a Police Consultative Group:

The States approved paragraph 3.2.1 of the Strategic Plan, which was to establish a police consultative group, either through separate primary legislation or a new Police Law by 2008. What steps has the Minister taken to address the matter? How has it been progressed and has a timetable been agreed to ensure the matter is addressed by 2008?

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

My department is currently considering the matter alongside a new Police Law and, as part of the research, we have examined the newly established arrangements for a Police Authority in Gibraltar, which has been drawn to our notice by H.M.I.C. (Her Majesty's Inspectorate of Constabulary). The Assistant Minister has met the Chairman of the Gibraltar Police Authority to discuss the establishment and early experience of their arrangements. A meeting is arranged with the Law Draftsman's Department in early December when specific options will be discussed in detail, including an appropriate timetable to meet the Strategic Plan commitments.

7.7.1 The Deputy of St. Martin:

Is the Minister confident - as it is only 13 months away - that the Consultative Group will be up and running by 2008?

Senator W. Kinnard:

We are going to discuss the detailed timetable when we meet with the Law Draftsman. Obviously there are some law drafting commitments, but the Police Law itself, Sir, is very much virtually complete except for this small matter. I do not see at this stage any concern for any delay.

7.8 Deputy G.C.L. Baudains of the Chief Minister regarding biometric identity cards:

Will the Minister explain whether he has decided to proceed with biometric identity cards? What consultation has taken or will take place and what opt-out facilities will be available?

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

Following the decision of the States on 22nd June 2005 to adopt a registration scheme as an integral part of the new migration strategy, no decision has yet been taken on what form registration will take other than that it will be combined with Social Security registration. The Migration Advisory Group has concluded that on balance it is sensible that the single registration document incorporates a method of establishing identity for the purposes of assessing the employment and housing and potentially a range of other public services. Given the purpose of registration - including access to Housing, Social Security and other public services - an opt-out facility does not seem to be appropriate, but all avenues will be explored. This is an important policy area in securing migration and population objectives and the fullest possible public understanding and debate is vital. Clearly, therefore, all proposals on this subject will be subject to consultation as and when they are considered for development.

7.8.1 Deputy P.V.F. Le Claire:

I have tried a few crafty ones in my day but this might take the biscuit. I would like to ask the Chief Minister in what way he sees biometric identity cards playing a part in airport security in the future, as it does currently with Channel Islanders returning home being photographed and then re-photographed, there is a certain biometric element there I believe? What aspect does the Chief Minister see that playing in regard to Jersey's airport security; and on the issue of Jersey's airport security, can the Chief Minister update us about the issues in relation to airport security which have us looking at the least supportable time at security: an issue where there might be a strike on our hands?

Senator F.H. Walker:

I think that is a question that is a bit far off the subject of the principal question. Nevertheless, so far as the use of biometric identity cards is concerned for airport security, it is far too early to give an answer to that question. The whole issue, as I think I said in my main answer, is effectively work in progress and no decisions at this juncture have been made. So, I have had no updates since very early this morning on the airport security position but at the time that I received my last update sadly the news is that some sort of strike beginning tomorrow morning is most likely to occur. But I would emphasise that this is a dispute between the employers - who are G4S, the security firm - and the employees. It is not a dispute between the airport and/or, if you like, the States and their employees in this instance.

7.8.2 Deputy G.C.L. Baudains:

Before the Chief Minister finally chooses the technology that will incorporate the information on to an identity card, will he take into account developing concerns on biometric passports and other such devices which have now been proven to be easily hacked into? Apparently the equipment to hack into a passport costs £105, and the House of Commons Science and Technology Committee has asked the government to reconsider the technology because it is not secure.

Senator F.H. Walker:

I am grateful to the Deputy for making that point. This will be the subject of detailed consideration by the Migration Advisory Group who will in turn, at the appropriate time, be advising me and the Council of Ministers on what they believe to be the appropriate way forward. Then of course it is a question of coming back to this House, no doubt going through a full, rigorous scrutiny process and consulting widely with the public.

7.8.3 Deputy K.C. Lewis:

I did see a biometric passport only yesterday, Sir, and I believe they will be an important tool in combating illegal immigration and terrorism. However, I understand that this biometric equipment is horrendously expensive. Does the Chief Minister believe that if politically and legally possible this equipment could be shared with Guernsey?

Senator F.H. Walker:

The answer to that is, at this point, unknown. What I can say to the Deputy is that the Council of Ministers is meeting with our counterparts, the Policy Council in Guernsey on Friday and it is now added - and I am grateful to the Deputy - to the list of possible areas of co-operation that we will be discussing with them during that meeting. So, I am grateful to the Deputy for raising the possibility.

Deputy P.V.F. Le Claire:

I request that you grant me a little leniency if I may, Sir, because I would like to stray back into the issue about airport security in relation to the answer that the Chief Minister gave me before, Sir.

The Bailiff:

You have got away with it once, Deputy, but not a second time I am afraid.

Deputy P.V.F. Le Claire:

May I ask, Sir, that the Standing Orders be lifted in order that we may question the Chief Minister on this issue? Given the issue that airport transportation involving perhaps delays and security issues and the ability for the finance industry to operate effectively is at hand here, we have no statements today from any of the Ministers in regards to this. We have a statement from the Economic Development Minister on sea routes; I believe that is forthcoming. But, I do believe that we need to at least have an understanding of what the issue is so that we can push the Chief Minister on some of these issues and question him and put some points to the Chief Minister, Sir, that we may have in this regards. Therefore, Sir, I would like to ask for the Standing Orders to be lifted in this instance so that I can ask the Chief Minister some questions on this issue.

Senator P.F.C. Ozouf:

If I may be helpful to the Assembly, I have already been in communication with the Greffier. The Assistant Minister will be making a statement on the issue concerning the airport, with your leave, later on after the luncheon adjournment.

Deputy P.V.F. Le Claire:

I thank the Minister for Economic Development for that intervention.

7.8.4 Deputy G.C.L. Baudains:

Given the wider implications, as I mentioned earlier, Sir with the biometric passports as used by Britain being now easily cloned and offering virtually no assistance with increasing security - what are the Chief Minister's thoughts on our own passports, which I believe are now going that way? Is there any intention of looking at the issue afresh given this new information on the lack of security of the information on these cards?

Senator F.H. Walker:

Clearly the Deputy raises an important issue. I am assured that security implications have been fully taken into account, but I will see that the Deputy's question is pursued with the relevant officers and gets a full, comprehensive answer to him, which I think would be of interest possibly to all Members of this House.

7.9 Deputy R.G. Le Hérisier of the Minister for Home Affairs regarding costs of consultants engaged on the Prison Improvement Plan:

Would the Minister identify the cost and time commitment of the consultants employed to assist in the production of the Prison Improvement Plan?

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

Two senior consultants from the Prison Service of England and Wales spent 6 days and one consultant returned for an additional 3 days at a cost so far of £806. We anticipate a further bill of approximately £750 giving an overall total of £1,556.

7.9.1 The Deputy of St. Martin:

The Minister has previously stated that the Prison Improvement Plan would be considered by the Council of Ministers on 19th October and then afterwards made available to States' Members and Scrutiny. Would the Minister advise the House as to what has happened to the Plan?

Senator W. Kinnard:

The Council of Ministers were given a presentation on 19th October but Members will be aware that there was no funding available for the Prison Improvement Plan and I am awaiting the outcome of funding discussions which are due to take place in the Council of Ministers. But I can certainly say that the Plan will be shortly available to all Members and published as a report.

7.9.2 Deputy R.G. Le Hérisier:

Would the Minister now confirm her statement on 12th December during the debate on the Business Plan is no longer accurate? We ought to congratulate the Prison Governor and the staff of La Moye for their achievement in completing the Plan while continuing to run the prison without any of the extra resources I have just described that are available to their colleagues elsewhere.

Senator W. Kinnard:

I stand absolutely by that statement, because the costs that have been incurred, which I believe are very minor, just cover in fact accommodation and travel costs. All the work that was undertaken during that period of time has been undertaken at no cost to La Moye prison because of the very good relationship that we have developed with the Prison Service of England and Wales in recent times. I do believe that we should congratulate the Governor and his staff for all the work that they have done when they have not received the resources that their colleagues receive in England and Wales, which is usually in the region of £500,000 and also seconded staff for at least a year.

7.9.3 Deputy C.J. Scott Warren:

I think the Minister has really answered what I was going to ask her. I wanted her to comment on whether she believed this money of £1,556 is - obviously I realise it was for practical reasons - but would the Minister confirm that she believes this is money well spent in the longer term view, or as short as possible term view?

Senator W. Kinnard:

Considering that we are looking at a Prison Improvement Plan at a cost of about £1.5 million I do believe that this very small amount is extreme value for money, and I would like to see any other department in the States manage to deliver such a Plan at such low cost. I put the challenge. I lay down the gauntlet, Sir, including the gauntlet to Scrutiny, thank you.

7.9.4 Senator J.L. Perchard:

I have to admit to being very concerned by the Minister's attitude towards this. The Prison Improvement Plan: it is critical that Members get an opportunity to see it and that the Home Affairs Department invoke an improvement plan. I think it has been going on for too long that excuses have been made on behalf of the department by the Minister for nothing less than a poor service;

particularly with regard to the vocational and educational training of prisoners at La Moye. It is a disgrace what is happening up there, Sir, and I am not prepared to listen to excuses for any longer. When exactly will the Minister be producing a Prison Improvement Plan for us to scrutinise and when will she be asking the Council of Ministers to fund it?

Senator W. Kinnard:

I have never heard such absolute nonsense. Frankly, this Prison Improvement Plan has been produced. We are all aware that there is no funding for it. The Council of Ministers has agreed through a Strategic Plan to fund the education part, but at this precise moment there are a lot of departments with extreme funding issues. Depending on the outcome of those funding discussions it will have some impact on what I can deliver in year one and year 2 and so on of the Prison Performance Improvement Plan. There seems to me little point, Sir, to deliver that to Members until those discussions about funding have taken place. I have the Prison Performance Improvement Plan but it seems to me, Sir, that it is of little value to Members until we know whether we have any resources to apply to it. When I have the notice of what those resources are likely to be it seems to me that that is the moment the Members will gain most value from having the plan in front of them.

7.9.5 Deputy G.C.L. Baudains:

Would the Minister not agree that the crisis created by under-funding is her responsibility as a previous President of the Committee for not funding it in prior years?

Senator W. Kinnard:

The under-funding problem at the prison is the result of decades of neglect and, in fact, the only funding that has gone into the area of La Moye has occurred under my Presidency and under my position as Minister. I think that this House is fully aware, through the Scrutiny process not least, for which I am grateful, of just the kind of strategic problems that La Moye prison does face. I do feel, Sir, that the prison service at La Moye is doing a very good job under extremely difficult circumstances. I think this kind of knocking copy, which really is quite unacceptable, does nothing to support those officers doing a very difficult job, as I have explained, under extremely difficult circumstances. I would like to feel that they have this House's support as well as mine.

7.9.6 Senator J.L. Perchard:

The officers and the Governor and the staff at La Moye prison certainly have my support and I know those Members that have visited the prison will think likewise. The appalling conditions under which they are expected to work are, as I have described earlier, a disgrace to this Assembly. I ask again, when will the Minister make this Plan available to Members and will she put her position as Minister for Home Affairs on the line if she cannot deliver it?

Senator W. Kinnard:

It may have escaped the attention of the Senator, but the Council of Ministers does try to work as a collective. If I could magic the funds out of the air I certainly would magic the funds out of the air, but the difficulty is that this House - this Government - faces extreme difficulties, which the Council of Ministers has not yet resolved. I am not entirely sure it is going to be able to resolve them. I am quite happy to give the Performance Improvement Plan to Members but as I say, as it stands it has very little meaning until I know what resources I am going to be able to put towards it. The cost is £1.5 million. At this stage there is not the funding being made available to deliver that Plan. The discussions have yet to be had. It seems to me most sensible to wait until we have the outcome of those discussions, but if Members are insistent on having the Plan I have no problem in letting them have it. It just seems to me of little use until we can say what we are able to deliver in year one and year 2 and so on.

7.10 Deputy R.G. Le Hérissier of the Minister for Treasury and Resources regarding :

Senator Ozouf knows I am very slow to learn in this area. Would the Minister inform the Assembly whether local postal rates are in any way affected by the postal imbalance created by the postage of items for the fulfilment industry?

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

In the absence of the Treasury and Resources Minister I am answering this question. I am advised by Jersey Post that the cost of mail sent to and from the U.K. including that generated by fulfilment does not affect the cost of local to local mail, although it does affect the cost of mail from Jersey to the U.K. and other international destinations. Upon the incorporation of Jersey Post the review of postal prices became the responsibility of the J.C.R.A. (Jersey Competition Regulatory Authority). The J.C.R.A. are currently undertaking a review and have indicated in their forward work programme, which was issued for public consultation on 13th November, that the review should be complete by March 2007.

7.10.1 Deputy R.G. Le Hérissier:

I wonder if the Chief Minister could give a categorical assurance, Sir, that the proposed increase in local postal rates and the increases which have damaged local societies who mail overseas - like the Channel Islands Occupation Society, which I spoke about at almost tedious length with Constable Fisher when he was in charge - could he give us an assurance that the imbalance and the prices charged for local mail are in no way, in no way to do with that imbalance and the increasing sums sought by the Royal Mail?

Senator F.H. Walker:

I think I have already said that in my answer, that local to local mail prices are not affected by the imbalance. Local mail to other destinations is.

7.10.2 Deputy G.C.L. Baudains:

Would the Chief Minister confirm or otherwise that in fact the cost of local mail is tied-in with our agreement with the United Kingdom because it encourages us to keep our cost of local mail high, thereby keeping our contribution to the U.K. low?

Senator F.H. Walker:

No, Sir, that is not the case.

7.10.3 Deputy C.J. Scott Warren:

Can the Chief Minister give details to Members now about how much the effect of the fulfilment industry has on the local U.K. and local European rates... can he supply that information to us today?

Senator F.H. Walker:

Only in rough figures. I am advised by Jersey Post that it is in the region of between 10 per cent and 20 per cent.

7.10.4 Deputy R.G. Le Hérissier:

Would the Chief Minister - a.k.a. Chief Postman - acknowledge that the rates for mail internationally have risen to disproportionate levels and they are knocking out local societies who are engaged in mailing of members overseas and that these rates, no matter how they are calculated, do not bear comparison with neighbouring countries and that indeed, people are going to some of these countries to do their mailing?

Senator F.H. Walker:

No, again I am afraid that simply is not the case. I do have a graph here which clearly shows where Jersey sits in relation to mail out of the Island to the U.K. and Jersey is the fourth cheapest mailing service in the whole of Europe.

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

Could the Chief Minister confirm that in the late 1990s, and possibly even the early 1990s, and during the time when he was in fact President of the Postal Committee, that local to local rates were loss-making and they were maintained artificially low and possibly - as the fullness of time has demonstrated - unsustainably low in the long-term and that this was achieved through subsidies from mail prices that were not local to local?

Senator F.H. Walker:

Local to local rates it is true were artificially low for a very considerable period of time, an extended period of time, and what Jersey Post have done now is to correct that position to seek to ensure that local to local rates more adequately - I have no information on the profitability or otherwise of local to local rates at the moment - but what Jersey Post have done is seek to ensure that the rates more realistically cover the cost of what is a very expensive but hugely comprehensive delivery service.

7.10.6 Deputy C.J. Scott Warren:

Is the Chief Minister aware that in previous years many people who are travelling to the U.K. will post their Christmas cards to Jersey residents second class from England to save money?

Senator F.H. Walker:

That may well be the case, but Jersey Post has been inflicted with enormous increases in costs by Royal Mail over the past 5 years; enormous increases in costs which they do have to reflect. It is interesting that Guernsey postal prices, despite the fact that the Guernsey Post Office made a loss of over £0.5 million last year measured against a very considerable profit from Jersey Post, despite that Guernsey prices are now moving up towards, and in some cases, beyond those in Jersey.

7.10.7 Deputy R.G. Le Hérissier:

But, are we not back, Sir, to the nub of the question? Those enormous charges, I would suggest, Sir, in my naïve belief, are being made simply because the postal traffic has got so out of balance prior to when we were an active tourist sender of postcards, *et cetera*, it is so out of balance that the Royal Mail now wishes to be rewarded for the extra work it has to perform. As such it does impact on the costs in a vast way of Jersey Post. Hence the increases I am talking about.

Senator F.H. Walker:

The Deputy is quite right, but if he is making the point that it is all down to the fulfilment industry, he is quite wrong. The fact is that there has been a dramatic increase also in other forms of mailing from Jersey to the U.K. and other destinations from banks, *et cetera*, which is not a fulfilment industry. I said in answer to an earlier question that Jersey Post estimate that the effect of fulfilment is between 10 per cent and 20 per cent. Those are the figures supplied to me as of lunchtime yesterday.

7.11 The Deputy of St. Martin of the Minister for Economic Development regarding the Tourism Development Fund grant to “Tennerfest”:

£10,000 has been granted to Tennerfest from the Tourism Development Fund for each of the past 2 years. What is the justification for the grant? What use was the grant put to and what system is in place to monitor the number of visitors attracted to the Island to participate in the Tennerfest promotion?

Senator P.C.F. Ozouf (The Minister for Economic Development):

Tennerfest has been supported by Jersey Tourism for the past 7 years and is funded out of the Economic Development Department budget, not the Tourism Development Fund. It meets the strategic objectives of driving new business in the off-season - that means October and November in this case - and increasing spend in the local economy. The promotion provides a showcase for the Island's fabulous array of restaurants, cafés, bars and hotels delivering business to this sector of the industry at a traditionally quiet time of year. In 2006, 102 restaurants participated in the promotion. The Tennerfest promotion costs £121,000 in total and Jersey Tourism's grant of £10,000 contributes towards the promotional print. Tennerfest is a key part of the 2006 tourism campaign; significant off-Island advertising is carried out. For example, regional advertising campaigns covering 18 regional newspapers, full-page adverts in the *Jersey Evening Standard* with a readership of some 839,000 people, full-page copy in the *Your M&S* magazine with a readership of approximately 4 million and many other promotions. In terms of Jersey's performance during the Tennerfest - October and November - these have become strong months for the leisure market. In 2005, the most recent data available, suppliers sold 69 per cent of the available capacity of a total of 94,000 room nights, an increase of 2 per cent over the previous year. November saw similarly an increase of 5 per cent over the previous year. Many specific packages are marketed by tour operators and we will be evaluating the success of Tennerfest 2006 in the forthcoming weeks.

7.11.1 The Deputy of St. Martin:

Given that Tennerfest I understand is a joint campaign with Guernsey, does the States of Guernsey pay an equal amount of money as a grant as Jersey does?

Senator P.C.F. Ozouf:

I can confirm to the Deputy later on in the day what the exact contribution of the States of Guernsey is, but I understand the States of Guernsey is a similar partner. I am happy to confirm that later in the day to the Deputy.

7.11.2 Deputy C.J. Scott Warren:

Would the Minister agree with me that many local people are able to eat out more cheaply and it may encourage them perhaps to eat out, certainly during that period, more often?

Senator P.C.F. Ozouf:

I would absolutely agree and this is one of the fundamental dilemmas that Jersey tourism has. A lot of the events that we are supporting are not only good for the visitor economy but they are great for the local economy too. I know I enjoy Tennerfest - I know I certainly put on a few pounds during the weeks of Tennerfest as we all probably do - and so that clearly indicates that there is a win-win both for the tourism economy and for the local economy and it is a great news story for what is a fantastic array of restaurants that we have in the Island.

7.11.3 The Deputy of St. John:

I just wondered if the Minister had any measurable evidence of the concept of the £15 Tennerfest for the local economy. Have there been any statistics compiled as to how well that sector of our economy is doing as a result of support from the local residents because, as you have said, most people seem to take advantage of this far more than tourists do? Is there a measurable effect on that particular element of our industry locally from the local residents?

Senator P.C.F. Ozouf:

It is quite difficult to carry out but I am happy to take on board the Deputy's comments - which I agree with - that it is important that one should make decisions on clear evidence. But I would not want to engage in a great deal of work in terms of research for something which is an established

success which I think we all intuitively know is a success and is widely supported, I understand, by the tourism industry themselves. It basically brings, and it has an excuse for, marketing of Jersey. I got some great feedback from people I know in London who picked up the *Evening Standard* and Jersey was there in the *Evening Standard* as a place to visit. So it is tangible and intangible but I am happy to do some more work to get some more data, but I do not want to spend another £10,000 finding it.

7.11.4 The Deputy of St. Martin:

Given that very few establishments sell or provide menus for £10, does the Minister agree that possibly the Tennerfest campaign in its present form is probably past its sell by date and should be revisited with possibly looking at another promotion form?

Senator P.C.F. Ozouf:

The Tennerfest is a great brand name, and I do not know whether or not we should be thinking about having a '12'; I do not know, the ring of a sort of '15-fest' does not have quite the same ring to it. It is important that there are menus available at £10, £12.50 and £15 and I think it is accepted that there is a range of menus available. It is the brand that has been invested in that is now very well known and certainly I would need evidence to move away from what is now a very established brand of which restaurants do give £10, which is great value.

7.12 Connétable G.W. Fisher of St. Lawrence of the Minister for Planning and Environment regarding amendment of "Island Plan 2002, Policy H2: Fields 848, 851, 853 and 854" (P.48/2006):

On 4th July 2006 the States approved the "Island Plan 2002, Policy H2: Fields 848, 851, 853 and 854" which was Projet 48 of this year, and requested the Minister to seek to amend paragraph 8.71 of the Island Plan 2002 which related to these fields so that a maximum of 97 homes could be created on the site. Would the Minister inform Members when he proposed to lodge the amendment as requested by the States?

Senator F.E. Cohen (The Minister for Planning and Environment):

The Constable's proposition was a major factor in my decision to personally determine the previous application for this site. My findings addressed the issue of over-development, which was one of the main reasons for refusing planning permission. Previous decisions on H2 sites have led to approved deals which are up to 35 per cent higher than the estimates contained in the Island Plan. The revised number of homes proposed in the current application for Bel Royal is now 5 per cent above the Island Plan indicative yield of 97 homes. The proposed 102 homes is therefore at the lower end of the precedents set by the previously approved comparative sites, but that does not mean that I accept this as an absolute number. Consequently I do not believe that amending the Island Plan would necessarily have achieved the best outcome for this site. Furthermore I am concerned that to change the Island Plan retrospectively in the way suggested, only in respect of this site, when other H2 sites were determined based on the present wording of the Island Plan may be construed as unreasonable. The number of houses built is just one consideration and of equal importance is their design, which must be locally relevant. Furthermore, I must ensure that any new homes provide the space-about and garaging which I believe is so essential if we are to satisfy the desires of Islanders.

7.12.1 The Connétable of St. Lawrence:

Does the Minister propose to insist that the developer adheres to the development brief, particularly in the 2 following areas? One; that the split of 45 per cent/55 per cent between first-time buyer and sheltered rental housing should be adhered to. Secondly; the development brief required some sheltered housing - and in view of the Minister's recently expressed support for 400 sheltered housing units across the Island I assume he will - and is he going to insist that the development

brief's requirement for 15 to 20 sheltered housing units plus a unit for a guardian is adhered to in this development?

Senator F.E. Cohen:

I am afraid I am unable to accurately answer the questions at the present time. The reason for that is that in consultation with the Housing Minister we are currently reviewing the 45/55 per cent split and furthermore we are reviewing it in relation to our objectives of introducing shared equity. Presently I do not know what the outcome of those discussions are likely to be, but I can assure the House that we will be giving proper consideration to providing the appropriate social element, whether that be by sheltered homes for the elderly or shared equity for other sectors of the community.

7.12.2 Deputy J.A. Martin:

I am sure it is just a coincidence we have a question from the Constable and both the Deputies on the same field this morning. As one who did vote against the amendment but listening to answers from the Minister for Education and Sport and Culture this morning, my calculation is that in the local schools - in 2 primaries and one senior school - there are only 46 places available. Even with the minimum 97 houses I know these Ministers are consulting, but how much emphasis will the final outcome be put on the availability to educate the children who will be living in these houses if they are allowed... well, 97 will be allowed to be built, but how much emphasis is put on that or is it just consultation?

Senator F.E. Cohen:

As I said in answer to the previous question on this subject, education was one of the 5 reasons that I rejected the previous application and it should be noted that that was against officer advice. I can assure the House that education places will be properly taken into account when I determine the application.

7.12.3 Deputy I.J. Gorst of St. Clement:

In light of the general discontent with regard to the indicative figures in the current Island Plan, could the Minister give an indication as to how he intends to deal with indicative numbers in the Island Plan review?

Senator F.E. Cohen:

I think part of the problem with indicative numbers is that they should be rounded and many Members, as I understand it - and remember I was not in the House at the time - saw specific numbers like 97, 91, 75, 71, and they thought that these were specific numbers. What you need to do is to round and to make it very clear that indicative numbers are just that and that a range should be set around the indicative numbers so that the House knows exactly where they are when they approve anything.

7.12.4 Deputy G.P. Southern:

My understanding is that the policy decision of a 45/55 per cent split was brought to the House. Will the Minister assure the House that if he is minded to change this policy he will bring it to the House equally?

Senator F.E. Cohen:

Most certainly I will, Sir.

The Bailiff:

That concludes oral questions with notice.

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

The Bailiff:

We come now to questions to Ministers without notice. The first question period is of the Minister for Transport and Technical Services.

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

A point of order, Sir. I am sure Members would rather see me fully roasted and parboiled. I cannot help but notice that the 15 minutes does run into the lunch break. I wonder whether...

The Bailiff:

It does not run very seriously into the lunch break.

8.1.1 Deputy G.C.L. Baudains:

During the determination of the tenders for the summer bus service how much regard did the Minister have to the States' policy on competition?

Deputy G.W.J. de Faye (The Minister for Technical and Transport):

I am aware of the States' policy pertaining more accurately to transport, which is that there should have been in place a single-operator bus service. In fact the existence of a summer service and school service under licence was something of an anomaly in respect of that policy. However, with regard to the aspect of the competition I - as I think may be seen and it will be helpful to slightly correct the Hansard that Deputy Martin provided - instructed my Chief Officer to take up the position with respect to a future tender process with the Jersey Competition Regulatory Authority because quite clearly there was a possibility that the result of the tender process would have an impact on the level of competition within the Island. I was satisfied with the results I received from those negotiations and discussions that the J.C.R.A. had no particular difficulty with that aspect of competition and indeed they regarded a renewable tender process for contracts relating to public transport services in general as the competitive element.

8.1.2 Deputy G.P. Southern:

In the light of the Minister's previous so-called answers, will the Minister clarify on the matter of the Connex and Easylink tourism bus tenders whether the Connex tender came in as the lowest bid before or after the amendment of their unrealistic projected revenue figures and whether, when judging tenders, normal practice would be to identify any unrealistic, fantasy estimates in order to eliminate the tender and not to further adjust the bid?

Deputy G.W.J. de Faye:

In respect of the first part of that question, it is open to anyone conducting a tender process to apply whatever calculations they see fit in order to properly understand the tenders that are being put forward. It is in fact the case, and I am sure I have advised the House on this matter in the past, that on the calculations made as to the relative value of the tenders, in financial terms they came extremely close indeed. But, it is not all about finance; it is about the overall quality of tenders as well as the perception of what will be the best value for the public of the Island. So, there are criteria beyond finances to consider. But, as I think I have explained in some detail already, it is open to me, and it is a course I pursued, to apply a number of calculations to the revenue forecast in order simply to have a better picture of the quality of the tenders that had been put towards me.

8.1.3 Deputy R.G. Le Hérissier:

During the recent Home and Lifestyle Exhibition on his department's stand - which was rightly praised I should add - I think it said, Sir, that 82 per cent of what we dump could indeed be

recycled, and as the Minister well knows, Sir, the figure of 32 per cent became an absolute article of faith in the summer's composting debate. Would he now say, Sir, having gone public and said 82 per cent could be recycled, that the Maginot Line that was set by the former and the current department was, indeed, utterly pessimistic and that he needs to revise his policy?

Deputy G.W.J. de Faye:

I am very grateful to the Deputy for raising the subject of the recent trade exhibition because I am very delighted that the Transport and Technical Services won the award for the best stand in the show. That is against notable local companies who are renowned for their marketing and public relations skills and I think it bestows great credit on all the members of the department who took part in that particular exercise. With respect to the 82 per cent figure, this is an aspirational figure and it is an understanding that high levels of recycling can indeed be achieved, but at what cost? This is the entire point that I am having extreme difficulty conveying to Scrutiny side. It is absolutely vital to understand that recycling and re-use is, of course, possible to a very high level of percentages, but it is the price of achieving that. I am quite satisfied that my department have come up with sensible, practical proposals about recycling, properly costed, and that they are achievable and we should set ourselves practical targets that can be attained and that is what I intend to do.

8.1.4 Deputy G.C.L. Baudains:

Would the Minister not agree that it is only in the very higher level of recycling that costs come in? It is in the medium levels that there is a cost saving to recycling.

Deputy G.W.J. de Faye:

This is something of a myth that needs to be exploded. It is like saying: "Where there is muck there is brass." It might be true in some cases but it certainly does not apply to anything. There is very little value in recycling glass as far as this Island is concerned. There is very extensive cost to recycling fridges. There is a fantastic cost to recycling some areas of plastic and, in particular, hazardous style waste. Now I know that some Members of this House labour under this myth that as long as we stockpile vast quantities of plastic bottles and wait for the plastic market to swing in our favour we can all suddenly cash-in and our recycling programmes will be funded to infinity. It just simply is not the case, and we have to be realistic about it. Even the scrap metal market does not always pan out in favour of the private contractors who handle it for us, it is a difficult area but it is not one where anyone can expect to become rich and a lot of people in this Island suffer from that delusion.

8.1.5 Deputy G.C.L. Baudains:

Would the Minister not agree, having made those comments, that in fact there is a cost of course to incineration or other disposal? In respect of glass there is the cost of creating new reclamation schemes and when you take it in the round, very often recycling does prove a saving.

Deputy G.W.J. de Faye:

I can assure the Deputy there is even a cost to getting out of bed in the morning. Yes, everything has costs attached to it and I am delighted with the progress that the Department is making, particularly, for example, in the recycling and re-use of wooden pallet boards. We have now developed things so far that we can now offer animal bedding as a part of the process. There is a private contractor who offers kindling wood, those are all various aspects of re-use and recycling. It is, and I have said this from the day I walked through the door at Transport and Technical Services, recycling is my number one priority. I regret to say that it comes at a cost at every single stage of the process. Yes, incineration does cost money but it is one of the more economical ways of dealing with waste. There is a difference, and I remind Members, between incineration - simply burning - and what we do in Jersey, which is energy from waste. In other words, using the heat acquired from

the burning process to run electricity generation. Now, it does not pay for everything but it gets some money back.

8.1.6 The Deputy of St. Martin:

There are signs around Springfield that the road works around that area have been completed 2 weeks ahead of schedule. Will there be any savings to the taxpayer as a result of this work being completed ahead of schedule and if not, why not?

Deputy G.W.J. de Faye:

I am afraid there is no money back aspect to the road scheduling contracts. The fact of the matter is that a certain number of weeks are normally allocated and within that time is a buffer period because one has to expect that there may be bad weather or whatever unexpected feature may come along to cause delay and disruption to a particular project. The fact that it has come in 2 weeks early is simply an indication that everybody has worked hard, that there have been no serious problems, and as far as I am concerned that is the bonus for the people of the Island; that the disruption has been kept to the minimum timeframe.

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

Will the Minister advise the House of the average cost of disposing one ton of mixed refuse through the incineration process?

Deputy G.W.J. de Faye:

I require notice of that question, but I will very happily let the Deputy know in due course, if he would care to email me.

8.1.8 Deputy R.G. Le Hérisier:

I think the Minister, and indeed the Chief Minister, made a statement that the Transport and Travel Strategy will be put in front of us before the end of the year. Could he confirm the actual date on which it will be put in front of us and could he confirm whether it will follow a green paper format, i.e. all the clear options will be researched and presented?

Deputy G.W.J. de Faye:

I had hoped to put it in front of the Council of Ministers last week but unfortunately the agenda was slightly disrupted due to unexpected circumstances. As a result of that Members may obviously come to the conclusion that it will be presented to the Council of Ministers at their next meeting, which is what is planned, and thereafter it will become effectively open house as far as I am concerned. I want it to be treated as a green paper or as a consultative document because I am very anxious that Members - both Scrutiny and otherwise - will want to have a look at it and I want to also emphasise that I am open for additional contributions from Members as they wish.

8.1.9 Deputy K.C. Lewis:

Does the Minister agree that the current level of graffiti in the Island is unacceptable and will the Minister undertake to remove all graffiti from Transport and Technical Services property and agree to prosecute anyone caught so doing?

Deputy G.W.J. de Faye:

I am not particularly aware of the amount of graffiti in the Island. Frankly speaking, I do not see very much of it. What I am aware of and what I was concerned about at the time when the issue of graffiti was first brought to me by the local media was that I issued a warning to the publication involved that the very fact of publishing photographs of graffiti of itself would encourage further graffiti to be put into place, because it was effectively giving the oxygen of publicity for people who deliberately seek that sort of thing. I very much regret to say that as a consequence of ignoring

my advice and proceeding with, quite frankly, a not very interesting and barely relevant storyline, the level of graffiti has subsequently risen because you may have a chance of having your work of art displayed in the pages of the local newspaper. I find the entire subject really unhelpful and I regret that the Deputy has given yet further promotion to the work of these particular characters.

8.1.10 Deputy K.C. Lewis:

A Site of Special Interest to the Minister would be the pumping station at the Dicq Slip, which was devastated by graffiti a matter of weeks after being completely repainted. Part of it at the moment on the steps has been graffitied with obscenities and if the Minister will not do anything about it I will be quite prepared tonight after this sitting to go down with white paint and sort it out.

Deputy G.W.J. de Faye:

I am very grateful to the Deputy for his contribution to our work, Sir. **[Laughter]**

The Bailiff:

That completes the first question period.

LUNCHEON ADJOURNMENT PROPOSED

Senator S. Syvret:

I propose the adjournment, Sir.

The Bailiff:

The adjournment is proposed. If Members agree the States stand adjourned until 2.15 p.m.

LUNCHEON ADJOURNMENT

8.2 Questions to Ministers Without Notice - The Minister for Health and Social Services

The Bailiff:

We now proceed with the second question period of the Minister for Health and Social Services and I invite questions.

8.2.1 Deputy R.G. Le Hérissier:

This will be debated later, but we have been told many times that the Minister for Planning is operating on evidence provided from the Health Ministry in regard to mobile phone masts, and yet last sitting, Sir, the Health Minister said he was inclined to support a six-month moratorium. Could he tell us what the nature of the advice is that his department has given to the Planning Minister and could he say how that squares with his support of a six-month moratorium?

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

The advice given by my department to the Planning Department is that it has come from examining reliable, robust science. In fact when one examines the availability of material on the internet and elsewhere, although a lot of it might appear convincing to a lay reader, in fact a lot of it really is rubbish. We have, in these kinds of questions, to be guided by the evidence - robust scientific evidence - and that is the evidence that will have been furnished by the Health Department to the Planning Department. My position as I said at the time, in fact, was not necessarily that I thought there would be health issues with the mobile phone mast but simply there were other concerns such as mast-sharing, and whether simply physically we needed 200 masts in a small island environment.

8.2.2 Deputy R.G. Le Hérissier:

Would the Minister not acknowledge - indeed I think it has been expressed by him over things like the Mohan report re. toxins at the airport - would he not acknowledge that science is in an evolving stage in this regard and while it may veer towards there being a conditionally safe approval from his department, where does he find the evidence to make such firm statements about the health-free risk of mobile phone masts?

Senator S. Syvret:

The evidence I rely upon in making those kind of claims is in fact on the robust science, and if you did a detailed examination of the published material in relevant scientific journals and elsewhere on university websites, there is a great mass of this kind of information available. All of the robust peer review scientific examinations have been unable to detect any health effects from mobile phone emissions. It is certainly true, as I have said previously, that the state of science does in fact evolve, but for the time being there is no evidence of these transmissions posing a particular risk.

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

But surely how does this attitude square with the comments in the Stewart Report that say: "In the light of the above considerations we recommend that a precautionary approach to the use of mobile phone technology be adopted until much more detailed and scientifically robust information on any health affect becomes available." Now, I also have been on the internet and there are a lot of studies going on at the moment but there are none that are concluded. I wonder if the Minister would like to comment.

Senator S. Syvret:

I think there are in fact an awful lot of studies that are concluded. There has been some really quite robust work done on the subject for at least 2 decades now, so there is a very substantial body of evidence out there. The Stewart Report recommended a cautionary approach, although I think that statement that the Deputy just quoted needs to be read within the context more broadly of the report. I generally tend to favour a cautionary approach myself but again, as I have said previously, we have to weigh-up the risks, the costs and benefits of activity that we wish to engage in, in society as people, and the vast majority of the people - certainly the vast majority of Members in this Assembly - use mobile phones and we therefore need and rely upon the network to support that use. The fact is you are getting a greater exposure to the effects when you are using a mobile handset held to your head than you are from any mast.

8.2.4 Deputy J.B. Fox:

Perhaps I could ask the Minister - I know we are on a debate later today, but referring to P.144/2006 page 2 the Medical Officer of Health has stated: "The evidence and judgment of these bodies is that public exposure to lower levels of radio waves below the accepted international standards from mobile phones and base stations are not likely to damage human health." It is the words "not likely" as though there is an element of doubt attached to it. Perhaps he could comment for me on that statement by his own Medical Officer of Health, thank you.

Senator S. Syvret:

I think you will find that most scientists - most clinicians and most scientists in all fields - would use that kind of language and that kind of phraseology when describing effects or phenomena that they have studied. It is not necessarily always possible to be able to prove negatives. The science philosopher Karl Popper was the most famous authority on this and he spoke of determining scientific evidence and coming to scientific conclusions based on the theory of falsifiability. Simply trying to prove negative effect - trying to prove negatives - is not, in fact, regarded as good science.

8.2.5 Deputy P.V.F. Le Claire:

May I ask the Minister for Health, in light of the impending - in all likelihood - strike and closure of the airport in Jersey, how will this affect emergency flights to and from the Island for the hospital services? How will it also affect the scheduled services and hospital visits that have been arranged by the Health Department? How are they going to mitigate against these closures.”

Senator S Syvret:

It is certainly my hope that industrial action will be avoided. I have to say, though, so far it has always been the case that whenever industrial action has been taken by the unions in Jersey they have always made a special case of health and social services, which I think we should all be very grateful for. Certainly in the past no industrial action has had an effect on health and social services, the hospital or the services we provide to the community. If industrial action does affect the airport, I would hope, and indeed be confident, that the Union would adopt a similar approach to opening the airport for emergency flights and things of that nature.

8.2.6 Deputy P.V.F. Le Claire:

That settles me somewhat in relation to an emergency situation, but I did ask about the scheduled operations that people would be attending in the United Kingdom. What is going to happen to the people who have planned operational procedures or investigations? Will they be travelling by sea instead?

Senator S Syvret:

I can be less certain about that answer because we just do not know to what extent the industrial action will be and what kind of depth it might take. But certainly the questioner is correct. If scheduled flights are seriously disrupted, or even brought to a halt, that would affect the transfer of our patients to many of the tertiary centres we use in the United Kingdom. Again, I suppose, I would have to have discussions with the Unions themselves to see if any kind of flexibility could be introduced into the situation. Certainly we would do all that we could to reschedule people's procedures or find alternative means of getting them to the United Kingdom, indeed possibly by sea. It is an evolving situation and we are aware of all of these issues and we are bearing them in mind.

8.2.7 Deputy A.E. Pryke of Trinity:

Could the Minister inform the House if he feels there is sufficient homeless provision - and where it is - for young people between the ages of 16 and 18, as most homes like Roseneath, *et cetera*, are now registered for 18 years plus.

Senator S Syvret:

No, there is not enough provision in this field. We certainly need to be investing more and we need to be doing an awful lot more for young people. These young people are often readily criticised by society in general, and indeed, politicians, as being potential troublemakers, but the children in this kind of category have often come from a very, very difficult background - dysfunctional families of one kind or another, alcohol or drug problems. I do think we, as a society, have a duty to do all that we can to support these young people. The straight answer to the Deputy's question is, frankly, no, we do not have enough money and we are not investing enough money in this field.

8.2.8 The Deputy of Trinity:

In the new registered scheme for this sheltered accommodation like Roseneath and Shelter, do you feel it is right in the terms of their licence that it does not allow someone who is homeless, but they have to fit the box of either having a mental disorder or be drug and alcohol dependent?

Senator S Syvret:

I think the difficulty that those institutions have is that there is such a substantial demand for their services that they do have to categorise and draw the line in these kinds of ways. There are also other issues - child protection issues, protection of vulnerable youngster issues - that would mean that certain age groups, for example, those of the age of 17 or 18 or 19, you would not want to be mixing with particularly younger groups of children. It is a very difficult field and certainly I think we would want to look very closely at what kind of investment we can make into this in the future, because these groups of people do need better protection than that which is available to them at the moment.

8.2.9 The Deputy of St. Martin:

Will the Minister give an update of the progress of the Sexual Health Strategy which is out for consultation and when it is intended to address some of the concerns raised by A.C.E.T. (AIDS Care Education and Training) and Brook in respect of sexually transmitted diseases among young people?

Senator S Syvret:

The Sexual Health Strategy is, I think, broadly published now. It has been produced in close co-operation with groups like A.C.E.T. and Brook, clinicians at the hospital and other stakeholders. It is very nearly at the stage where we will be able to implement it and roll it out, so we are very nearly there with the Sexual Health Strategy.

8.2.10 Deputy S.C. Ferguson:

Sorry to return to phone lines. I assume that the Minister has had a report from his officials with reference to the work that has been done and the safety of these base stations and so on. I wonder if that report could be made available to the States' Members.

Senator S Syvret:

Certainly. I think this was a report produced a couple of months ago when this matter first arose and I understood it had been published. If it has not, I can certainly make arrangements for it to be distributed.

8.2.11 Deputy R.G. Le Hérissier:

After the Minister had been a witness to the Overdale inquiry - where, I must say, he was a very useful and good witness - he immediately gave a media interview where he termed the inquiry useless. Would he acknowledge that he had not previously consulted with the Panel Chairman who could well have briefed him on all the multitudinous reasons which had led to the inquiry and that the inquiry, far from being a repository for people who were moaning or whose families were moaning about leaving Overdale, was dealing with some very, very sensitive, emotional, physical, maintenance, capital, long-range issues which were increasingly becoming evident as it progressed? Would he not say that that was a slightly intemperate and premature judgment?

Senator S Syvret:

My judgment on the report itself will have to await its publication, but the fact is I do think that the Panel were misguided to put so much time and effort into simply the Overdale issue. I am asking my department to calculate the cost of this exercise because it is very, very substantial. I think this is more broadly a criticism that could be made perhaps of some Scrutiny Panels in the first 12 months. The fact is the status of the buildings at Overdale and the particular issues surrounding Overdale is not really the issue itself. It was a symptom - a symptom - of the broader issue, which is the overall problems of how we deal with an ageing society in Jersey: provision for those who need residential care and elderly care, what kind of investment and stakes is made into that field into the past couple of decades and what we are planning to do into the next decade or 2. Frankly, to focus

on one particular building and one particular set of circumstances, I simply felt really was rather missing the target, and there was a much more justifiable need for broader strategic appraisal of the whole issue.

8.2.12 Deputy G.P. Southern:

Will the Minister reassure the House that should his budget come under corporate pressure due to spending, that he will robustly and vigorously defend his part of his own budget?

Senator S Syvret:

Yes, I certainly will do. This is not something that will come as a shock to my Ministerial colleagues. I have made my position on this plain. We are living within our budget; we have done every year I have been responsible for Health and Social Services, which is 7 years now. We have always delivered to our budgets and we have made do with what we have been given by the centre. We have co-operated fully, we have delivered all of the efficiency savings that were required of us and, in fact, we have delivered a number of substantial service improvements during that time. But I am certainly not now - those kinds of efforts having been made by the department - going to go back to them and say: "Well, because the States generally has messed-up its finances we are going to have to cut into the budget we have already allocated for you next year." So, yes, certainly I will be resisting any such attempt if it is made.

8.2.13 Deputy R.G. Le Hérisier:

I had intended to ask a supplementary. The Minister says he has asked for an account of the cost of seeking the information, but as he well knows, and as he has argued many times in this House, it is, of course, absolutely open to a Panel to ask that which they want in order to further their inquiries. He should also know - and it may not be his fault, it is a symptom, sadly, of how bad the system is - there were very simple questions asked about maintenance schedules, for example, which took weeks and weeks and which arrived after the Panel had finished its formal hearings.

The Bailiff:

Come to the question, please.

Deputy R.G. Le Hérisier:

My question is, does he not acknowledge that a Scrutiny Panel has an absolute right to ask for the information that it wants? Secondly, it behoves a Minister to look at his internal processes and procedures before he starts criticising a Panel for incurring vast sums of money in its inquiry.

Senator S Syvret:

I am perfectly happy to look at my department's procedures. Any areas for improvement that we can alight upon are gratefully seized and taken up. Certainly, I am very happy to do that. As far as accepting that Scrutiny Panels have the absolute right to look at what they please when they please and ask for all of the relevant information, yes, absolutely. I do accept that and that has always been the case. As the Deputy well knows, I have always been a strong supporter of Scrutiny. As I have said previously, I was the only Minister to vote in favour of the establishment of the Scrutiny Panel, which we have just appointed a Chairman to today. But just as the Scrutiny Panels have a right to their own views, comments and opinions, I think I and anyone else also has a right to express their opinions and views too. If we are going to work together in a co-operative process I do not think we can go into this new era of government imagining somehow that the work of the Scrutiny Panels themselves are somehow immune from scrutiny or criticism or challenge.

STATEMENTS ON A MATTER OF OFFICIAL RESPONSIBILITY

9.1 The Chief Minister regarding the outcome of the complaint made by Senator B.E. Shenton against Senator P.F.C. Ozouf, Minister for Economic Development

The Bailiff:

That concludes the second question period and we now come to statements on a matter of official responsibility. The first statement of which I have notice is a statement to be made by the Chief Minister.

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

I would like to inform States' Members of the outcome of the Council of Minister's review of the complaint by Senator Shenton against the Minister for Economic Development. Senator Shenton made his complaint in an email dated 12th October 2006, which was sent to the Deputy Chief Minister and copied to all States' Members. The complaint centred on the awarding of £95,000 in grants to the Battle of Flowers Association. At the Council meeting last Thursday Ministers reviewed the actions of the Minister of Economic Development and his department. The Council's deliberations were informed by the report of the Comptroller and Auditor General and a further internal audit report commissioned by the Chief Executive of the States. The Council concluded that a number of procedural errors had been made in relation to the awarding of a second part of the additional grant. The Council confirms that, as a result, the financial direction in obtaining value for money from grants was breached. In addition, while the Minister made a verbal offer to the Association, he should have ensured that the Accounting Officer gave him written guidance on conditions to apply to such a grant. If he did not agree with this advice he should have issued a letter of instruction. The Council has treated this as a serious matter and I have written to the Minister to inform him of the Council's view to formally notify him of his errors and seek his assurance that corrective action will be taken to revise procedures within his departments. The Council noted that the Minister had himself acted by asking the Comptroller and Auditor General to review the circumstances surrounding the 2006 Battle of Flowers. The Council believed this demonstrated the Minister's own concern about how to obtain best value from public money and the importance of following proper procedures. In relation to any breach of the Ministerial code, the Council concluded there was no such breach. The Council decided that the Minister had acted in good faith and in what he believed were the best interests of the Island. The Council also noted that all the recommendations of the Comptroller and Auditor General had been accepted by the relevant parties, including the Minister, and were in the process of being implemented. The Council of Ministers reaffirms the importance of proper procedures in taking and documenting ministerial decisions. These errors, while regrettable, were made in the early days of Ministerial government and it is clear lessons have been learnt. In order to strengthen procedures, the Council will issue new guidelines to clarify the role of Ministers and Accounting Officers. These are designed to ensure that clear governance and procedural arrangements are in place, understood and followed. A preliminary draft has been circulated and it is intended that this will be finalised at the Council's next meeting which is next week. In relation to the role of the officers involved, the Chief Executive and the Corporate Management Board are taking the appropriate action. The Chief Executive is also updating all senior officers on the new rules and financial guidelines - financial directions. As soon as the Council has finalised the new additional guidelines all senior officers will be appropriately briefed.

9.1.2 Deputy P.V.F. Le Claire:

May I ask a question in relation to the review of the decisions that were undertaken? It was interesting to listen to the statement inasmuch as the words that were being used were: "The Council decided" and: "The Council concluded". In instances of this nature, although there may be a Ministerial breach of a code in relation to financial expenditure, does not the Chief Minister

believe that in order for everything to have been seen to have been reviewed properly that these sorts of procedures should be referred to the P.A.C. (Public Accounts Committee) for comment as well? Would the Chief Minister not consider, further, that would probably be a more robust method of deliberating upon one of his own members of his Council?

Senator F.H. Walker:

I do not necessarily have a problem with that in the future. It is something I think that could be looked at. But this complaint was referred to the Council of Ministers and the Council of Ministers have properly dealt with it.

9.1.3 Senator J.L. Perchard:

It is now clear that at the end of 2005, the old Economics Development Department had serious concerns over the quality of the Battle of Flowers Association's management. It is also clear that the Senator, after his appointment as Minister, was warned of these serious concerns by his officers. Is the Chief Minister concerned that his Minister did not take into account the serious concerns before deciding to make further funds available?

Senator F.H. Walker:

I think I have made it clear in my statement that the Council of Ministers has been concerned and is concerned. But equally, we are utterly convinced that the Minister acted absolutely in what he saw as being the best interests of Jersey. The Battle of Flowers is Jersey's premier visitor attraction. It has suffered over many years now from a gradual decline in standards and the Minister was seeking, quite rightly, to boost what I have said is a major economic earner for the Island. He made a genuine error. Who of us in this House has not done the same? The important thing, and it is very clear this is the case here, is that one learns from one's mistakes. That is exactly what is happening here, not just for the Economic Development Minister, but for the Council of Ministers as a whole.

9.1.4 Senator J.L. Perchard:

After the 2006 Battle of Flowers the Minister has said: "I am afraid failing to organise the filling of the V.I.P. stand is only one of the problems. Others include the way in which decisions are made, the chaotic nature of their press management, judging problems, timing of announcements, changing minds, accountability, decisions of celebrities, signing of contracts, *et cetera*." We now know that he Minister rewarded the Battle of Flowers Association, in exchange for influence over some of these decisions, with an unauthorised payment of £45,000. My question is, Sir, is it wise for a Minister to become so closely involved in the managerial decisions of the Battle Association, even in decisions as trivial as insisting on celebrities?

Senator F.H. Walker:

The Minister was badly let down by the Battle of Flowers Association, of that there is no doubt. But I have already said the Minister has accepted that errors were made; we accept that. Lessons have been learnt and what we have to do now is move forward and ensure 2 things. Firstly, that financial management is absolutely as it needs to be and secondly, under new management as it were, and following all the recommendations of the Comptroller and Auditor General, that the Battle of Flowers resumes its place as Jersey's undisputed leading visitor attraction and something that the Island - as it used to - can once again take great pride in.

9.1.5 Senator B.E. Shenton:

In this instance, as has been said, procedures were not followed. We have had backdated Ministerial decisions, we have had waste of taxpayers' money. This is not just about the Minister himself; it is also about his Accounting Officer and, ultimately, the Chief Executive and the Chief Minister. I have 3 questions for the Chief Minister.

The Bailiff:

They all relate to the statement, do they?

Senator B.E. Shenton:

They all relate to the statement, yes. Firstly, will he publish the report that was prepared by his Chief Executive, in full and completely un-doctored and make it available to all States Members? Secondly, he has mentioned that they are strengthening the guidelines. I have read through the guidelines and they seem fairly straightforward to me. Will he also publish the guidelines and point out where the weaknesses were, because they were written, as I say, before. They are very easy to understand and these were serious breaches. Thirdly, he says that in relation to the role of the officers involved, the Chief Executive and the Corporate Management Board are taking the appropriate action. Could he tell us what the appropriate action is and also confirm that it has been taken in due course?

Senator F.H. Walker:

The answer is yes, yes and no. Publish the report from the Chief Executive, yes. The report from the Chief Executive was totally based upon the internal audit report. Publish the guidelines - the new strengthened guidelines - yes, that has always been the intention. Outline what actions have been taken against the officers, disciplinary action or whatever the alternative is. No, Sir, that has never been disclosed in public before and should not be done so again in this instance.

9.1.6 Senator L. Norman:

The statement excuses the actions of the Minister because he acted in good faith and what he believed were the best interests of the Island. Does the Chief Minister not accept that all Members of this Assembly act in that way and that if this is to be accepted any action by a Minister, however inappropriate, could be defended and excused by using that excuse?

Senator F.H. Walker:

I am not defending or excusing it; I am making a statement - as far as the Council Minister is concerned - of fact. This is an unusual scenario. It is extremely unusual for anyone in the States - previously Presidents of Committees - to stand up and make a statement based on a complaint against one of their Members of the Committee, in this case, of course, a Minister. It demonstrates how seriously the Council of Ministers have taken this issue and how determined we are that such errors will not reoccur, not just in Economic Development, but elsewhere in the future. I ask Senator Norman if he has never made a mistake while acting in the public interest, because I know he has. I do not imagine that he was hauled-up, basically, in front of the States with a public statement on the back of it, which is exactly where we are at for the Minister for Economic Development.

9.1.7 Deputy J.J. Huet:

Is there not a saying that a person who never makes a mistake never does any work?

Senator F.H. Walker:

Sorry, is that a question?

Deputy J.J. Huet:

You could take it as a question.

Senator F.H. Walker:

I wholeheartedly agree.

9.1.8 Deputy C.F. Labey of Grouville:

Would the Minister not agree that this is not only a tourism event, but it is an even bigger local event and is quite huge in the community diary? It involves many, many local people of all ages and Jersey would be a far worse place without it.

Senator F.H. Walker:

I absolutely and completely agree and that is precisely what lay behind the Minister's actions. It is a community event and a tourism event and that is precisely what lay behind his actions in seeking to support it. There is no doubt that his intentions were absolutely right for the people of Jersey in every possible way relating to this event.

9.2. The Minister for Economic Development regarding the Northern and Southern Ferry Routes:

The Bailiff:

That completes the 10 minutes allowed for the questioning the Chief Minister. The Minister for Economic Development will make a statement regarding the northern and southern ferry routes.

9.2.1 Senator P.F.C. Ozouf (The Minister for Economic Development):

Members will recall that earlier this year, it was reported that the current Service Level Agreement (S.L.A.) and ramp permit for the northern route would expire on 31st December 2006. I published a new Air and Sea Transport Policy which, *inter alia*, set out our approach for securing the Island's sea routes. In addition, the Assembly considered a proposition from Deputy Fox on the same subject. Since then Members will be aware that I have requested a full investigation of port and ferry services under Article 6.4 of the Competition (Jersey) Law. This report is due before the end of the year. I can inform Members that negotiations are ongoing with Condor Ferries to agree the new S.L.A. in respect of the period 1st January 2007 to 31st December 2008 for car and passenger ferries on the northern and southern ferry routes. I am happy to report that Condor has shown a positive and constructive approach to the negotiations. However, I believe it would be inappropriate to conclude those S.L.A. negotiations until the J.C.R.A. has completed their work, as their findings may have a bearing on the terms and conditions in any S.L.A. In order to give Condor operational certainty I have asked Jersey Harbours to issue Condor a ramp permit for the period 1st January to 31st December 2007 to allow ferry services to continue to operate within the law.

9.2.2 Deputy J.B. Fox:

My concern is obviously the safeguards for the public and also for any company operating on the northern and southern routes. If a ramp permit is to be given for the next 12 months without the S.L.A. agreement - I understand that sometimes there is a need to have a slight delay - can the Minister give me an assurance and preferably a timescale when the Service Level Agreements will be signed by whichever company or companies operate on both the southern and the northern route? I should declare I am a regular traveller.

Senator P.F.C. Ozouf:

I think Deputy Fox and Economic Development are as one in terms of the objectives of what we are trying to do. Signing S.L.A.s is in the interest of the States, it is in the interests of the travelling public. It is also in the interests of Condor. We expect to be able to conclude the S.L.A. agreements, certainly I would hope in the first 3 months of next year, at the very latest.

9.2.3 Deputy K.C Lewis:

The Minister and, indeed, the Chief Minister are well aware of my sharing their desire to forge greater links between Jersey and Guernsey, but can the Minister assure the House that he will

ensure that all talks take place with Guernsey prior to signing any new agreements, to ensure that we do not have a repetition of the past where Guernsey go it alone?

Senator P.F.C. Ozouf:

I very much can give the assurance to Deputy Lewis. Deputy Lewis will be aware that this is an interregnum period for 2007 and 2008 until all our Service Level Agreements expire coterminously at the end of 2008. It is that objective that we are really focusing our long-term attention on and, indeed, will be the subject, I hope, of discussions between the Council of Ministers and the Policy Council of Jersey and Guernsey on Friday.

9.2.4 Deputy A. Breckon:

I wonder if the Minister could confirm to the House that he has also received a report from the Consumer Council that hopefully will inform the formulation of the Service Level Agreement and consultation will come back from that report during his deliberations?

Senator P.F.C. Ozouf:

Yes, Sir, I can confirm that I have received the Consumer Council report for which we asked and have paid for, and I am grateful for the Consumer Council's independent work on that. Indeed, it will be helpful in terms of understanding what the public view of ferry services is and will be part of the ongoing deliberations concerning the S.L.A.. I thank the Consumer Council for their assistance.

9.2.5 Deputy S Power:

Could I ask the Minister to assure this Assembly that any new Service Level Agreement that is being constructed by his department is constructed in such a way so as not to prohibit any new entrant into our sea routes on the northern and southern route?

Senator P.F.C. Ozouf:

The first thing I would say is that there is not currently an S.L.A. on the southern route. There is a Service Level Agreement on the northern route. The one we are talking about exists in Jersey until the end of the year and does give a measure of a barrier to entry because there are certainly the back-up services. The ongoing discussions with Condor concerning the S.L.A. are ongoing and I bear the Deputy's comments in mind. Certainly, he will be as aware as I am of other expressions of interest in relation to other potential operators on the southern route. Whether or not anything comes of that and whether or not the Service Level Agreement is relevant to that I am not sure, but certainly I am aware of the Deputy's and other people's concerns on that matter.

9.2.6 Senator L Norman:

It is clear that the Minister is acting in good faith and in the best interests of the Island, but I wonder if he could tell us what conditions, if any, will be attached to the ramp permit which will become effective from 1st January?

Senator P.F.C. Ozouf:

I did not answer a question in the last statement and I would have said that I wanted to say that I regret and apologise if any errors occurred, notwithstanding the good faith that they were made in, in respect of the Battle of Flowers issue and I wish to say that publicly. In respect of the particular ramp permit, I have the ramp permit licence here and it has been issued, and there is a clause in it which effectively reserves the Minister's right to vary and remove any of the conditions. Indeed, the letter associating with the issue of the ramp permit which has been issued by the Assistant Minister specifically recounts the fact that we are engaging in discussions with the S.L.A. Indeed, in the event of an S.L.A. not being effectively signed I think that there would be grounds for us - and I say that without prejudice or any further decisions we may make - to withdraw the ramp

permit. We are, I hope, in a fairly strong position, but there is a desire on both sides. I must say I recognise the fact that Condor are working very hard and I am grateful for their hard work and my officers' work in terms of concluding something which is appropriate to all parties.

9.2.7 Deputy J.A. Martin:

This is a question about the involvement of the J.C.R.A.. The statement states that a report is due before the end of the year. In my working with the J.C.R.A., although they may be very good, they seem to not work very well to their timetable, because of lots of pressures that have been put on, not only in this review but also Telecom and others. Lastly, could the Minister inform the cost that this review into the harbours alone is costing the States?

Senator P.F.C. Ozouf:

I will happily circulate the exact cost that has been agreed with the J.C.R.A.. In respect of their timeliness of any work that the J.C.R.A. does, the J.C.R.A. is, indeed, undertaking a great deal of work on a number of different fronts for us, but the J.C.R.A. has confirmed in the last couple of days that they will be preparing an interim report on the specific issues of ferries within the next couple of weeks, with their final report by the end of the year. I am confident that we are going to have all the information available to us in order to deal with the conclusion of the S.L.A.s. I would say that this review by the J.C.R.A. is of fundamental importance to the whole issue of our sea routes and the operation of the ports and is likely to have, and I expect it to have, quite large implications to the way we operate and license our ferry services in future.

9.2.8 Deputy J.B. Fox:

I wonder if the Minister would just advise us - when it is published, the final document - will he be publishing it for all of us to see or is it something that is going to need more work after that?

Senator P.F.C. Ozouf:

No, it will be published in its final form after it has been agreed by the relevant parties and it will be published in the normal way just as the last one has been. It would be inappropriate, I think, for me to publish and put into the public domain any working documents in relation to what is clearly a negotiating position between the States, the Harbours Department, specifically Economic Development and Condor. There are strong negotiations going on in relation to it, but I am happy to publish it when it has been concluded.

Deputy J.B. Fox:

Do you have any timescale in which we might be seeing this document?

Senator P.F.C. Ozouf:

I just repeat the comments that I made a few moments ago. We will be receiving the J.C.R.A. advice, engaging in intensive ongoing negotiations with Condor to deal with it, and I hope very much that it will be done in certainly the early part of next year, at the very latest by the end of the third month of next year. That is certainly the undertaking I am prepared to give.

9.2.9 Senator S Syvret:

Would the Minister agree with me that the great difficulty he and his department faces in sorting out the whole issue of the ferry services to and from Jersey would perhaps have been somewhat easier if it were not for some of the errors made by the previous authority - the Harbours and Airport Committee - although of course they would have been acting in the best faith and best interests of people, as they thought at the time?

Senator P.F.C. Ozouf:

Nobody who has ever made a decision has ever made a mistake... and certainly I have to say that in my stewardship of Economic Development and Harbours with my Assistant Minister over the last few months, I think we have appreciated quite the full depth and breadth of problems that arise. I am not sure in all these cases I would have made very different decisions given the facts - some of which are in the public domain and some of which are not - to those that the previous Committee had made. Nevertheless, we are engaging in a root and branch review of port and ferry services - root and branch of the Harbour Authority - and there is change underway. We are hoping to make decisions in an informed way and certainly with the benefit of the input of the J.C.R.A. which the previous Committee never had the benefit of.

9.2.10 The Deputy of St. Martin:

There has been a considerable amount of point-scoring this afternoon and I have become a little lost. Have you been able to keep up with the score?

The Bailiff:

The Chair never concerns itself with such things, Deputy. That concludes the questioning of the Minister's statement. I have given leave to the Assistant Minister for Economic Development to make a statement, but that is to come later in the afternoon.

PUBLIC BUSINESS

10. Ministerial Government: review of first 12 months (P.77/2006)

The Bailiff:

Now we come to public business and the first item of public business is Projet 77 - Ministerial Government: review of First 12 months, in the name of Senator Shenton and I ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion to requests the Privileges and Procedures Committee to present to the States by March 2007 a report reviewing the first 12 months of Ministerial Government, together with any recommendations for improvement, following consultation with the Council of Ministers, Members of the States and any other interested parties, and to include comment on the operation of both the Council of Ministers and Scrutiny, examining the strengths and weaknesses of current processes and paying particular attention to the structure of the Strategic Plan, its relevance and its separation from the States' Business Plan.

10.1 Senator B.E. Shenton:

When I saw that I was the first item on the Order Paper, I did not think I would be standing up at 3.00 p.m. to do the proposition. I am going to be very, very brief, because I think this is very much a commonsense proposition, although I am bound to say that. One of my colleagues on the benches across the Chamber from me did say that I should be nicer when I do my propositions and not attack anyone and I would get more votes, so I am going to be very nice on this one and see if it works. As I said, I believe that with any new processes in business or in government, you need to sit down at some point and take a good look at where you are. I think 12 months is a good time to do this. I would like to thank the Privileges and Procedures Committee for tightening up my proposition with their amendment, which I fully accept. I think with any new Assembly you go through a bit of a honeymoon period and now we are getting to the period - certainly for the Council of Ministers and for the Chief Minister - where the honeymoon period is over. After the honeymoon it is time to take stock of exactly where you are. Deputy Le Hérissier also put forward

an amendment which I cannot accept, because I very much think it is up to the Chamber to push forward electoral reform and not the Council of Ministers, but we can come on to that. As I said before, it is just the checks and balances; it is what you would do in business. The proposition has the support of the Council of Ministers. I have not come across any Member who says it is a bad idea, so I am not going to waffle on and I have put forward the proposition.

The Bailiff:

Is the proposition seconded? [**Seconded**] There is an amendment to the proposition in the name of the Privileges and Procedures Committee and I ask the Greffier to read the amendment.

Connétable D.F. Gray of St. Clement:

Would it be appropriate to take it as read, it is rather a long amendment?

The Bailiff:

I was not going to ask the Greffier to read the appendix, Connétable, but I was going to ask him to read paragraphs 1 and 2 of the amendment.

The Greffier of the States:

(1) For the words "By March 2007" substitute the words "As soon as practicable and no later than 30th June 2007." (2) Renumber the proposition as (a) and insert a new paragraph (b) as follows: "(b) to agree that the review should have the terms of reference set out in the appendix to the report of the Privileges and Procedures Committee dated 7th November 2006."

10.2 The Connétable of St. Clement (Chairman of the Privileges and Procedures Committee):

I am going to be a little longer than Senator Shenton, but it is just to try and explain where Privileges and Procedures are. As Privileges and Procedures have stated in their report to this amendment, we fully support the proposition of Senator Shenton. The whole purpose of this amendment is to add the framework to his proposals to indicate how we intend to structure the review. We are endeavouring to see how well the various elements of government - that is the Council of Ministers, individual Ministers and their departments, the Chairmen's Committee, the Scrutiny Panels and P.A.C. - are working. It is intended that they should all work in harmony, but not only in harmony, but more importantly effectively as well. The Committee sees this review as the equivalent of the first service of a motor vehicle. We are all familiar, I am sure, with this concept. We do not consider that this is the time for the full-scale review as some Members seem to want. Our new system of government has only been working for just one year. The States have often been criticised for either not coming to a decision or looking to rescind it or at least make some changes - often important ones - to it too soon after it is made. As far as Ministerial government and Scrutiny are concerned, a different decision was made by the States in order for the new system to start in December 2005 and I believe it is too soon to consider any major changes before it has been working for at least a full term. Any major review should happen either in 2009 or maybe it would be more appropriate to undertake the review after the system has been running for 2 full terms. The review that is the subject of the amendment, as I have said earlier, is about the working of government and I think that we all acknowledge that this includes Scrutiny. Scrutiny is in place to ensure that Ministers and their departments are working in the interests of the public of the Island. In the terms of reference we are looking at the Council of Ministers to see how effective it is in making and disseminating decisions. We review how the Council operates and its relationship with individual Ministers. It is important that the Council ensures that the States' Members and the public are well informed of its work. This is another area that will be reviewed. It has been brought to the Committee's notice that the amount of administrative support for the Council of Ministers might be inadequate to meet the demands of Scrutiny and the provision of information. This is the reason for including this in the terms of reference. It is intended to look at

the relationship between the Ministers and their Assistant Ministers and the role played by them. Concern has been expressed that Scrutiny has not received encouragement and support from individual Ministers. The Committee will look into this to make sure that the Panels and the P.A.C. are being allowed to fulfil their terms of reference as laid down by Standing Orders. We will also look at the Panels' terms of reference to make sure that they are appropriate. As for the Executive side, it will be necessary to make sure that they receive the appropriate amount of administrative support to enable them to scrutinise both timely and effectively. I am fully aware that there is one area of concern to the Chairmen's Panel which needs to be resolved. It is under consideration at the moment and I hope that it will be satisfactorily settled soon. The difficulty in this area revolves around the interpretation of the term "government". If this is not settled shortly, then this should form part of this review. The Chairmen's Committee has an important role to play in co-ordinating the functions of the 5 Panels, but it also must be involved in 2-way dialogue with the Council of Ministers to make sure that the Panels are working with a full exchange of information regarding future policies and how they are to be scrutinised. I said at the beginning of my speech that this was an operational review that is one aspect that needs to be addressed before December 2008. This concerns the election of the Chief Minister, Ministers, the Chairman of P.P.C. (Privileges and Procedures Committee), the Panels, and P.A.C. that will take place in that month. The whole procedure and timing will be reviewed. In Senator Shenton's proposal, he asked the review was completed and the report brought forward by March 2007. As this is a review of the first year of a new form of government which, if approved, will take place close to the end of the year, we are asking that the time limit be extended by 3 months and that P.P.C. be allowed to report back no later than the end of June of next year. If this amendment is approved, a sub-committee of P.P.C. will be formed at our next meeting on 29th November. Work will commence immediately after that meeting. Finally, can I underline my opening remarks that this is a review of Ministerial government and therefore the Council of Ministers and the Scrutiny Panel, and this amendment addresses these issues? I move the amendment and ask the Assembly to support it.

10.2.1 The Bailiff:

Is the amendment seconded? [**Seconded**] There is an amendment to the amendment in the name of Deputy Le Hérissier and I ask the Greffier to read the amendment.

The Greffier of the States:

In paragraph (2) in the new renumbered paragraph (b), after the word "Appendix", insert the words "except that (a) in paragraph 3 sub-paragraph (iv), add the following sub-paragraph "(v) the degree and nature of co-operation received from Ministers and departments." (b) After paragraph 3, add the following paragraph "(4) to review the composition and role of the Privileges and Procedures Committee." (c) Add the following sub-paragraphs to paragraph 5 "(iv) to assess whether the absence of electoral reform and reform of the composition of the States has inhibited or hindered the workings of the ministerial system. (v), to consider whether the notion of stronger checks and balances is working as intended. (vi), to consider whether the responsibility for government reform should be placed in the hands of the Council of Ministers." (d) After paragraph (6) add the following new paragraph: "(7) to consider any other matters deemed relevant to this review."

10.2.2 Deputy R.G. Le Hérissier

Like the previous speakers, I do not want to be excessively long. Senator Shenton will be glad to hear we do not disagree. We agree on the right for the issue to be discussed. Whether we agree with the issue can be left to another day. I would like to make it clear I think this is premature, this proposition, but having been made - and I appreciate the Senator has made it - I do not want it to go off in a half-baked fashion. The president of P.P.C. has tried to intimate that it is what he calls an operational review, but of course if you were looking at a business and you were looking at part of a business you would not say: "Well, we are going to look at the business, we are going to look at its effectiveness, but we will just forget about the Marketing Department or we will forget about the

Human Resource Department” and so forth. You would look at the whole thing. Not in detail; you would not pull it apart, but you would look... and I can see a look of puzzlement upon the President’s face - or confusion. I can see that, but you would look at the whole picture. So, what I am saying with my amendment - and I hope they will be fairly quickly picked up - is these are issues that I have noticed and that I have heard of and that have been expressed in some detail, for example, on the Chairmen’s Committee, and I think it is very important that the whole thing be looked in the round. I do not for a moment believe we should be producing a philosophical treatise on the nature of government and get a re-run of Clothier and so forth, but I do not want this to go ahead, Sir, without these points being borne in mind. There are other issues and you cannot look at half a system and come to meaningful conclusions about half a system. Just a few comments about the individual ones: paragraph 3, the degree and nature of co-operation received from Ministers and departments. As I alluded to this morning, there are issues; there is evidence to be taken from Scrutiny Panels on this matter and I want to highlight that fact. I am not sure all Ministers, despite the fact that they displace their criticism on to Scrutiny, have realised that we are indeed in a very changed world. I think it is only right, if we look at (b), (4) - that P.P.C.’s role be looked at. As we all know, it is meant to be a compromise between the Executive and the non-executive side of the House, with the non-executive being ostensibly in the majority. That needs to be looked at. Of course, I look at it in a more serious way as we proceed. (c), (iv) - to assess the absence of electoral reform and reform or composition of the States: I am not going to push a particular line here, because people jump to that conclusion, but I do not see how you can adopt a report, cherry-pick it or take half of that report and not expect there will be some impact upon the system you then eventually run with. You have to consider that issue even if only to say: “We have made a mistake and the type of accountability that should have ensued with this system has not worked out.” We already know, as was said this morning and is said time and time again by some people, we took on board a system which was essentially a system that worked only with political parties, so there were bound to be strange things which would happen when you put what you might call an alien transplant into our society. That is very much the point I am trying to make. Whether people say that is a load of rubbish, it has worked perfectly well, do not get worried, I have no problem with that. If they reach that conclusion after due study, all well and good. (c), (v) - to consider whether the notion of stronger checks and balances is working: a very important issue very much bound up with the broader role of Scrutiny as to whether it is working and the sorts of issues about the role of question time, in particular the role of votes, votes of censure, the role of votes of no confidence and I do not think we have had any real discussion about those issues. I would not like us all of a sudden to be faced with a preliminary report where all sorts of judgments are made and these issues get conveniently buried. (c), (vi) - where the Senator and I, if it were to be implemented or sought to be implemented would disagree, Sir, but all I am saying is here you have one of the most fundamental reforms of all. It has struggled for various reasons. Building-up consensus is enormously difficult, there are all sorts of visceral, emotional, historical feelings that surround it, and why is the Council of Ministers not driving it? Why are they not saying democratic reform is as important, if not more important, than Ministerial reform and I think the issue has to be looked at. You may disagree with my stance, I have no problem with that, the issue has to be looked at. The last one is just a catch-all. If there are any other things that come to people’s minds, obviously it is useful to have that catch-all.

The Bailiff:

Is the amendment seconded? [**Seconded**] The amendment is seconded by Deputy Duhamel and is open to debate.

10.2.3 Senator F.H. Walker:

I think most of the points raised in the amendment may well be seen to add something to P.P.C.’s own amendment which the Council of Ministers has supported. I do not have any strong views about them, really, either way, except for (c), (vi). I have to say that I think it is absolutely and

entirely wrong for the Council of Ministers to even be considered as the appropriate body to look at electoral reform and governmental reform. I think it is vital that we do continue to separate, as we have done... and as, indeed, Deputy Le Hérissier has been a very strong proponent of. It is vital that we continue to have a separation between the Executive function and the parliamentary or government function overall as well. I have to say I am absolutely astonished that the Deputy, of all people, having in his previous incarnation as President of P.P.C. fought so hard to create a separation and, indeed, refused point blank that the Policy Resources Committee of the day should be responsible for the States of Jersey Law, insisting that it had to be P.P.C. One wonders whether his views have changed following the loss of his job as President. I am absolutely astonished that his views have changed so much and I would be amazed if the House agreed that this was a suitable and fitting responsibility for the Council of Ministers. To make it absolutely clear, the Council of Ministers do not believe this is a role that we should take on. This is firmly a role for P.P.C.; it is where it always rested and where it should continue to rest from this point.

10.2.4 Senator M.E. Vibert:

There seems to be a marked reluctance for people to take part in this debate. I know we have not had it very long, but I think it is important that we look at it. I am a member of P.P.C. and P.P.C. will be charged to do this. My concerns with some of the add-ons of Deputy Le Hérissier is that they will widen it and make it harder to bring back to the States in the timescale and to do the job we are being posed to do. (a), (v) - the first amendment - I have no problem with. If the Deputy wants to name and shame, we can do that. I do not think it adds much. I think Scrutiny are capable of doing that, but I do not have any great problem with that. (b) - the change the Deputy wants as in his (b) - I just think is laughable. He is asking P.P.C. to review the composition and role of the Privileges and Procedures Committee. If there is one Committee that should not be doing that, it is P.P.C. What are we going to say? We are all members of it. We should not be members of it; it should be doing something else. It is the States that decided the composition and role of the Privileges and Procedures Committee, and a very short time ago. I think it is going to confuse the issue if P.P.C. is asked to include that in their review that Senator Shenton is asking for. Similarly (c), (iv) - to assess whether the absence of electoral reform and reform of the composition of the States has inhibited or hindered the workings of the Ministerial system. As the Deputy well knows, we are currently working on electoral reform and reform of the composition of the States. There are numerous options, so which option would we be looking at to consider whether every option inhibited or hindered the workings of the Ministerial system? Again, one, it is open-ended and I do not think it was what the original proposal of Senator Shenton was designed to do. I believe the original proposal was quite rightly designed to look at how the existing system we have got has worked over the past year and to report back on that. No problem with (c), (v) - to consider whether the notion of stronger checks and balances is working as intended; but again, (c), (vi) I find strange - to consider where responsibility for government reform should be placed in the hands of the Council of Ministers, when this House decided very strongly it should not, not very long ago, so why should we look at that again? Again, I think P.P.C. would be the wrong body to look at that as they currently have that responsibility, are midway through producing options on that, having commissioned the MORI poll and so on, and are getting on with the job that they have been tasked with by the States, and then they would be asked to look at whether they should not be doing that job. The question is should they continue doing the job while they are looking at whether they should be doing the job or not; or whether they should stop doing the job while they look at whether they should be doing the job or not? It is totally something that is going to cause confusion and is quite unnecessary. I do not mind the catch-all in (d). I think we should keep this review as simple as possible and not confuse it and I am afraid I will be voting against most of the amendments suggested by Deputy Le Hérissier.

10.2.5 Deputy C.J. Scott Warren:

I have always believed that electoral reform of the Assembly and the composition of the States may be of benefit to the future running of successive States Assemblies, but I also believe that the new Ministerial system firstly needs to bed-in for at least one and maybe 2 to 3 terms in order to assess how we function. We have a rule for 10 per cent more members not being in the Executive. We have to see how we are coping with this present system and iron-out any present difficulties. So I am concerned that these amendments - however well intentioned by Deputy Le Hérissier - may... firstly, I believe that a lot of them are premature; and secondly that it will greatly delay the original purpose of bringing this proposition to the Assembly.

10.2.6 Deputy P.V.F. Le Claire:

The States Assembly is now constituted under a Ministerial system. Given that we have only been in this new system for one year and given the perplexity of problems that face the Island in the very near foreseeable future of the Island, I strongly believe that we should not get into a habit of over navel-gazing at this stage. I normally can support Deputy Le Hérissier when he brings propositions because I normally find a lot of sense in them. Occasionally, as was with the Special Committee, I find that perhaps we do not always agree, but I do not disrespect his views and do not make any disrespectful remarks in the fact that he brings them. But I would just say this much: I believe quite strongly that we should not be getting into a discussion today or indeed in the near future about the make up of the Assembly. I think that the way that we have come together at this stage is a situation where we are symbiotic with each other and certainly will live among a Ministerial system and a Ministerial system will live with the benefits of the Scrutiny system. I quite strongly believe that instead of us focusing on our own political agendas and our own political careers - which many of us seem to do and I have been guilty of it myself - we should be focussing at this critical time in our Island's history at sorting out a morass of issues that are facing us. I would urge all Members to put aside their past differences and start working together to face some of the challenges that we have ahead of us. Navel-gazing is one thing, but future gazing: it is a little bit difficult ahead, there are some rocky roads and I believe that we are not going to get through it unless we stick together and work harder with each other.

10.2.7 Senator P.F.C. Ozouf:

Sir, I do not think the Chief Minister or Senator Vibert are going to thank me for standing, but I am going to support Deputy Le Hérissier's amendments. Deputy Le Hérissier is saying that the matter should be reviewed. If Members, like I have done, have read Deputy Le Hérissier's points - and it is all very well for people to criticise Deputy Le Hérissier, or indeed anybody for changing their position - but he has made in his report 2 quite strong points about the issue of the new world of Ministerial government that we have. That is that policy leadership - and there is some confusion here about who in fact is responsible for policy leadership - in a system of Ministerial government, as Deputy Le Hérissier quite rightly points out, is in the hands of the Council of Ministers. I know that there were some Scrutiny Panels that think... and I can see the Chairman of the Scrutiny Panel shaking his head for the very reason, and this is why there is some confusion. The policy leadership in the separation of the Executive from the legislature exists in the hands of the government. It is a curious state of affairs in the reading of what effectively is the world of Ministerial government that a parliamentary panel - which is effectively P.P.C. - is in such a crucial policy formulating role. It may well be that Senator Vibert is right when he says that work is underway and that effectively the train has left the station - and the work is underway - but that does not mean to say that we should just simply fire Deputy Le Hérissier down in a storm-trooper of flames in saying that he is wrong. He is quite right in saying that in normal separation of the Executive from the legislature policy matters rest with the government. The government in this context is the Council of Ministers. All Deputy Le Hérissier is asking - if one reads his amendment - is to consider whether responsibility for government reforms should be placed in the hands of the Council of Ministers. He is asking the question. If we are afraid of asking the question, then I think that is effectively something which I

think is a sad signal to send out, that we are not in fact prepared to sometimes look at the fundamentals and see whether or not the world which we have created is the right one in the current world, in the context of the new system of government that we have created. It was a strange situation, was it not, that a P.P.C. was responsible for a States of Jersey Law. That is a major policy development, which in any other democracy... and I would ask any opponents of what Deputy Le Hérissier had to say to cite one other parliament that has a parliamentary committee in charge of, effectively, the most important policy development, which is effectively the context that the government is operating. It is a strange state of affairs, and I will support Deputy Le Hérissier's right to have that question asked in the review.

Senator M.E. Vibert:

Sir, can I just thank Senator Ozouf for standing up and speaking? He did not think I would, but I would like to.

The Bailiff:

I will call upon Deputy Le Hérissier to reply.

Senator S. Syvret:

Sir, I had my light going, but Senator Vibert's head was in the way. [Aside]

The Bailiff:

Senator Syvret?

10.2.8 Senator S. Syvret:

Thank you, Sir. In preparation for these debates - and indeed generally - I had cause to dig out my original copy of the Clothier Report and I have brought it here with me. It does not take long to read because it is such a thin document; thin in every sense of the word. Deputy Le Hérissier was always very, very enthusiastic about constitutional governmental reform, about changing the government. He was a great fan of the Clothier Report, as were a lot of other people, and he and others say: "Well, the States were wrong to have taken only certain parts of the Clothier Report instead of taking it as a whole." Well, I do think there is a strong element of the Emperor's New Clothes about the Clothier Panel work of itself. I think that means that the Assembly was very, very justified in thinking very carefully about what was proposed and making the decisions that we did. When you are looking at completely remodelling an entire system of government for the 21st century you would not necessarily look in any event to the United Kingdom, which has plummeting voter turn-outs and a largely accepted view across the political spectrum that things have gone badly wrong with the U.K. Parliament. That the Executive is utterly out of control of the House of Commons and the House of Lords, and that there is a total imbalance of power; that the voting system itself is badly flawed because a party can get 35 per cent of the public vote and 100 per cent of the power. So I was never especially impressed with the report that based itself largely on the U.K. Local Government Act 2000. You can look at it on the internet yourself and see that particular report. But to those who still remain wedded to the notion that the Clothier Report was somehow the perfect document I would just point out briefly a few of its flaws. As I have already said it was based on a U.K. system. People like Deputy Le Hérissier - and indeed many others who were desperate for any kind of document that said: "Yes, this is the way to reform; this is the way to reform" - have seized upon it as a man in a desert might fall upon an oasis, notwithstanding that the water is brackish with camel urine. The fact is that in the 21st century how seriously could we take this reform of government when it contains precisely one paragraph on freedom of information, and even then only merely a passing reference - zero analysis - of the nature of power in the Island; which sections of our community have the power and who wield it? How is it wielded and on whose behalf? Nothing whatsoever on election expenditure or campaign funding. Now Jersey is pretty much unique among established democracies in having absolutely no legislation in this field.

Every respectable democracy you look at has very strict regulation about campaigning, financing, and election expenditure, because it is well proven and well accepted in respectable democracies that if you do not have that you enable special interest groups - large businesses, the wealthy, and the powerful - to basically buy power by spending vast amounts of money on election campaigns, and that is an established fact which is why the vast majority of respectable democracies have legislation on this. What did the Clothier Report have to say about this really fundamental issue? Nothing. Not one word. I say again to Deputy Le Hérissier - and I have said this to him in the past - that if he wants to win me over to his plans for governmental reform he has got to stop putting the cart before the horse. Before I am ever going to be persuaded to embrace his notion of reform I need to see that the basic foundations of modern civilised, transparent, and ethically acceptable democratic practices are put in place in the Island first. I certainly do not want to be fighting election campaigns which I have paid for myself for a modest amount against candidates who are having large companies spend £35,000 on their election campaigns. I just do not think that any respectable democracy should tolerate that. The idea certainly I think of putting the responsibility for governmental reform for the make-up of the Assembly to the Council of Ministers is really truly quite bizarre, and I am afraid that Deputy Le Hérissier misses the fact when he says: "Well, this is not common in most places" when in most places you do have a party political system and you have a government, as is the case at Westminster whereby the government of the day has absolute power by dint of its majority in the Assembly, and if it wants to change electoral laws, rules, processes, whatever, it can do so. Jersey, without that party political tradition, I do think needs to be very careful before putting the apparatus of democracy into the hands of the political Executive who are charged with undertaking the day to day politics of running the Island and its Departments. I do think Deputy Le Hérissier is badly misguided on that point. But, Sir, I will not be supporting the Deputy's amendment. I will support the amendment of Senator Shenton. But I say again to Deputy Le Hérissier and others like him who wish to see - who indeed hunger for meaning democratic and political reform in the Island - get the basic building blocks in place first and then you might persuade a few more of us to agree with you.

The Bailiff:

Does any other Member wish to speak?

10.2.9 Senator P.F. Routier:

I will be very brief. The original proposition of Senator Shenton I think is something which I think many of us want to support, and I think that we all recognise that the Privileges and Procedures Committee, because of the make up that they have - they have 2 Members of the Council of Ministers on the P.P.C. Committee - I believe that they are the real appropriate body to be thinking about things which are highlighted in the amendment of the amendment by Deputy Le Hérissier. I cannot accept in any way, shape, or form that the Council of Ministers should be solely responsible for looking at the reform of government because it would be better to come from a cross-membership of the States, which we have in the selection of Members who are on P.P.C. who will be in a far better position to carry out that work in an even-handed way. Because what would happen if the Council of Ministers were left with that job, to carry out that reform? I am sure that would be held up as a big criticism that they had carved it up in a way that suits the Council of Ministers. So I think it is far better that P.P.C. does take on that responsibility. While they are doing that - which I hope they are given the job of doing that, among all the other things in the review - I hope they do take the opportunity to look at the ability of bringing amendments to amendments at a very late stage, because although we have had the amendments for a week or so, for us to really consider the implications of what this is trying to do I think we should be afforded a greater time to consider the matter. We are where we are today with this one. I have considered it the best I possibly can in the short time that we have had it, and I have come to the conclusion that I am unable to support the amendments to the amendments and, in particular, the Council of Ministers being asked to look at government reform. So, I urge Members to reject the amendments.

10.2.10 Deputy J.A. Martin:

Yes, Sir. I do not know quite which way I am going to vote on this one, because I find myself in some ways agreeing with the speech of Senator Ozouf: not the sentiment of the speech, and not even the way he interprets the government - but that is an argument for another day - but what Roy Le Hérissier is only asking is that it is considered; to consider whether the responsibility of the form of government is put in the hands of Ministers. Now from all the Ministers that have spoken, except Senator Ozouf, there seems to be “no way Jose”, do not go there. Is it because again nothing will happen? Because nothing has happened so far. Nothing happened in the build-up, and the reform of the inter-Ministry, and now whether or not the Ministers believe they are the government and the rest are not, somebody should make a decision. So, as I say, I am quite tied. I may support the amendment to the amendment because I think it just adds a few extra considerations, and it just widens slightly the terms of reference. I think at the end of the day if it is determined - and this House determines - that the Ministers are the government and if we do not consider they are the people who bring in electoral reform you can mark my words, Sir, electoral reform will be 10 years at least down the line.

10.2.11 Deputy G.P. Southern:

It seems to me that P.P.C. is a curious sort of camel, designed to wander across the shifting sands at its own pace on the desert that is constitutional reform; whether it is headed in a direction or not it is really too early to tell. I sincerely hope it is not wandering around in slow and ever-decreasing circles. However, despite any frustration one might have with the speed at which the current P.P.C. Committee operates - and indeed past P.P.C. Committees have operated - I do not think that is cause to abandon all faith in P.P.C. No matter how curious it looks, it is a creature that probably is best equipped for negotiating constitutional reform. Certainly the thought of putting constitutional reform in the hands of the Ministers who are self-evidently - obviously - the product of that system it seems to me absolutely clear that they are not going to want to tinker with it very much at all. However, before I condemn the whole of this amendment to the amendments - and I think by and large I do not see the sense of much of what is on offer there - I must try and salvage part (a). Part (a) is something that desperately needs looking at. There is a whole range of reactions to Scrutiny from Ministers, ranging from complete and utter co-operation to complete and utter refusal to recognise the existence of Scrutiny. So that does definitely need consideration and action, I believe. So, if we are to throw out this amendment, can we please at least save paragraph (a)?

10.2.12 Deputy R.C. Duhamel:

Yes, just briefly, Sir. I did second the proposition, possibly to the surprise of the proposer, because we had not prearranged it. But having listened to the comments that have been made it is quite clear that some do raise interesting issues which suggest that perhaps there are some items which are more supportable than others. So with that in mind, Sir, I would urge the proposer of the proposition, Deputy Le Hérissier, to ask for votes to be taken separately on every item.

The Bailiff:

I think the different paragraphs could be taken separately if that was the wish of the proposer of the amendment, but further breaking up I think would be difficult. Does any other Member wish to speak? Well, I call upon Deputy Le Hérissier to reply.

10.2.13 Deputy R.G. Le Hérissier:

I am glad it aroused a good debate, but of course I wanted to provoke the issues or to stimulate discussion on them, but as Deputy Martin and Senator Ozouf have said I did not want to have the actual debate now. We have focused on the Council of Ministers. I stand by my point, Sir, just committing the very crime that I said we tried to avoid, that the separation of powers, as Senator Ozouf said, it could allow for the Council to drive it. Responsibility - and the issue was still in our

favour - responsibility still rests with the House, all of us, as to the nature of reform. So, it is not as if we are abdicating it. There seems to be this view that somehow we are abdicating it. Far from it. Or I am suggesting it be abdicated. Far from it. My view is, Sir, as Deputy Martin and Senator Ozouf have said, I think these are issues that need to be debated, or flags need to be erected in order to make sure that the issues have been mentioned. I do not for a moment want a re-run of Clothier; Senator Syvret will be relieved to hear. I thank all the people for speaking. Senator Walker, I have dealt with. Senator Vibert; he says: "Well, how can P.P.C. look at itself?" A lot will depend on the composition of the sub-committee. I hope it will be much more than the sum of P.P.C. But I hope P.P.C. will be in a very, very small minority and there will be people there who have really diverse views and who can stimulate a lot of discussion. So, I think it is irrelevant. It is not P.P.C. looking at itself. In any case it should be up to speed with healthy self-criticism. Deputy Scott Warren, I agree with her; it should be bedded in over a few terms, but we are, with Senator Shenton's proposition, where we are. Deputy Le Claire, I could not agree with him more; too much navel-gazing, but I wanted to jump in before the things hardened and all of a sudden we are told: "Well, everything is relatively hunky-dory. A few little issues here and there, but we are all getting on wonderfully, are we not" type approach. That is why I wanted to raise the bigger issues. Senator Ozouf, I thank him, and very much agree with the thrust of what he said. Senator Syvret, I am sorry that I do look a total unreconstructed Clothier-ite, and obviously it is a burden I will have to bear to the day I am put into one of the residential homes, whether it is private or public, or whatever. **[Laughter]** Yes, it is clearly a burden I will have to bear. I think he raises some very good points and I certainly do not disagree with him at all and I, as he will see from my amendments, did not mention the dreaded word here. I would not mention the dreaded word because it sets a lot of people off in palpitations. So I wanted to mention broader issues. But I totally agree with him, but I am not sure the answer to being anti-Clothier is to being in support of no change whatsoever. I do not think the 2 follow-on from the other. I have explained why I want to put it in the hands of the Council. Senator Routier: I am sorry that it did arrive late on his doorstep, but he was clearly able to come up with some views. I wish he would have come up with views that would have contradicted his normal drift of views and then I would have thought: "This has really worked." Deputy Martin and Deputy Southern, I agree, Sir. I would like to move them separately, but according to your ruling I cannot break (c) down is what you are saying.

The Bailiff:

The Assembly does not generally do that, Deputy, and I think it would be unduly complicated, if I may say so, to break it down any further than from the paragraphs, which if you wish to break it down in terms of paragraphs you can certainly do.

Deputy R.G. Le Hérisier:

Okay, we will move with paragraphs. Thank you, Sir.

The Bailiff:

So, you would like an electronic vote? Yes, an appel. Well, I ask all Members who wish to vote to return to the Assembly, return to the Chamber, and the Assembly will vote first on paragraph (a) of the amendment to the amendment, and I ask the Greffier to open the voting.

POUR: 37

Senator L. Norman
 Senator P.F. Routier
 Senator M.E. Vibert
 Senator P.F.C. Ozouf
 Senator F.E. Cohen
 Senator J.L. Perchard
 Connétable of St. Ouen

CONTRE: 9

Senator S. Syvret
 Senator F.H. Walker
 Senator W. Kinnard
 Senator B.E. Shenton
 Connétable of St. Clement
 Connétable of St. Martin
 Deputy J.J. Huet (H)

ABSTAIN: 0

Connétable of St. Saviour
Connétable of St. Mary
Connétable of St. Lawrence
Connétable of St. John
Connétable of St. Brelade
Deputy R.C. Duhamel (S)
Deputy A. Breckon (S)
Deputy of St. Martin
Deputy G.C.L. Baudains (C)
Deputy C.J. Scott Warren (S)
Deputy R.G. Le Hérissier (S)
Deputy J.A. Martin (H)
Deputy G.P. Southern (H)
Deputy S.C. Ferguson (B)
Deputy of St. Ouen
Deputy P.J.D. Ryan (H)
Deputy of Grouville
Deputy of St. Peter
Deputy J.A. Hilton (H)
Deputy G.W.J. de Faye (H)
Deputy P.V.F. Le Claire (H)
Deputy J.A.N. Le Fondré (L)
Deputy D.W. Mezbourian (L)
Deputy of Trinity
Deputy S.S.P.A. Power (B)
Deputy S. Pitman (H)
Deputy K.C. Lewis (S)
Deputy of St. John
Deputy I.J. Gorst (C)
Deputy of St. Mary

Deputy J.B. Fox (H)
Deputy A.J.H. Maclean (H)

The Bailiff:

We come now to paragraph (b) and I invite the Greffier to open the voting.

POUR: 16

Senator P.F.C. Ozouf
Senator F.E. Cohen
Connétable of St. Saviour
Connétable of St. Mary
Deputy A. Breckon (S)
Deputy J.J. Huet (H)
Deputy of St. Martin
Deputy R.G. Le Hérissier (S)
Deputy J.A. Martin (H)
Deputy S.C. Ferguson (B)
Deputy G.W.J. de Faye (H)
Deputy P.V.F. Le Claire (H)
Deputy J.A.N. Le Fondré (L)
Deputy of Trinity
Deputy K.C. Lewis (S)
Deputy of St. John

CONTRE: 30

Senator S. Syvret
Senator L. Norman
Senator F.H. Walker
Senator W. Kinnard
Senator P.F. Routier
Senator M.E. Vibert
Senator B.E. Shenton
Senator J.L. Perchard
Connétable of St. Ouen
Connétable of St. Clement
Connétable of St. Lawrence
Connétable of St. John
Connétable of St. Brelade
Connétable of St. Martin
Deputy R.C. Duhamel (S)
Deputy G.C.L. Baudains (C)
Deputy C.J. Scott Warren (S)

ABSTAIN: 0

Deputy J.B. Fox (H)
 Deputy G.P. Southern (H)
 Deputy of St. Ouen
 Deputy P.J.D. Ryan (H)
 Deputy of Grouville
 Deputy of St. Peter
 Deputy J.A. Hilton (H)
 Deputy D.W. Mezbourian (L)
 Deputy S.S.P.A. Power (B)
 Deputy S. Pitman (H)
 Deputy A.J.H. Maclean (H)
 Deputy I.J. Gorst (C)
 Deputy of St. Mary

The Bailiff:

We will come to paragraph (c), and I will ask the Greffier to open the voting.

POUR: 13

Senator P.F.C. Ozouf
 Senator F.E. Cohen
 Senator J.L. Perchard
 Connétable of St. Saviour
 Connétable of St. Mary
 Deputy R.C. Duhamel (S)
 Deputy A. Breckon (S)
 Deputy of St. Martin
 Deputy R.G. Le Hérissier (S)
 Deputy J.A. Martin (H)
 Deputy S.C. Ferguson (B)
 Deputy D.W. Mezbourian (L)
 Deputy K.C. Lewis (S)

CONTRE: 33

Senator S. Syvret
 Senator L. Norman
 Senator F.H. Walker
 Senator W. Kinnard
 Senator P.F. Routier
 Senator M.E. Vibert
 Senator B.E. Shenton
 Connétable of St. Ouen
 Connétable of St. Clement
 Connétable of St. Lawrence
 Connétable of St. John
 Connétable of St. Brelade
 Connétable of St. Martin
 Deputy J.J. Huet (H)
 Deputy G.C.L. Baudains (C)
 Deputy C.J. Scott Warren (S)
 Deputy J.B. Fox (H)
 Deputy G.P. Southern (H)
 Deputy of St. Ouen
 Deputy P.J.D. Ryan (H)
 Deputy of Grouville
 Deputy of St. Peter
 Deputy J.A. Hilton (H)
 Deputy G.W.J. de Faye (H)
 Deputy P.V.F. Le Claire (H)
 Deputy J.A.N. Le Fondré (L)
 Deputy of Trinity
 Deputy S.S.P.A. Power (B)
 Deputy S. Pitman (H)
 Deputy A.J.H. Maclean (H)
 Deputy of St. John
 Deputy I.J. Gorst (C)
 Deputy of St. Mary

ABSTAIN: 0

The Bailiff:

We come finally to paragraph (d), and I ask the Greffier to open the voting.

POUR: 33

Senator S. Syvret
 Senator L. Norman
 Senator P.F. Routier
 Senator M.E. Vibert
 Senator P.F.C. Ozouf
 Senator B.E. Shenton
 Senator F.E. Cohen
 Senator J.L. Perchard
 Connétable of St. Ouen
 Connétable of St. Saviour
 Connétable of St. Mary
 Connétable of St. Lawrence
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 Deputy R.C. Duhamel (S)
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 Deputy of St. Martin
 Deputy R.G. Le Hérissier (S)
 Deputy J.A. Martin (H)
 Deputy G.P. Southern (H)
 Deputy S.C. Ferguson (B)
 Deputy of St. Ouen
 Deputy P.J.D. Ryan (H)
 Deputy of Grouville
 Deputy J.A. Hilton (H)
 Deputy P.V.F. Le Claire (H)
 Deputy D.W. Mezbourian (L)
 Deputy of Trinity
 Deputy S.S.P.A. Power (B)
 Deputy K.C. Lewis (S)
 Deputy of St. John
 Deputy I.J. Gorst (C)

CONTRE: 13

Senator F.H. Walker
 Senator W. Kinnard
 Connétable of St. Clement
 Connétable of St. Martin
 Deputy G.C.L. Baudains (C)
 Deputy C.J. Scott Warren (S)
 Deputy J.B. Fox (H)
 Deputy of St. Peter
 Deputy G.W.J. de Faye (H)
 Deputy J.A.N. Le Fondré (L)
 Deputy S. Pitman (H)
 Deputy A.J.H. Maclean (H)
 Deputy of St. Mary

ABSTAIN: 0**10.3 The Bailiff:**

The debate accordingly returns to the amendment of the Privileges and Procedures Committee, as amended by Deputy Le Hérissier's amendment.

10.3.1 Senator P.F.C. Ozouf:

There is no doubt that this review is going to be important and has implications for both the Executive and non-executive parts of the States. The P.P.C. amendment says that it intends to set up a sub-committee to conduct a review and I quote: "Representatives of both the Executive and non-executive." I would be grateful in his summing up if the President of P.P.C. could explain how he intends to form this sub-committee; because of course it is important that the sub-committee is - I would imagine - made up of Members who are pluralistic in their views; that have not got a pre-determined position. There are some Members who clearly do not still quite like Ministerial governments, or they still do not quite like some of the definitions of it. It is important, I would have thought, that the sub-committee is made up of a balance, not only Executive and non-

executive, but also of people with different views, and perhaps different perspectives and interpretations of Ministerial government. It is absolutely vital that this sub-committee is not packed full of those people who are, for example, of a view that the usual suspects that - for example - have a particular view that Scrutiny should be in policy development. I just would like that the Chairman... President - I am not quite sure, I think I prefer the name President for the Chairman of the P.P.C. Committee; perhaps he will consider changing himself back into a President - to say how the sub-committee is going to be appointed. Who is going to appoint it? Also how anybody is going to be able to influence that, specifically the numbers of the sub-committee, and how he considers that sub-committee is going to work? Are they going to hear oral evidence? Are they going to invite everybody to give views in public? What is the *modus operandi* of this group? It is very important, and we have got scant information on which to base our decision.

10.3.2 Deputy J.A. Martin:

Well, unfortunately the last speaker, Sir, has no influence over how Privileges and Procedures elect the sub-panel. I will be announcing now I would like my name to be considered, and I am sure this is the way that it will come forward. This is the law that we are with. This is what we need to review. There are lots of things under Standing Orders that do not suit Scrutiny; that we cannot co-opt a Member on to a Committee, but we have to form a complete sub-panel, Sir. But, unfortunately, this is where we are and we are where we are - as the Ministers always like to tell us. Unfortunately, unless there is a lot of back coffee-room whispering, the membership will be open and considered, and it will give across the board membership that is worthy of this House, Sir.

10.3.3 Deputy J.B. Fox:

Yes, Sir, I do not think that Senator Ozouf has to have any worries about the composition of it. From the experience of the last few months we will have 53 different versions of the same thing, and some Members will have several versions of their own of the same thing. All I hope is at the end of the day that we get it right this time, and hopefully in a timescale that makes it productive as opposed to going on for a long time. I have every confidence in P.P.C. and its Chairman in bringing forward the right mixture, and hopefully this time we will come out with the decisions that are required.

10.3.4 Deputy G.P. Southern:

Yes, once again the Minister for Economic Development cannot resist putting his little fingers in whatever pie is around to make sure that it happens in the way that he wishes it to happen. He made a quite moving speech about not stacking the Committee with certain types of people. The only thing that was missing from the end of his statement was: "Certain types of people who happen to believe like me." At which point I reinforce my absolute faith in Constable Gray to be able to pick and choose the appropriate blend of people to do this study and urge him to get on with it and not be worried about concerns as expressed by the Economic Development Minister.

10.3.5 Deputy P.V.F. Le Claire:

As the Member for Coventry, Sir, I thought I might rise to this occasion. **[Laughter]** I would like to offer my participation in the review if the P.P.C. is going to consider a cross-section of Members with different experiences, because I have had a broad breadth of experience, both in and out of Scrutiny, and in some respects the previous Committee system, which was acting as the Executive. I believe also maybe some consideration might be given to people that are not necessarily States' Members participating in some format, and I believe that if a review is to have any worth then really what I would suggest perhaps is to set up a framework where we have a bi-annual review. So every 2 years we set a marker in the ground as to where we are and where we think we should be and assess that on an on-going basis. I would hope and anticipate with the amount of work and problems that are ahead of us that we do not get bogged-down for too long - or this group does not get bogged-down for too long - in looking at issues which are unlikely to repeat themselves on the

grounds that this is a new system and we are learning. There is no need to relearn the first steps but merely to notice that they have been taken.

10.3.6 Deputy C.J. Scott Warren:

Well, I welcome these slightly amended terms of reference and I would just like to say - as has been said by another Member - I have full confidence in the Chairmen's ability and his work, including the consultation, process to look at all these aspects of our very new system of government, even our fledgling system of government, and I look forward to receiving the report.

10.3.7 Senator M.E. Vibert:

Just hopefully to bring this part of the debate to a close, we are not holding auditions at the moment for the sub-committee. **[Laughter]** So, Members, please restrain themselves from singing their praises and how suitable they would be on it. If Members approve this amendment, and then the amended proposition of Senator Shenton, they will be asking P.P.C. to get on with the job, which we will do.

10.3.8 Senator P.F. Routier:

When we were agreeing the voting on the amendments of Deputy Le Hérissier we did give a positive vote to 7, which was to consider any other matters deemed relevant to this review. I just wondered if, through the Chair, Sir, that some guidance might be given - I do not know if I have got my timing right for this one - with regard to whether it would be able to include the issues which the States have voted down, for instance, that (c), (vi) - to consider whether the responsibility for government reform should be placed in the hands of the Council of Ministers. Would that be a matter that is deemed relevant?

The Bailiff:

I would have thought the answer is "Yes, paragraph 7 is an actual provision."

Senator P.F. Routier:

So, we have fallen into the trap Deputy Le Hérissier has set for us, Sir. **[Laughter]**

Senator M.E. Vibert:

Sir, that assumes that we would ever deem it relevant.

The Bailiff:

Deputy Le Hérissier is much more subtle than you imagine. **[Laughter]** Does any other Member wish to speak?

10.3.9 Deputy G.W.J. de Faye:

I have to be straightforward; I think this is far too early to conduct a review. The baby has only been around for 9 months, and we are already going into deep psycho-analysis. But, having got that off my chest, there is nothing wrong with having reviews and certainly it is known that there are some Members of the House who do not have much to do, because there were not enough Scrutiny Panels to go around, although, hopefully, this morning's measures may deal with that to some extent. So, on the basis there is nothing like employing keen hands, then why not have a review? Although I am concerned that we may not have enough serious evidence really to form a comprehensive review that perhaps Members may be hoping for, I certainly would strongly caution against the advice of my good friend, Deputy Le Claire, who wants to do this on a regular - even bi-annual - basis; even that sounds pretty ghastly to me. The idea of doing this sort of thing on a regular basis, I think we should think extremely carefully before we go down that particular avenue. While we do have at least a reasonable framework to consider, I really would urge any Members who take part in this that the essence of this particular review is a light touch and a broad brush, so

that we can quickly identify some of the issues. We can prioritise them. We can do one or 2 things perhaps reasonably speedily. But I think it would be a serious mistake if we tried to turn this into a real comprehensive analysis of our entire and brand new governmental system when it is barely run for a year. So, if I can just urge a tone of lightness upon those who will be involved in this. I have to say that while it is early, perhaps we should have one.

The Deputy Bailiff:

Does any other Member wish to speak? Very well, I call upon the Constable of St. Clement to reply.

10.3.10 The Connétable of St. Clement:

I would like to thank all the Members that took part in the debate. I do not think there are many questions to really answer. If you pass this proposition, as Senator Vibert pointed out, it is to request the Privileges and Procedures Committee to present a report. That is the function of this proposition, and that is what the Privileges and Procedures Committee intends to do. I do not think there is any mileage in having a large committee, because a large committee very rarely gets to a good decision quickly. If you pass this proposition, as amended, then it will be in the hands of the P.P.C. The P.P.C. are meeting next Wednesday and they will look at the way forward and move it quite quickly, Sir.

Senator P.F.C. Ozouf:

Sir, may I press the Chairman? I did ask him to explain who is standing - is any one person expressly standing - I did ask him to explain how the membership of the sub-committee would be selected, and specifically would it be members only from P.P.C., or would it be any others? I would just like to press him on how he intends to form and run that sub-committee?

The Connétable of St. Clement:

Well, as the Senator is aware, the P.P.C. is comprised of Members from both the Executive and the non-executive side of this Assembly and it is intended for the P.P.C. to make the decision of the exact composition. But as far as I can see it will be equally shared between Scrutiny members and Executive members.

Senator P.F.C. Ozouf:

Can I just press him? Does that mean it is going to be made up exclusively of members of P.P.C.?

The Connétable of St. Clement:

I think I made it quite clear that P.P.C. are meeting next week and they will make the decision. It is not up to the Chairman to make that decision. It is up to P.P.C. to make that decision.

The Deputy Bailiff:

Very well. Are you asking for the appel? I invite all Members to return to the Chamber for the appel on the amendment of the Privileges and Procedures Committee. I will ask the Greffier to open the voting.

POUR: 44

CONTRE: 0

ABSTAIN: 0

Senator S. Syvret
Senator F.H. Walker
Senator W. Kinnard
Senator M.E. Vibert
Senator P.F.C. Ozouf
Senator B.E. Shenton
Senator F.E. Cohen
Senator J.L. Perchard

Connétable of St. Ouen
Connétable of St. Saviour
Connétable of St. Mary
Connétable of St. Peter
Connétable of St. Clement
Connétable of St. Lawrence
Connétable of St. John
Connétable of St. Brelade
Connétable of St. Martin
Deputy R.C. Duhamel (S)
Deputy A. Breckon (S)
Deputy J.J. Huet (H)
Deputy of St. Martin
Deputy G.C.L. Baudains (C)
Deputy C.J. Scott Warren (S)
Deputy R.G. Le Hérissier (S)
Deputy J.A. Martin (H)
Deputy G.P. Southern (H)
Deputy S.C. Ferguson (B)
Deputy of St. Ouen
Deputy P.J.D. Ryan (H)
Deputy of Grouville
Deputy of St. Peter
Deputy J.A. Hilton (H)
Deputy G.W.J. de Faye (H)
Deputy P.V.F. Le Claire (H)
Deputy J.A.N. Le Fondré (L)
Deputy D.W. Mezbourian (L)
Deputy of Trinity
Deputy S.S.P.A. Power (B)
Deputy S. Pitman (H)
Deputy A.J.H. Maclean (H)
Deputy K.C. Lewis (S)
Deputy of St. John
Deputy I.J. Gorst (C)
Deputy of St. Mary

The Deputy Bailiff:

So, we return then to debate upon Senator Shenton's proposition, as amended. Does anyone wish to speak? Very well, do you wish to reply, Senator?

10.4 Senator B.E. Shenton:

Sir, I do not know what the record is for the shortest summing up speeches, but I would like to ask for the appel. [Laughter]

The Deputy Bailiff:

Very well. I invite Members to return to the Chamber for the appel on the proposition of Senator Shenton. The Greffier will open the voting.

POUR: 41

Senator S. Syvret
Senator F.H. Walker

CONTRE: 2

Connétable of St. Saviour
Deputy R.G. Le Hérissier (S)

ABSTAIN: 0

Senator W. Kinnard
Senator M.E. Vibert
Senator P.F.C. Ozouf
Senator B.E. Shenton
Senator F.E. Cohen
Senator J.L. Perchard
Connétable of St. Mary
Connétable of St. Peter
Connétable of St. Clement
Connétable of St. Lawrence
Connétable of St. John
Connétable of St. Brelade
Connétable of St. Martin
Deputy R.C. Duhamel (S)
Deputy A. Breckon (S)
Deputy J.J. Huet (H)
Deputy of St. Martin
Deputy G.C.L. Baudains (C)
Deputy C.J. Scott Warren (S)
Deputy J.A. Martin (H)
Deputy G.P. Southern (H)
Deputy S.C. Ferguson (B)
Deputy of St. Ouen
Deputy P.J.D. Ryan (H)
Deputy of Grouville
Deputy of St. Peter
Deputy J.A. Hilton (H)
Deputy G.W.J. de Faye (H)
Deputy P.V.F. Le Claire (H)
Deputy J.A.N. Le Fondré (L)
Deputy D.W. Mezbourian (L)
Deputy of Trinity
Deputy S.S.P.A. Power (B)
Deputy S. Pitman (H)
Deputy A.J.H. Maclean (H)
Deputy K.C. Lewis (S)
Deputy of St. John
Deputy I.J. Gorst (C)
Deputy of St. Mary

11. Draft Restriction on Smoking (Workplaces) (Jersey) Regulations 200- (P.114/2006)

The Deputy Bailiff:

Very well. That completes that matter. So, we turn next to proposition 114, the Draft Restriction on Smoking (Workplaces) (Jersey) Regulations lodged by the Minister for Health and Social Services. I will ask the Greffier to read the citation?

The Greffier of the States:

Draft Restriction on Smoking (Workplaces) (Jersey) Regulations 200-: the States in pursuance of Articles 1, 1AA, 1AB, 1C, 1D, 1G and 2 of the Restriction on Smoking (Jersey) Law 1973 have made the following Regulations.

11.1 Senator S. Syvret:

Thank you, Sir. I do not propose to spend a great deal of time making an introductory speech in respect of these Regulations. This is, I think, the third or fourth time this matter has been considered by the States' Assembly. We have had the in principle Tobacco Strategy debate a few years ago. Then we had an in principle, stand alone proposition on whether we should move down the path of banning smoking in enclosed workplaces. Then we had the amendment to the parent Law, and now finally we have the actual Regulations that will bring the Law into effect. When this was last debated by the Assembly earlier this year - the amendment to the parent Law - the vote was 43/3 in favour, so I am not aware of a great deal of opposition to this proposition, although there will be some I am sure. Just to briefly remind Members why we are doing this. In common with many other Western jurisdictions in the world, and indeed further afield now, there is a huge and ever-increasing movement for this kind of measure to prevent smoking in enclosed work places. It has become the accepted policy in many jurisdictions. In the late 1990s and the early part of this decade there was some scepticism as to whether we would ever get to the stage of having a complete ban, but when it was seen to be introduced in jurisdictions such as the city of New York, and indeed Ireland, and to work very successfully with a great deal of public approval and support, then we took a different view of it. I think now at the stage we have reached today where even the hospitality industry accepts the inevitability of the move. This kind of measure is important, because the great majority of people who smoke wish they did not. Most people who smoke want to give up. One of the hardest moments to stick by that resolution in giving up smoking is that time when you have just eaten in a restaurant perhaps, or you are in a bar, in a pub, having a drink with other people after work, perhaps, and other people around you are smoking. That is when it becomes immensely difficult. The evidence that we have from Guernsey is that following their introduction of a ban on smoking in enclosed workplaces they have a very, very substantial number of people taking up the facility of the smoking cessation advice, guidance and support, that is offered to people. We will be putting in place a similar programme in Jersey. We are going to be investing something in the region of £400,000 next year on a smoking cessation programme. So when the ban comes into effect - assuming the Assembly approves it today - on 2nd January it will coincide with people's New Year resolutions and there will be real help from the Health and Social Services Department and other health professionals to help people quit. That is important because smoking is probably the... well, it is by some margin, the major cause of preventable death in Jersey. It kills prematurely something like 170 Islanders a year. People will be very familiar with the fact that smoking causes lung cancer, but perhaps less familiar with the fact that it also causes a variety of other cancers, bladder cancer, pancreatic cancer; all kinds of problems that it can cause. Because it clogs the arteries it is one of the major causes of lower limb amputation in Britain and it also can lead to premature onset of Alzheimer's disease for the same reason. So the evidence against smoking and the harm it causes is very, very strong and robust. To those who adopt the very libertarian view and say: "Well, you know, it should not be anything to do with government/society what people choose to do with their bodies", well I would say that there are 2 problems with that. First of all here we are talking about smoking in environments where other people - most of the other people - who are not smoking are going to be subjected to and affected by your smoke. I think that is an important consideration and we are really trying to protect passive smokers here and make sure that people have the ability to have a clean, fresh air environment, when they are out socialising, or out having a drink with friends. I also think it is important to recognise that the completely libertarian view is not especially robust when you consider that it is the rest of society that has to pick up the pieces for these kind of extremely poor, highly addictive, damaging lifestyle choices. The cost of dealing with illness, chronic illness and general physical decay caused by smoking is immense for the State each year, and while smokers point to the revenue that the State raises from people buying tobacco, it does not balance out. The cost of dealing with the consequences of smoking is very, very expensive. I spoke earlier of the sum of £400,000 being invested in smoking cessation next year. That sum of money could quite easily be consumed in the space of 12 months treating maybe 3 patients who have a serious chronic health condition caused

by smoking. That is the kind of costs that we are looking at. So, Sir, I do not propose to go on much longer. This is the final step. As I said, it is putting the final touch to a decision already made by the States on several occasions, and I think it is quite clear that the great majority of people in the Island support this measure, and even the social survey would indicate that a great majority of smokers support this measure. So, Sir, I propose the preamble.

The Deputy Bailiff:

Is the principle seconded? [**Seconded**] Does any Member wish to speak on the principles of the regulations?

11.1.1 Deputy G.W.J. de Faye:

Jersey is a truly interesting and contradictory place in which to dwell. It must be one of the few places in the world where you can be prosecuted for speeding, although you have only been doing 18 miles an hour. Similarly, is it not strange that we will be debating in due course the contradictions of mobile phones, and how many parents send their children to schools now equipped with a mobile phone for the convenience of being able to keep in touch, and yet will have been hugely relieved to hear the Minister for Education announce that he will not be having mobile phone masts on any of his schools, even while their children are being exposed to emissions thousands of times greater than a mobile phone mast from the very mobile phones that they have given to their youngsters. It is indeed truly a bizarre world in which we live, and this is a set of rather bizarre Regulations. When the Minister, I think at the end of his speech, said: "And this is the next step" he was indeed right. But in my view parts of this are a step too far. I had no problem realistically when the anti-smoking Regulations were initially put to States' Members in fairly relaxed terms. This was going to be an approach that would really affect restaurants, places where people were eating, because there was an unknown level of unpleasantness to sit down to a restaurant meal and have your enjoyment disturbed because someone lit up on the adjoining table, or even in the room. But the theme of the anti-smoking policy has veered around a little. Now restaurants have become workplaces. Now pubs are workplaces. Not places of hospitality and leisure. Where we were going, which was ostensibly just a ban where people were eating, has now become a comprehensive blanket ban across all workplaces. I see Deputy Scott Warren was trying to... did you wish to intervene, Deputy?

Deputy C.J. Scott Warren:

Sorry, I was trying to say that I wished to speak later on.

Deputy G.W.J. de Faye:

I think I dealt with that fully comprehensively there. [**Laughter**] So, we have to now devote our minds to what is a workplace. I struggle with some of these definitions because this is going to be the classic scene of unintended consequences. I do not really believe that the States should have intervened in this area in the first place, because the Island was going through a gradual - perhaps not fast enough for the Minister of Health - but a gradual cultural transformation. Restaurants and pubs were beginning to develop their own no smoking areas, their smoking areas. Some indeed had decided to go the whole way and become no smoking. Of course that is entirely reasonable. The statistics indicate that 4 out of 5 adults are non-smokers. It is quite fair that the majority of Islanders would want to have an advantage over interference from a minority group, albeit 20 per cent of the adult population who are smokers. It is indeed accepted that many smokers wish they could give up smoking. This may be a way of helping, although I think we should always be careful about how we analyse things. I have heard all sorts of claims about how successful anti-smoking policies have been simply on the basis of the reduction in tobacco duty. I said several years ago that, of course, this was simply down to the fact that everyone was buying their tobacco elsewhere, apart from in Jersey where we have slapped so much tax on top of it, and in due course was proved to be exactly right on that point. So what is a workplace? Well, it includes any tent, temporary structure, or

moveable structure in which a person carries out his or her work and is required to be in there for that purpose. So that would clearly include a wedding marquee set up on somebody's private grounds where waiter and waitressing staff are employed. But it goes beyond that because these Regulations have become so all-pervasive that they have managed to include voluntary workers as being equivalent to employed workers. Now I have raised this in debate already before but it is worth reminding ourselves that this would mean that the 2 marquees that are erected by the beer enthusiasts in the Island on People's Park, and are staffed by entirely voluntary personnel who belong to the beer enthusiast's C.A.M.R.A. (Campaign for Real Ale) Society, would suddenly find themselves in a workplace, and therefore in a no smoking zone. Now, while it is surely reasonable to have restaurants that are no smoking, and it may just about be reasonable to have a blanket ban across all pubs - although I do not happen to believe that is reasonable - it seems to me really quite extraordinary that Jersey's annual beer festival, which is populated almost entirely by people who like to go and have a pint and a fag, is now going to become a no smoking zone. These Regulations will prohibit people from smoking even though they are outside restaurant premises. Now I wonder if Members are familiar with the small restaurant opposite the Town Hall. I wonder if Members are familiar with Friday's premises which are by the Central Market. These are all examples of premises that have had their front doors and windows set back from the pavement, primarily over time to hopefully take advantage of alfresco Regulations. But the net effect of these Regulations is that because these premises are set back, and they have, as it were, a ceiling formed by the first floor of the premises which they are in, and they have walls around them, and therefore only the open façade is open to the pavement, they fall within these Regulations as constituting a workplace. It really seems to me extraordinary that these Regulations want to go to these limits and take in these types of situation. How can it? How can it in all consideration of what is reasonable behaviour? Somebody who wishes to have a smoke, leaves the premises in which they were either dining or perhaps drinking, or meeting with friends, goes out through the front door of the premises, closes it behind them, sits down at a table outside effectively, and still finds themselves in the situation where they are not allowed to have a cigarette. Now that is going to cause unintended consequences that I do not believe anyone in this House would really want to see because it is unreasonable. It is a failure to understand some basic practicalities of how our local leisure business works. One of the really sneaky aspects of the Regulations that I find quite unpleasant is the policing. Now I have no doubt at all that the effect of a blanket ban on smoking is going to see some of our smaller pubs go out of business. The Law, as it is framed in this document, is going to put some people out of work. Now it may be argued that perhaps you are saving them from dying of cancer. That is another issue. Although I have come across people who have said to me that they have deliberately moved from premises that were declaring itself as a no smoking restaurant because they were a smoker and they were looking to go and find a job somewhere where they could smoke. So, regrettably, not every smoker wants to give up. There are people who are smokers who are going to find it extremely difficult to work. There are going to be people who are smokers and drinkers who will now be slightly more prevalent to becoming alcoholics. Why? Because one of the reasons why people tend to smoke in pubs is because it slows down their drinking. It is going to introduce lots of unusual factors that we do not expect. Has there been a great rush of concern from the Licensed industry? Not really, because one can tell that the interests there are probably well satisfied by a few pubs closing down. It opens up the possibilities for change of use and development into other residential/commercial accommodation. But do we really want more pubs? After all they are adult youth clubs and they do serve a purpose for a lot of residents, particularly in St. Helier, who would otherwise be marooned in their own homes. Not getting out. Not meeting people. Not sharing in the social intercourse of life. A smoking ban is certainly going to ensure that people are going to be more likely marooned in their own homes. Sir, I have to say I do not want to continue for long because I frankly know that any resistance to this is doomed from the first moment. But I do want to put my marker down and say some pubs will go out of business. There are unintended consequences in the application of alfresco opportunities which will now be entirely

frustrated because alfresco areas outside pubs and restaurants will be deemed workplaces. I think that we have gone one step too far with these Regulations.

11.1.2 Deputy S.C. Ferguson:

Thank you, Sir. One of the anomalies in this set of Regulations appears to be that a prisoner being questioned at the police station can smoke, but the policeman interviewing him cannot. As Deputy de Faye says this set of Regulations has caused significant confusion for establishments with alfresco areas. This is the one thing I have had quite a number of calls on. No one - even I - has raised objections to curtailment of smoking within buildings, but paragraph 2.1 is particularly clumsy and confused. What is a railing? Is it a temporary one, as in the Royal Square, or one with a firmly anchored base in concrete? Consider the Royal Square establishments. Anyone who has tasted the grain or the grape there is well aware of the vigorous natural ventilation. Is it really appropriate to treat these as enclosed workspaces? Now the policing of this with a dedicated tobacco commissar seems particularly difficult. If the trade is having problems with the concepts how much more will this confuse the public? Looking at the Royal Square, for example, presumably if a customer moves his chair outside the railings, while still having the shelter of the canopy, it will then be legal to smoke and sit there talking to his friends the other side of the railing. This particular paragraph and the supporting definitions are confusing in the extreme and I really feel they are very bad law and I will ask Members to reject it.

11.1.3 Deputy J.J. Huet:

Sir, just on this, I would like to slightly lighten the mood and I would ask and crave your indulgence to read 6 lines that I found this morning on *This Day in Jersey*. It says, Sir: "On 21st November in 1939 the *Jersey Evening Post* announced that 100,000 cigarettes would shortly be sent to members of the British Expeditionary Force in France. Islanders subscribed to the Cigarette Fund which supplied the troops with smoking material. A second consignment which was being arranged would include pipe tobacco. Each pack had a label informing the recipient that it had been given by the people of Jersey." I thought, Sir, it was just too much, and I had to share it with you today as we were going to talk about smoking.

The Deputy Bailiff:

Thank you, Deputy.

11.1.4 Deputy C.J. Scott Warren:

Sir, in recent years the harmful effects of passive smoking have become fully realised. In answer to one point made by Deputy de Faye, the harmful effects of passive smoking also affect voluntary workers as well, equally as they do paid workers. This proposition will hopefully be a catalyst for the many people in Jersey who wish to stop smoking to manage to do so with the support of - as has been mentioned by the Minister - Health and Social Services' smoking cessation programme. This proposition will curtail the current totally unsatisfactory situation that people who work with smokers face on a daily basis of having no choice but to be subjected to cigarette smoke. In the hospitality industry this may well mean working in a very smoky environment for many hours of the day and night, most days of the week, and most weeks of the year. The Minister has mentioned that there are approximately 170 people per annum that are killed as a result of smoking. This accounts for one-fifth of all deaths in Jersey. We, Sir, can do something about this. We must do something about this and I urge Members to fully support this proposition.

11.1.5 Senator P.F.C. Ozouf:

I like Deputy de Faye. He is a good friend and like me I suspect that in his heart he is a bit of a fluffy libertarian liberal. It is convention in this Assembly for people normally, I think, to declare an interest. For those that do not know, I am an asthmatic. Deputy de Faye is a smoker. I went to

that beer festival that he spoke about. While I think probably... I am not sure whether or not it was just the stress of work, or the beer that I consumed, I had a bit of a headache the day after that I went to the beer festival with him; but I also wheezed as I do on every single occasion when I am subjected to passive smoking, as most asthmatics do. He made some extraordinary suggestions, as indeed Deputy Ferguson has done, as indeed no doubt other smokers are going to put up a stiff fight in order to suggest that their right to smoke should be maintained. The fact is that these Regulations are - as I understand it - and no doubt the Minister for Health and Social Services can confirm to us for the avoidance of doubt, these are equivalent measures that are already working in other places. Maybe he would care to comment on the issue of the definition of the workplace, so that there does not need to be any concern, or should not be any concern among Members about the definition of that. At the end of the day these Regulations are designed not to prohibit smoking; they are designed to confine smoking to places where it does not affect others. That is the purpose of these Regulations, and that is why I have always supported them; and I will be supporting them today. I will just say one final thing in conclusion, as Minister for Economic Development I am responsible indeed for on-going dialogue with members of various different industry groups. I have to say that I am pleased that I have not received any unreasonable or any strong lobbying from the hospitality sector in opposing these matters. I believe that there is general acceptance within the hospitality sector that these Regulations are going to be brought in - that the smoking ban will be brought in - and I have to say that I respect and congratulate the Hospitality Association for having accepted what is not the will of the States demonstrated on one occasion, but on 2 occasions, and I will be supporting all of the Regulations. I urge Members not to be unduly influenced by what is a group of people who are, I am afraid, attempting to protect their own rights, against the rights of others. I want the rights of having clear air, not air which has been polluted with smoking from smokers.

Deputy R.G. Le Hérissier:

Sir, I wonder on a point of clarification if the Minister could say whether the Hospitality Association have assured him that the alfresco arrangements are entirely right in their view?

Senator P.F.C. Ozouf:

I have not had any representations from the Hospitality Association in recent weeks, but I do know that there have been discussions with the Health and Social Services Department and I would suggest that it is up to the Health and Social Services Minister, who can no doubt assure the Assembly that the Regulations before us are in fact even identical or very similar to those in other places which are shown to be working in places such as Ireland, now proposed in the U.K., in Italy and New Zealand, and other places such as that.

11.1.6 The Deputy of St. John:

I fully support the Health Minister on this aspect. 3 members of my family have died from smoking related diseases. I would rather that did not happen again. Anything that the Minister and the Health Department can do to make it more difficult for people to smoke - to get on that slippery pole - I would fully endorse, and I am sure the majority of Members, members of the public, those that have been affected by smoking related diseases, and those that may be affected in the future if we do not have such legislation, would say the same. I, too, went to the beer festival and it was a tent, and I came back home and my wife said: "Have you really been to the beer festival because you smell terribly of cigarettes"; thinking like others have thought, a tent, yes, you would not smell of cigarettes, but I did. It is still an enclosed area and I really do not take Deputy de Faye's point that such structures should be in any way exempt. I am slightly concerned though that all over town there seems to be little structures being created - little smoking dens - at the backs of pubs, and clubs, and so on. I do hope that the appropriate authorities - the Constable of St. Helier, in particular - have taken note of this and have made appropriate steps to ensure that this does not create unnecessary disturbance to residents in St. Helier. Indeed, litter and further pollution from smoking dens at the back of nightclubs and pubs is not a terribly nice, pleasant trend and I do hope

that it is going to be curtailed by some Ministry or other, if not the Constable, because I think that is just encouraging people to continue to smoke and the more we can do to discourage it, the better, certainly in my family's case and I am sure in many others.

11.1.7 Deputy G.C.L. Baudains:

Thank you, Sir. Yes, I enjoyed Deputy de Faye's speech, as I often do, and I agreed with some - not all - of his comments on the matter. Likewise with Deputy Ferguson, I do also find some of the Regulations unnecessarily onerous and some of them are confusing. What I would like to just briefly bring forward, Sir, is another unintended disadvantage which has possibly slipped Deputy de Faye's mind during his speech and that is that adults have choice. Of course if they find premises unattractive for whatever reason, smoking could be just one of them, they can choose other premises. But, unfortunately, barring people from smoking at work or at leisure will encourage a disadvantage and that is they, most likely, will smoke more at home and of course at home there may well be young children, most at risk from smoking and clearly not having the choice to choose to move elsewhere, Sir. So on this occasion I will not be supporting the health policy on this particular concern.

11.1.8 Deputy P.V.F. Le Claire:

Thank you, Sir. As Members may know, when I was on the Health Committee it was my responsibility, as a member of the Health Committee, to work with the officers to bring forward a strategy for tobacco and whereas I could stand up and read ream after ream of facts and figures which would bore everybody to tears, I think the reality is that what we need to do is to get on and put in place some good legislation which is before us. Let us quash a couple of the myths too; the myths that, as some have indicated in the past few weeks and months, that the industry itself was not consulted; it certainly was consulted. It was consulted extensively and there was only one body that was not consulted and that was the Jersey Youth Council, who were not in existence at the time that the smoking strategy came forward. When the smoking strategy came forward it had looked at these issues comprehensively on the grounds that it understood that they would be coming forward in the years to come and not in the weeks to come, that were occurring at the time. Deputy Baudains unfortunately has made a common error in saying that he will not support this because it will increase smoking in the home. While smoking indoors and the risk of transferring disease to people who do not smoke - especially the younger infants and children - there is no clear evidence at all that smoking prohibited in the workplace or in public places has led to an increase in the home. In fact, if people get used to the fact and are encouraged that they are not to smoke in the workplace and they should really cut down smoking in public places, then they are more likely to see the sense of not smoking on their own premises, especially when it is going to be impacting upon their children. So I would urge Deputy Baudains, who has made that point, to strongly reconsider and I can provide him with the evidence in the interim between now and when the vote comes, to certainly convince him and others that smoking in the home - although it is a serious issue and will need to be looked at in the long, long term - does not result from having smoking bans in restaurants and workplaces. I am certainly not going to steal any of the Minister's thunder; he is to be congratulated, together with his Assistant Minister and the predecessor Committees and their Presidents - including the current Minister - for bringing forward a raft of legislation that will tackle the Island's number one killer. In my day I have enjoyed a pint and I have enjoyed a fag and that was fine but we are living in a modern world and a modern world has clearly and unequivocally realised that smoking is a thing of the past. The only place it has a future, regrettably, is in the third world and in places like China, where the tobacco industries are now targeting their wares.

11.1.9 Senator J.L. Perchard:

Yes, I would just like to ask a point of clarification from the Minister when he sums up. I know everybody in this House would defend the rights of a person to smoke as long as their second hand-

smoke does not affect anybody else. I think it would be wrong of us to be presumptuous to say otherwise. That did get me thinking and asking myself a question: is there a situation, Sir, where a person could smoke in a workplace with a roof, in an environment where that smoke did not affect anybody else? And, coming from the background I do, I obviously thought of a tractor - a workplace, single seat, a farmer ploughing a field on his own, up and down all day. If he lights up a cigarette on 3rd January, do I ring 999? Or a digger driver, somebody who is driving a machine, carting soil, a lorry driver, is it really illegal for them to have a cigarette while they are working in an environment where there is only one seat? I am not sure. I have read the Regulations and I do not think there is any exemption for a person working in that environment, Sir and perhaps the Minister, when he sums up, can provide some clarity?

11.1.10 Connétable S.A. Yates of St. Martin:

I start off with a bit of a disadvantage; I missed the 3 other occasions when this House spoke on this matter. Over the weekend I had my copy of the proposed Regulations - the proposal - which I quickly read through and I thought to myself: "Well, this is surely to protect the health of employees." If I return to the front again and it says: "Draft Restriction of Smoking in Workplaces", nothing about employees. I fully support the concept of protecting the health of employees. I read through again to find out where the health bit came in and, in fact, I found nothing in here about the health of employees. There were just 2 mentioned on the report bit of it; one which mentions the Public Health Department and one which mentioned the Health and Social Services core budget, so I presume that it is to help to protect the health of employees. So I read it through carefully again and I found, to my dismay, that I am going to become an occupier of a workplace and that is the public hall of St. Martins. So, having found out that I am going to be responsible for the policing of this workspace because I understand that it is the man in charge - the occupier or the manager, in his absence - who has to look after the law of this particular situation I started reading the descriptions and it says that it has to have walls of more than 50 per cent alfresco areas, 50 per cent of the perimeter is made of walls or similar structures, similar structures in Regulation 1 as including railings, partitions, windows, doors and gates - so this obviously covers alfresco areas - railings in front of alfresco areas, which seem to indicate that then smoking is going to be illegal. I thought to myself: "The Central Market: that has got railings around, it is a very high roof, presumably, although there are 2 open sides - 50 per cent of the sides of Central Market are open - it is going to be illegal." Dwelling, house, workplace, I understand. Single occupancy workplace, prison and police cell I read through; nursing homes, residential homes, workplaces used for charitable purposes, smoking is allowed with certain exemptions. Bedroom in workspaces, onstage theatrical productions, tents and ships - now I would like to perhaps ask the Solicitor General if she could clarify the definitions and implications with the proposed law of ships in the harbour. It seems to be very, very clumsy. I have got: "Definitions and the implications of this proposed law as written, ordinary Jersey ships, British registered Jersey ships, or Guernsey or Isle of Man ships, but British registered, which might be Jersey/Guernsey-owned, a British registered U.K. ship, U.K.-owned and Nassau-registered ship, Jersey-owned", as I believe the cross channel ferries are. Is that possible?

The Deputy Bailiff:

This is a matter, Connétable, where there is an amendment brought by the Minister of Economic Affairs.

The Connétable of St. Martin:

Yes, Sir, I am reading this as a result of that amendment, Sir. I still do not understand the actual legal implications of...

The Deputy Bailiff:

I see, I am just wondering whether it would be more convenient to consider that at the time of the amendment, or would you prefer to hear it now?

The Connétable of St. Martin:

I can wait until the time of the amendment, yes, Sir. Now the thing is, if I can continue...

Senator S. Syvret:

Sir, if I could just help the Constable, I am going to be accepting the amendment of Senator Ozouf and procedurally we will deal with the precise detail of each of the Regulations as we move through them. At the moment we are just debating the preamble.

The Connétable of St. Martin:

With regard to my responsibilities at the St. Martin public hall, Sir, there is one particular situation where I have got a portico outside the front door. It is used for the general public to enter and leave but it has got a portico with 2 walls and 2 open sides but with a pillar, a large pillar in the corner. Therefore it is less than 50 per cent open space. It is big enough to shelter about 20 people; it is adjacent - within 2 metres - of the bus stop, so it is a bus shelter as well. The difficulty is that every time I go to work in the morning, if there are people there waiting for the bus having a cigarette, I am in a pretty awkward situation - or I will be after 2nd January - of having to take action because I am the occupier of the working premises. If there are a bunch or a couple or 3 or 4 German, Dutch or Norwegian tourists in the summer waiting for a bus, what am I going to do? Every time I walk past that particular spot or through to the front door and there is somebody smoking a cigarette in that particular front door they are doing no harm at all to my volunteers or my employees but the Regulations say that I must take action and if I ignore that I am subject to a £5,000 fine, level 4. I cannot handle this, Sir. I cannot handle that particular part of the Law, sorry, Sir.

11.1.11 Deputy K.C. Lewis:

Thank you, Sir. I am not a smoker, Sir, I never have been. I am not smug; I am lucky. Many people my age and younger have been trying to give it up for years. I must agree with Senator Perchard in that people have the right to smoke if they so wish, they just do not have the right to blow it over everyone else. I have just one question, Sir, regarding 51 - "Smoking in certain workplaces": the paragraph applies to (a) a cell in a States of Jersey prison at La Moye; I have just one question - maybe the Solicitor General could help out - whether there are any human rights implications either way on that?

The Deputy Bailiff:

Solicitor General, would you be in a position to answer that query at this stage?

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

The human rights implications which exclude cells in a States of Jersey prison: the answer is, in my opinion, no, it does not. I do not know if the Deputy wants me to expand on that but I simply do not think there are any human rights implications.

The Deputy Bailiff:

I think he just wants an answer.

Deputy K.C. Lewis:

This is for or against, either way.

11.1.12 Senator S. Syvret:

Just to deal with the issues raised by the Constable of St. Martin, I think you will find if you read the Regulations that the requirement upon anybody who is responsible for a premise is if they take reasonable steps to dissuade and prevent people from smoking there, for example putting up a kind of non-verbal, obvious, no smoking sign - a cigarette with a line through it or something - in the shelter and you would then discharge all your duty. If people then choose to persist in ignoring that Regulation - that indication - then it is the people who are smoking who will be committing the offence. I think that is quite clear in the Regulations. Senator Perchard mentioned a person working on their own in their own enclosed workspace: that is covered by Regulation 4, which I think he has now seen. As far as the points just raised by Deputy Lewis are concerned, the fundamental approach we have taken in drafting this legislation is to take the view that we exempt those places which are classified as a home where somebody is living, albeit on a voluntary basis or an involuntary basis, as is the case at La Moye. If it is the individual living quarters of a person, we have taken the view that there will be some allowance for smoking within those kinds of circumstances, which is why that particular Regulation permits those areas.

Deputy S.C. Ferguson:

Clarification, Sir, and at the police station? I do not think people live in the police cell.

Senator S. Syvret:

If people are under arrest in a police cell that is classified as being basically their place of occupancy for the period of their arrest, and I think the view that has been taken in other jurisdictions over this particular matter is that it is often difficult enough to restrain and deal and calm down prisoners in any event. Denying them smoking in their cells could, I think, be quite problematic for the police and increase the number of difficulties they might face. A number of speakers - I will not go through what each person said - but a number of speakers raised the issue about the outside perimeter requirement of 50 per cent and anything over 50 per cent you would not be permitted to smoke in. This is a very deliberate measure and this has been adopted to cover tents, awnings, walls, whatever it may be, in order to keep the playing field as level as possible for businesses. If we did not take this kind of measure, those businesses that happened to have open space or a wide area abutting their property could just put up a big canopy with walls down most of its sides and take all the customer people who wanted to smoke. There would be lots of other pubs and restaurants that did not have that kind of open space available to them outside, who could not offer the same facility, and that would be a serious detriment to a level playing field of proper competition so that is the requirement for that particular Regulation. It is very necessary to maintain that kind of level playing field and, certainly, I have had no particular lobbying from the industry about that particular requirement so I just do not see that it is an issue. So that is the importance of it; it is important not to create loopholes and opportunities that only a few select businesses would be able to take advantage of, to the detriment of other businesses. If we are going down this path, it is important that we do in fact have a level playing field which is why the Regulations are quite deliberately framed as they are. I think I have covered all of the issues that were raised, Sir. I must just - I neglected to do so before - thank Deputy Bob Hill because, when he was a member of the old Health and Social Services Committee, moving forward on this issue of banning smoking in enclosed workplaces was an issue that he felt strongly about and it was his initiative really that got the Committee going down this path. So I think that deals with the issues, Sir and I maintain the preamble and ask for the appel.

The Deputy Bailiff:

The appel is called for on the principles of the Regulations. I invite Members to return to the Chamber and the Greffier will open the voting.

POUR: 38

Senator S. Syvret
 Senator F.H. Walker
 Senator W. Kinnard
 Senator M.E. Vibert
 Senator P.F.C. Ozouf
 Senator B.E. Shenton
 Senator F.E. Cohen
 Senator J.L. Perchard
 Connétable of St. Mary
 Connétable of St. Peter
 Connétable of St. Clement
 Connétable of St. Lawrence
 Connétable of St. John
 Connétable of St. Brelade
 Deputy R.C. Duhamel (S)
 Deputy A. Breckon (S)
 Deputy of St. Martin
 Deputy C.J. Scott Warren (S)
 Deputy R.G. Le Hérissier (S)
 Deputy J.B. Fox (H)
 Deputy J.A. Martin (H)
 Deputy G.P. Southern (H)
 Deputy of St. Ouen
 Deputy P.J.D. Ryan (H)
 Deputy of Grouville
 Deputy of St. Peter
 Deputy J.A. Hilton (H)
 Deputy G.W.J. de Faye (H)
 Deputy P.V.F. Le Claire (H)
 Deputy J.A.N. Le Fondré (L)
 Deputy D.W. Mezbourian (L)
 Deputy of Trinity
 Deputy S.S.P.A. Power (B)
 Deputy S. Pitman (H)
 Deputy A.J.H. Maclean (H)
 Deputy K.C. Lewis (S)
 Deputy of St. John
 Deputy of St. Mary

CONTRE: 3

Connétable of St. Martin
 Deputy G.C.L. Baudains (C)
 Deputy S.C. Ferguson (B)

ABSTAIN: 0**The Deputy Bailiff:**

Now, the principles having been adopted, I must ask the Chairman of the relevant Scrutiny Panel - which I think is Deputy Breckon - as to whether he wishes to have the matter referred to his Panel.

Deputy A. Breckon (Chairman, Health and Social Security and Housing Scrutiny Panel):

No Sir, and it is not for the reason that it is a Panel of one, **[Laughter]** it is because I believe that the issue has been well aired, Sir, over a period of at least 5 years. Community, trade and other views have been expressed and I do not think there is any reason to scrutinise it at this stage.

The Deputy Bailiff:

Very well, thank you. So then we move to consider the individual Regulations. How would you like to take this, Minister?

11.2 Senator S. Syvret:

It appears fairly uncontentious, Sir - I mean the fastest way possible, given the other items we have to deal with on the Order Paper?

The Deputy Bailiff:

Very well. Well, we cannot do it *en bloc* because there is an amendment, but I suggest therefore you propose Regulations 1 to 12?

Senator S. Syvret:

Certainly, Sir.

Deputy G.W.J. de Faye:

Sir, could I ask Article 2 to be taken separately?

The Deputy Bailiff:

Very well, certainly it can be voted on. You would like it to be taken separately? Deputy, are you content that they all be proposed together and then voted on separately?

Deputy G.W.J. de Faye:

Yes, Sir.

The Deputy Bailiff:

Very well, Minister, so proposed Regulations 1 to 12 but we will vote separately on Regulation 2.

11.2.1 Senator S. Syvret:

Certainly, Sir. Briefly, Regulation 1 is the standard interpretation that we find in these Laws; 2 deals with the basic prohibition on smoking in certain workplaces; number 3 deals with the exemptions for certain dwellings - and dwellings being living places that I have already spoken about; Number 4 deals with the issue raised by Senator Perchard concerning the ability of a person to smoke in their own enclosed workplace. It does in fact make allowance for that. Five - going on, permits smoking in certain defined and exempted workplaces - and again we have already had some discussion on this such as the prisons, for example, police cells and things of that nature. Six is the duty of the occupier or the person in charge to seek to limit any inappropriate smoking on their premises. Going on to 7, it is the similar provision in respect of the manager in charge of the workplace. Eight is the requirement to display notices, again this is one of the ways in which people who are responsible for premises discharge their duty under the Law so that while they are taking all the reasonable steps to prevent smoking on their premises in contravention of the Law, then if people persist in smoking it is the people who are doing the smoking who become the culprits. Nine is the offences and penalties; 10 is the defences; and 11 is the liability of a person smoking to pay for food, beverage or service, which is there so that people who have gone to a restaurant, ordered the meal, started their meal or whatever and then told they cannot smoke and if they then decide to leave in a huff and storm off in outrage. We cannot really have that kind of scenario so people will be required to pay for their meals. Article 12 as well, that is the extent or exemption of the restriction. So, Sir, I propose those Articles.

The Deputy Bailiff:

Are Regulations 1 to 12 seconded? [**Seconded**] Does any Member wish to speak on any of those Regulations?

11.2.2 Deputy G.W.J. de Faye:

Yes, Sir, well predictably I want to speak on Article 2 because this really is, I think, a source of some serious future difficulties. I regret Senator Ozouf did me something of a disservice by suggesting firstly that I was a smoker. Yes, I suppose if you smoke even one cigarette you count as a smoker but I certainly would not... I would describe myself as an occasional smoker. I certainly do not smoke in the workplace and I am quite happy to back the principles of not smoking in the workplace, and I have worked in many offices over many years where people do not smoke in the workplace and that is not an area of contention that I have with the general principles. I start to drift away from the concept of smoking in the workplace when the workplace is more of a hospitality/leisure zone for the bulk of its occupants and there is only a limited number of workers, but I do accept that workers, employees who work in the leisure business, are entitled to protection from smoking. I just think that there were probably other and better ways of doing it to everybody's mutual satisfaction. Nevertheless a blanket ban is an effective tool, but where I draw the line is when someone has walked out of the front door and is effectively outside the building. Why has this prohibition pursued them into the open air? And this is the difficulty of Article 2; as soon as you start introducing the concept of an awning that can be folded out and down from outside the premises it is going to constitute a roof or a ceiling. As soon as you start indicating that as a percentage of the perimeter of the workplace is made up of one or more walls, then those problems that I outlined when I was addressing the principles of the Law become a serious problem. I was intrigued by the argument put up by the Minister on this issue that this is to create a level playing field. Well, I suppose if just saying no is creating a level playing field, then that is a tenable position to have; no, nobody can do it. But I think that this aspect of these Regulations is entirely unreasonable and entirely unfair on smokers who - let us face it, come 1st January - will no longer be able to sit in the pub and have a cigarette or a cigar, will no longer be able to be in a restaurant. Having suffered those indignities - albeit there will be some who will be delighted because it will assist them in giving up the habit - but for those who are not disposed in that way, even if you go outside, you still find yourself pursued by this Regulation and I find that an extraordinary situation because no one, as far as I know, is suggesting that smoking should be banned in open air spaces. Now, maybe it will be something that will develop over time. Perhaps that is the way the world is going. I have always said I do not necessarily want to live in Syvret World but that may be something that we can all - in the majority - look forward to. But we have heard - and I think expressed very eloquently by the Connétable of St. Martin - one of the difficulties he will face, and this is also another unfortunate element of these Regulations as a whole: that the policing is going to have to be done by individual restaurant managers, licensees, owners of premises. It is going to be very painful for plenty of publicans to tell some of their best customers they are going to have to step out of the door; and that is going to happen. But because of Article 2, even if that best customer does step out of the door into the alfresco area, they will be faced with a bizarre situation because the alfresco area will still be a workplace. Some of the ones that I have described fall into this. I believe that Deputy Ferguson indicated the alfresco area immediately outside the States Building in the Royal Square where there is an enormous awning and dozens of chairs and tables, but the smoker is going to have to stand outside the railing partition to have their cigarette but they cannot have a drink because that is not on the alfresco licensed premises. So we will be seeing no end of folk standing outside the railing having a fag and reaching over to their glass on the table, but doubtless because their feet are not on the licensed alfresco area that is probably breaking the Law as well. No, the general basis of these Regulations is right, it is supported by the majority of the Island and it is supported by the majority of this House, but I think Article 2 has got it completely wrong and I have asked that to be separated out so that the States, at this late stage, can correct something that I think this House would come to very seriously regret if it was allowed to proceed as part of the Law.

11.2.3 The Deputy of St. John:

1st January is often a day when we decide to take on New Year's resolutions. This Act will come into power on 2nd January. Can I suggest to the Minister of Health that he considers some kind of marketing or advertising campaign to say that life is going to get a little bit tougher for smokers on 2nd January so think about it now and think about giving up now, for your benefit and the benefit of the whole community?

The Deputy Bailiff:

Deputy, we are considering Regulations 1 to 12 at the moment.

11.2.4 The Connétable of St. Brelade:

Just picking up from the points made by Deputy de Faye reminds me of an application which has recently come to me for Chose Publique application at St. Aubin where a premise has been granted an alfresco area and also they have been granted permission to change their windows into doors, so suddenly we have a situation where instead of stepping out of the door, shall we say, on to the alfresco area, the inside becomes part of the outside and I see that Deputy de Faye's suggestions could be extremely difficult to follow up from a definitional point of view. However, I think he has quite a point about policing of alfresco areas because I have seen from the honorary police point of view, while the Regulations suggest that policing will be done by the manager of the premises, and indeed by the staff, I feel the lot could well fall back to the Constable of the Parish who will have to monitor this, and I am very concerned as to how alfresco areas are going to be satisfactorily policed.

The Deputy Bailiff:

Does any Member wish to speak on any of Regulations 1 to 5? Very well, I call upon the Minister to reply.

Senator S. Syvret:

Is it worth, Sir, just proposing the vote on Regulation 1 first?

The Deputy Bailiff:

Indeed, yes, if we do not get a reply to anything, then the vote, I think, should be taken on Regulation 1, then Regulation 2 and then, unless any Member wishes, we will take it on the remaining *en bloc*.

Senator S. Syvret:

I will wish to respond to Regulation 2, do you think I should do that now?

The Deputy Bailiff:

I think you should do it now.

11.2.5 Senator S. Syvret:

Very well Sir, thank you. Yes, Deputy de Faye has made similar comments in respect of Regulation 2, as he did in his initial introductory speech. Let us be quite clear about this; it is not correct and it is not true to say that this has the effect of banning smoking in alfresco areas. It simply requires that no more than 50 per cent of the perimeter should consist of walls or awnings. So people can smoke outside of premises under a canopy with an awning, the requirement simply is that no more than 50 per cent of the perimeter is surrounded by walls or similar structures.

Deputy S.C. Ferguson:

Clarification Sir, the Regulations say railings; the establishment to which I was referring has railings on 3 sides.

Senator S. Syvret:

I do not think that was a point of order or anything, Sir, but I am not aware of the particular establishment that the Deputy was referring to, but the fact is this mirrors the same approach to this kind of legislation that has been taken very successfully at a number of other jurisdictions and the 50 per cent perimeter issue is needed to ensure that businesses who currently cater for a portion of their clientele who smoke have a reasonably good chance of having a level playing field on which to compete. If this kind of Regulation did not exist - if it were not 50 per cent, if it was over, or some other kind of suggestion - then that would hand a dramatic advantage to a range of businesses and disadvantage a number of others. So it is, in fact, important to make sure that there is the level playing field and it is absolutely clear that that is right and that should be so. This Regulation is one of the key articles in the entire Regulation because if it were not for this kind of measure then, frankly, the entire purpose and objective of the rest of the Regulations would be largely swept aside. All of those businesses that are capable of putting up marquees, or whatever, would do so and the smoking would just carry on inside the premises. So this particular Regulation is absolutely crucial, Sir. Deputy de Faye has asked for the vote on it separately, so I will propose that now, Sir and ask for the appel.

Senator P.F.C. Ozouf:

Sir, I think it is a point of order or a point of clarification; Senator Syvret used the word awning in his definition and I just would like to be absolutely clear that we are clear on what we are voting on. Regulation 2(1)(a) says the workplace is covered by a roof or ceiling. In the definitions it says: "A ceiling that is fixed or movable or a roof that is fixed or movable." Sir, can I just get a clear understanding that an awning - that means the thing that comes over the top of somebody's head - is covered by the roof or ceiling and Deputy de Faye is correct in saying, is he not, Sir, that in the event of an awning covering an area - this is not the thing around it - but anything covering would mean that it is prohibited and so Deputy de Faye is correct in saying that an awning would be a prohibited space?

Senator S. Syvret:

No, I am afraid not. That, Sir, is completely wrong. Smoking under an awning will be permitted under these Regulations providing the vertical walls or similar structures around - below that awning - do not exceed 50 per cent of the total area.

Deputy S.C. Ferguson:

Another point of clarification, Sir; that if you have railings round 2 or 3 sides and a wall backing it, it then turns into a prohibited area.

Senator S. Syvret:

As I have already explained, Sir, this is necessary for a level playing field, not to advantage certain businesses while disadvantaging others, and I am not sure that there is much profit to be gained in completely running round in circles.

Deputy G.W.J. de Faye:

Sir, can we have some indication from the Solicitor General as to what the position really is because I am concerned that the Minister keeps misleading the House?

The Deputy Bailiff:

We will ask the Solicitor General. What Regulation 2 says is persons will not smoke in a workplace if (a) it is covered by a roof or ceiling and more than 50 per cent of the workplace is.

H.M. Solicitor General:

The roof or ceiling means the bit that goes over you, so, firstly, is there a roof or ceiling? Is there something over where everybody is sitting? The perimeter is the bit that goes round you, so measure that then look and see if there are walls, railings, windows, whatever around this perimeter and if 50 per cent of the perimeter, which you have just measured, has these walls, railing, doors, windows, or whatever, then that plus your ceiling, awning, whatever it may be, above you, brings it within Regulation 2.

Senator S. Syvret:

So from that, Sir, we perceive that an awning is a ceiling then?

Deputy G.W.J. de Faye:

If it is just an awning, is it covered? Sorry, I am being thick.

H.M. Solicitor General:

If it is just an awning but round your perimeter there are either no walls, railings, *et cetera*, or less than 50 per cent of your... suppose you have got a perimeter and 45 per cent of it has got walls and you have got an awning, it does not come within Regulation 2 but if you have got a ceiling and around your perimeter there is 50, 55, 60 per cent walls, *et cetera* - running round your perimeter - then that, plus the awning, brings it within it.

The Deputy Bailiff:

Very well, I hope that has clarified matters for Members. Now, the Minister has asked for the appel. In terms of voting, we will take Regulation 1 first, on its own. Minister, are you happy to have that on a standing vote? Appel. Very well, the appel is called for on Regulation 1 alone. Will all Members please return to the Chamber and the Greffier will open the voting of Regulation 1 only.

POUR: 46

CONTRE: 0

ABSTAIN: 0

Senator S. Syvret
Senator L. Norman
Senator F.H. Walker
Senator W. Kinnard
Senator P.F. Routier
Senator M.E. Vibert
Senator P.F.C. Ozouf
Senator B.E. Shenton
Senator F.E. Cohen
Senator J.L. Perchard
Connétable of St. Saviour
Connétable of St. Mary
Connétable of St. Peter
Connétable of St. Clement
Connétable of St. Lawrence
Connétable of St. John
Connétable of St. Brelade
Connétable of St. Martin
Deputy R.C. Duhamel (S)
Deputy A. Breckon (S)
Deputy J.J. Huet (H)
Deputy of St. Martin
Deputy G.C.L. Baudains (C)
Deputy C.J. Scott Warren (S)

Deputy R.G. Le Hérissier (S)
 Deputy J.B. Fox (H)
 Deputy J.A. Martin (H)
 Deputy G.P. Southern (H)
 Deputy S.C. Ferguson (B)
 Deputy of St. Ouen
 Deputy P.J.D. Ryan (H)
 Deputy of Grouville
 Deputy of St. Peter
 Deputy J.A. Hilton (H)
 Deputy G.W.J. de Faye (H)
 Deputy P.V.F. Le Claire (H)
 Deputy J.A.N. Le Fondré (L)
 Deputy D.W. Mezbourian (L)
 Deputy of Trinity
 Deputy S.S.P.A. Power (B)
 Deputy S. Pitman (H)
 Deputy A.J.H. Maclean (H)
 Deputy K.C. Lewis (S)
 Deputy of St. John
 Deputy I.J. Gorst (C)
 Deputy of St. Mary

The Deputy Bailiff:

Next we will take the vote on Regulation 2 only, so it is merely Regulation 2. The Greffier will open the voting.

POUR: 33

Senator S. Syvret
 Senator F.H. Walker
 Senator W. Kinnard
 Senator P.F. Routier
 Senator M.E. Vibert
 Senator P.F.C. Ozouf
 Senator B.E. Shenton
 Senator F.E. Cohen
 Senator J.L. Perchard
 Connétable of St. Mary
 Connétable of St. Peter
 Connétable of St. Clement
 Connétable of St. Lawrence
 Deputy R.C. Duhamel (S)
 Deputy A. Breckon (S)
 Deputy of St. Martin
 Deputy C.J. Scott Warren (S)
 Deputy J.B. Fox (H)
 Deputy J.A. Martin (H)
 Deputy G.P. Southern (H)
 Deputy P.J.D. Ryan (H)
 Deputy of Grouville
 Deputy J.A. Hilton (H)
 Deputy P.V.F. Le Claire (H)

CONTRE: 13

Senator L. Norman
 Connétable of St. Saviour
 Connétable of St. John
 Connétable of St. Brelade
 Connétable of St. Martin
 Deputy J.J. Huet (H)
 Deputy G.C.L. Baudains (C)
 Deputy R.G. Le Hérissier (S)
 Deputy S.C. Ferguson (B)
 Deputy of St. Ouen
 Deputy of St. Peter
 Deputy G.W.J. de Faye (H)
 Deputy S.S.P.A. Power (B)

ABSTAIN: 0

Deputy J.A.N. Le Fondré (L)
Deputy D.W. Mezbourian (L)
Deputy of Trinity
Deputy S. Pitman (H)
Deputy A.J.H. Maclean (H)
Deputy K.C. Lewis (S)
Deputy of St. John
Deputy I.J. Gorst (C)
Deputy of St. Mary

The Deputy Bailiff:

Now unless any Member asks otherwise, I propose that the Regulations 3 to 12 inclusive should be voted on *en bloc*. Is that agreed? Very well, the Greffier will now open the voting for Regulations 3 to 12 inclusive.

POUR: 44

Senator S. Syvret
Senator F.H. Walker
Senator W. Kinnard
Senator P.F. Routier
Senator M.E. Vibert
Senator P.F.C. Ozouf
Senator B.E. Shenton
Senator F.E. Cohen
Senator J.L. Perchard
Connétable of St. Saviour
Connétable of St. Mary
Connétable of St. Peter
Connétable of St. Clement
Connétable of St. Lawrence
Connétable of St. John
Connétable of St. Brelade
Connétable of St. Martin
Deputy R.C. Duhamel (S)
Deputy A. Breckon (S)
Deputy J.J. Huet (H)
Deputy of St. Martin
Deputy C.J. Scott Warren (S)
Deputy R.G. Le Hérissier (S)
Deputy J.B. Fox (H)
Deputy J.A. Martin (H)
Deputy G.P. Southern (H)
Deputy S.C. Ferguson (B)
Deputy of St. Ouen
Deputy P.J.D. Ryan (H)
Deputy of Grouville
Deputy of St. Peter
Deputy J.A. Hilton (H)
Deputy G.W.J. de Faye (H)
Deputy P.V.F. Le Claire (H)
Deputy J.A.N. Le Fondré (L)
Deputy D.W. Mezbourian (L)

CONTRE: 1

Deputy G.C.L. Baudains (C)

ABSTAIN: 0

Deputy of Trinity
Deputy S.S.P.A. Power (B)
Deputy S. Pitman (H)
Deputy A.J.H. Maclean (H)
Deputy K.C. Lewis (S)
Deputy of St. John
Deputy I.J. Gorst (C)
Deputy of St. Mary

The Deputy Bailiff:

Then, Minister, may I suggest that you propose Regulations 13 and 14 because the amendment affects both of those?

11.3 Senator S. Syvret:

Yes, Sir, they are self-explanatory; there is an amendment being put to them though because of some doubt that has arisen in the minds of Port Users about the definition of shipping. I am happy to accept the amendment being brought forward by the Minister for Economic Development, although he does, I think, accept that we may have to revisit this question some time in the course of the next year once we see precisely what Regulations the United Kingdom are putting in place. They are wrestling with this matter at the moment as to how they are going to define and regulate smoking on ships within their territorial waters. So I am happy to accept this amendment, for the time being, with the proviso that we may need to see the Regulations being amended to ensure that what we are doing is compatible with that in the United Kingdom. Regulation 13 is the definition of the workplace and Regulation 14 is the amendment in the principal Law of the definition of workplaces and I propose both Regulations, Sir.

The Deputy Bailiff:

Seconded? **[Seconded]** Very well. Now we have the amendment. I will ask the Greffier to read the amendment.

The Greffier of the States:

Page 19, Regulation 13: delete paragraph (a) and renumber the remaining paragraphs in Regulation 13 accordingly. Page 20, Regulation 14, for paragraph (e) substitute the following paragraph: (e) after the definition of 'self-employed person' there should be inserted the following definition: Ship or vessel means (a) a Jersey ship within the meaning of Article 2 of the Shipping (Jersey) Law 2002, that is; (i) within the territorial sea adjacent to Jersey; or (ii) in a harbour port or other place in Jersey; or (b) any ship, vessel or boat of any description is used in navigation to which paragraph (a) does not apply, that is; (i) wholly owned by a person ordinarily resident in Jersey or by a company incorporated in Jersey; (ii) not registered under the law of the United Kingdom, any of the other Channel Islands, the Isle of Man or any other country outside Jersey; and (iii) within the territorial sea adjacent to Jersey or in a harbour, port or other place in Jersey.

Senator P.F.C. Ozouf:

Sir, can I ask the Assistant Minister who has responsibility for harbours and airports matters to be the very brief, I think, rapporteur on this item?

The Deputy Bailiff:

Yes, Deputy, I am sure, as you will agree, the Minister has agreed and accepted. You can propose it accordingly, no doubt?

11.3.1 Deputy A.J.H. Maclean of St. Helier (Assistant Minister for Economic Development - rapporteur):

Yes Sir, I am very happy to do that. I would just like to thank the Minister and his department for their assistance. I think both departments; Economic Development and Health and Social Services worked very closely on this and we understand and accept.

The Deputy Bailiff:

Right, well that was indeed brief. So you are proposing that, is it seconded? **[Seconded]** Does any Member wish to speak on the amendment?

11.3.2 Deputy P.V.F. Le Claire:

Sir, I would just like to ask, I do not know who can supply the answer, but has thought been given to what the situation would be if the vessel was inside the Jersey marina and a harbours employee, who was at a place of work, had to go and inspect that or issue a ticket? And also what would be the case in respect of a pilot who has to board a foreign vessel to help it through the navigation cycle? That pilot would be at a place of work within his remit, I would imagine, stepping on to a foreign vessel?

The Deputy Bailiff:

Does any other Member wish to speak?

11.3.3 Deputy G.C.L. Baudains:

It is not often this occurs to me, I have to say, but I am completely confused by Article 14 and the amendment to it. In relation to ships, Sir, it does appear to me, and I seek clarification from the Assistant Minister, that my reading of the amended article under (b)(i) means that it applies to privately owned vessels which are being used by a self-employed person, in which case, Sir, if I am correct in that, I seek clarification as to whether exemption under Articles 3 or 4, being used as dwelling places, whether that applies to the vessel or whether in fact it does not because otherwise it seems to me it becomes slightly complicated and that somebody using a windsurfing board can have a smoke but a person driving a cabin cruiser cannot because in the wheelhouse you are covered by an awning and surrounded by more than 50 per cent. In the wheelhouse you may not have an awning but you are in fact surrounded by what might be termed walls, although the technical term is coaming. I would just like to know what the situation is, Sir, because while I happen to be a non-smoker I wonder if I have to tell my friends they cannot smoke on my boat.

11.3.4 The Connétable of St. Martin:

I would like to clarify in my own mind because I realise that a British registered ship is a piece of the U.K. which sails all over the world and it operates under the international maritime law and U.K. law, and I know you can get British registered ships that are registered in Jersey because Jersey is a port of British registration. I just wanted to know how these different categories fit into what would normally be normal Jersey fishing boats? So I did ask if the Solicitor General could clarify certain things and I suppose we are talking about work boats but work boats would include ferries, it would include fishing boats, charter vessels and any one of those boats could be an ordinary Jersey ship, a British registered Jersey ship or a Guernsey ship, a British registered Guernsey or British registered Isle of Man and those ships could be Jersey, Guernsey, Isle of Man or U.K.-owned. We could have British registered U.K. ships here, which are U.K.-owned, and I do believe that our ferries currently are Nassau registered ships but Jersey-owned and for the information... well, to help me, Sir, I mean these things are also happening at Gorey Harbour and people are going to ask me: "Is that French ship or fishing boat breaking the Jersey law by allowing their employees to smoke in the wheelhouse?" Would, perhaps, the Solicitor General please inform us? Thank you very much.

H.M. Solicitor General:

Well, I can only answer it by reference to the definitions which have been proposed in the amendment and accepted, and the first part of the vessel is a Jersey ship within the meaning of Article 2 of the Shipping (Jersey) Law and that is defined. I am afraid it is a rather cumbersome definition, but I will just have to read it. It is: "A ship which is registered in Jersey, a small ship other than a fishing vessel that is not registered but that is wholly owned by a person ordinarily resident in Jersey or by a company incorporated in Jersey and is not registered under the law of a country outside Jersey or a government ship registered in Jersey by means of an Order made under Article 198." And that is the definition of a Jersey ship from the Shipping (Jersey) Law. Then the second part of the additional definition, that is the sub-paragraph (b), again I really cannot do more than refer to the wording, it is: "A ship, vessel or boat used in navigation and wholly owned by a person ordinarily resident in Jersey or a company incorporated in Jersey, not registered under the law of the United Kingdom, any other Channel islands, the Isle of Man or any country outside Jersey and it is within the territorial sea adjacent to Jersey or a harbour port or other place in Jersey." So, I think a hypothetical example was a ship which is owned by someone not in Jersey, not somebody resident in Jersey and not registered in Jersey, and in that case it appears to me not to fall within the definition. I was going to say if the ship is neither registered in Jersey, which would be a ship within the Shipping (Jersey) Law definition, neither that nor wholly owned by a person ordinarily resident in Jersey or a company resident in Jersey, then it appears to me not to fall within the definition.

The Deputy Bailiff:

Does any other Member wish to speak on the amendment? Very well. I call upon Deputy Maclean to reply.

11.3.5 Deputy A.J.H. Maclean:

Thank you, Sir. Uniquely among workplaces ships operate in 3 legal environments at once; that of their own national flag, international maritime conventions and the law of the country that they may be visiting. Legislation restricting smoking in ships varies between countries. It is clear from the study of these that each has its difficulties. It has been noted that the United Kingdom is about to consult on the way forward on this for ships in U.K. waters and will then introduce legislation, probably in the summer of 2007, to restrict smoking under its Merchant Shipping Act 1995. The intention that - regardless of where a ship is registered, or the nature of business - the same rules would apply to all ships visiting the U.K. To ensure a consistent approach, it is proposed that Jersey should amend its legislation with regard to smoking on ships after the U.K. consultation has concluded. Jersey legislation will then seek to reflect the U.K. approach, amend it if necessary and working together between Economic Development and Health and Social Services. Sir, I would move towards the appel.

Deputy G.C.L. Baudains:

I do not believe my clarification was answered, Sir.

Deputy A.J.H. Maclean:

Would the Deputy be very kind and repeat his point. I thought I had covered it.

Deputy G.C.L. Baudains:

I will try an edited version, Sir. What is the position regarding a self-employed person who owns a boat and may or may not be using it for work? Is smoking allowed on that boat or is it not? And if so; in the wheelhouse, the cockpit or not at all?

Deputy A.J.H. Maclean:

I am not sure of the correct answer to that question, Sir, but I would be delighted to get the answer and supply it to the Deputy in due course.

Senator S. Syvret:

Sir, I think the Solicitor General will correct me no doubt if I am incorrect, but I had assumed that Regulation 4, which exempts a person's own private workplace, would in fact cover a private fishing boat as well.

H.M. Solicitor General:

I certainly think that Regulation 4 is relevant but that there are 3 parts to Regulation 4; firstly, if it is a workplace in which one person carries out his or her work and secondly, no other person carries out work in that workplace and indeed no other member of the public has access to the workplace. So, the answer to the Deputy's question turns upon whether any other person is carrying out work along with the self-employed person in that workplace. So if there are 2 of them in the wheelhouse then it does come within Regulation 4, if the person is on his own in that workplace then he is exempted by Regulation 4.

The Deputy Bailiff:

All those in favour of adopting the amendment, kindly show. The appel is asked for. Very well, the Greffier will open the voting on the amendment of the Minister for Economic Affairs.

POUR: 42

Senator S. Syvret
Senator F.H. Walker
Senator W. Kinnard
Senator M.E. Vibert
Senator P.F.C. Ozouf
Senator B.E. Shenton
Senator F.E. Cohen
Senator J.L. Perchard
Connétable of St. Saviour
Connétable of St. Mary
Connétable of St. Peter
Connétable of St. Clement
Connétable of St. Lawrence
Connétable of St. John
Connétable of St. Brelade
Connétable of St. Martin
Deputy R.C. Duhamel (S)
Deputy A. Breckon (S)
Deputy J.J. Huet (H)
Deputy of St. Martin
Deputy C.J. Scott Warren (S)
Deputy R.G. Le Hérissier (S)
Deputy J.B. Fox (H)
Deputy J.A. Martin (H)
Deputy G.P. Southern (H)
Deputy S.C. Ferguson (B)
Deputy P.J.D. Ryan (H)
Deputy of Grouville
Deputy of St. Peter

CONTRE: 3

Senator P.F. Routier
Deputy G.C.L. Baudains (C)
Deputy of St. Ouen

ABSTAIN: 0

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

The Deputy Bailiff:

Very well, we then return to Regulations 13 and 14 as amended. Does any other Member wish to speak on those Regulations? Very well, all those in favour of adopting Regulations 13 and 14, kindly show. Those against. The Regulations are adopted. Minister, do you propose now Regulations 15 and 16?

11.4 Senator S. Syvret:

Yes Sir, thank you. Regulation 15 is the revocation of a piece of old legislation that has now been made redundant and 16 is the standard citation and commencement date, which is the date of 2nd January. It was chosen quite specifically because some premises have often very long parties on New Year's Eve where they might be going on into the very early hours of the morning so we did not want to have the ban on smoking coming into effect half way through that at a celebratory event, so we specifically chose 4 a.m. on 2nd January instead. So I propose those 2 Regulations, Sir.

The Deputy Bailiff:

Are they seconded? [**Seconded**] Does any Member wish to speak on those 2 Regulations? All those in favour of adopting Regulations 15 and 16, kindly show. All those against. The Regulations are adopted. Do you propose the Regulations in Third Reading, Minister?

Senator S. Syvret:

Yes, Sir, I do, and just to briefly thank... I singled out Deputy Hill earlier for his contribution to this particular measure but I would also like to acknowledge the support of my Assistant Minister and Deputy Le Claire. When he was a member of the Health and Social Services Committee he did a great deal of work on the subject, as indeed did my other Committee members, and I would like to thank them all because this is the culmination of a very long process which we have been working on for quite a number of years now and it is going to be, I think, a very, very important public health measure. It is going to be looked back upon, I think, as a major step forward in delivering better health and longer life for the community, so I propose it in Third Reading Sir.

The Deputy Bailiff:

Seconded? [**Seconded**] Does any Member wish to speak on Third Reading? All those in favour of adopting the Regulations in third reading kindly show. Those against? The Regulations are adopted in Third Reading. Do you propose the amendment?

ADJOURNMENT PROPOSED

Senator S. Syvret:
The adjournment, Sir.

The Deputy Bailiff:
The adjournment. [laughter]

Senator S. Syvret:
I got a little confused there, proposing the amendment and I think: “What amendment is this one? Have I missed something?”

The Deputy Bailiff:
It was just a tester. [laughter]

Senator S. Syvret:
Sir, I am happy to propose the adjournment, Sir.

The Deputy Bailiff:
Very well.

STATEMENTS ON A MATTER OF OFFICIAL RESPONSIBILITY

Senator S. Syvret:
Sir, before we adjourn, I had hoped we were going to have an announcement from the Assistant Minister of Economic Development. Has that been shelved?

The Deputy Bailiff:
Well, there are certainly 2 matters I want to deal with before we formally adjourn, but, Minister, do you wish to say anything?

12. Deputy A.J.H. Maclean:

I would like to make just a very brief statement, not in fact the statement that I was going to make. There have been frantic negotiations this afternoon at the airport, in relation to the industrial relations dispute that is intended for tomorrow morning. We believe that negotiations have been successful and indeed that the strike for tomorrow morning has been cancelled but I am waiting for further details. I would like, if I may, Sir, to make a fuller statement in the morning, on the matter.

NOTIFICATION OF LODGED PROPOSITIONS

13. The Deputy Bailiff:

I must inform Members that 2 matters have been lodged; the draft European Communities (Accessions) (Jersey) Regulations 200- (Projet 158) in the name of the Chief Minister; and the Draft Income Tax (Amendment Number 26) (Jersey) Law amendment (Projet 132 Amd) in the name of the Minister for Economic Development. So those 2 matters have been lodged.

ADJOURNMENT

The Deputy Bailiff:

Very well, the Assembly stands adjourned until 9.30 a.m. tomorrow morning.