

# STATES OF JERSEY

## OFFICIAL REPORT

**TUESDAY, 15th JANUARY 2008**

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## **The Roll was called and the Dean led the Assembly in Prayer**

### **QUESTIONS**

#### **1. Written Questions**

##### **1.1. TO THE MINISTER FOR ECONOMIC DEVELOPMENT BY DEPUTY G.C.L. BAUDAINS OF ST CLEMENT REGARDING GATWICK AIRPORT:**

###### **Question**

Would the Minister advise whether he has had contact with Gatwick Airport authorities regarding the problems Jersey passengers have experienced in accessing onward connections as 'through passengers' and, if so, can he give an assurance that the matter is now resolved and that passengers from Jersey with onward connecting flights will no longer have to check in through security for a second time?

###### **Answer**

Officers from Jersey Airport have had contact with the authorities at Gatwick Airport regarding the handling of Jersey passengers both through the North and South Terminals on a number of occasions. Accordingly, I am able to advise the Deputy as follows:-

The Department for Transport require all passengers arriving from potential 'unsecure' airports in security terms, to be searched on arrival prior to entering the lounge. This is to stop a prohibited item gaining entry to the airport's restricted zone from an overseas destination where security may not be as tight. The item could then be taken onto a flight departing the UK.

The construction of Gatwick (history) is such that there is no separation between arriving passengers who are transferring to International Departures. Passengers from all destinations are all mixed together at the immigration/transfers area. The Department for Transport concern is that a prohibited item could be passed from one passenger to another at this point. Therefore all passengers going through transfers are re-screened irrespective of their original departure point before they can enter the lounge.

If Gatwick was ever reconstructed the authorities could look at creating a transfer route for known 'secure' passengers (i.e. those from Jersey) that kept them totally apart from 'unsecure' passengers. Such a route would not then need security screening. I am advised that there is no likelihood of this happening in the future.

I can further advise the Deputy that this is not an issue for Jersey alone, the same rules apply to all transferring passengers who arrive from UK airports like Glasgow, Manchester, Aberdeen and who transfer to international departures.

We will continue our dialogue with the authorities at Gatwick in an effort to minimise, where we can, the difficulties of transiting through that airport.

##### **1.2 TO THE MINISTER FOR ECONOMIC DEVELOPMENT BY DEPUTY G.C.L. BAUDAINS OF ST CLEMENT REGARDING SAILINGS OF FERRIES TO THE UK PRIOR TO CHRISTMAS:**

###### **Question**

Would the Minister confirm that several sailings of both conventional ferries to the UK in the week prior to Christmas ran as much as seven hours behind schedule, despite fair weather and if so, would he account for these anomalies and state whether any breach of Service Level Agreements occurred as a result?

**Answer**

As widely covered by the media, the Commodore Goodwill experienced an incident during berthing operations whilst manoeuvring in St Helier Harbour during strong winds on Monday 10th December. Damage to the vessel caused as a result of this incident, meant that she had to be taken out of service for a number of days.

The priority for all concerned at this time was to ensure that the vital supply of freight to the Island from the UK and France during the run up to Christmas was maintained with minimum disruption.

The Commodore Goodwill was replaced by the Coutances on 13th December when a two vessel schedule was resumed. The Commodore Goodwill returned to service on 19th December, albeit on reduced power.

For five days, the Commodore Clipper carried double the usual amount of freight in order to maintain the necessary level of freight service in the run up to Christmas. The resulting increase in loading and discharge times led to delays to sailings of approximately 3 hours.

When the Commodore Goodwill returned to service she was running on only one engine. This technical issue has resulted in longer delays to sailings for this vessel – two of which were in excess of 7 hours.

The Service Level Agreement with Condor Limited covers passenger and car ferry shipping services between Jersey and the UK. This agreement does not cover the carriage of freight.

I can confirm that there was no breach of the Service Level Agreement which sets out the requirement for regular scheduled services with at least one fast ferry and one conventional ro-pax vessel. Delays caused by technical or adverse weather issues would not result in a breach of the Agreement however, in the event of technical problems resulting in a delay over 4 hours, passengers are entitled to cancel their bookings and receive a full refund.

Despite adverse weather conditions, by using other vessels in their fleet and by chartering an additional vessel, Condor Ferries made every effort to ensure that business and customer demands for freight were met. Indeed they were met at minimum inconvenience to the Island during the time the service was disrupted.

Deputy Alan Maclean, the Assistant Minister for Economic Development with responsibility for Jersey Harbours, and I observed first hand Condor's Port operation in the run up to Christmas. We were impressed with the efforts made to minimise the impact of the disrupted service and would like to thank Condor for the considerable efforts made to ensure the resilience of our Island service during what were difficult conditions.

**1.3 TO THE CHIEF MINISTER BY DEPUTY G.C.L. BAUDAINS OF ST CLEMENT REGARDING PLANS TO INTRODUCE REGISTRATION OR IDENTITY CARDS:**

**Question**



Would the Minister advise whether he, or his predecessor has had discussions with the UK regarding plans to introduce registration, or 'identity' cards (currently out to consultation) and, if so, whether their introduction in Jersey is part of a unifying strategy?

Would the Minister advise what measures, if any, will be introduced to ensure that the collation of sensitive information into a central database will be more secure than holding data in a number of separate databases?

## **Answer**

It is not proposed to introduce an 'identity' card for Jersey residents and nor have there been any discussions with UK authorities on this issue. The proposal to introduce a registration card in Jersey to manage access to housing and employment is wholly separate from any UK initiative, not part of any 'unifying strategy', and as such is not a basis for detailed discussion with the UK.

It is not the intention that sensitive information will be collated into a shared database. The Names and Address Index (the shared database) will hold only surname, forename, salutation, date of birth, place of birth, and gender, together with unique customer and property references. The Population Register (the Population Office system) will hold associations between individuals (ie family membership) and the address history. This will be restricted to the Population Office and not shared.

The range of access controls and security policies applied across all States Departments will be applied to the Index and Register.

These controls are based upon British and International Standards, and are directed by the States Security Policy Group - which reports directly to the Corporate Management Board. This group recently commissioned a review of States Information Security management in July 2007, which found 'a general good level of information assurance' and compared the standard of information security in the States positively with other large public and private sector organisations.

In addition, individual risk assessments will be applied to the development of the Index and Register, with internal controls designed and matched to address any identified risks.

The systems will also be subject to internal and external audits, with additional powers granted to the Data Protection Commissioner.

This is a very high level of protection and security, reflecting the importance placed on keeping information confidential and private.

### **1.4 TO THE MINISTER FOR HOME AFFAIRS BY DEPUTY G.C.L. BAUDAINS OF ST CLEMENT REGARDING POLICE INVESTIGATION INTO ALLEGATIONS OF CHILD ABUSE:**

#### **Question**

Would the Minister confirm that the current police investigation into allegations of child abuse has broadened to include examination of instances where people might have prevented this alleged abuse, but failed to do so for whatever reason and, if so, would she concede that there could be instances where the States of Jersey Police themselves failed to act – perhaps through insufficient evidence and, if so, would she explain what actions, if any, would be taken should such a scenario arise where the police might be conflicted ?

## **Answer**

The current investigation is examining a significant number of allegations of historic abuse. Operational decisions in respect of the enquiry are a matter for the Chief Officer although I have been regularly briefed and consulted on all of the key issues. Any investigation into historic offences will inevitably raise questions of whether action could have been taken at an earlier date and whether individuals in positions of responsibility have properly discharged their responsibilities, particularly where the interests of children are concerned. This investigation is no exception. It may be worth taking this opportunity to remind members that the role of the police in this matter is to investigate conduct which may amount to a breach of the criminal law by any person, and in the case of a serving police officer, any conduct which may constitute a disciplinary issue. It would not be appropriate for the police to investigate allegations of professional neglect by members of other agencies, although in some circumstances it will be appropriate to draw any evidence of such conduct to the attention of the agency concerned.

In any large and complex investigation there is an unavoidable need to determine investigation priorities. In this case it has been decided that at this time, the investigation of historic allegations will focus on alleged criminal offences against children. The investigation of any historic allegations of neglect or failure to act will be considered at a later date. I have however agreed with the Chief Officer that there will be an exception to this general rule in any case where an allegation of failure to take appropriate action relates to a police officer and where that police officer is still a serving member of the force. I have been made aware of one current case which falls within these terms. The circumstances of this case have been the subject of independent advice from her Majesty's Inspectorate of Constabulary and in consequence of this advice a senior officer from a UK force has been appointed by the Chief Officer to independently investigate the circumstances and to make recommendations. The investigation will be conducted under the Jersey regulations covering the conduct of police officers and will be independently supervised by the Jersey Police Complaints Authority. Any action in consequence of the investigation falls within the legal remit of the Chief Officer, but as with the enquiry in general, it is anticipated that I will continue to be briefed and consulted on the outcome.

Given the sensitive nature of the investigations and the need to avoid prejudicing any current line of enquiry it is not appropriate to give further details at this time.

### **1.5 TO THE CHIEF MINISTER BY DEPUTY G.C.L. BAUDAINS OF ST CLEMENT REGARDING DISCHARGE OF FUNCTIONS DURING ABSENCE:**

#### **Question**

Under Article 27(2) of the States of Jersey Law 2005, the Chief Minister may, during the absence of another Minister, either personally discharge the functions of that Minister or designate another Minister to discharge the functions of that Minister. During the recent Christmas recess, several Ministers, including the Chief Minister, were absent from the Island.

Does the Chief Minister recognise that work continues regardless, and the public – as well as other members – may have need to contact a Minister and if so, in future will a list be circulated to members declaring who has responsibility for which Ministry during such breaks?

## **Answer**

It is fully appreciated that States business continues throughout public holiday periods. Article 27(2) of the States of Jersey Law 2005 clearly lays out the procedures to be followed in the absence of a Minister and I can confirm that over the Christmas period the Deputy Chief Minister deputised in my absence.

Whilst I am sure that individual Ministers make appropriate arrangements for contact and decision-making during periods of absence, I am happy to consider whether such arrangements need to be made clearer to Members. I will therefore raise this issue at the next meeting of the Council of Ministers in order to consider whether there is scope to make these arrangements clearer in the future with a view to publishing cover arrangements for major holiday periods.

### **1.6 TO THE CHIEF MINISTER BY DEPUTY G.C.L. BAUDAINS OF ST CLEMENT REGARDING JERSEY'S NEW LOGO:**

#### **Question**

Following recent suggestions that Jersey's new logo appears to have been plagiarised from that of an Indian company (Pantaloone Retail (India) Limited), will the Chief Minister now consider withdrawing it before legal or other embarrassing developments occur and inviting the consultants who 'invented' it to refund their fee?

#### **Answer**

The Jersey identity has three component parts which are intended to be used together in order to form a unique and distinctive marque for Jersey. These are the soaring bird, the Jersey designed typeface and the strap-line 'life enriching'. When these are used together as intended there can be no risk of confusion with any other place or product.

The design work which was undertaken was subjected to a rigorous process of independent market testing prior to implementation to ensure that the images would be sufficiently appealing to a wide spectrum of Jersey audiences and stakeholders. The early results have been extremely positive to date with the designs working across a number of market sectors.

### **1.7 TO THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES BY DEPUTY G.C.L. BAUDAINS OF ST CLEMENT REGARDING THE DISPLAY OF 30 mph STICKERS ON VEHICLES WITH LADEN WEIGHT OF 3.5 TONNES OR OVER:**

#### **Question**

1. With regard to the recent media announcement that any vehicle limited by law to 30mph must henceforth display a 30mph sticker on pain of a £5000 fine, would the Minister explain why, in the two sentences that refer to the requirement within the report accompanying P.87/2007 (Draft Road Traffic (No.58) (Jersey) Regulations 200-), neither trailers nor any vehicle other than 'vehicles with a laden weight of 3.5 tonnes or over' are mentioned.

## **Answer**

The report made reference to vehicles with a laden weight of 3.5 tonnes as this was the most significant change in relation to vehicles subject to the lower limit, brought about by those Regulations. Previously the 30 mph all Island limit applied to all vehicles over 2.5 tonnes unladen weight and vehicles drawing trailers. The accompanying explanatory note however provided the full list, as of course do the Regulations themselves, and which is as follows (medium goods vehicles have a laden weight between 3.5t and 7.5t - large goods vehicles, large passenger carrying vehicles, medium-sized goods vehicles and vehicles drawing trailers).

## **Question**

2. Would the Minister accept that the significant number of amendments to the Road Traffic (Jersey) Law 1956 brought about by P.87/2007 makes it very difficult for the layman to fully understand the Law, as amended, and there is a possibility that members of the public could be 'trapped by ignorance'.

## **Answer**

The Minister would not accept this. Previously vehicles over 2.5 tonnes unladen weight and vehicles drawing trailers were subject to the lower limit. Goods vehicles are categorised by laden weight as are licence categories. The category class C1 on a Jersey driving licence (consistent with international practice) allows the holder to drive a vehicle of over 3.5 tonnes laden weight and requires a different test to that for a car (category B). By making this change and combining it with the requirement to display a sticker, the likelihood of motorists being "trapped by ignorance" will be much reduced.

## **Question**

3. Given the potential number of vehicles involved, would the Minister advise whether a public awareness presentation has been made and if not, why not and would he undertake to publish a comprehensive and clear list of those vehicles affected, outlining the circumstances when certain vehicles would be considered exempt?

## **Answer**

My Department invited haulage firms and goods vehicle suppliers in the Island, to a meeting in November at which the requirements were explained. It has distributed leaflets advising of the new requirements to haulage companies, local garages and Parish Halls. A press release has been issued, and formal notices in accordance with the legal requirements of the relevant legislation published in the Gazette. The issue also received media coverage when debated in the States in October. Further information has been available on the States website. It is not the intention to publish a list of specific vehicle makes and models which fall into the various categories as it is the responsibility of individual motorists to be aware of the category of vehicle they are driving, in order to conform with their licence. Vehicles brought into the Island for less than 3 months are exempt.

## **Question**

4. Would the Minister give an indication as to the acceptable size, colour etcetera of the proposed sticker or notice for instances where a sticker may be inappropriate and would he

explain how his reported ‘significant benefit in our efforts to reduce road accident numbers’ and any other benefits will be achieved by a sticker on the back of a vehicle?

### **Answer**

Full details of the required sticker or plate are given in the Motor Vehicles (Construction and Use) (Amendment No.9) Jersey Order 2007. In short it is simply a circular sign which must be at least 150 mm in diameter displaying the numerals “30” in black on a white background. TTS ensured that a number of local suppliers would provide a supply in time for the implementation.

By displaying the 30 plate both the driver of the vehicle is reminded that he/she should not travel at speeds in excess of 30 miles per hour and following motorists will understand why the vehicle in front is travelling at 30 miles per hour on a 40 miles per hour road. Similarly, road users will be able to identify and report vehicles that are clearly exceeding the restriction.

### **Question**

5. In view of the Minister’s assertion in the media that the ‘30’ stickers will help to prevent accidents, will he advise how many accidents directly related to the lack of such a disc, if any, are known to have occurred over the last five years?

### **Answer**

It is impossible to assess how many accidents could be directly related to the lack of a disc, but I can inform the Deputy that, according to the States Police database, during 2006, 22 casualties were suffered from road accidents involving those types of vehicles to be subject to the lower limit. Speeding is a serious concern and often particularly in relation to large vehicles, which are generally less manoeuvrable and leave less space for other road users especially pedestrians. I believe it entirely appropriate that such vehicles are subject to a 30 mph limit, as indeed they have been for many years, and that in order to improve compliance the displaying of a “30” sticker or plate is a reasonable requirement.

## **1.8 TO THE MINISTER FOR TREASURY AND RESOURCES BY DEPUTY G.C.L. BAUDAINS OF ST CLEMENT REGARDING GST EXEMPT ITEMS:**

### **ANSWER TO BE TABLED ON TUESDAY 15th JANUARY 2008**

### **Question**

Would the Minister advise members of -

- (a) the latest list of GST exempt items;
- (b) the procedure that will allow both registered and unregistered traders to reclaim GST already paid on goods which are ultimately sold at a reduced price or are not able to be sold at all (for example perishables or items which are no longer in fashion);
- (c) the procedure for reclaiming GST on returned goods which are surplus to requirements, unsaleable, returned under warranty and so on;

- (d) the procedure for payment of GST by non-registered traders when the imported goods are urgently required, and the expected timescale for such procedure.

## Answer

- a) Supplies that have been excluded from the tax base are listed in the GST Law under Schedule 5 (Exempt) and Schedule 6 (Zero rate) which were approved by the States in April 2007. The exclusions were revised by amendments (additions) contained in the GST Regulations which were approved by the States in October 2007. The range of exclusions has been debated by the States on four separate occasions (the latest being in November 2007). I can forward a copy of the relevant schedules to the Deputy but in brief there are 8 groups of Exempt supplies in Schedule 5:-

- Finance services;
- Insurance;
- Postal Services;
- Medical and paramedical supplies;
- Supplies by Charities;
- Child Care;
- Education and Burial and Cremation

and 5 groups of zero rate supplies in Schedule 6:-

- Dwelling;
- Land;
- Medicines on prescription;
- Exports; and
- International services.

- b) Perhaps I should start by reminding the Deputy how GST/VAT systems work. Any business registered for GST is entitled to reclaim the tax paid on all expenditure (expenses and goods for resale) as input tax on the quarterly GST return. All goods and assets are in effect held tax free. GST must be charged on the goods when they are supplied on the value of the consideration involved (i.e. on the actual sale price if reduced). If they are not sold (e.g. perishables or say destroyed by fire) then no GST is chargeable. The onus will be on the business to provide adequate records to show any write off of stock.

What must be borne in mind is that purchases/expenses (GST input tax) and sales (GST output tax) are two separate events in GST/VAT systems.

The non registered GST trader cannot reclaim any GST incurred on purchases/expenses but they do not have to account for GST on any of their sales.

- c) The procedure for returned goods under GST is not that different to current practice. If any goods are returned to a supplier by either a GST registered or non registered trader then the supplier, depending on their terms and conditions will raise a tax credit note or provide a full refund. In the specific case of goods returned under a warranty then goods subsequently repaired or replaced are not considered to be a supply for GST purposes (tax is not charged).

- d) A non GST registered trader can still apply to Customs for approved importer status and as such will be allowed to clear all imported goods under current timescales (whether they are required urgently or not). They will be allowed to enter goods 10-15 days after the goods have arrived and pay any GST/duty after a further 15 days.

It would only be if a non GST registered trader does not request or obtain approved importer status that they will be expected to enter and pay any GST/duty before the goods are released. Entry and payment can be made electronically in advance of the date of import in which case the goods will be released on arrival.

The procedures for imported goods for both GST registered and non registered traders have been agreed with the Chamber of Commerce to ensure that there should be no delays in the movement of goods into and out of Jersey.

**1.9 TO THE MINISTER FOR TREASURY AND RESOURCES BY DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR REGARDING MONIES FROM UNFILLED VACANCIES:**

**Question**

Would the Minister confirm that monies from unfilled vacancies are not used for other purposes within Departments?

**Answer**

Under the Finance Law the States allocates funds to Departmental Accounting Officers to deliver services in accordance with States objectives. It is up to the Accounting Officers to decide how to most effectively utilise these resources, either by employing staff or purchasing goods and services.

**1.10 TO THE MINISTER FOR ECONOMIC DEVELOPMENT BY DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR REGARDING HARBOUR CHARGES:**

**Question**

“Can the Minister confirm that the policy of applying annual increases based on the Retail Price Index for Harbour facilities such as parking has been replaced by a User Pays policy and if so, would he explain how the percentage increase is determined for these payments?”

**Answer**

I can confirm that there is no policy of user pays for all harbour charges. Increases are based on a mix of options including States of Jersey policy of 2.5%, JRPI and user pays on a case by case basis as appropriate for that particular charge.

In 2006 it was recognised that the charge for Port Parking Permits was too low. The charge per permit per annum in 2007 was £73. A season ticket in St Helier costs £1,020 a year.

The decision was made to increase the charge for port users based on a formula derived from the approximate rateable value of a parking space and the number of permits issued for the years 2008, 2009 and 2010. The rate has been increased to £138 for 2008.

The changes were agreed on the basis that Jersey Harbours is a commercial trading organisation operating in a competitive environment for parking spaces so should therefore charge a market rate. It should be noted that, even at the increased level, fees are still discounted in comparison to commercial season tickets.

Port Users were consulted on the price increases during 2006 for implementation in 2008.

**Notes**

Car parking is not included within harbour dues and has always been charged separately. The circulation of traffic at the Harbour is included in the 1962 Regulations, as opposed to the Harbour and Light Dues Law.

Major assets such as the linkspans have also been subject to a separate charge for some considerable time; as will cranes in line with the same principle.

**1.11 TO THE CHAIRMAN OF THE ENVIRONMENT SCRUTINY PANEL BY DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT REGARDING ENVIRONMENT SCRUTINY PANEL ADVERTISING EXPENDITURE:**

**Question**

Would the Chairman give details of his Panel's advertising expenditure, either actual or approved, in the last six months?

**Answer**

In the last six months the Panel has spent some of its budget on two reviews as part of an overall plan to engage with the public. The Panel has found that the use of one advertising medium has not been sufficient to achieve interest and to increase the public's knowledge of the work being undertaken by Scrutiny.

To that end £332.39 has been spent on JEP advertising on both the Air Quality Review which is shortly to be concluded and on the Waste Plant Review terms of reference and call for evidence. The additional amount of £2631.50 has been spent on radio advertising campaigns for both reviews.

05/09/07	Waste Plant	The Idea Works x3 night	£332.39
01/10/07	Air Quality	The Idea Works	£332.39
07/11/07	Air Quality	Channel 103 advertising November	£1484.00



31/12/08	Waste Plant	Channel 103 advertising December	£1147.50

£3296.28 total spend in the last 6 months

**1.12 TO THE MINISTER FOR PLANNING AND ENVIRONMENT BY DEPUTY P.V.F. LE CLAIRE OF ST. HELIER REGARDING CLIMATE CHANGE AND EMISSIONS:**

**Question**

1. On the 4th December 2007 answers were given by the Chief Minister to a range of questions regarding climate change and emissions with the exception of electricity generated from Bellozanne.

**Answer**

I believe the Deputy refers to Part C of the answer I tabled to his question of the 4th December 2007 where a breakdown of carbon emissions by category (from 2001) was given as collated by the Statistics Unit. Emissions from electricity generated at the energy from waste (EfW) plant at Bellozanne are not included in those figures since they are not directly measured at the EfW.

It is difficult to estimate the carbon emissions from a tonne of residual waste since the level of emissions is dependant on the composition of the municipal solid waste (or residual waste) that is being treated. In particular, it is accepted that the biogenic fraction of the residual waste, which is composed of recently photosynthesised material, is a renewable resource and thus is 'carbon-neutral'. Therefore, international emissions inventories do not count the emissions arising from that portion of the solid waste that is arising.

However, the carbon emissions from an energy from waste process can be estimated by using agreed 'emission factors' and applying these to the tonnages of waste being treated. These have been used in the Energy Policy Green Paper 'Fuel for Thought?' and I would refer you pages 53-56 of the document which makes a full analysis of estimated carbon emissions from the current EfW facility at Bellozanne.

The UK National Inventory for Greenhouse Gas Emissions uses an emissions factor of 253kg/C per tonne of residual waste. The following table uses this factor to estimate carbon emissions between 2001- 2006. The data for 2007 is not readily available at this time, but is likely to follow a similar trend.

Year	Residual waste through EfW <sup>1</sup>	Electricity generated <sup>2</sup> (Kw/h)	Estimated Carbon emissions <sup>3</sup> (tonnes)
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<sup>1</sup> Figures supplied by T&TS

<sup>2</sup> Figures supplied by T&TS

2001	80,997	19,192,700	20,492
2002	79,993	18,766,630	20,238
2003	84,880	19,966,770	21,474
2004	80,805	18,233,780	20,443
2005	74,530	15,573,450	18,856
2006	74,873	17,018,935	18,943

### Question

2. Would the Minister provide electricity emission levels from 2001 to 2008 at Bellozanne and advise whether there are any other known emission figures for the JEC and other polluting sources and if so what these are from 2001 to date?

### Answer

With reference to your question on ‘other known emission figures for the JEC’, I would refer you to part C of the answer tabled on the 4th December 2007 which includes the emission figures for electricity generated from fossil fuels by the JEC between 2001 and 2006. Data is collated annually by the Statistics Unit and published in the publication Jersey Energy Trends. 2007 data is not yet available.

### 1.13 TO THE MINISTER FOR HEALTH AND SOCIAL SERVICES BY DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR REGARDING INTEGRATED CARE RECORD PROJECT:

### Question

“Would the Minister confirm how much money has been spent to date on the Integrated Care Record project, outline what amount of money, as a sum and as a percentage of the project’s budget, has been paid to consultants and advise when the project will be activated?”

### Answer

The Integrated Care Record project (ICR) is the name given to the programme of work which will replace HSSD’s ageing and failing computer system and make the Department’s information and communication technology fit for the future. While there has been a year on year deterioration with the technology as it falls further and further behind what is required for modern medicine, there is a very potent and tangible short term threat, namely that the Department’s current software supplier is in the process of exiting the health information computer technology market. There is a danger, therefore, that the ‘plug is

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<sup>3</sup> Estimated Emissions using emissions factor of 253kg/C per tonne of residual waste

pulled' both literally and metaphorically. This threat was not lost on the Council of Ministers which made the funds available in 2006.

As with all large and complex capital projects, a detailed project management approach has been taken, which includes clear lines of accountability, the creation and maintenance of risk registers, and a structure of working groups which report through to the ICR Programme Board which is chaired by the Chief Officer of Health and Social Services. In addition to technologists, managers and consultants, the Programme Board also includes the Director of Strategic Purchasing for the States of Jersey and the Director of Information Services for the States of Jersey. The project has been advised also – on a very specific aspect of the work – by the Controller Auditor General.

The project has been designed in such a way that it has a budget of £12m which is to be released in tranches of £4m in 2007, £3m in 2008, £3m in 2009 and £2m in 2010.

It is not the policy of HSSD to employ general 'management consultants'. The consultants involved in the project are highly specialised from the fields of procurement, health technologies, and the law (particularly contractual law). In this regard – as at 31 December 2007 - £643,440 has been spent on this specialist advice. This represents 5.4% of the £12m budget sum. Learning from the experience of other procurers of major ICT systems, the deployment of these specialist consultancies has been 'front loaded' to the beginning of the project and therefore the plan is that there will be a phased reduction in reliance upon them as the project comes to fruition.

In the States of Jersey, large building projects are normally budgeted with 20% of the capital sum being deployed for external advice, which includes architects and fees. In complex ICT projects, the Society of Computer and Information Technology Management (SOCITM) provides a benchmark of between 8% to 10% of the cost of a complex ICT procurement as being deployed on specialist advice.

The project will be implemented in a phased way as the above phasing of tranches of investment makes clear. The first tranches of investment in 2007 and 2008 are to protect against the risk of reliance upon EDS (the current service provider of the ageing H&SS computer systems) who are looking to exit the market at the end of 2008. However, in another sense, investment will be a continuous process as the technology matures, as software upgrades are made available, and as the boundary between medical technology (such as a Magnetic Resonance Imager) and information computer technology becomes increasingly blurred.

**1.14 TO THE MINISTER FOR HOUSING BY DEPUTY G.P. SOUTHERN OF ST. HELIER REGARDING PERCENTAGE OF ARREARS AGAINST TOTAL RENT CHARGES:**

**Question**

The KPMG benchmarking report of February 2004 showed the Housing Department in the lowest quartile at 4.98% against a comparative median figure of 2.1% for percentage of arrears against total rent charges. What progress has the Minister made in improving this figure?

**Answer**

Since 2005 significant work has gone into tackling the level of rent arrears. Statistics are recorded on a regular basis, most recently at the end of December 2007. At that time the level of rental arrears had reduced to 3% of gross rental income.

### **Question**

Does the Minister have any figures to indicate the length of time taken for staff to assess rent abatement/rebate applications? What period of time for this process appears in tenants' rental agreements, and if it does not, why not?

### **Answer**

Historically rent abatement applications have taken on average approximately 28 days to process. This is a reasonable period and compares favourably with published figures on average times taken in the UK which show that in 2006, those local authorities in the top quartile took on average 26.4 days to process housing benefit claims. As Members are already fully aware, the Housing Department's Rent Abatement Scheme is to be replaced by the Social Security Department's Income Support Scheme on 28th January 2008. There has been a necessary period of transition leading up to Income Support and that has brought with it a considerable amount of extra administrative work which has caused a temporary increase in assessment times for a short period of time. Applications have and will be dealt with as quickly as possible and within the resource capabilities of the Housing Subsidy staff at the Social Security Department.

In answer to the second part of the question; No, this process does not form part of the tenancy agreement, nor should it as not all tenants seek or require a rental subsidy. The tenancy agreement does make it clear that tenants may apply for a subsidy if they wish, however, it does not compel them to do so.

### **Question**

Will the Minister confirm that arrears due to processing delays are treated similarly, whether caused by the tenant or the department, and indicate what proportion of the arrears total is due to the time taken by the department in processing claims? Will the Minister inform members what measures he will put in place to improve times and will he agree to set benchmark targets for this process?

### **Answer**

Yes, arrears that arise as a result of delays in processing rent abatement applications are dealt with in the same manner as other rent arrears. It should be pointed out that an applicant will have enjoyed the benefit of any excess subsidy paid during the period and any overpayments that are accrued as a result must be repaid. As with any other arrears, the Housing Department only asks that tenants acknowledge the existence of the debt and work with Officers to repay it by adhering to a reasonable repayment schedule which will be agreed with the tenant having due regard to their circumstances and ability to pay.

It is not possible to differentiate between subsidy backdates created by administrative delays within the Department and those delays caused by applicants not supplying the information required for the Department to carryout an assessment expediently. I would reiterate that applications have and will be dealt with as quickly as possible and within the resource capabilities of the Housing Subsidy staff at the Social Security Department.

It is not proposed at this stage to make any changes aimed at reducing processing times or to set benchmarking targets as suggested due to the fact that the Income Support Scheme will replace the rent abatement scheme on 28th January 2008. The Housing Department will work closely with their colleagues at Social Security to ensure that all applications for Income Support from tenants are processed as quickly as possible.

**1.15 TO THE MINISTER FOR PLANNING AND ENVIRONMENT BY DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT REGARDING GOOSE GREEN MARSH DEVELOPMENT:**

**Question**

With regard to the Goose Green Marsh development, would the Minister explain why the developer was issued a permit for development before details of conditions were finalised, and advise the Assembly of the approximate number of occasions that permits have been issued in similar fashion since the 2002 Island Plan?

**Answer**

At the outset, may I thank the Deputy for his question, because it is clear there remains some misunderstanding about my decision to grant planning permission for the Category A housing development at Bel Royal. The permit was not issued before details of conditions were finalised and I am not aware of any other permits issued in such a fashion. It is, however, true that the permit was issued before details of the Planning Obligation Agreement were finalised, for reasons that are explained in this answer.

In order to answer this question more fully, I think it is important to first describe in detail the chronology of and the context for the decision.

As I have outlined to this Assembly on previous occasions, I made my decision to grant planning permission for the development in question at Bel Royal (P/2006/2489) on 21st March 2007.

At that time, I instructed the Planning Officer to write up the consent for 102 homes together with various associated works, subject to finalisation of conditions and to a requirement that the applicant should enter into a Planning Obligation Agreement.

On the 4th May 2007, following the finalisation of the conditions, I agreed to release the permit and to publish my detailed report on the application (dated May 2007).

The permit was formally issued on the 8th May 2007, subject to 62 planning conditions covering a wide variety of issues. These included a requirement to enter into a formal Planning Obligation Agreement "*within 6 months of the date of the permission*" (i.e. 8th November 2007) and also allowed for the commencement of a certain amount of development in advance of the Planning Obligation Agreement being signed and registered.

My findings on the application and the issues arising and my reasons for granting planning permission and issuing the permit are fully set out in my published report on the application, which is still available for viewing on the Planning and Environment Website under 'News Releases 2007'. At the time, I thought it appropriate to permit the commencement of development in advance of the Planning Obligation Agreement, in order to avoid further delaying the development of homes required to meet the Island's identified needs and, also,

to ensure that it would not become necessary for the Developer to lay off a large proportion of their workforce. It is important to note that it was made very clear to the Developer that all works undertaken prior to the signing off that Planning Obligation Agreement were at their own risk.

In my report on the application, I recognised that it was unusual to permit the development in advance of the Planning Obligation Agreement being signed and registered. However, I considered there were good grounds for doing so in this instance. Furthermore, there was already a precedent for so doing, set by the former Planning and Environment Committee in association with the planning permission granted to develop one of the other H2 Category A housing sites at Fields 786 and 787, La Rue des Cosnets, St. Ouen.

I would accept that if I had not issued the permit until the Planning Obligation Agreement was in place, it is likely that there would have been far fewer planning conditions, because many of the requirements set out in the conditions would have been met in the interim period.

Negotiation of the required Planning Obligation Agreement for the Bel Royal site is now at an advanced stage. Unfortunately, this has taken longer than originally anticipated and it has not been possible to complete the work within the envisaged time period. As a consequence, the applicant has made an application to vary the condition (and other similar time-constrained conditions) to allow more time for compliance, and I will be deciding upon this application in due course, under Article 21 of the Planning and Building (Jersey) Law, 2002.

Finally, may I remind Members that the circumstances surrounding the whole of this application, which spans the work of a number of former committees, are subject to an on-going public inquiry and I would hope that the House feels it is appropriate to confine further examination to that inquiry.

**1.16 TO THE MINISTER FOR HOME AFFAIRS BY DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT REGARDING RECENT STATES OF JERSEY POLICE ARMED ACTION:**

**Question**

Following the recent States of Jersey Police armed action near the Odeon, it was reported that it had yet to be established whether or not an item recovered was a firearm or a replica. Would the Minister confirm that a person with knowledge of firearms should be able to determine the difference within a few moments and explain why this was not achieved in this case?

**Answer**

While it may be possible for a lay person to offer a view as to whether a firearm is a normal functioning weapon or a replica within a relatively short period of time this is not the test which is applied by the police. In their exercise of their powers under the law police officers are from time to time required to establish whether an article meets the legal criteria for being classed as a firearm, and specifically, whether it is capable of discharging a potentially lethal bullet or missile. This test needs to be applied to all articles which may be subject of criminal proceedings irrespective of their apparent nature or the purpose for

which they were originally manufactured. It has sometimes been the case that weapons which do not at first appearance appear to be functioning firearms are nevertheless capable of operating in a way which meets the legal definition of a firearm. The States of Jersey Police have dealt with many different types of weapons over the years. Experience shows that weapons range from plastic toy pellet guns (often worryingly realistic) to fully automatic firearms; in between these two extremes the situation can be complex. There are for example antique weapons (often dating back many years), blank firing weapons, starting pistols and modified weapons. In many cases these articles did not begin life as a functioning firearm but have been modified in an attempt to make them capable of being used as a firearm within the meaning of the law. In the U.K. and elsewhere there have been numerous examples of criminals making use of weapons which purport to be de-activated or replicas but which have been modified to enable them to fire live rounds.

Whether or not any of these weapons are firearms within the definition of the law and therefore whether or not persons in possession are criminally liable will often depend on careful examination of the weapons once they have been stripped down. Sometimes they will need to be sent for examination by an expert witness in the UK before it can be confidently said that they are or are not firearms for legal purposes.

It follows therefore that whether or not a weapon is a firearm within the definition of the law can take some days, if not weeks to determine to a standard which may be required in a court of law.

In relation to the incident in question – without wishing to comment specifically on the case – the press briefing was given within minutes of the incident finishing and the weapons being seized. The information that was available to the Commander giving the press briefing at the scene was a truthful and accurate statement of the information available to the police at that time. I understand that the articles concerned have since been subject to more detailed examination. It would however not be appropriate to comment on the findings of this examination while criminal proceedings are still pending.

**1.17 TO THE MINISTER FOR HOUSING BY DEPUTY G.P. SOUTHERN OF ST. HELIER REGARDING PROPERTIES BEING BOUGHT FOR INVESTMENT PURPOSES:**

**Question**

Will the Minister inform members what data, if any, he has on the numbers of properties being bought for investment purposes (“buy-to-let”) by non-residents and what measures, if any, are under consideration to control house price inflation from this or other sources, such as increased immigration numbers?

**Answer**

It is not true that house price inflation is caused by non qualified or non resident investors. It is caused by a buoyant economy, and demand for houses from locally qualified people.

The only properties that can be purchased by people without their housing qualification are those owned by companies, so-called ‘share transfer’ properties. These properties are almost all flats, and flat prices have generally been static. As to how many share transfer flats are sold, we do not have this information, as their purchase is not controlled by the Housing

Law, and there is no requirement to register the sale through the Royal Court. With the introduction of Stamp Duty on share transfer properties this situation may change, but in the meantime, the Statistics Unit have separately estimated that about 3/5th of flat sales in any one quarter are share transfer sales. However, the overwhelming majority of these share transfer flats are purchased by owner-occupiers who are residentially qualified. As to free standing houses, these cannot be bought by anyone without their qualifications.

All this adds up to a housing market overwhelmingly reserved for locally qualified individuals, and protected from non-resident investors.

As to migrants causing house prices to rise, less than 10% of all properties are purchased by 'j' category essential employees, with the vast majority of purchases - well over 90% - being made by people qualified under the Housing Law following a long period of residence.

The measures being introduced to promote affordable home ownership are well documented, and include a shared equity scheme, more sheltering housing, the sale of some States properties, and more generally, the provision of more supply where possible.

#### **1.18 TO THE CHIEF MINISTER BY DEPUTY G.P. SOUTHERN OF ST. HELIER REGARDING IMAGINE JERSEY 2035 CONSULTATION PROCESS:**

##### **Question**

Will the Chief Minister give an undertaking to members not to bring a proposition resulting from the 'Imagine Jersey 2035' consultation process to the States before the summer recess without including a full examination of all fiscal alternatives to the use of immigration and population growth to solve the issue of the ageing population to the satisfaction of the Migration and Population Scrutiny Sub-Panel?

##### **Answer**

The papers supporting the current consultation process already clearly identify fiscal measures as one of four possible policy alternatives, namely:

- Further growth in the economy
- Working Longer
- The resident population paying more for services
- Allowing more people to live in Jersey.

The purpose of Imagine Jersey 2035 is to gauge the public's views and encourage wider discussion about these options and the balance that needs to be struck between them. The Council of Ministers will consider the views expressed as part of the consultation process before considering any policy response.

Until Imagine Jersey 2035 has been concluded and responses analysed, it will not be possible to consider exactly what form a report to the States before the summer recess may take. It is, however, likely to focus on an overall strategic direction, rather than specific



policy proposals. Having considered the Public's views, the Council of Ministers will need to decide what further detailed work is required before making specific policy proposals.

The nature of this subject means that any proposals for future population growth would have to be set in the context of other the alternatives. I can assure Members that when making such proposals, the Council of Ministers will give full consideration to all the alternatives, including those relating to fiscal measures. At the end of the day it is for the Scrutiny Sub Panel to determine whether it is satisfied with any proposals which are brought forward and I cannot give any undertaking on their behalf.

**1.19 TO THE CHAIRMAN OF PRIVILEGES AND PROCEDURES COMMITTEE BY DEPUTY G.P. SOUTHERN OF ST. HELIER REGARDING ELECTION EXPENDITURE:**

**Question**

1. Will the Chairman of the Privileges and Procedures Committee inform members whether the Committee has considered including organisations akin to "Elect Jersey 2005" (which do not have to register as political parties) in measures to limit the election expenditure of election candidates (or their parties) and if not, when will it do so?
2. Will the Chairman advise how he proposes to regulate or to investigate members' declarations of expenditure; the sources of such expenditure (whether from individuals, or from non-accountable bodies, as above); benefits in kind, such as services provided at nominal cost; or positive coverage in non-regulated websites as part of a service purporting to be a "neutral" medium?
3. Will the Committee be bringing any measures to regulate election expenditure to the States, in time to ensure a level playing field in the 2008 elections, and if not, why not?

**Answer**

1. I am pleased to be able to answer this question to update members on the progress of legislation to regulate election expenses by candidates.  
The issue of the expenditure by third parties during election campaigns has been one of the most difficult issues for PPC to deal with during its work on the regulation of election expenses. Although the Committee initially thought it might be appropriate to outlaw all expenditure by third parties it received legal advice that this course of action would not be human rights compliant in a democratic society where third parties must be free to express their views. The Committee will nevertheless be including measures in the legislation being brought forward which will regulate and limit expenditure by third parties. In this context third parties could include individuals, registered political parties or lobby organisations, including those that do not have to register as political parties. The intention of the legislation will be to ensure that all possible steps are taken to create a level playing field for elections although it is only proper to reiterate, as mentioned above, that in a democratic society no undue or disproportionate restriction must be imposed on the expression of political viewpoints and comments.
2. The legislation being proposed by PPC will include a monetary limit on candidates' expenditure that will be made up of a basic sum supplemented by an additional amount

related to the number of electors in the relevant constituency. The principles will be broadly in line with the Committee's consultation document on this issue presented to the States on 15th January 2007 (R.2/2007). The restriction on expenditure will include money received from donations or professional services received at reduced cost although, for the avoidance of doubt, PPC wishes to make it clear that the wide ranging assistance provided to candidates in Jersey by volunteers will not be restricted. Candidates will be required to make a declaration of expenditure following the election setting out not only the total expenditure incurred (which must be within the statutory limit) but also setting out the source of expenditure. Candidates who receive assistance or donations will therefore be required to provide details of this in their return of expenditure. Any expenditure incurred on behalf of a candidate without his or her knowledge or consent will be regulated by the measures relating to third parties referred above. Although it would be inappropriate in a democratic society to restrict the circulation of purely factual information about candidates and policies, any websites that are created for the purpose of encouraging the electorate to vote for or against any particular candidate will be covered by the regulation of third parties. The legislation will provide that the initial returns of expenditure by candidates are submitted to the Judicial Greffe after an election, in view of the role of the Royal Court in overseeing elections. The legislation will contain criminal offences for any breaches of the rules and any alleged offences will be investigated as criminal offences in the normal way.

3. The drafting of legislation relating to election expenses was included in the 2008 Law Drafting programme and comprehensive instructions were forwarded to the Law Draftsmen on 17th December 2007. Although the Committee had been working on this issue for some time the matter of third party funding required considerable research and legal advice and it was this aspect that delayed the preparation of complete drafting instructions. The Committee's intention is to present the legislation as triennial Regulations as the legislation relates to a purely domestic matter for Jersey and does not require the amendment of any existing primary legislation. As triennial Regulations do not require sanction by the Privy Council the Committee is confident that the necessary measures can be debated by the States and, if approved, be in force before the elections in the autumn of 2008. The Committee's intention is to convert the triennial Regulations into primary legislation in the light of experience after the 2008 elections.

#### **1.20 TO THE MINISTER FOR SOCIAL SECURITY BY DEPUTY G.P. SOUTHERN OF ST. HELIER REGARDING INCOME SUPPORT LETTERS:**

##### **Question**

1. How many, and what proportion of, applicants for Income Support (which commences on 28th January 2008) had received their assessment letters by Monday 7th January 2008 and how many have received them to date?

##### **Answer**

As of 7th January 2008, 7,309 application forms for Income Support had been received in the Department. By that date 5,624 claims (77%) had been rated and Award Notices issued to customers. Since then a further 415 application forms have been received bringing the total number of claims to 7,724. As of 13th January 2008 a further 1,256 claims had been rated (89% of all claims received).

### **Question**

2. How many enquiries by telephone, e-mail or in person have the department had to deal with since the first letters were sent?

### **Answer**

Since the dispatch of Award Notices began, the Department has received 4,674 phone calls and there have been 3,888 face to face contacts in the Front Office enquiring about Income Support. Email enquiries have been relatively low with 52 customers emailing the Department to enquire about their Income Support claims.

### **Question**

3. Will the Minister undertake to consult with the Plain English Society to ensure that future communications from the department are written in language which can be clearly understood by recipients?

### **Answer**

All standard Income Support letters are prepared by the Department in close co-operation with the States Communications Unit. The Communications Unit has published a comprehensive set of Editorial Guidelines, which have been approved by the Plain English Campaign and have been awarded the Crystal Mark. All standard Income Support letters are produced in line with these guidelines.

All letters are very carefully written to ensure that they provide the correct legal information required by the claimant. Income Support is a major change to the social benefits system and the department has had very many enquiries about it, but the language used in the letters has not featured as an issue in these enquiries.

Once the Income Support scheme is in operation, the emphasis will be on face-to-face interviews between trained advisers and claimants.

### **Question**

4. Will the Minister clarify what Income Support arrangements are now in place with each of the parishes, and in particular what service level agreements have been signed, and when? Will he also assure members that no parish staff will be involved with Income Support administration unless and until such agreements have been signed?

### **Answer**

Departmental officers are in daily contact with the 11 parishes that will assist claimants with certain aspects of their Income Support benefit.

I shall be signing an agreement with the Comité before the implementation of Income Support. This will cover:

- 1 Provision of cash Income Support payments to parishioners
- 2 Administration of existing residential care claimants
- 3 Use of Parish Hall premises for Social Security staff to interview Income Support claimants

- 4 Facilities for emergency and out-of-hours payments by parish officials
- 5 Provision of general Income Support information and literature.

This agreement will be fully compliant with data protection legislation.

## **2. Oral Questions**

### **2.1 Deputy G.C.L. Baudains of St. Clement of the Minister for Treasury and Resources regarding the sale of Jersey Telecom:**

Will the Minister undertake not to seek to debate the proposition to sell Jersey Telecom until the structural separation and issues relating to the powers of the J.C.R.A. (Jersey Competition Regulatory Authority) have been resolved so as not to create a climate of uncertainty in the market place?

#### **Senator T.A. Le Sueur (The Minister for Treasury and Resources):**

I remain firmly committed to reveal that the sale of all or at least a majority of the shares in Jersey Telecom would be in the best long-term interests of the States, the Island residents as consumers, and of the employees of Jersey Telecom. Having spoken to the management of Jersey Telecom and having heard from representatives of the workforce, I am also aware of the damaging effect which has arisen from the ongoing delay in this debate. However, I am also aware that there are a number of uncertainties in the minds of many States Members for a variety of reasons and this has been aggravated by recent activities which impinge on the activities and capabilities of the Jersey Competition Regulatory Authority. At this stage, there are still some unresolved issues regarding the capacity of the J.C.R.A. to properly regulate the company which the Economic Development Minister is currently addressing. I aim to have further discussions with my fellow Ministers during the coming week, but I have to acknowledge that in the present climate I believe that unless I am able to resolve some of the unanswered questions in Members' minds, it could be unwise to proceed with the debate on the sale of Jersey Telecom at this time. I aim to make a definitive statement to the House within the next 2 weeks following meetings with the parties concerned.

#### **The Deputy Bailiff:**

We will come to question 2 and if I may, I meant to say this at the beginning; there are a large number of questions so I do invite Members to be as concise as possible.

#### **Senator M.E. Vibert:**

While you are on the questions, just looking through the written questions and answers, can I ask that question 11 be looked at again because the figures do not seem to make any sense to me?

#### **The Deputy Bailiff:**

I am sure the Chairman will note that. Deputy Baudains will ask the following question of the Chief Minister.

### **2.2 Deputy G.C.L. Baudains of the Chief Minister regarding access to the Corporate Management Board minutes:**

In response to an oral question on 6th November 2007 the Chief Minister refused to release the Corporate Management Board minutes suggesting it was not the role of politicians to become involved in the detail of how States policies and decisions are implemented. Would the Minister reconsider his decision to deny access in order to ensure that Back-Benchers are able to satisfy themselves as to public service efficiency?

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

As the Deputy has pointed out in his question, I have already explained in an answer to a previous question why the minutes of the Corporate Management Board will not be released and I see no reason to change that decision.

**2.2.1 Deputy J.A. Martin of St. Martin:**

Would the Chief Minister confirm that even he himself is sometimes not given the minutes of the Corporate Management Board? It is my understanding that the Chief Executive Officer makes the decision as to whom and what minutes are taken and who receives them. Is this correct?

**Senator F.H. Walker:**

Yes, it is correct. As I explained in answer to a question by the Deputy in November, this is a management board. It is not a political entity. It takes no political decisions. It makes no policy decisions and the power of management is delegated to officers in the appropriate way.

**2.2.2 Senator S. Syvret:**

The Chief Minister is reiterating his view that it is not the role of politicians to become involved in the detail of how States policies and decisions are implemented. It is not a view I would necessarily agree with, but would he, by the same token, accept then that it is not the role of the Corporate Management Board or the senior officers who sit on it to become engaged in political manoeuvring?

**Senator F.H. Walker:**

That is, of course, a rhetorical question and who decides or defines what is or is not political manoeuvring? But generally speaking the answer to the question has to be yes.

**2.2.3 Deputy G.P. Southern of St. Helier:**

Does the Chief Minister accept that his position on this particular issue does not sit well with his commitment to open government?

**Senator F.H. Walker:**

No, I do not. Open government is all about taking policy decisions and conveying those decisions to the public and that is exactly what this Assembly does. I believe that the defined difference between political activity and management activity is exactly as it should be.

**2.2.4 Deputy G.P. Southern:**

Does he not accept that delivery of policy is also a matter of public concern and should be in the public domain?

**Senator F.H. Walker:**

Yes, but I also accept that Ministers are responsible for the delivery of services and ultimately it is Ministers who are held to account and that is the position this House has agreed to. That is the correct position and that is a position I believe should continue.

**2.2.5 Deputy J.A. Martin:**

Would the Chief Minister please not accept that a Corporate Management Board does and must discuss policy information such as Imagine Jersey 2035 and New Directions? All the coming together of all these things are policy information and States Members as a whole should know what is going on at these meetings and I really think he should reconsider and we have... or, at the least, the Minister knows exactly what is going on at these meetings and sees the minutes.

**Senator F.H. Walker:**

I am sorry. I do not agree with the Deputy.

### **2.2.6 Deputy G.C.L. Baudains:**

Again on 6th November the Chief Minister did say that States Members need to be involved at a higher level of policy-setting and then monitoring and vetting. How does he expect us to be able to achieve that if only the Council of Ministers is able to see the minutes but not us? Surely it is up to us to decide whether or not the minutes deserve our attention and not to be told by the Chief Minister whether or not we can see them. Does he not agree with that?

### **Senator F.H. Walker:**

I think I should make it clear, although I think I did so on the last occasion this question was raised, the Council of Ministers do not see the minutes of the Corporate Management Board on an official or regular basis, nor do we see any need to do so. There is a difference between the political responsibility of Members and the managerial responsibility of our officers, and I maintain the answer I have given consistently to this question, Sir.

### **2.3 Deputy K.C. Lewis of St. Saviour of the Minister for Home Affairs regarding wheel clamping of vehicles on private land:**

Would the Minister advise whether she is satisfied that the wheel clamping of vehicles on private land and subsequent demand for money for their release is legal?

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

I am grateful to Deputy Lewis and, indeed, to the *Jersey Evening Post* for bringing the problems associated with wheel clamping to my attention. Quite honestly I have been shocked to read of some of the alleged treatment of individuals who have been clamped. The legality of wheel clamping and subsequent demand for money will only be determined by a court as the law appears somewhat uncertain. The issue is likely to be tested in a court, I believe, in the near future as no case has been tested to date. We will have to await the deliberations of the court but Members can be assured that I and my Assistant Minister will be keeping a close watch on the outcome of any court decision.

### **2.3.1 Deputy K.C. Lewis:**

I thank the Minister for her reply, Sir. As you aware many of our laws are based on French law. Ironically, in France wheel clamping is illegal and also in Scotland since 1991. I am very concerned that young women are being forced to walk home in all weathers in the dark, and I am sure the Minister is aware that a couple who are senior citizens, one of which had mobility problems, were recently forced to go to a cashpoint machine and withdraw £150 before their vehicle was released. What possible justification is there for charging £150? A change in Jersey laws of wheel clamping is long overdue. Does the Minister not agree?

### **Senator W. Kinnard:**

As I have said, the position I am advised at present is that this is a civil matter between the owner of private land and his private agent acting on his behalf and the individual motorist concerned. That is the position I believe at present until and unless the court determines otherwise, but as I have said, Sir, we in Home Affairs are keeping a very close interest in the outcome of any court decision on this matter.

### **2.3.2 Deputy R.G. Le Hérisier of St. Saviour:**

Would the Minister identify why she has not chosen to take a political route on this issue and she is prevaricating and waiting for a court decision?

### **Senator W. Kinnard:**

It may well be that the court decides that there is no need to change the law and it is not a matter of prevarication. This has been brought to my attention only just recently. It is not, at this moment, a criminal matter which is generally where criminal matters sit with Home Affairs. But as I say, Sir, there is very little that can be done until the matter is tested in court and we have to await that decision before we could decide which way we wanted to jump in terms of any law change if necessary to deal with this matter.

**2.3.3 Deputy G.P. Southern:**

More directly, Sir, will the Minister consider bringing a law to this body to render wheel clamping illegal, and will she further bring to the House information stating whether wheel clamping is permitted and to what extent on publicly-owned land: States-owned land?

**Senator W. Kinnard:**

As I say, it is not a matter of bringing something forward straight away. I think we do have to await the consideration of the court because that will give us direction as to how to deal with this matter appropriately. I really do not think I can help any further than that at this stage.

**Deputy G.P. Southern:**

The second half of the question is not answered. Would she care to bring information to the House to the extent to which wheel clamping takes place on States-owned land?

**Senator W. Kinnard:**

I can certainly provide the House with that information, Sir.

**2.3.4 Connétable M.K. Jackson of St. Brelade:**

Would the Minister confirm that she will investigate, in conjunction with the Data Protection Registrar, the divulgence of information to wheel clamping companies which seems to be taking place just for a very small fee?

**Senator W. Kinnard:**

I am not sure that is particularly my preserve or area, but clearly it has been raised and it is something that I am happy to begin to have a look at but, again, I am not sure that that particular area of data protection is within Home Affairs' remit. Sometimes there is a tendency to give us everything but I am quite happy to undertake some initial research on the matter.

**2.3.5 Deputy P.V.F. Le Claire of St. Helier:**

Would the Minister not look into whether or not it is possible to suspend wheel clamping on States-owned land in the interim?

**Senator W. Kinnard:**

I do not have any complaints at this point before me in relation to States-owned land so I do not really think it would be necessary.

**2.3.6 Deputy F.J. Hill of St. Martin:**

Would the Minister not agree that the circumstances described by Deputy Lewis whereby people are almost put in fear of not paying the money is tantamount to demanding money by menaces and then does become a criminal offence?

**Senator W. Kinnard:**

If the alleged offence was proven, yes, of course, that would be a criminal matter but we are dealing with allegations and alleged offences at this stage, thank you, Sir. Well, not even offences if they did not negate the law.

### **2.3.7 Deputy G.P. Southern:**

Does the Minister accept that bringing an individual case to court is a potentially expensive, lengthy and stressful process? What assistance is the Minister prepared to offer the individual concerned in order to clarify this part of the law?

### **Senator W. Kinnard:**

I think the individual concerned is well able to bring the case himself. He, himself, I know is not unaware of the workings of the law in our jurisdiction so I think he is perfectly capable. As I have said, Sir, at the moment my understanding is that this is a civil matter between an individual and the owner of private land, not a criminal matter, so it is not appropriate that the Minister should be giving any assistance in that matter.

### **2.4 The Deputy of St. Martin of the Minister for Home Affairs regarding plans to introduce any new legislation to resolve the problems associated with Jersey's perceived binge drinking culture:**

Will the Minister advise whether she plans to introduce any new legislation to solve the problems associated with Jersey's perceived binge drinking culture and, if so, when will such laws be presented to the States for consideration?

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

With your permission, and with that of the House, I wonder whether my Assistant Minister might answer this. I can answer it but he is the Member for the Safer St. Helier Group and also is the Member on the Economic Development Working Group on licensing.

### **The Deputy Bailiff:**

Very well, Assistant Minister.

### **Deputy A.D. Lewis of St. John (Assistant Minister for Home Affairs - rapporteur):**

I thank the Deputy for bringing this matter up. While we do not have the problems of many inner city areas, there is a perceived drinking culture in Jersey and Home Affairs is endeavouring to address this issue in a number of ways. However, to be fully effective a cross-departmental approach is required. I do, however, need to remind Members that although Home Affairs is one of the departments most affected by the consequences of excessive consumption of alcohol it is not responsible for some of the initiatives and legislation required to tackle the issue. The key to resolution is revision of the current licensing law. Although this is a matter for Economic Development, I am delighted to say that Economic Development has formed a small steering group consisting of representatives from Economic Development, Health and Social Services and Home Affairs. This is the start of a process of reform and it is anticipated that revisions to the 1974 law will be ready for drafting at the end of August. However, Home Affairs believe that it may be necessary to institute some more immediate measures to help curb the trend of antisocial behaviour caused by the excessive consumption of alcohol. For example, measures need to be considered to tackle the current trend by some of consuming large quantities of alcohol at home before going out of an evening. This is mainly as a result of a disparity in costs between off sales and on sales. Currently the off-license trade is still permitted to undertake drink promotions whereas pubs and clubs are not. This inconsistency needs to be addressed. It appears that young people are being served alcohol in off-licenses often by underage staff who too are under the legal age for drinking but are permitted to work in retail. This needs to be regulated more stringently. Home Affairs would like the Magistrate's Court to have the power when sufficient evidence exists to close down licensed premises within 24 hours when it is suspected that a licensee is seriously violating the law, particularly in respect of serving alcohol to people on their premises when some individuals are clearly already drunk. With regard to other legislation, I will be recommending to the Licensing



Law Steering Group that consideration be given to providing Connétables with discretionary powers to implement alcohol-free zones and the power for Honorary and States officers to confiscate alcohol from adults in public places. From what I have said so far, Members will be acutely aware that this issue is very much a multi-agency one and I am, therefore, delighted that Economic Development has established a consultation process to move things forward, but I would like to see some short-term action to address the issue of binge drinking which I thank the Deputy of St. Martin for raising.

#### **2.4.1 The Deputy of St. Martin:**

While I accept the praise and thanks from the rapporteur for bringing this to the House, what I was hoping for was seeing some action from Home Affairs which really should be responsible for law and order in this Island. The rapporteur mentioned the effect... about the Confiscation of Alcohol Law. Unfortunately, he was in the House some years ago when I brought a proposition to the House asking the States to ask or request Home Affairs to bring a law to enable police officers to confiscate alcohol from people over the age of 18. I think it is quite clear now the absence of that law is making things very difficult for the police. Will the Home Affairs reconsider bringing forward legislation which will enable the police officers to confiscate alcohol from people over the age of 18, which it can do so at the moment for persons under the age of 18?

#### **The Deputy of St. John:**

Yes, I totally agree with the Deputy. This is common place in various boroughs in the U.K. and when I have been out on the beat with officers that perhaps have worked in the U.K. they are quite surprised that they cannot confiscate alcohol from adults. This is usually done by order by County Councils and it could be done in Jersey too through existing laws. It is something which we are actively looking at and I would hope to think that we can get something through before the revision of the Licensing Law is completed.

#### **2.5 Deputy P.V.F. Le Claire of the Minister for Home Affairs regarding the recent armed response incident in St. Helier:**

Would the Minister explain the background to the recent armed response incident in St. Helier, and outline, in light of appeals by the Royal Court, what proposals exist, if any, to increase the sentencing terms for offences involving people carrying weapons such as knives?

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

As the recent armed response incident is *sub-judice* no information or background on it can be given at this time. A Firearms Law amendment has, however, been prepared with regard to offensive weapons which creates new offences respectively of (1) carrying a pocket knife with a blade over 3 inches long or other article that has a blade or is sharply pointed in public, and (2) carrying such an article or an offensive weapon on school premises. Both of these offences would be punishable by means of a fine or up to 4 years imprisonment.

#### **2.5.1 Deputy P.V.F. Le Claire:**

How does this compare with proposals in the United Kingdom for sentencing for people under those circumstances? Is 4 years mirroring that type of an offence and is 4 years really going to be enough of a signal to stop this type of activity in our society, which leads to people not only having their lives ended by these traumatic incidents, but also altered for ever by having to serve in prison for these terms?

#### **Senator W. Kinnard:**

As to whether 4 years is in keeping with what is the sentence elsewhere, particularly in the United Kingdom, I think I would have to look to the Attorney General for that.

**Mr. W.J. Bailhache Q.C., H.M. Attorney General:**

The proposals for sentence are similar to those in the United Kingdom.

**2.5.2 Deputy P.V.F. Le Claire:**

I am comfortable with this, Sir, but just in light of the appeal by the Royal Court, which I do take seriously and I am sure Members do also, will the Minister undertake to keep under review the sentencing in the future so that these types of activities are kept under strict guidance and control?

**Senator W. Kinnard:**

Yes, Sir.

**2.5.3 The Deputy of St. Martin:**

Will the Minister confirm that the current or the present legislation is sufficient to enable the police officer to carry out their responsibilities in respect of any offensive weapon, not just knives? Is she satisfied the present legislation is sufficient or would she consider bringing new legislation to give police officers more assistance?

**Senator W. Kinnard:**

We are always looking to give assistance to our police officers wherever possible and we are bringing a number of amendments to the Firearms Law in respect of other aspects of firearms. Police do have a number of powers which they utilise appropriately, but we have felt it is important, given the concern about knives in general, that we have a specific explicit statutory piece of legislation that deals particularly with knives.

**The Deputy of St. Martin:**

Could I help the Minister? I am thinking offensive weapons such as carrying baseball bats or other instruments. Is she satisfied the current legislation gives the police officer sufficient powers?

**Senator W. Kinnard:**

Yes, I am, Sir.

**2.5.4 Deputy G.C.L. Baudains:**

Does the Minister not agree that it is more an issue of culture and public order rather than what one is carrying on one's person, Sir, because what I can see from what the Minister has just explained is that an awful number of law-abiding citizens are going to be made into criminals simply because they have got a pen knife in their pocket with a blade slightly longer than it should be with no intention of creating any antisocial behaviour with it?

**Senator W. Kinnard:**

No, the intention of the law is to ensure that law-abiding citizens are not caught by the legislation and every effort is made to ensure that is the case.

**2.6 Deputy R.G. Le Hérissier of the Minister for Planning and Environment regarding the criteria by which an owner, who has allegedly illegally converted a property, is recommended for prosecution:**

Would the Minister outline the criteria which determine whether or not an owner who has allegedly illegally converted a property is recommended for prosecution?

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

I shall answer this question as fully as possible but must stress at the outset the decisions as to whether to refer a case for prosecution are taken by officers under guidance determined by the

Attorney General. This guidance provides important background to my answer and this material has, therefore, been tabled for Members' information. Dealing with the planning enforcement aspects of the questions, alleged infractions are dealt with by officers under planning law and the relevant legal guidance that I have already referred to. Following appropriate investigations, including a site visit and the collation of necessary evidence, an officer will determine whether to serve an enforcement notice in response to an alleged planning infraction. Successful planning enforcement work often leads to the reinstatement of offending works by negotiation. Alternatively, where an appropriate planning solution can be found, the works may be regularised through a retrospective planning application. In such cases, it may be neither productive nor appropriate to seek prosecution. In some instances, it may be the case that the infraction is materially insignificant so, again, it may not be productive or an effective use of scarce resources to seek prosecution. However, if the infraction is significant or if an enforcement notice has not been complied with, we would caution the person responsible and refer papers to the Attorney General for prosecution. This is in line with Law Officers' guidance.

#### **2.6.1 Deputy R.G. Le Hérissier:**

Would the Minister explain whether the policy covers situations where a person may, indeed, have illegally or allegedly illegally converted a property, but in order to salvage that situation is prepared to develop another site? Would the Minister answer whether, indeed, such a situation exists and whether, indeed, there is negotiation carried out to allow a kind of swap?

#### **Senator F.E. Cohen:**

I need to be rather careful with this answer because I think that the Deputy is referring to a specific instance and, therefore, it would be inappropriate for me to give a detailed comment that may give an indication of how that particular situation was dealt with, but the general principle is that a practical approach is taken by the department bearing in mind the infraction, bearing in mind the likelihood of a successful prosecution, and bearing in mind the scarce resources within the department in relation to enforcement procedures.

#### **2.6.2 Deputy R.G. Le Hérissier:**

Could the Minister outline whether he consults with the Housing Department as there have been, as he well knows, a few recent high profile cases concerning the alleged illegal use or the illegal use of properties not being declared for their proper housing use for example? Would he indicate whether he consults with the Housing Department when such cases arise?

#### **Senator F.E. Cohen:**

I do not personally consult with the Housing Department, but I am aware that where it is appropriate there is officer consultation between the departments.

### **2.7 The Deputy of St. Martin of the Minister for Home Affairs regarding legislation to place children of 12 years and over in the Greenfields secure youth remand unit as a sentencing option:**

In his traditional Christmas address, the Magistrate expressed his disappointment in the lack of new legislation to give the court powers to place children from the age 12 and over in the Greenfields secure youth remand unit as a sentencing option. Will the Minister advise when such legislation will be presented to the States and whether there is any possibility of expediting its progress?

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

The Children's Executive has developed law drafting proposals to allow the secure detention of offenders under the age of 15 in the Greenfields secure unit, but these need to be considered carefully against the Island's obligations under the International Covenant on Civil and Political

Rights 1976. Discussions with the Ministry of Justice in the United Kingdom are taking place in that connection, and also Andrew Williamson has been asked to comment on the appropriate custodial settings for different ages of sentenced children below 18 years of age. It is intended that subject to these discussions the Children's Executive will bring forward a request for law drafting in order that these proposals can be implemented. It is difficult to provide a definitive time scale at this point for the Deputy, but everything possible is being done to try and implement the piece of legislation in accordance with their obligations. It is also worth noting that the Magistrate's address included praise for the way that the agencies were working together to deal with young offenders in the Island and some of the preventative work that is being carried out here. In addition, the Magistrate highlighted the very small number of regularly offending children who are aged under 15. This endorses the point that there is a real will to bring about positive change in some challenging young people and recent developments about which we can be proud. Indeed, since the law drafting proposals were prepared the Children's Law has been introduced which has allowed the secure detention of children at Greenfields via a civil rather than criminal route, and the criteria include children who commit a series of criminal offences as well as those who regularly abscond and represent a risk of harm to themselves or others.

### **2.7.1 The Deputy of St. Martin:**

I am rather puzzled because on page 201 of the 2008 Business Plan it says that the amendments conferring new sentencing powers for the court in respect of offenders aged 12 and over linked with the development of a new secure facilities at the Greenfields site and the law drafting instructions were awaited as at 15th May 2007. What I am rather puzzled about is why are we having law drafting prepared yet no decision been made whether, in actual fact, that law was necessary. Can the Minister explain please?

### **Senator W. Kinnard:**

The law drafting is just an initial brief. It is not formal instructions. They are not yet with the law draftsman. They are really put together on the back of a decision of this House, in fact I think brought by a proposition of the Deputy of St. Martin. Things have moved on, Members will be aware quite clearly, in terms of the heightened sensitivities around institutional care and children and this has led to the current hold-up on the matter.

### **2.7.2 The Deputy of St. Martin:**

Can I just press the Minister and ask, is it Home Affairs' intention to bring forward legislation to enable the courts to sentence people of the age of 12 and over to custodial sentence?

### **Senator W. Kinnard:**

It is a matter of a decision of the Children's Executive to bring that forward.

### **The Deputy of St. Martin:**

With respect, Sir, the Children's Executive is not a political body. Can I just ask, was it the intention of the political body to bring forward legislation?

### **Senator W. Kinnard:**

It will probably fall to me to bring that piece of legislation as a member of the Executive, but clearly the piece of legislation will be a matter of consultation and also agreement by the other joint members of the Executive.

### **2.7.3 The Deputy of St. Martin:**

Have we got a date when this information will come forward to the House?

### **Senator W. Kinnard:**

No. I have mentioned that it is difficult to give a precise definitive time scale for the Deputy for 2 reasons. One is we are awaiting the outcome of decisions with the Ministry of Justice on our international obligations, and also we are awaiting the deliberations of Andrew Williamson on the question that has been put to him about the appropriate settings for different ages of children in different custodial settings.

#### **2.7.4 Deputy R.G. Le Hérissier:**

In the light of all these discussions, would the Minister tell us what her personal view is of this situation and what particular stand she will be taking on the matter?

#### **Senator W. Kinnard:**

My personal view is well known, that my concern has been about the problem of young people below the age of 18 years of age having to be accommodated at La Moye which I consider to be entirely inappropriate. My personal view on that particular age group for which I am responsible is well known.

#### **2.7.5 Senator S. Syvret:**

Would the Minister give the Assembly an assurance that among these deliberations and examinations of what the best options may be, she will seek the advice and opinions of the Howard League for Penal Reform?

#### **Senator W. Kinnard:**

I am aware of the Howard League for Penal Reform's view on this matter and I am more than happy to review it again.

### **2.8 Connétable A.S. Crowcroft of St. Helier of the Minister for Planning and Environment regarding the proposed demolition of 12-14 Hilgrove Street:**

Would the Minister advise whether numbers 12 to 14 Hillgrove Street, St. Helier are considered significant in historic building terms and, if so, does he support the proposed demolition of them apart from the façades?

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

Firstly, I would like to reiterate my commitment to the protection of historic buildings. I have made it very clear in the past that if a developer wishes to destroy worthy historic buildings they have the wrong Planning Minister and the wrong Assistant Minister. So far as 12 to 14 Hillgrove Street goes, I can confirm that these are registered buildings of local interest. The B.L.I. (Building of Local Interest) status affords protection to the exterior of the building but does not protect the interiors. Listing as a Site of Special Interest (S.S.I.) would extend protection to the interior, but I am assured 12 to 14 Hillgrove Street do not warrant such status. Indeed, I should point out that the recent examination has raised questions as to the historic significance of number 12 Hillgrove Street as quantities of chicken wire and metal lath are present in the façade. I am advised on the listing of historical buildings by the Jersey Heritage Trust in consultation with the Ministerial Registration and Listing Advisory Group. I am afraid that I cannot comment further on the proposals for 12 to 14 Hillgrove Street as the matter is soon to be considered by the Planning Applications Panel. However, in general my view is very clear: worthy historic façades must be protected and I know from personal experience that suitable engineering solutions can generally be found to achieve this.

#### **2.8.1 Deputy P.V.F. Le Claire:**

I accept that the Minister is constrained by the fact there is a current application, but nevertheless is his personal view not that façade-ism on the whole does not do justice to important buildings, and

we have very few early 19th century buildings left in St. Helier, but that we should be doing more to protect both the interior as well as the exterior of those we have?

**Senator F.E. Cohen:**

Yes, I do. We have a problem with our listing system and that is that we have only 2 methods of listings. One is a Building of Local Interest which lists effectively the exterior of the building and the other is a Site of Special Interest, and the criteria for registration as a Site of Special Interest are very strict. What I am looking at at the moment is completely revising the system and having a new structure with a grading system and work is ongoing in that respect.

**2.8.2 Deputy P.V.F. Le Claire:**

It is interesting to hear the Minister once again outline his stand in respect of the preservation of historic buildings and it is one that is reassuring. In light of these questions that have been raised this morning what steps, if any, has he considered in respect of preserving the remnants of Wesley Grove Church?

**Senator F.E. Cohen:**

There have been a number of exchanges both this morning, last night and throughout yesterday in relation to the church building. I am in consultation with Marcus Binney who, as we all know, is a leading expert in this area. We are proposing to bring over an internationally-recognised surveyor to look at the structure and the owners themselves, as we speak, have a local surveyor on site. We will be doing everything we can to ensure that the remnants - the important remnants - of the structure are supported and are not allowed to fall down but, of course, public safety must play an important factor in this.

**2.9 Deputy K.C. Lewis of the Minister for Treasury and Resources regarding the possible return of the Hoppa Bus service:**

Will the Minister undertake to identify sufficient funding to enable Transport and Technical Services to restart the Hoppa Bus service when several car parking areas in St. Helier are lost?

**Senator T.A. Le Sueur (The Minister for Treasury and Resources):**

It is not within my remit to identify funding for this or any other service. There is a well established annual resource allocation process culminating in a States' business plan debate each September. We are just embarking upon such a process for the 2009 Business Plan and should the Transport and Technical Services Minister consider it a priority to restart the Hoppa Bus service, it is for that department to identify the matter as a funding pressure for the future. This would then be considered by the Council of Ministers, who may or may not put it forward for approval by the States in the Business Plan debate. Should they not do so, any States Member may, of course, bring an amendment as part of that debate.

**2.9.1 Deputy K.C. Lewis:**

In a recent question to the Minister for Transport and Technical Services, I believe he stated that he was prevented from starting a Hoppa Bus service again due to lack of funding. I hope I am quoting the Minister correctly. With so many of St. Helier car parks due for closure, a Hoppa Bus service would be a great asset to the people of Jersey and to shopkeepers alike. Does the Minister believe that this should be brought forward in the Business Plan for next year? Does the Minister not agree?

**Senator T.A. Le Sueur:**

I am not sure what the Minister of Transport and Technical Services said, but clearly there is no funding available in 2008 for a Hoppa Bus service. If it is felt that this service is now of a high

priority, then it is up to the Minister and up to this House to decide in next September's Business Plan whether to vote those funds. When those funds are voted, the Minister can then implement the service.

**2.10 Deputy J.A. Martin of the Minister for Social Security regarding contingency arrangements for households who fail to submit their application form for Income Support by 28th January 2008:**

Will the Minister outline what contingency arrangements exist, if any, for the payment of monies to households who do not submit their application form for income support by 28th January 2008?

**Senator P.F. Routier (The Minister for Social Security):**

Anyone who wants to claim income support does need to make an application otherwise my department will not be able to make a payment. The department is ready today and every working day to help anyone who wants to make their application. I thank the Deputy for this question because it gives me the opportunity to, yet again, publicise the need for people who wish to receive income support payments when their existing benefits finish in just under 2 weeks' time. In the answer to the written question this morning, Members will see that the vast bulk of applications have been received and the department have rated the majority of these claims. While mentioning the work the department have been carrying out, I would like to take the opportunity to thank all the staff who have been working so hard during the lead-up to the start date. Many were working on this last Saturday and Sunday to ensure that claimants are informed of their benefit rate and that the payment can be made on the due date. I would urge anyone who is still intending making a claim to do so as soon as possible if they need a prompt payment. The department has sent 2 reminder letters to existing benefit recipients and will be following-up with reminder phone calls during the next week or so. I would urge anyone who intends claiming income support when their existing benefit ceases to contact the department as soon as possible. The later they leave it the more difficult it will be for the department to rate their claim in time for the switchover.

**Deputy J.A. Martin:**

I would like an answer to the question, how long if somebody is not receiving income support will they have to wait to get money from the Minister's department? What plans have they made?

**Senator P.F. Routier:**

When somebody comes into the department their application will be dealt with as promptly as it can be. We cannot do it any sooner. As soon they come in, we will be able to deal with their application.

**2.10.1 Deputy G.P. Southern:**

To further illustrate, would an individual who comes into your department - as happens in many welfare departments - with no food in the cupboards, 2 kids to feed and no income, no money in the purse, will they be able to receive money as an emergency one-off payment?

**Senator P.F. Routier:**

Of course.

**2.10.2 Deputy R.G. Le Hérisier:**

In the light of the trend of applications that have arisen already or been submitted, would the Minister confirm whether or not his programme is likely to be on budget? Is he getting more applications or more requests for money than he thought or is he getting fewer for example?

**Senator P.F. Routier:**

It is probably a bit early to say the outcome of that yet. I will be in a far stronger position to give a true reflection of that towards the end of the month.

**2.11 The Connétable of St. Helier of the Minister for Transport and Technical Services regarding the lift in Minden Place car park:**

Would the Minister confirm that the lift in Minden Place car park is not in operation after 10.00 p.m. and, if so, explain the reasons for this decision?

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

All car park lifts are closed at 10.00 p.m. due to the high levels of vandalism they sustain if left operating over later periods. Minden Place car park is one of the car parks that has suffered most frequently from vandalism. This has often prevented access to a working lift for the majority of car park users during the daytime. Due to the age of the car park and its dated design, there is no possibility of installing an additional lift in the event that the existing one is damaged or requires maintenance. Therefore, the conditions at this car park are more critical than most to keep its lift working by doing whatever possible measures can be taken to prevent it being taken out of action for long periods of time.

**2.11.1 The Connétable of St. Helier:**

Would the Minister not consider a range of potential solutions for the vandalism problem that might enable people, particularly using the Arts Centre but also going to the nearby restaurants, who have mobility problems to have a lift available to them, for example, up and until 11.30 p.m.? Has he, for example, looked at C.C.T.V. (closed circuit television) or getting the assistance of the States and the Honorary Police in ensuring that vandalism is kept to a minimum and that this very valuable lift can be kept running longer?

**Deputy G.W.J. de Faye:**

I appreciate that the closure of the lifts will inconvenience a minority of the car park users during the evenings and those most likely to be affected though would not be the 83 per cent of the car park users who use that car park between 8.00 a.m. and 5.30 p.m., particularly parents with children in buggies as well as disabled badge holders. There are 6 disabled spaces that have access at all times via a ramp in the Minden Place car park itself and lift access is not required for those. There are also 4 disabled bays in Phillips Street and 3 in Peter Street should there be events on at the Arts Centre for example. I do not consider that additional measures are required.

**2.11.2 The Deputy of St. Martin:**

Will the Minister accept that there are a number of people who may not be that disabled but are certainly inconvenienced by having to climb stairs so, therefore, just do not work on those people or assume that those people who have a disabled badge are, in fact, disabled because there are a lot more than that. But could the Minister advise us how was this magic hour of 10.00 p.m. arrived at? We have heard him say about the issue of vandalism, but how was it arranged? Have we got any survey carried out to ensure that 10.00 p.m. is that magic hour because it would seem to me that people can commit vandalism at any hour of the day?

**Deputy G.W.J. de Faye:**

The time 10.00 p.m. was derived on the basis of considerable experience of my department.

**2.11.3 Deputy J.B. Fox of St. Helier:**

I would like to ask the Minister if it is not time to review the design against crime award with which all these major States public car parks receive gold awards? This included appropriate lighting, closed circuit television, *et cetera*, and originally when it was designed and when it was



given the awards there was appropriate coverage preventing the necessity of closing-down lifts, *et cetera*. So I would ask the Minister if he would be gracious enough to review the current security and come back to the House as and when appropriate, especially if finances are required to update that which has been up for some considerable time.

**Deputy G.W.J. de Faye:**

Whatever awards the car parks may have won in the past, the clear situation now is that most of them are getting past their sell-by date. Minden Place is a particular example where it is now clear that its design is no longer appropriate. Frankly, the sooner we can knock it down the better because it simply is clearly creating problems. I am happy to review the situation as Deputy Fox has suggested, but I would say to those who have put forward ideas of other supervisory options such as greater levels of honorary policing and so forth that those are really not areas under my remit and I would suggest that the original questioner may consider it himself.

**2.11.4 Deputy D.W. Mezbourian of St. Lawrence:**

I was pleased to see the question raised this morning by the Constable of St. Helier because this is an issue that has been addressed to me on a number of occasions, but mainly by people who have had problems accessing their vehicle after they have attended shows at the Arts Centre. As a matter of interest, I wonder whether the Minister would be able to advise us whether there has been any discussion between his department and the Department for Education, Sport and Culture in trying to resolve this issue.

**Deputy G.W.J. de Faye:**

No, there has been no discussion between my department and Education, Sport and Culture on this matter although there has been some fairly direct correspondence with users of the Arts Centre. I am familiar with the issue there. I have, regretfully, had to advise Jersey Arts Centre that we will continue to close the lift at 10.00 p.m. and they should plan their performances accordingly.

**2.11.5 Deputy K.C. Lewis:**

I do not think that is quite appropriate, Sir. As the Minister is aware I too have had correspondence with the general public and with the Minister on this very subject. I fully appreciate that in the past there has been vandalism but we must not bow down to the vandal. This is a public facility and must be opened for the use of the public. Does the Minister not agree?

**Deputy G.W.J. de Faye:**

No, the Minister does not agree that a facility should be open necessarily 24 hours a day. I have made it quite clear that the bulk of the usage of this car park at Minden Place occurs between 8.00 a.m. in the morning and 5.30 p.m. in the evening; 83 per cent of the use occurs at that time so, therefore, we are looking at during the evening, and effectively the rest of the time period, 17 per cent only of the usage of that car park. It is not appropriate to simply construct policy for the operation of a car park such as Minden car park around one or 2 operations that happen to be occurring during the evening which is a time of very low usage. It is entirely important to keep this car park open during the daytime for its main use. I have already indicated the department has very considerable background statistics on when the vandalism takes place. It takes place after 10.00 p.m. at night and that is why we closed the lift.

**2.11.6 Deputy C.F. Labey of Grouville:**

I have had correspondence with the Minister in my role with responsibility for culture a couple of years ago whereby I asked his department if they would consider keeping this lift open longer. I really do think for 17 per cent of the users of this car park and theatre goers and cinema goers, they really ought to think about it, otherwise we will just bow down, as Deputy Lewis said, to the vandals in our society.

**The Deputy Bailiff:**

What is your question, Deputy?

**The Deputy of Grouville:**

Sorry. [Laughter] Would he please consider keeping it open until a more reasonable time of, say, midnight?

**Deputy G.W.J. de Faye:**

If the Deputy of Grouville would consider dipping into her doubtless limitless resources under her Culture remit and would pay for the cost of a security guard to stand at that lift until whatever time she deems that users of the Art Centre will have left that building I will happily look at that particular course. I will discuss that at length, should she wish.

**2.11.7 Deputy J.A. Martin:**

This is very concerning that people cannot access this car park. On the wider issue, the Minister seems not to be able to wait to knock this car park down. Could he inform the House when this will happen and where these much needed car parking spaces will be replaced?

**Deputy G.W.J. de Faye:**

I would be delighted to, Sir, but I regret I do not have any dates available.

**2.11.8 Deputy D.W. Mezbourian:**

The Minister is throwing statistics at us, but would he be so kind as to advise us how many people 83 per cent represent and how many people 17 per cent represent?

**Deputy G.W.J. de Faye:**

The reason those things have to be put into percentages is simply because they cannot be put into real numbers because, obviously, the number of users of the car park varies day to day. I really do not see the point in putting numbers to the figures. It is quite clear 83 per cent of the usage is from 8.00 a.m. until 5.30p.m. and the remainder of the usage is obviously much less use.

**2.11.9 Deputy K.C. Lewis:**

There was a recent error, Sir, on behalf of Transport and Technical Services - really a minor error - when the clocks went back somebody neglected to alter the time switch on the lift at Minden Place, so it was open for an extra hour for I think about 8 or 9 days. To my knowledge the lifts are still there, they have not been destroyed, wrecked or otherwise altered. Will the Minister not reconsider?

**Deputy G.W.J. de Faye:**

I am happy to report that during a brief period of mechanical failure when the lift did indeed open later in the evening we were fortunate not to suffer any vandalism. I can assure Members that all sorts of quite disgusting things can take place in that lift late at night involving everything from drug use to urinary and defecatory behaviour and that is before we get into mechanical damage. This closure of lifts in all car parks at 10.00 p.m. is entirely sensible and I think one or 2 Members are really wringing this out a lot longer than it needs to go.

**2.11.10 The Connétable of St. Helier:**

The Minister has attempted to pass the buck - the financial buck at least - both on to E.S.C. (Education, Sport and Culture) and on to the Honorary Police. Would he perhaps tell the Assembly how much money he currently has in the car park trading fund which exists to provide these kinds of services?

**Deputy G.W.J. de Faye:**

The Constable of St. Helier well knows that the car park trading fund does not exist to provide security services for late operation of lifts and I have no further comment.

**2.12 Deputy R.G. Le Hérissier of the Minister for Housing regarding the criteria used for prosecution where category (a) to (h) housing has been taken out of the market without permission:**

Under what criteria does the Housing Minister decide to recommend cases for prosecution where category (a) to (h) housing has been taken out of the market without permission?

**Senator T.J. Le Main (The Minister for Housing):**

Decisions as to whether to refer the case for prosecution are taken by officers under the relevant Law Officers' guidelines.

**2.12.1 Deputy R.G. Le Hérissier:**

Would the Minister indicate, Sir, how serious a case has to be when prosecution is considered?

**Senator T.J. Le Main:**

The general policy objective of the housing laws is to prevent further aggravation of the housing stock. The law defines what transactions are subject to the law and entitles a Minister to attach conditions to consents granted relating to the use of the land and persons by whom the land may be occupied. As a general principle we will consider permitting accommodation previously reserved for occupation of locally qualified individuals to change to commercial property, including the lodging house, subject to planning approval in exchange for the delivery of an equivalent number of (a) to (h) units of accommodation on an alternative existing commercial site under the same ownership and which have not already been identified for residential development. Such an exchange would have to achieve the objective of preventing further aggravation of the housing stock and, indeed, an enhancement of the housing stock available for locally qualified individuals. May I also say, Sir, that over a period of the 7 or 8 years that I have been heading the Housing Department, the Housing Law and loans side of the department has had numerous, numerous commendations from many people in the private sector of the way and manner we treat individuals, companies and businesses and I am very proud of the work they do and the commonsense approach.

**2.12.2 Deputy R.G. Le Hérissier:**

Would the Minister acknowledge, therefore, that if a person does not have a property which can be developed to make up for the former so-called illegal property that their chances of prosecution are much higher?

**Senator T.J. Le Main:**

I do not get involved in the day-to-day running of the department. **[Laughter]** Sir, the officers and the department work under strict guidelines issued by the Attorney General and his department. I do not get involved in the day-to-day running, so I cannot answer that question in any shape or form.

**2.12.3 Deputy G.P. Southern:**

Can the Minister clarify for me, and I think for others, whether he referred to prosecutions taken out under the Law Officers' articles and would he further, if that is what he did say, explain to Members what those are?

**Senator T.J. Le Main:**

I have not understood the question. If the Deputy could speak a little slower so that I can try to understand what he is getting at?

**Deputy G.P. Southern:**

Certainly. I think I heard the Minister in his first answer say that prosecutions were taken out under Law Officers' articles. If he did say that, could he confirm it and could he then explain to Members what these Law Officers' articles are?

**Senator T.J. Le Main:**

Those guidelines have been issued and tabled this morning in the last 15 or 20 minutes. They are guidelines that have been issued to my officers, and I presume to planning officers in other departments, on, as I say, guidelines for the officers in these cases.

**2.12.4 The Deputy of St. Martin:**

The Minister has moved on about the investigations, *et cetera*, about the loan managers. Can he advise Members who now is responsible for the investigation of potential unlawful occupancy? Is it his department or Housing or is it now Property Holdings?

**Senator T.J. Le Main:**

It is the Population Office, and the Housing Minister currently administers the Housing Law with the Population Office. It is the Population Office and their officers that investigate the housing laws.

**2.12.5 Deputy G.P. Southern:**

If I may take it on to a different area of prosecution, but a legal matter nonetheless; recently the Minister has delegated the authority for evictions to his Chief Officer. Could he explain to Members why he feels this was justified?

**The Deputy Bailiff:**

I am sorry, Deputy, I think that is a bridge too far. There is not much connection with...

**2.12.6 Deputy R.G. Le Hérisier:**

In the light of his previous comments, could the Minister confirm that it is now policy that if one is running a property judged to be illegally occupied that one can get retroactive permission to have done so? Secondly, if one can offer up a development site, this acts as a form of forgiveness for the first act?

**Senator T.J. Le Main:**

There is no change of policy. Commonsense has been applied by the Housing Law Department for the last 20 years. The policies have to be applied in a commonsensical way, as I have outlined, which would be beneficial for the maintaining and the improving of the housing stock in all areas, whether it would be qualified or unqualified. We have a duty under the Housing Law to provide accommodation to make sure there is suitable accommodation for all residents of this Island. Commonsense has been the prime objective of my officers. I have to say that I will be very sorry to be losing one of my senior officers - Peter Connew - who is retiring very soon, who has been an absolute star in this department.

**2.12.7 Deputy R.G. Le Hérisier:**

While we all give our best wishes to Mr. Connew, I wondered, Sir, if I could continue just finally? Sir, if the Minister has delegated these matters to staff, as in administrative matters, why has his department been so keen to publicise recent court cases where people were prosecuted for allowing the illegal occupation or the wrongful occupation of dwellings?

**Senator T.J. Le Main:**

I sent a little note back to Deputy Le Hérissier only recently and I asked him that under his New Year's resolutions he should stop asking me silly questions. [Laughter] He has certainly not taken the advice because I can assure the Deputy that the Housing Department do not go out and publicly advertise people that have been prosecuted or otherwise. The issue about prosecution is that the department, when they have a case, refer it to the Attorney General. The Attorney General then takes over the issue of that case and whatever happens after. If it eventually goes for whatever reason to the courts then that is public knowledge and the media pick up those cases. The Housing Department do not go out and publicly announce or get involved with these issues.

**2.13 Deputy P.V.F. Le Claire of the Minister for Transport and Technical Services regarding the release of the 'Hazard Review Report 2':**

Given the information for the reassurance and piece of mind for residents as the conclusion of the Buncefield Report was recognised as essential in the United Kingdom, will the Hazard Review Report 2 into the domino effect risk assessment be released in Jersey, and if so, when?

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

The Hazard Review Group signed off the Phase 2 report - Land Use Planning Risk Assessment for the La Collette Fuel Depot and Jersey Gas Facility - on Friday, 14th December 2007. This report is due to be presented to the Council of Ministers on 24th January 2008 and subject to approval will be made public immediately after. The report will then be considered by the Planning and Environment Minister with the recommendation it is approved as a supplementary planning guidance note for any future developments at La Collette and for it to be incorporated into the Island Plan Review. The report is also being disseminated to the Environment Scrutiny Panel on a confidential basis. I thank Deputy Le Claire for respecting that confidentiality and it may be he feels in a position that he cannot tell me that he has a copy, but if he has not got a copy I can tell him that he has got a copy. [Laughter]

**2.13.1 Deputy P.V.F. Le Claire:**

I do not know if I have got a copy, Sir. At least I am not telling. I am respecting the confidence. However, if I had a copy and if I had have read it I might have still put the question I put this morning. What I was trying to ask and determine was that if I did have a copy that he is questioning me about - the second review report - is that copy the copy that relates to the domino effect and would that copy, when circulated, take into account the recommendations in also the berthing of vessels and the distances in respect of the locations of those berthed vessels when taking into the account the assumptions in that report?

**Deputy G.W.J. de Faye:**

In short, Sir, I believe it will. To give a slightly extended reply, the Report Number 2 does deal with aspects relating to Jersey Gas as well as the fuel depot. It does also indicate the variations in the hazard distances that will ultimately be made public, obviously, roughly by the end of the month.

**2.14 Deputy G.P. Southern of the Chief Minister regarding the use of information provided by the "Imagine Jersey" survey to resolve immigration issues:**

Will the Chief Minister explain how the Imagine Jersey survey provides sufficient information on potential impacts of non-mutually exclusive alternatives to allow any member of the public to make a reasoned preference between them, particularly when it comes to the issue of population growth and housing in the last couple of pages and gives limited alternatives to resolve immigration issues?

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

The Deputy has chosen to focus on only question 7 in the survey. Questions 5 and 6 clearly spell out all the alternatives facing us in the light of the ageing population of which population growth is but one of a number of options. The other options clearly spelt out in the survey are growing the economy, working longer, or paying more in tax or social security. The Deputy will also know that as part of the consultation process a great deal of information covering all these possible solutions has been published and was available to those who wish to complete the survey. I believe that the survey represents a constructive initial step in the consultation process, which in the context of changes to the makeup of the Island's population, which are inescapable, will lead to the development of policies to protect the future prosperity and quality of life of the people of Jersey.

**2.14.1 Deputy G.P. Southern:**

Does the Chief Minister not accept that there are very limited alternatives proposed where it considers the alternative of paying extra in taxation to cover the issues concerned and that a great deal of emphasis is placed on the issue of growing the population in way to one extent or another?

**Senator F.H. Walker:**

No, Sir. All the options, as I have already said, are clearly spelt out. Of course it is for any member of the public who wishes or who has responded to the survey to use the information provided and to clearly indicate their wishes. That is what the survey is all about. It is to enable the public to clearly state what their wishes are. The public have done that in considerable numbers.

**2.14.2 Deputy G.P. Southern:**

Does the Minister not accept that by building to a final set of questions as to how we will live in the future - which pose only the proposition that we will have to build more houses, where would you like them to be built? - the survey is badly designed and is leading to a biased conclusion?

**Senator F.H. Walker:**

Absolutely not. Again, the Deputy has chosen - no doubt for his own reasons - to totally ignore the questions raised in 5 and 6 of the survey which, for example, under 6 asks the question: "Please rank these 4 options in your order of preference: growing the economy, working longer, the resident population pays more through taxes or social security, or should we allow more people to come and live and work in Jersey." If the Deputy has any other alternatives I would be very pleased to hear from him in that respect.

**2.14.3 The Deputy of St. John:**

Does the Chief Minister agree that it is an important debate that is vital for the success for planning for the future? The public needs to understand the consequences of no growth as well as the consequences of controlled growth. Does the Minister agree?

**Senator F.H. Walker:**

Absolutely, Sir. That is what the consultation process is all about; it is to have an informed debate. Of course there is the Imagine Jersey event on Saturday which I urge all Members to attend. I think, at the moment, attendance by Members is not looking that promising. I hope that as many Members as possible will come along on Saturday because it is vital that we and the public do have an informed debate on all the options and that we fully understand the consequences of each of those options to the future of us all.

**2.14.4 Deputy C.J. Scott Warren of St. Saviour:**

Does the Chief Minister agree that this issue, being under discussion in Imagine 2035, is of paramount importance and that a decision should not be rushed?

**Senator F.H. Walker:**

Absolutely. It is in that spirit that I have agreed with the President of the Chairmen's Committee that the consultation process will be extended. I absolutely agree it should not be rushed. At the same time it cannot be ducked and we have to face up to the issue, and we will sooner or later have to come forward with proposals and this House will have to take what will no doubt be a difficult or a number of difficult decisions.

**2.14.5 Deputy J.A. Martin:**

I was looking at the 4 questions. I too have real concern, Sir, with the, I would say, leading nature of the Imagine Jersey 2035. The 4 questions the Chief Minister has just mentioned do have a small explanation against the first 3, except for the last one, allowing more people to come and live and work in Jersey. It is not a secret and we have all been presented with the different scenarios, between 80,000 up to 130,000, and given how much more we will need, how much more public services? This is missing from the public consultation. That is why I think myself and Deputy Southern, Sir, have a problem. I am pleased to hear that the Chief Minister is going to extend the consultation. Also, could he inform me how many members of the public have decided to attend on Saturday? I know there is a limit of 200, but as far as I think, we have not even captured the imagination and the public do not fully understand what we are asking.

**Senator F.H. Walker:**

I will take that last bit first. I believe that we will be very close, if not up to, to the 200 limit that we have had to put on the conference, so I do not think the Deputy's observation that the public are not interested holds any water. I think that is further borne out by the fact that we have had something in the region of 1,300 responses to the survey. Again, I do not think the Deputy's observation is well-founded. Sir, I cannot agree with the Deputy, I am afraid. I do believe all the options have been spelt out. They need to continue to be spelt out, as do the consequences of all or any of them, and that is absolutely our intention. Can I confirm, because there seems to be a suggestion that some sort of decision or semi-decision has already been made here, that that is absolutely, positively not the case. No decisions have been reached. No conclusions have been arrived at. The issue is open for genuine consultation and I very much hope that we will indeed have a full and very fruitful day on Saturday, which is another important step - but not the concluding step - in the whole consultation process. This is, as Deputy Scott Warren said, a hugely important issue, the public need to be listened to, but we all need to be aware of the consequences of whatever decisions are arrived at.

**2.14.6 Deputy G.P. Southern:**

Returning at last to questions 5 and 6, does the Minister not accept that by including options that are not mutually exclusive the survey breaches one of the fundamental laws of survey design and is, in fact, not as useful as it ought to be? Does he not consider that money spent on his new advisers on this survey was money wasted?

**Senator F.H. Walker:**

No, Sir.

**2.15 Senator B.E. Shenton of the Minister for Planning and Environment regarding fees paid by the Boathouse restaurant as part of a planning agreement:**

Would the Minister confirm that as part of the planning process the Boathouse Restaurant was required to pay the sum of £20,000 to the Planning Department to fund community improvements in the St. Aubin's area and if so, will he explain how this money has been used and advise Members whether such cash payments to his department are now commonplace?

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

The Boathouse was granted initial planning permission by the former Planning and Environment Committee in 2004. Subsequent applications relating to the balcony and terrace were received in 2005 and as these works were to significantly increase the number of covers in the restaurant the former Committee decided to seek contribution towards improvements and parking facilities through a planning obligation agreement. The agreed sum was £20,000. A cheque for £20,000 dated May 2006 was forwarded by the Law Officers to the Treasury where it is held in escrow pending the signing of the planning obligation agreement. Once signed the funds will be made available to Transport and Technical Services who will determine the best parking improvement solution in consultation with the Parish and Harbours. This mechanism for delivering public benefit through planning obligation agreements is a normal and accepted part of the planning process. Provision was made for it under the Planning and Building (Jersey) Law 2002 and it is common practice in other jurisdictions including the U.K. The law makes provision for financial contributions. For example, the Checkers redevelopment of Georgetown to increase the size of the store is subject to a possible contribution of up to £250,000 towards road improvements which would otherwise have to be funded by the public. £500,000 was negotiated for road... **[Interruption]** Furthermore, £500,000 was negotiated for road improvements through a planning obligation agreement on a housing scheme. All sums received are held in escrow by Treasury. They will usually be repaid, if not expended, within an agreed timeframe.

**2.15.1 Senator B.E. Shenton:**

Can the Minister confirm that the St. Aubin's residents will benefit from the interest on the money as it has been held for quite a long time?

**Senator F.E. Cohen:**

I am not authorised to answer on behalf of the Treasury, but I am sure that the Treasury Minister would look favourably on applying the interest to the benefit of the parishioners in terms of the parking improvements.

**2.15.2 Senator J.L. Perchard:**

Does the Minister agree that money obtained by his department from developers by means of a planning obligation agreement or, in fact, a Percentage for Art contribution, or any other levy on developers other than the usual application charges, are public funds once levied and received? Does he agree that all public funds should be managed in an open and transparent manner? If he, like me, thinks they most definitely should, how does he intend to regularly inform the people of the Island of the use of these funds?

**Senator F.E. Cohen:**

I think that the Senator is rather conflicted in this matter as he has a current planning application under consideration at the present time which may involve both the planning obligation agreement negotiation and a Percentage for Art negotiation. Therefore, I think it probably inappropriate that I answer the question further.

**2.15.3 Deputy J.J. Huet of St. Helier:**

Could I ask, I heard the Minister say that developers would be asked for a planning improvement that would go to either the roads or something else or to art, but I am also hearing rumours that the word "developer" seems to be getting misused. I would like to be reassured that this is private developers and not what I am hearing if we wanted to put up a ward, a hospital, a waste energy plant, that they are not expecting a tax to come from those because that is the taxpayer's money. I believe that on a waste energy plant, planning officers are asking for something like £1 million to go to art. That is taxpayer's money; that is not a private developer's money. I want to be really reassured on the floor of this Assembly that there is no intention of taking £1 million from the tax payer to pay for an art gallery or whatever.



**Senator F.E. Cohen:**

I can quite happily confirm that there is no intention of taking any sum from the energy from waste plant for the purpose you have suggested. The concept of planning obligation agreements is to be reasonable. They are intended to effectively compensate the public for inconvenience and to mitigate for the effects of development. For example, if you build a shop it may be that it would be reasonable to expect that that would increase the quantum of traffic in the area and therefore the developer should be expected to compensate the public so it does not fall to the public purse to pay for the road works necessary. The intention is not to apply it to works for the benefit of the public.

**2.15.4 The Deputy of St. John:**

The Minister may require some notice for this question, but I will ask it anyway. Could the Minister advise the House of any other planning obligation agreements since 2002 and assure the House that true benefit to the public has been achieved? Perhaps he could publish something, which I think is what Senator Perchard was getting at?

**Senator F.E. Cohen:**

The concept of planning obligation agreements, which the public are already benefiting significantly, was the brain child of my predecessor, Senator Ozouf, and I think we should all be very grateful to him for introducing this mechanism into the planning system. The system is transparent, it is open, and I am perfectly happy to commit to producing a published list of planning obligation agreements and, for example, Percentage for Art agreements if that would be helpful to Members of the House. It is not supposed to be a secret, but clearly during the negotiation process we cannot be entirely open about our expectation of what has been offered. Once they are agreed, yes, they can be published.

**2.15.5 Senator J.L. Perchard:**

I shall not respond to the Minister's accusation that I was conflicted. I am very disappointed to hear him say that. I will write to Members to explain my position; I am far from conflicted. The Minister said that the planning obligation agreements are subject to negotiation with the developers. He has also, just a moment ago, said that an application can be the subject of a planning obligation agreement without a developer even knowing. So which is it? Is it a negotiation or is it a levy, a tax?

**Senator F.E. Cohen:**

I am not prepared to answer further questions from the Senator in relation to this matter. He is quite clearly conflicted. He has a current planning application in the planning process. It is a contentious application. It will probably be subject to a Percentage for Art negotiation and it may well be subject to a planning obligation agreement in other areas. I really think it is inappropriate to continue questioning me on this.

**2.15.6 The Connétable of St. Brelade:**

I understood the Minister to indicate the planning obligation agreement on the Boathouse had yet to be signed-off? The premises have, to my knowledge, been operating for some almost 2 years now. Could he give any Members any indication as to when this signing-off may take place?

**Senator F.E. Cohen:**

I have already asked the department to do what they can to encourage the signing-off of the planning obligation agreement. The problem is that the impetus to sign it off has probably rather fallen away because from the developer's perspective they have paid over their money to Treasury and it will now be up to their lawyers to complete their side of the work. I will be doing what I can to get it signed as soon as possible and I would certainly hope that it would be signed within a few months.

**2.15.7 Senator F.H. Walker:**

I am concerned about the way this question is developing. Will the Minister confirm that the planning obligations and the Percentage for Art are charges that are levied, that are then re-invested in the infrastructure of the Island entirely to the benefit of the people of the Island? That was my intention. That is how I believe they are being implemented and I would welcome the Minister's confirmation.

**Senator F.E. Cohen:**

Absolutely, Sir, I can confirm exactly as the Chief Minister has suggested.

**2.16 Deputy G.P. Southern of the Minister for Treasury and Resources regarding the difference between "exempt" and "zero-rated" supplies under G.S.T:**

Will the Minister define exactly what the difference is between "exempt" and "zero-rated" supplies under G.S.T. (Goods and Services Tax), outline how they will be treated as they pass through the supply chain by registered and non-registered companies, with special reference to the pharmacy trade and assure Members that there will be no costs passed on to the consumer from "exempt" supplies?

**Senator T.A. Le Sueur (The Minister for Treasury and Resources):**

We have debated the range of exclusions in the States at least 4 times. In my comments I have tried to explain the difference between exemption and zero-rating. It has also been covered in various presentations to States Members and in the public information material, including our original G.S.T. consultation document. I shall try, nonetheless, to explain the difference once again as simply as possible. G.S.T. is not charged on either zero-rated or exempt supplies. The difference between them is that any G.S.T. incurred by a G.S.T. registered person on business expenses involved in making zero-rated supplies may be reclaimed because they are classed as a taxable supply, admittedly at a zero rate. The G.S.T. incurred in the course of making exempt supplies may not be reclaimed. Zero-rating gives complete relief from G.S.T. but exemption only partial relief. Businesses that only make exempt supplies cannot be registered for G.S.T. because they do not have a taxable turnover. If they make a mixture of exempt supplies and taxable supplies - that is supplies that are taxed at the standard rate or the zero-rate - they may claim the G.S.T. on their business expenses - their input tax - in proportion to their sales of taxable and exempt supplies. I can assure the Deputy that in the case of the pharmacy trade there will be no costs passed on to the final consumer for exempt supplies because their supplies are fully taxable, either at the zero-rate in the case of medicines on prescription or at the standard rate in respect of other goods.

**2.16.1 Deputy G.P. Southern:**

I do apologise for asking the Minister yet again to explain this sort of detail. The question has come to me from a pharmacist out there who is confused, so the message is not quite getting across yet. Is the reality for pharmacists then that medical supplies sold on prescription will be zero-rated and bear no cost, but all other forms of supply non-prescription will be taxable and that there will be a quite large demand on the pharmacist in order to get his sums right and that there will be costs passed on to the public as a result of medicines being zero-rated only on prescription?

**Senator T.A. Le Sueur:**

No, Sir, I think the Deputy is confusing himself. All the costs on the pharmacist's input will be offsetable because all his sales are either sold at the zero rate or at the standard rate. All the input costs can be matched by the output costs. It is only when there is a mixture of taxable and exempt supplies that there is the confusion or the situation that the Deputy talks about. In this case there is no such confusion.

**2.16.2 Deputy G.P. Southern:**

A final point of clarity for one and all, and perhaps for ever: could the Minister again explain to Members the difference between the treatment of goods by a company which is operating below the £300,000 threshold and that which is above and is registered?

**Senator T.A. Le Sueur:**

A company that has a taxable turnover below £300,000 and is not registered for G.S.T. cannot charge G.S.T. on its sales, but equally it cannot recover any G.S.T. on its inputs. If its turnover is below £300,000 and if it elects to register for G.S.T. then it can offset its input taxes against the taxes on its sales. I hope that clarifies the situation, Deputy, and the Members who are similarly confused.

**2.16.3 Deputy G.P. Southern:**

Finally, if I may, Sir, the net result is that it is to a company's advantage to register for G.S.T. and thereby if that happens with very many companies that will place a severe stress on the department in order to get everybody registered and to deal with that volume of companies?

**Senator T.A. Le Sueur:**

It will depend from business to business whether or not they elect to register for G.S.T. assuming they have a turnover below £300,000. If their turnover is below £300,000 for taxable supplies and they wish to register, firstly they will have to demonstrate that they have the capacity to maintain accounting records. Secondly, they will be faced with the additional administrative burden of keeping those records, separating their supplies if needs be, and reporting them to the tax office. Whether they feel the overheads of that are beneficial in relation to the G.S.T. they may be able to recover will vary from business to business. I do not think one can make a blanket suggestion that all companies will register or that none will register. It will depend from company to company.

**2.16.4 Deputy R.G. Le Hérisier:**

Although Members of the House may be crystal clear about G.S.T., I wonder, Sir, if the Minister could confirm the kind of feedback he is getting from the retail sector and whether he feels people are fully prepared or whether the kind of confusion rightly manifested in Deputy Southern's mind is in fact reflected in the retail sector?

**Senator T.A. Le Sueur:**

I think, again, it will vary from business to business, but I agree there is still a large degree of uncertainty among the business community and the public about G.S.T. Part of the activities over the next few months will be to try to remedy that. In conclusion, Sir, maybe to avoid any further supplementary questions, can I suggest to the Deputy that the helpdesk and the G.S.T. Director would be quite happy to try to explain things still further and so would I, but perhaps it would be easier outside this meeting.

**2.17 Deputy J.A. Martin of the Chief Minister regarding the extension of the consultation on Imagine Jersey 2035:**

On 4th December 2007 the Chief Minister stated that it would not be a problem to extend the consultation on Imagine Jersey 2035, but he has subsequently informed the Scrutiny Panel that, and I quote from an email, Sir: "There is a real problem with extending which I was not aware of." Will the Chief Minister explain why this situation has changed?

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

I am slightly surprised that the Deputy is asking this question because my understanding is that the issue has been resolved to the satisfaction of Scrutiny. In December the Council of Ministers

considered a formal request from the President of the Chairmen's Committee to extend the deadline until the beginning of April to enable Panels to: "Give more serious consideration to the issue." While the Council of Ministers agreed that it wished to produce a report on the consultation process by the end of February as planned, it recognised the need to build the insufficient opportunity for Scrutiny to contribute constructively. It therefore agreed to extend the overall consultation process until the end of March to allow Scrutiny Panels and other interested parties more time. This decision was communicated to the President of the Chairmen's Committee on 18th December who expressed her contentment with it.

**2.17.1 Deputy J.A. Martin:**

I would just like to thank the Minister for the extension. I am just wondering that if at the time he had had sight of Corporate Management Board's minutes he would have known of the real problem on the day when he promised he could deliver the extension in the first place?

**The Deputy Bailiff:**

We seem to have come full circle, I think, in these type of...

**2.17.2 Deputy S.C. Ferguson of St. Brelade:**

I would just like the Chief Minister to confirm that he did send an email correspondence, which I did have circulated to the rest of the members of the Chairmen's Committee, and there were no screams, so we assumed that the extension was in order. I would like him just to confirm that he did confirm the end of March to allow Scrutiny more time.

**Senator F.H. Walker:**

Yes, I absolutely do confirm that point.

**The Deputy Bailiff:**

The concludes all questions on notice.

**3. Questions to Ministers Without Notice - The Minister for Treasury and Resources**

**3.1 Deputy G.P. Southern:**

In the light of the Treasury and Resources Minister's previous answer earlier today that he was now caught in 2 minds over the sale of Jersey Telecom, is he aware of the opinion expressed by the Chief Executive of the J.C.R.A (Jersey Competition Regulatory Authority) that whatever the merits of the structural separation of the company that the issue of structural separation needs to be decided before sale takes place because following the sale it would be nearly impossible. It would be very, very difficult, to structurally separate, if that was decided to be the right way to go after a sale, and that this decision needs to be discussed and debated and decided upon well before we decide to sell Jersey Telecom.

**Senator T.A. Le Sueur (The Minister for Treasury and Resources):**

Yes, Sir, I am aware of the opinions of the Chief Executive of the J.C.R.A. I do not necessarily share them, but I think that while the issue needs to be discussed before the sale takes place, if the Deputy is implying that structural separation needs to be in place before the sale takes place I would disagree with him.

**3.1.1 Deputy G.P. Southern:**

No, I am not suggesting the pros and cons of either way; I do not have an opinion on that. The evidence is that we need to decide what we are doing and to get the powers in place before we sell because it will be very difficult afterwards.

**Senator T.A. Le Sueur:**

I am not sure if it would be any more difficult afterwards than it is now, Sir. Structural separation would be a very difficult issue. Certainly it needs to be discussed and it is one of the matters that I shall be discussing with my colleague, the Minister for Economic Development, over the next few days.

**3.1.2 Deputy G.P. Southern:**

Does the Minister accept that on competition and regulation issues he would be best advised to listen to his Chief Executive adviser on that basis?

**Senator T.A. Le Sueur:**

I am pleased to listen to advice from all sources, particularly when that advice is based on well-founded information.

**3.2 Deputy R.G. Le Hérissier:**

Does the Minister consider that it has almost reached a situation that it would be counter-productive if the number portability issue were resolved before this discussion were to be taken? Were it to be resolved it could radically undermine the case for J.T. (Jersey Telecom)?

**Senator T.A. Le Sueur:**

No, Sir. I think the issue of mobile number portability, while is quite important, has relatively little importance in the overall situation of the sale of Jersey Telecom. It is an issue that needs to be resolved in any case and has been resolved, as far as I am concerned, by mutual agreement with the J.C.R.A.

**3.2.1 Deputy R.G. Le Hérissier:**

Could the Minister outline how he believes it has been resolved?

**Senator T.A. Le Sueur:**

An agreement has been reached between the Jersey Telecom's company and the Jersey Competition Regulatory Authority that mobile number portability will be instituted during the year 2009 and I believe certainly before the end of 2009.

**3.3 Deputy R.C. Duhamel of St. Saviour:**

Members will be aware that they had a copy of R.4/2008, a report on land transactions under Standing Order 168(3) outlining the Minister's intention to rent Flat 2 Claremont, Bagatelle Road to a person. I am told by next-door neighbours that this particular property has remained empty for a substantial period of time and there are 2 premises within the single house. I would like to ask the Minister whether or not he is satisfied with the running of the Property Holdings Department in relation to the leasing of States' properties? It would appear on the surface, Sir, that not enough is being done in order to ensure that properties do not remain unoccupied for substantial periods of time.

**Senator T.A. Le Sueur:**

Yes, Sir, I am perfectly satisfied with the abilities of the Property Holdings Department to deal with these sorts of properties. If it is likely that a property has no potential for future letting, as was the case with a building near J.C.G. (Jersey College for Girls) some time ago, then it is generally put up for sale or otherwise disposed of. In this case there may well be instances where there is a change of tenant and the property remains vacant for a while, but I understand that the property is still required and that certainly effectively is now being leased as that report suggests. It suggests that we have in fact an ongoing need for the accommodation in question.

**3.3.1 Deputy R.C. Duhamel:**

In that case, Sir, will the Minister assure the House that all efforts will be made to rent Flat 1 of Claremont, Bagatelle in addition, which I am told is still empty?

**Senator T.A. Le Sueur:**

Yes, Sir, I am sure we will.

**3.4 Deputy R.G. Le Hérissier:**

Does the Minister's department have a policy of setting targets to ensure that properties are not kept empty for longer than is necessary?

**Senator T.A. Le Sueur:**

One of the objectives of setting up Property Holdings is to come to the House with a complete strategy for the operation of Property Holdings. I discussed with the new Chief Officer of that section of the Treasury last week the strategic plan for Property Holdings which will look at all issues such as that. I hope to be able to give a presentation to States Members generally within the next couple of months outlining the answer to that and other issues because I think they need to be looked at collectively rather than in isolation. I take the point that the Deputy raises and certainly a policy will be forthcoming.

**3.5 Deputy G.P. Southern:**

Returning to the issue of Jersey Telecom and the proposed sale, the last time we spoke about the issue of gearing the Minister said that he was not sure that he had the right solution, or indeed any solution, to the problem of gearing control post-sale. Is the Minister clearer that he has an answer to the problem of gearing control now than he was before Christmas?

**Senator T.A. Le Sueur:**

I think the short answer to that one is no, Sir, because the issue of gearing, or the ability of a company to borrow, is a very subjective one and will vary from company to company and the commercial needs of the company at that time. I think the answer to the Deputy is that it needs further discussion and further consideration.

**3.6 Deputy R.C. Duhamel:**

Apropos to the recently stated Minister's point of view that he wishes to seek that States' property is kept in a full state of occupancy, would the Minister like to inform the House when he intends, as promised, to bring forward the re-tendering process at Jersey Girls' College?

**Senator T.A. Le Sueur:**

I authorised that process to recommence just before Christmas. Clearly over the Christmas holidays was not the ideal time. I believe it will be instituted during the month of January.

**3.7 The Very Reverend R.F. Key, B.A., The Dean of Jersey:**

I have been reading with interest the answer about the things that are exempt and zero-rated and so on. I have noticed that it says education and burial and cremation are exempt. Would the Minister confirm that churches will not have to charge G.S.T. on wedding fees, or do I need, with my ecumenical colleagues, to get us all registered before the wedding season begins after Easter?

**Senator T.A. Le Sueur:**

I hope that the Dean is very busily occupied with weddings during the coming year and that people do get married in churches, but the threshold for registration would be £300,000 and I am not sure whether the church in question would reach that threshold.

**3.8 Connétable D.J. Murphy of Grouville:**

With regard to Jersey Telecom, could the Minister confirm to me the name of the advisers to the States, please?

**Senator T.A. Le Sueur:**

The lead advisers to the Treasury in respect of the sale of Jersey Telecom have been Citigroup.

### **3.8.1 The Connétable of Grouville:**

Is that the same Citigroup who are writing off £20 billion in the last half of 2007?

**Senator T.A. Le Sueur:**

Yes, Sir.

### **3.9 Deputy G.P. Southern:**

In the light of the Social Security Minister's commitment to investigate through the actuary the state of the social security funds, and in particular the pension situation, does the Minister consider that the reduction or elimination of £56 million worth of supplementation - the largest single item of States' expenditure - is a priority to be solved in the coming year?

**Senator T.A. Le Sueur:**

The issue of supplementation is under discussion I know by the Minister of Social Security. While it may sound simple to suggest that supplementation should be reduced, the Deputy and Members maybe need reminding; a supplementation is there as a crucial component of income support in that it is there to support the contributions of people earning less than the average in order to maintain their pension entitlement in later life. Where one has reduced supplementation it could impinge to the detriment of those people's pension entitlements. I think if one were just to remove or reduce supplementation it needs to be replaced by some other form of assistance to those people and, again, that will come at a cost. That cost will presumably be borne either by employees or by employers or by the States. That issue has to be faced that this costs money. I do not think it is as simple to just say reduce supplementation. It does have a serious detrimental effect on the less well-off.

### **3.9.1 Deputy G.P. Southern:**

Does the Minister accept that the principle of progressivity should be applied and that it is in fact a relatively straightforward, if not simple, matter to shift that burden from the States to the better-off in order to pay for those who are least well-off in our society?

**Senator T.A. Le Sueur:**

I am happy to talk to the Minister for Social Security but I would not want Members to think that I have taken over the responsibility or the role of Social Security Minister as well. From my own point of view, I remind the Deputy and others that social security contributions are a form of insurance. They are not a form of taxation. On that basis you get what you pay for. You pay a flat-rate contribution for a flat-rate benefit. If the Deputy wishes to review the social security scheme as a whole, that is an issue wider than my own personal remit.

### **3.10 Deputy S.C. Ferguson:**

Would the Minister not agree that the business of supplementation increasing so dramatically is partly due to the rush to bring in I.T.I.S. (Income Tax Instalment System) and perhaps the fact that the analysis of the effects of I.T.I.S. were not taken into account as they should have been?

**Senator T.A. Le Sueur:**

It is very easy to speculate about the causes of increased supplementation. I have no doubt that the introduction of I.T.I.S. has been a contributory factor and I do not know to what extent that is the sole cause. That is being currently investigated, I believe, by officers of Social Security. What I

would say is that the revenue from I.T.I.S. has exceeded our expectations and if part of the consequences of that is an increase in supplementation I believe we are still on the right side of the line, so to speak.

**3.10.1 Deputy S.C. Ferguson:**

Has the Analysis Department of the Treasury looked at the cost benefit analysis of the extra money from I.T.I.S. and the additional increase in supplementation? Surely it is essential to know where the increases have come from to do the analysis in order to reach a conclusion about how to deal with the problem.

**Senator T.A. Le Sueur:**

I think before anyone conducts any cost benefit analysis on I.T.I.S. we would need to know the actual affect that I.T.I.S. has had on supplementation. At this stage it is pure conjecture and it would be unwise to do a cost benefit analysis based on conjecture. I would also say that even if I.T.I.S. had no financial benefit overall, and there was a net effect of supplementation balance of I.T.I.S., I still believe that I.T.I.S. would have been in the best interest of the population in that it is socially fairer for people to pay their tax in instalments and for all people, including those employed seasonally, to contribute to the tax net. Irrespective of the supplementation one way or the other, I.T.I.S. has still been a good thing for the benefit of the people of the Island.

**3.10.2 Deputy S.C. Ferguson:**

Will the Minister confirm that the analysis is being done to look at this? Because it seems to me that there is a lack of analysis of the figures in order to understand what they mean.

**Senator T.A. Le Sueur:**

Analysis of supplementation figures and an increase in supplementation is a matter for the Social Security Department. I understand it is being done, but I cannot give an update of what the position is and what post they have reached so far. That is not for me to say, Sir.

**3.10.3 Deputy C.J. Scott Warren:**

Is the Minister reconsidering the possibility of giving up on the I.T.I.S. rate from the previous year and in fact basing... in other words losing that and gaining tax on this year's earnings?

**Senator T.A. Le Sueur:**

I did say that after I.T.I.S. had been in for a few years we would review the possibility of moving to a current year basis for everybody. At this stage there are enough activities going on in my department, so that review would not yet take place; when the opportunity arises it will be pursued, as I indicated it would be a year or so ago.

**The Deputy Bailiff:**

I am afraid the time has run out. We turn then to the second period which is Questions to the Minister for Home Affairs.

**4. Questions to Ministers Without Notice - The Minister for Home Affairs**

**4.1 The Deputy of St. Martin:**

With the turnover of prison governors at La Moye very akin to the turnover of managers at Newcastle United, what steps, if any, will the Minister be taking to ensure that the new prisoner governor does not get bogged-down with red tape and bureaucracy that caused the last prison governor to resign?

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



In relation to the turnover I think Members might be aware that in the United Kingdom the turnover of governors is quite frequent. They do move between establishments, but clearly here in the Island, when we have been offering a 5-year (j) category, we have wanted to keep them, but for various circumstances - different circumstances - we have a situation where 2 prison governors did not fulfil the entirety of their contract. I am very much looking forward to welcoming the new prison governor to La Moye. I am absolutely convinced that his background will make him an excellent governor. He is coming to the Island with his family, so he is going to be putting down his roots here from that point of view, and I have every confidence that he will be able to make known his requirements to me, as indeed all prison governors have been able to in the past, and that he will bring a great breadth of experience and further enthusiasm which is much needed up at La Moye prison.

#### **4.1.1 The Deputy of St. Martin:**

I take it from the Minister that the past governor did not resign because of red tape, but other reasons. Is that such a fact?

#### **Senator W. Kinnard:**

The other prison governor made public his personal reasons which he referred to red tape. One accepts that, but clearly also I think it is often difficult for families to settle in the Island.

#### **4.2 Deputy S. Power of St. Brelade:**

My question will refer to a member of the public who owns a vehicle recovery business and I just want to clarify that he has given me permission to mention his name, Sir. Is that all right?

#### **The Deputy Bailiff:**

If he has given permission for his name to be used, yes.

#### **Deputy S. Power:**

Mr. Roy Boschat received a phone call from an inspector of the States of Jersey Police on 21st December to appear at police headquarters. He was told he was under investigation for an alleged criminal offence for a second time. He appeared with his advocate, Advocate Lakeman, and was interviewed for an hour. He was cautioned that his house might be searched on 28th December and he was warned that the alleged criminality referred to the misuse of a States' police computer connected to a previous case last year in a Magistrates Court when a suspended police officer was found guilty on 3 out of 42 charges and fined £200. My question to the Minister is; will the Minister undertake to look into this new alleged allegation against Mr. Boschat? I ask the Minister to do this as a matter of urgency because the States of Jersey Police have now indicated to Mr. Boschat that there is no timeline to this new investigation. Can I add and tell the Minister that a number of States Members have been contacted and are uneasy and indeed queasy. Thank you, Sir.

#### **Senator W. Kinnard:**

This is clearly a police matter which will be dealt with through the appropriate channels. It is not appropriate for politicians to get involved in individual criminal matters which are the preserve of the police and the courts.

#### **The Deputy Bailiff:**

Do you want to ask another one, Deputy Power?

#### **4.2.1 Deputy S. Power:**

This is a supplementary one, Sir. Would the Minister not agree with me that this could be interpreted as a form of inappropriate police behaviour, given that this new investigation parallels, (a) the States of Jersey police process for the recovery of vehicles from road traffic accidents, and

(b) that Mr. Boschat has made a complaint against the States of Jersey Police and this is being investigated by the Devon and Cornwall police?

**Senator W. Kinnard:**

Well, quite clearly it is not a matter then for us to be discussing in this Chamber. If a complaint has been made by the individual and is being investigated then clearly he is at liberty to make a further complaint, should he wish to do so.

**4.3 Deputy C.H. Egré of St. Peter:**

Towards the end of last year, amid some publicity, it was announced the States of Jersey Police were in the process of carrying out an investigation into several officers of the Customs and Immigration Service employed in the joint investigation bureau. Later in the session questions were asked, in this Assembly, in regard to the progress of this investigation. It was stated that a file had been forwarded to the Solicitor General and that a decision had been made that no further action was to be taken. It was also stated at that time that the file would be forwarded to the Customs and Immigration Department and that a full internal inquiry would take place. Can the Minister inform this Assembly if that inquiry has now taken place, and if so, will she make the results of that inquiry public?

**Senator W. Kinnard:**

It is impossible for me to say so. The inquiry has been included internally and I, and my Assistant Minister, have yet to consider it.

**4.3.1 The Deputy of St. Peter:**

Is the Minister also aware that there are now outstanding 4 complaints made by individual officers of the Customs and Immigration Department against the police force? Would she assure this Assembly that that inquiry will be carried out objectively? Is she happy that it should be the police conducting that inquiry into those complaints?

**Senator W. Kinnard:**

Any complaints that are made against the police are conducted absolutely appropriately and, of course, if there any complaints that are made they are overseen by the Jersey Police Complaints Authority.

**The Deputy of St. Peter:**

Supplementary, Sir?

**The Deputy Bailiff:**

No, I think you have had 2. You can come back later if we run out of questions, Deputy. Senator Syvret?

**4.4 Senator S. Syvret:**

Could the Minister for Home Affairs give the Assembly an assurance in the light of the current police investigation into a number of child abuse issues, that any officers, particularly those senior officers who are involved in carrying forward this inquiry whose contract term might be ending, or who might be coming up towards retirement, will be offered the opportunity to continue in post and carry on working upon this inquiry for the sake of continuity?

**Senator W. Kinnard:**

This has not been an issue that has been raised with me, but I am absolutely certain that if it would benefit the inquiry for that to be the case then it would be a matter upon which I would look very sympathetically.

#### **4.5 Deputy S.C. Ferguson:**

I have 2 or 3, but I will start with this one. Referring back to Deputy Powers' comments, the original court case that was referred to was in July, so why did it take until December to decide to investigate? I may be being cynical, but I must question whether it is entirely coincidental that the counter-investigation commenced after the Devon and Cornwall police started their investigation into complaints. Bearing in mind the guidance notes for officers, a copy of which has arrived on our desks, will the Minister confirm that that particular investigation was referred to the Attorney General?

#### **Senator W. Kinnard:**

I am a bit concerned about the kinds of conspiracy theory that seems to be being generated here. I do not have the details of this case. It would not be appropriate for me to be that close to it as to when it was, or was not, referred to the Attorney General. I think that we are in very sticky water here because the individual that Members are mentioning has indeed made a complaint and is in the process, or has already made a statement to police officers investigating matters, police officers from outside the Island who are independent, and I really think that this attempt here to raise these issues and raising a number of red herrings does not really show the most appropriate way of dealing with sensitive matters where individuals are concerned and the matters of judicial process are concerned.

#### **The Attorney General:**

I wonder, Sir, just for a matter of clarification arising out of the previous question, if I might say that the guidance note, which has been circulated this morning, is for regulatory departments and not for the police officers, not for the police station.

#### **4.5.1 Deputy S.C. Ferguson:**

Yes, there are a number of words that are more than 2 syllables. Think about it. In view of all the very forthright comments in the article in the *Jersey Evening Post* by the retiring prison governor, there were a lot of very valid criticisms made in that. What measures does the Minister intend to take to address these sort of measures and these issues where there was obviously a great deal of disquiet?

#### **Senator W. Kinnard:**

Perhaps the Deputy would elucidate on the valid criticisms as she sees them, Sir.

#### **Deputy S.C. Ferguson:**

Yes, Sir, I am referring to the fact that the prison governor felt that he was not able to communicate with the Minister. He was very much at the bottom end of the pecking order when it came to budgets, although the necessity for the budget for the prison is so apparent that the principle that he who shouts loudest gets the most and, in fact, that the reductions in budget and the economies were forced on the prison whereas the police who take up a significant amount of the budget never seemed to have been making any economies whatsoever.

#### **Senator W. Kinnard:**

I am afraid the Deputy is highly mistaken on a number of the assertions that she has made. The prison governor may have said that he found it difficult communicating his needs but in fact he had free access to both me and my Assistant Minister directly by email, by telephone and by face-to-face meeting, which we had on a regular basis. So, I do not accept that particular criticism. In terms of bottom of the pecking order in terms of budgets, Members will be aware of the long fight that I have had in this Chamber to get some appropriate level of funding for the prison. Having said that, within Home Affairs we have spent several years protecting the prison as best we could in terms of their budget and I would say, Sir, that the Council of Ministers has come up absolute trumps and, in fact, has ensured that the prison is now on a secure footing in terms of funding going

forward and that both the prison's performance improvement plan and the needs of the base budget are now protected.

**4.6 Deputy D.W. Mezbourian:**

We read in the 2008 policing plan that one of the aims is to reduce street violence and disorder associated with the Island's night time economy. In the Home Affairs 2008 Business Plan comment is made that effective policing of street violence and disorder continues to be frustrated by inadequate late-night transport services. The policing plan also refers to the fact that there are no buses but they complement the new taxi marshals that have been introduced in conjunction with the Building a Safer Society partnership. What is happening between Home Affairs and Transport and Technical Services to introduce adequate late-night transport services? This has been going on for some time, certainly since I have been in the House and it seems that we are getting nowhere fast.

**Senator W. Kinnard:**

In terms of some of the transport issues, the original focus was, of course, on buses but there has been some success just recently with the introduction of taxi marshals which has had an extremely positive effect both on those waiting for taxis and particularly, I am told, that young women are feeling much more secure, but also the taxi drivers themselves are feeling much more secure about operating from the rank late at night. So, I think that we are going to see a positive effect in terms of perhaps more taxis being available as a result of that experiment. My Assistant Minister of course sits upon the Safer St. Helier Group which is looking into these issues. There is one group that looks particularly into transport matters and buses is certainly a matter that is high on their agenda, but I have to say, Sir, I am not sufficiently briefed because I do not keep a dog and bark myself. Excuse me, I do not mean it in a very unpleasant way, Assistant Minister, perhaps not a very nice choice of words.

**Deputy Bailiff:**

He is currently your Assistant Minister. **[Laughter]**

**Senator W. Kinnard:**

I realise that. I do apologise for the unfortunate choice of words but in fact I would be more than happy to provide further details, but I would have to consult with my Assistant Minister further, if he will still speak to me, that is.

**Deputy D.W. Mezbourian:**

If I may, I would be happy for the Assistant Minister, if he is able, to respond to get an adequate answer to my question.

**4.6.1 The Deputy of St. John:**

If I could just add to what the Minister was saying. I have been talking to T.T.S. (Transport and Technical Services) recently about the issue of taxis and we have 2 types of taxis in Jersey, private hire and rank taxis. We have 160 private hire taxis, which currently cannot pick up at the rank, although they can at the airport and the harbour when there is no other rank taxi there. That would put an extra 160 taxis on to the streets late at night if those taxi drivers were in agreement with that, but that would need consultation with the taxi drivers which I believe T.T.S. are looking at, at the moment, but that could help that problem that Deputy Mezbourian is referring to. That could be mean an extra 160 cabs on the streets of St. Helier on a busy Saturday night, not something which you really want to look at, and I will be looking at it with E.D.D. (Economic Development Department) during the strategy we are looking at regarding licensing laws as well.

**The Deputy Bailiff:**

I am afraid that concludes the time for questions.

**Senator P.F.C. Ozouf:**

May I raise a point of order? Article 109 of Standing Orders says under Article 5 that the Presiding Officer shall determine whether the words of some of other Member were offensive. Sir, Deputy Ferguson... I heard her say that in relation to the statement from the Attorney General, that the statement had more than 2 syllables in it, and I think she was referring to some officers of the States of Jersey. She is not in the Assembly, but I thought that that was a derogatory remark in relation to officers within the employment of the Home Affairs Minister. She said: "Think about it" so I would like you to confirm whether not you heard that in which case you would suggest...

**The Deputy Bailiff:**

I heard it, but I did not understand it.

**Senator P.F.C. Ozouf:**

Did you not think that that was a derogatory remark in relation to certain police officers? I certainly took it as that.

**The Deputy Bailiff:**

Right. Well, I did not because I did not understand it. No doubt we can take it up with the Deputy when she returns. That concludes questions.

**PERSONAL STATEMENTS**

**Senator S. Syvret:**

I am in the hands of the Assembly, but I would have thought given the length of business we have on the Order Paper for this meeting it may have been as well just to dispose of the statements prior to lunch and then get straight into Public Business.

**5. The Deputy Bailiff:**

Does the Assembly agree with that? Very well. In relation to the statement I do just want to say this, that yesterday Senator Syvret applied under Standing Order 16(1) for leave to make a personal statement concerning the events at the time of the Christmas greetings in the final meeting of the States before Christmas. I have considered very carefully whether the draft statement which was supplied by the Senator complies with Standing Orders. It is debatable whether the content of the statement is entirely personal in nature. The statement contains criticisms of the Chair in inappropriate terms and it is also critical of others in a way that is not normally appropriate for a personal statement because no debate may ensue upon such statement. Accordingly, it is arguable that the statement does not comply with Standing Orders but nevertheless in the hope that a line may be drawn under this incident, and not without some hesitation, I have decided to grant the Senator leave to make his statement and I accordingly invite him to make it.

**5.1 Senator S. Syvret:**

At the end of the final meeting of this Assembly before Christmas I was prevented from completing the seasonal speech which is customarily delivered by the Father of the House. I was interrupted and barracked by some Members, including the Chief Minister, Senator Frank Walker; Senator Mike Vibert, Senator Terry Le Main and Deputy Peter Troy. These Members did not like, and did not agree with the content of my speech, an opinion they are entitled to hold. However, not one sentence of the speech I was giving conflicted with Standing Orders, or the States Members' code of conduct. Instead in what was merely a personal value judgment, these Members decided that, in their opinion, the speech was inappropriate, or not relevant. It was sad, but in truth predictable that the Bailiff should have chosen to side with these Members and stop my speech. In doing so he became probably the only Chairman of a Commonwealth parliamentary jurisdiction legislature who would fail to protect the right of minority opinions to be heard; the only Presiding Officer who supports tyranny by the majority; the only speaker who is content to use his powers to enable and support a majority grouping to silence the mere expression of a minority opinion simply because

the majority grouping did not like what was being said. Let us be clear. Not one single Member of this Assembly had to agree with as much as one word of my speech. Indeed, Members are entitled to strongly disagree with every sentence but procedures of this Assembly provide ample opportunity for them to have expressed such disagreement, for example, making a personal statement, as I am doing now, or during a debate upon a substantive proposition. What Members such as Senator Walker and Senator Le Main cannot do is drag this Assembly into mob rule and anarchy, as they did on 5th December. What took place then was yet another telling, disgraceful episode in the modern history of the States of Jersey. A compounding of the gross failure of the public administration of the Island which has enabled child abuse to go frequently unreported and unpunished for decade, after decade, after decade. It was the nauseating and tragically unembarrassed displaying of the very self-same culture of cover-up, concealment of the truth, denial of the obfuscation and oppression and silencing of anyone who attempts to speak out; the very culture which has led to the betrayal of people over the decades. In co-operation with some of the victims I am going to help establish an abuse survivor support group. It is plain that many people of all ages have suffered over a period of decades, often without the empathy and support which can come from speaking with those who have had similar experiences. Some victims have led tragically isolated lives with the understandable feeling that society offers them no support. Indeed in the last 3 days a number of victims have spoken with me and expressed utter disbelief and bitter anger at B.B.C. Jersey for its obvious and wilful editorial decision to give the absolutely minimum possible promotion for Sunday's B.B.C. T.V. programme and indeed make zero mention of the film during a 2-hour Monday morning news broadcast, 75 per cent of which was consumed with utterly irrelevant trivia. When faced with such deliberate hostility and proactive support for the establishment line from the local B.B.C. station, especially with regard to the full maiden broadcast by the B.B.C., there is little I can do but agree with those victims who have said to me that society has betrayed them yet again. The speech I was prevented from delivering on 5th December would have been the first time ever that an elected Member had risen to speak in the Assembly to express acknowledgement and recognition of what many people have endured over the decades; the first time a States Member had ever spoken in the Chamber to honestly admit the culpability of the States of Jersey. This was the very first time an elected Member had accepted the truth of what happened to so many children and to attempt to reach out to them with some empathy and compassion. In not being willing to hear those words at a time when we approach the celebration of the birth of Christ the States of Jersey utterly disgraced itself again. The *Jersey Evening Post* endorsed this assault upon free speech in a frankly deranged editorial comment which had the effect of provoking many communications of support to me from members of the public, a significant proportion of whom you would not imagine to form my natural constituency. However, in fairness to the *Jersey Evening Post* it printed the speech in full and it is with the consequence of this publication that I wish to conclude, and this may give Members some insight into why I take the subject so seriously. In the speech I mentioned a child who committed suicide in 1966. The death of this boy was movingly still of deep concern to a man who had been his close friend when they were in Haut de la Garenne together as children. During the evening of the day on which the speech was published I received 2 messages on my answer phone from a man who was clearly emotional. He had read in the speech the name of the young boy who had died in 1966 and it was this that prompted him to call me, for he was the brother of the deceased. I called him back and spoke with him for some time. I met him a couple of days later and had a long conversation with him. There was a time recently when I would have found his life experiences shocking. Sadly, these days I no longer find any great surprise with betrayals and failures of the system and the way so many people harmed by their childhood experiences had their lives cast on the scrap heap by the rest of our society. In some small way, as an elected Member of the States, as someone in authority, as someone who listened and took his experiences seriously, I hope I was able to offer him some comfort, some recognition, and some understanding of the difficulties he has faced in his life. Speaking to this man and many other people with similar experiences, as I have done during the last year, places the trivia of political manoeuvrings in its proper context; that is utter

irrelevancy. So, I want Members to understand this. No matter if there be 1,000 barracking States Members confronting me, wishing me to the furthest pit of hell, and no matter that the Jersey establishment in its shame still attempts to silence those who speak the truth, I will not be deflected. I, at least, am going to do everything in my power to assist these victims in gaining recognition, support and justice.

**The Deputy Bailiff:**

The adjournment is now moved.

**Deputy S.C. Ferguson:**

Before we adjourn, with reference to Senator Ozouf's comments and my somewhat esoteric quip in question time, it was not meant to cause offence to anybody, if anybody understood it. For that I would apologise to the House.

**LUNCHEON ADJOURNMENT PROPOSED**

**The Deputy Bailiff:**

The adjournment is proposed. We will reconvene at 2.15 p.m.

**Male Speaker:**

I believe there are 3 statements tabled.

**The Deputy Bailiff:**

The others are Ministerial statements on which questioning is permitted and therefore I think we will do it after lunch.

**LUNCHEON ADJOURNMENT**

**STATEMENTS ON A MATTER OF OFFICIAL RESPONSIBILITY**

**6. Statement by Deputy J.A. Martin on behalf of the Health, Housing and Social Security Scrutiny Panel regarding the future of the Income Support Sub-Panel**

**6.1 Deputy J.A. Martin:**

On behalf of the Health, Social Security and Housing Scrutiny Income Support Sub-Panel, I would like to take this opportunity to inform both the States and the public that the Sub-Panel will continue in operation through 2008 to monitor the introduction of income support. We are pleased to inform the House that Deputy Scott Warren has agreed to join the Sub-Panel, but would like to see at least one other States Member on the Panel. I would appeal to the Constables in particular for assistance as their experience in the administration of welfare would be very valuable in assessing the strengths and weaknesses of the new system. As a Sub-Panel we intend to continue to work closely with the Minister for Social Security and his department to ensure that the implementation of income for support does not disadvantage the public. To this end we would ask both States Members and the public to contact in confidence the Sub-Panel through the Scrutiny Office if they have any comments or concerns about the new income support system.

**The Deputy Bailiff:**

Are there any questions? Is there any Member rising on that? Very well. On the supplementary Order Paper we come to a statement to be made by the Chief Minister and I invite you to make the statement.

## **7. Statement by the Chief Minister regarding youth facilities at the Waterfront:**

### **7.1 Senator F.H. Walker (The Chief Minister):**

The purpose of this statement is to advise the Assembly on recent developments regarding youth facilities on the Waterfront. Following a meeting last week between Senators Vibert and Perchard, Deputies Fox and Gorst, and the Managing Director of the W.E.B. (Waterfront Enterprise Board), I can confirm that proposals are being developed to provide for skateboarding facilities on the Waterfront. Although this still needs to be positively confirmed with Harbours, the footprint of the old T and T Building on the New North Quay, south of the Maritime Museum, has been identified as an area suitable for the citing of a youth skateboard facility. This is an area of some 35 metres by 25 metres and is currently being used as a temporary car park. It is planned to provide an open-air skateboard park, but with a tented structure along the lines of the structure at Dynamic Earth in Edinburgh. Following planning application approval it is envisaged that the facility will be available by the end of 2008 at the latest. The advantages of this proposal are that the facility will require little ongoing maintenance and it will also be close to the youth café in Liberty Wharf. The cost of the facility will be funded directly by the Waterfront Enterprise Board. I can also confirm that other youth and community facilities are proposed to be developed on the top of the Waterfront car park. The Managing Director of W.E.B. has recently written to Ministers and Chief Officers, asking for nominations from States' departments for a working group to be established to develop proposals for such youth and community facilities. Discussions on these developments will begin in the near future and it is planned that detailed proposals will be published by the end of the year. I am pleased that these positive developments will provide much-needed facilities for our young people. As I said when I became Chief Minister it is crucial that we engage and invest in our youngsters and I will continue to be committed to improving the provision of youth facilities in St. Helier.

#### **7.1.1 Deputy P.V.F. Le Claire:**

This is wonderful news to hear this afternoon. Will the Chief Minister be able to tell us whether or not these facilities will be accessible free of charge for the youth of the Island? If he is not able to answer that, as I have asked this question before, will he investigate whether or not it is feasible and possible to make these facilities available for the youth of the Island free of charge?

#### **Senator F.H. Walker:**

I can confirm that the facility will be available free of charge.

#### **7.1.2 Deputy G.C.L. Baudains:**

I wonder if the Chief Minister could just clarify whether the area concerned is under the administration of W.E.B. or Harbours because I am thinking that in the past Harbours has done practically everything they can to discourage skateboarding down there, so I am wondering if they may have objections to this.

#### **Senator F.H. Walker:**

There may be a hint here for the Deputy that currently the land is under the administration of Harbours, but if the States approve the proposition at the next sitting it will come under the administration of the J.E.B. (Jersey Enterprise Board), so I am hoping the Deputy will therefore support that proposition.

#### **7.1.3 Deputy S. Power:**

I wonder if I can ask the Chief Minister if he is aware if the Jersey Port Users Association have been contacted and whether Huelin-Renouf have been contacted because Huelin-Renouf are proposing to move to the New North Quay in the not too distant future.



**Senator F.H. Walker:**

I am not aware if those particular organisations have been contacted, but obviously the facility will have to be produced and proceeded with, with the agreement of other parties. It is a question of which is the greater priority and in my view - and others - the youth facility carries the greatest priority at this time.

**7.1.4 Deputy K.C. Lewis:**

It is really good news that the park is now on the way - I am all in favour of a skateboard park - but on the New North Quay, can the Chief Minister state whether this is within the fenced-off area, being as it is in close proximity to the harbour?

**Senator F.H. Walker:**

No, Sir, it is not.

**7.1.5 Deputy P.V.F. Le Claire:**

I did not get an opportunity, Sir, but would the Chief Minister not agree with me that this is fantastic news for the youth of the Island and I am very, very pleased to hear these facilities are going to be free of charge. Well done.

**Senator F.H. Walker:**

I thank the Deputy for that. I was hoping that somebody might acknowledge the fact that this is a good, positive development for the youth of Jersey and I am grateful for Deputy Le Claire being the one to do so.

**PUBLIC BUSINESS**

**8. Draft Amendment (No. 8) of the Standing Orders of the States of Jersey (P.162/2007)**

**The Deputy Bailiff:**

That ends matters under K so we now come to Public Business and the first matter on the agenda is the Draft Amendment (No 8) of the Standing Orders of the States of Jersey - P.162/2007 - lodged by Senator Vibert and I will ask the Greffier to read the citation.

**The Deputy Greffier of the States:**

Draft Amendment (No. 8) of the Standing Orders of the States of Jersey: the States, in pursuance of Article 48 of the States of Jersey Law 2005, have made the following amendment to Standing Orders.

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

I am proposing this change to Standing Orders basically as a safeguard for the public. If approved it would mean changes to the constitution of the States could not be made unless a majority of all States Members support such a change. At present such changes can be made by a simple majority of those States Members present which can be as low as 14 in favour, or less, whereas my proposition requiring an absolute majority would require at least 27 States Members voting in favour. That is, it would require an absolute majority, over half of all the 53 elected States Members. The change to Standing Orders is detailed on page 7 of my proposition and there it is outlined which propositions would be subject to this new higher test, if approved, and they are, and I quote: "This Standing Order applies to (a) a proposition to alter in any way the membership of the States of Jersey, (b) a proposition to lengthen or shorten the term of office of any class of elected Member, and (c) a proposition to alter, add to, or extinguish the constituencies of any class of elected Members." Concern, Sir, has been raised in the past over the host of different propositions and amendments relating to the constitution and membership of the States, many of which have appeared recently. Of those already debated some have been rejected, some passed by a good

majority, others passed but by much closer votes without an absolute majority. It may be questioned as to why I have singled out constitution and election votes to be different from other matters. I have done so because I believe such issues are not only of constitutional importance, but are also areas where States Members can make decisions affecting themselves directly as to how and when the public can elect them. In many democratic states such constitutional changes are safeguarded by harder tests to get passed than other issues. Many require two-thirds majority of Assembly votes for any constitutional change to be effected. In considering bringing this proposition I considered whether a two-thirds majority rule should apply to Jersey, but believe it is not necessary in our current non-party political situation and may be too restricting, precluding change by setting the bar too high. I also looked at whether the tests should be one vote more than any of the individual estates of the States Senators, Constables and Deputies. Should it be 30? One more than the 29 Deputies to ensure the Deputies could not impose change on the other estates against their wishes. But in the end, Sir, I decided in the interests of democracy, an absolute majority of States Members was the simplest solution, which gave a safeguard to the public but would not be too restrictive. I give examples in my report of 2 recent votes on such constitution and election of the States issues. The proposal to extend the term of office of Connétables from 3 to 4 years was passed by 35 votes to 12 and well in excess of the absolute majority of 27 my proposition seeks to introduce. But the proposition to increase the term of Deputies from 3 to 4 years, which was also passed a few months later only got through to 22 votes to 18 and would not have passed the absolute majority test. In both votes I have just referred to, it is interesting to note that for the Connétables extension of office vote, 47 Members voted, with 6 Members' votes missing, meaning that if all of those 6 missing had voted against the proposition it would still have been passed easily, but in the Deputies' extension of term of office vote, only 40 States Members took part and if the missing 13 had all voted against the proposition it would have been roundly defeated. It is also interesting to note in that decision, if the Deputies votes had been excluded as the proposed change affected them directly, the result would have been a draw with the proposition then not being approved in line with Standing Orders favouring the *status quo* on tied votes. Some may argue that all votes in the States should be decided by just a simple majority of those Members present and voting and that a special exception should not be made for constitutional issues such as the composition and election of the States. As I point out in my report, we already have an exception and that is at least 20 Members are required to support a motion of moving on to the next item of business proposition for it to be passed. I believe that was brought by Deputy Gerard Baudains when we were debating Standing Orders. I believe issues surrounding the composition and election of the States should have this extra safeguard of an absolute majority. I do not believe it is right for decisions affecting the number of States Members and the length of their terms of office should be decided by simple majority, which under the present rules of a quorum of 27 could be 14 votes in favour, or less, if some Members abstained. I believe the public need a greater safeguard in such issues and my proposition would at least ensure that any such proposition to succeed would require at least an absolute majority of 27 Members of the States supporting it. Sir, I believe this is a safeguard we should give the public and I make the proposition.

#### **The Deputy Bailiff:**

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

#### **8.1.1 Deputy G.P. Southern:**

What a wonderful exercise in the art of navel-gazing. If there was the slightest chance that we were going to reform the constitution of the States in a meaningful, practical and sustainable way the arch-conservative - with a small "c" - on the Senatorial benches - Senator Vibert - wishes to put the kybosh on it. I shall vote against this.

#### **8.1.2 Senator L. Norman:**

This is not a safeguard for the public, as Senator Vibert would have us believe, but rather a device to hamper progress and reform. From the timing of this proposition it would appear that the Senator does not like the decisions the States have made to increase the terms of Constables and Deputies from 3 years to 4 years. I say, because of the timing, because 5 or 6 years ago when Senator Vibert was Deputy Vibert and chairman of the Special Committee looking into the constitution of the States lodged a proposition to the States but did not suggest at that time that it should be an absolute majority supporting it for it to be approved. He argued against the Constable of St. Ouen and Deputy Troy, who successfully brought the propositions to increase the terms of office for Constables and Deputies and they won the day. The reform was won. On those days the Luddites lost. Normally that would be it, decision made, the legislation would then be prepared, the legislation would be brought back to the States and then implemented. But as I said, it would appear that Senator Vibert does not like the decisions, so what is his answer? His answer is, in between making the decision and implementing the decision, we will change the rules. "We want reform", says Senator Vibert: "but now it is not going my way, let us make it difficult to get those reforms through." I think that is unfair. Senator Vibert is trying to tell us that the length of term of office of Deputies and Constables is of such importance, such gravity, in fact on the whole well-being of Jersey, that it deserves its very own Standing Order so that no change can be made unless there is an absolute majority of Members voting in favour. No change is really what the Senator is looking for, and what he might get if this proposition is successful. But really, what is so important and grave about the length of terms of office of Deputies and Constables? Just think about some of the things that we could be asked to decide upon. Abortion. We could decide to change the time period a termination could be allowed and we could do that by simple majority of Members, not an absolute majority. The death penalty. We could vote to reinstate the death penalty by simple majority, not an absolute majority, and before somebody tells me we cannot do that because of the Human Rights Law, we could vote to repeal the Human Rights Law by a simple majority, not an absolute majority. We could double income tax. We could quadruple G.S.T. We could elect a Chief Minister. We could remove a Chief Minister. We could remove a Minister for Education, Sport and Culture by a simple majority, not an absolute majority; all of these things and many, many others. We have to ask ourselves, are they more or less important, more or less significant, more or less grave than a Deputy or a Constable serving in this place for 4 years rather than 3? I know the answer to that and I am sure all of the Members of this House know the answer to that. This is just a transparent attempt to further stall and derail reform. We should see it for what it is and vote it down.

### **8.1.3 Deputy C.J. Scott Warren:**

Senator Vibert's proposition requiring an absolute majority has the intended consequence, which I do not believe is mentioned in the proposition, of the immediate negation of the agreed 4-year future term for Deputies. Sir, I believe there is a middle way of the minimum majority number of 20 and I believe that is far more acceptable and realistic and this precedent, Sir, has already been set, as mentioned in Senator Vibert's proposition, in relation to the move on to the next item of business provision. So, Sir, I will certainly not be supporting this amendment.

### **8.1.4 Deputy G.W.J. de Faye:**

It may well be that my fellow Minister and I are lone voices on this particular proposition, but I do commend Senator Vibert for bringing forward what I think is a very excellent proposal, despite some of the attempts to criticise it which I think are entirely ill-founded. Constitutional matters are serious. The constitutions of the world have been changed in dramatic ways over the years. The Barons' rebellion forced King John to sit down and talk turkey with top dogs in his country and sign up to Magna Carta. We have seen over the centuries the Citizen Charters in France, drawn-up after horrific civil struggle and in slightly more temperate times the Americans drew-up their own convention. The Constitution of Jersey, such as it is, is an important matter but here in Jersey we have taken a slightly unusual approach in the historical panoply of things that in spite being in the

full knowledge that vast sections of our fellow Islanders do not have a very clear of how their States operate, or what a Constable does, or who is a Deputy, or indeed what is a Senator. Our Privileges and Procedures Committee have taken the extraordinary step of asking those people at a time we are having to upgrade the education of children in their schools to teach them how the Island works, we have decided to ask people who do not know how it works and what they think about constitutional reform in a M.O.R.I. (Market and Opinion Research International) poll and it really is not surprising we have had some rather interesting results as a consequence of doing that. I know from experience, albeit short compared to some of the veteran Members, that we all love to be here in this Chamber debating this very issue. We do it session after session, time after time for hours and days and days on end, almost in a never-ending repeating manner, and here is yet another opportunity. I would urge Members to consider this proposition rather more carefully than simply knocking it down and running it down. It is a matter of fact that in most clubs and societies that are set up - and not just in the Island but anywhere - when you set up the constitutions of clubs and societies it is standard that they are not then varied lest by two-thirds majority of the members and that is for entirely sensible reasons. You have set up a basic framework and you do not want to fiddle around with it, but all other matters that come before clubs and societies as a matter of daily business and as politic as ours are dealt with on the normal simple majority basis. So, why insist on an absolute majority here? Let us be fair, the Minister has not gone as far as other normal members in operations elsewhere of insisting on a two-thirds majority. He has merely called for an absolute majority which is an entirely reasonable basis of assuming that we all have the courtesy to turn up, listen to the debate, and then a majority will pass the matter, as opposed to a straight simple majority which, as has been described, could see issues passed on the basis of 14 votes or less. That of course is entirely the sensible approach it seems to me. It also has this secondary issue. If Members are aware that for a proposition to be accepted on a constitutional reform basis it is going to require an absolute majority they may think a bit more about bringing them forward in the profusion that we see them and I even put my hand up myself because I am looking forward to, and I want to warn Members, I intend to speak at great length on my amendments because I know how much you all enjoy this particular subject. If it is a case though that I am wrong and you do not enjoy wasting States' time on these matters then I would strongly suggest that you support Senator Vibert's proposition and make it more difficult for constitutional reforms to be voted through. It is a very simple idea being put to us and I back it 100 per cent.

#### **8.1.5 Deputy S. Power:**

I am frankly surprised that a member of the P.P.C. albeit in his own name has brought this proposition to the Assembly, and I am also surprised that another member of P.P.C. has supported this proposition. In my view this proposition is to use stealth and what it does is when you read it for the first time, or even the second time, it does not appear to be as significant as it is, but when you read it and understand what he is trying to do it is an actual blockade of the way we change the composition of the States and I will be opposing this. I would like to ask Senator Vibert if he would agree that to show good faith, in order that this project is to be successful, and I doubt it, that he would accept an absolute majority of 27 votes himself to get this approved.

#### **8.1.6 Senator T.A. Le Sueur:**

I just take exception to the comments in the last speech that the proposal is being pushed through by stealth. The proposal is totally transparent and totally open, as it should be. Senator Norman in his speech said, what difference is there between this and other propositions; are not issues like the death penalty and abortion more important? Certainly I have no desire to try to rank the propositions we have before us in the past year in order of importance or lack of importance but I think there is a clear distinction that needs to be made and which I think is being overlooked, and that is the distinction between constitutional changes and changes relating to different activities of Island or international life. The constitution of any government is something which is changed only rarely and very often requires things like a Royal Commission or something to review before

those changes are put into effect. They are treated with the utmost of gravity and like Deputy de Faye I would assume that any constitutional reform ought to engage the attention of every Member in this House and that the likelihood of anything being passed by 14 or 15 votes should be absolutely nil, but that does not alter the principle that constitutional reform should be undertaken in a constitutional manner and I believe that having a simple majority of all those who are affected by it, in other words 27 at the current time out of 53 members, is a constitutional common sense approach and I think that far from being condemned the Senator should be welcomed and applauded for bringing this amendment.

#### **8.1.7 Deputy P.N. Troy of St. Brelade:**

If you wanted to wreck proposals for change this is the way you would go about doing it. I remember when we went to move to a Ministerial system of government the Senator then brought proposals that we go along a similar line to Guernsey with committee presidents, effectively Ministers with a committee in support. The Senator was wrong then and I think he is wrong on this one as well. He said earlier, what if the 13 people who had not been in the Chamber that afternoon when they supported the change of office for term of Deputies, what if they came into the Chamber and all voted against my proposition? I would say of course the other side of the coin, what would have happened if they had come in and voted in favour of my proposition? Even if half of them had voted in favour of my proposition I would have still won the day and there was a great feeling in the Chamber that day that we do need change, that the public do want to get to elections whereby we are all changing office at the same timeframe and we will get to the closest that we possibly can have in terms of a general election. So, this is counterproductive today, this proposition, and I hope Members recognise that and defeat it on this occasion. Senator Vibert said constitutional matters are very important and we need to look at them in a greater manner and give them greater importance. Well, yes, okay, let us have a referendum. Senator Syvret brought the proposals forward for referenda years ago, either in broad proposals for the machinery for referenda and Senator Kinnard in her capacity then as, I think it was legislation, brought the proposals forward to implement it so that we could have referenda. So, we could hold a referendum on any issue and the public could have their say. That would give it very great importance but maybe whether Senator Vibert would want something like that, I do not know but I think it would come back in a resounding result from the people of Jersey in that they want change, they want to get to the closest that we can have on a general election, which is really where we are going when we try to bring everybody into line on 4-year terms of office. So, I hope everyone here recognises that this wrecks proposal has a very good chance of wrecking proposals for change and I hope that we all vote against the Senator's proposition today.

#### **8.1.8 Senator P.F.C. Ozouf:**

I will come to the issue of the reforms later but I think that people like Deputy Troy are clutching at straws. Deputy Troy shot himself in the foot, as I did think Senator Norman did. All of the important issues that were raised only happened because of the composition of the States - because of the constitution of the States. Many assemblies require a higher bar for changes in the constitution. In dual assemblies it requires 2 votes, maybe 3 votes, of more than half, *et cetera*. That is why constitutional matters have a higher bar and a higher control. Not because it is similar to an abortion debate or an addition to a life sentence debate. It is the thing that makes the constitution that happens and that is why Senator Norman protests this a little too much. I am afraid Deputy Troy, what he wants is he wants his reforms through and I am afraid that we are dealing here with the constitution, and control and a higher bar for changing the constitution are something that should happen. That is why I will be supporting and I urge other Members to support Senator Vibert.

#### **8.1.9 Deputy P.V.F. Le Claire:**

I will be guided as to how I vote by the summation of the speech from Senator Vibert in response to the speeches that have been made. I am in the balance on this one, personally, but I would just like to remark that the recent comments in respect of the proposals that are before us in the immediate future from the Council of Ministers in respect of asking for P.P.C. to consider a new committee of inquiry to be conducted to look at the whole constitutional issue and for that to be put over until after the next election. I just wonder at what point all of this navel-gazing ends. It does appear to me that if the Council of Ministers are proposing that P.P.C. starts a committee of inquiry - which I am going to find it very difficult to support, I am afraid - if they are going to do that, there has been never any suggestion that we should go to the people themselves to ask about reforms the Ministry of Government has implemented, all the rest of that; never asked the people. Just get another committee of inquiry to muddy the water, get another group of people to sit in private, meet in secret, meet people that have got time during the day to go and talk to them, generally wealthy people. I am afraid to say we will not get what we want in the Island. We will get what will continue to fester in the Island, which is ineffectual, ineffective representation and we are seeing that in a lowering number of people turning out for elections. So, I am sorry, with Senator Vibert being on the Council of Ministers, with the recent comments coming forward, I am a little bit worried that - I do not know if it was at that meeting or if he contributed to this recommendation - if he is on P.P.C. and there are some Members of the Council of Ministers on P.P.C., in my view, it is all driving at delay. I think it is driving at more delay and I think it is driving at stopping the recommendations that some people wanted to see come through which was the Constables being elected all on one day. The Constables brought forward a very eminently sensible proposition that was supported in the Assembly and I think the Constable of St. Ouen did an excellent job in bringing that proposition. So, I am sorry, I do not want to see that kind of change, which the people called for. That was the call for a general election. It was not for a general election of all Members, it was for a general election of Constables misinterpreted in the Clothier aftermath that has been resolved by a recent debate. I think I am a little bit worried that we are seeing something coming forward that is going to manifest another group of wealthy individuals sitting behind closed doors, listening to other wealthy individuals telling us what we do or do not need and then not putting those proposals before the ordinary man and woman on the street. So, Senator Vibert, convince me I am erring in not supporting it.

#### **8.1.10 Deputy J.A. Martin:**

I will be brief. I do think we have discussed this before. I would just like to comment that we are here because of all this piecemeal... and I am not very proud, and I know exactly which way I voted on both of the last debates and it was against. This one, I may well support and I shall go on to explain why. We are talking among ourselves or to each other, Sir, and saying we are doing this because this is what the public want. Now, to me, I think it was to be commended, as the Constable brought a proposition to have an election on one day. I do not think it should be commended that we were told that the original proposition was going to be changed from 3 years to 4 and it never happened and then, after that one was carried, Sir, a Deputy not too far to my right stood up and said, obviously well thought through, Sir: "Well, if the Constables can have 4 years, I am going to bring a proposition and the Deputies can have 4 years." This is how we have gone on. It is absolutely ridiculous. Forty people voted on that one. I again voted against because the people out there are not telling me: "Oh, you are doing the Clothier, you are getting us a general election." All they are telling me is: "Great job is it not, when you can vote for an extra year for yourself in there on a majority of a few?" Well, I looked at this and I have listened to the Senator and I am very sorry but that is the way I see it and if this makes everybody at least come in and vote on such important matters. As you say, you cannot rank it against some of the different things that Senator Norman has brought to our attention but this is a constitution that is hundreds of years old and we have got to change it with very much thought and with everybody having a vote on it. Whichever way, if they all want to vote for it or against, that is up to them but we should all at least be in the House, not this piecemeal... We are the masters of our own demise because we have been

bringing... somebody has popped up with any forms of reform and said: "Well, this will work." Someone else then says: "Well, if that is happening, Sir, I am going to do this." That is why we are here today. Forty votes on the Deputies and only 4 votes in it. Well, as you say, it could have gone either way but, as I say, I have been all the way along, voting against any reform but this one, Sir, I will happily support. Thank you.

#### **8.1.11 The Deputy of St. Martin:**

It was mentioned about the example of Deputy Baudains, but I think it is quite important that we know exactly what was Deputy Baudains'. It was to move to have at least 20 Members but it was for every proposition that was beyond the table. It was not selective and I think that is very, very important because what we have here is a basic... a discriminatory piece of legislation only looking after the self-interested people. If indeed this proposition was that in future every proposition that came to the House had to have at least 27 votes in support of it, we may well have given it consideration. All we needed was for the majority of those people present in the House, then possibly we could give it consideration but it is simply to protect the self-interested people. It is interesting to see that the speakers mainly who spoke in favour of it have been the Senators. Why? Because we are getting very close to the time now that this may well be a debate that is going to affect the Senators. That is basically what it is.

#### **The Deputy Bailiff:**

That is not correct. All the speeches in favour were not all Senators.

#### **The Deputy of St. Martin:**

No, I accept that but I said most of them, but I would add that obviously Deputy de Faye has every interest in becoming Senator. I know he has tried twice and I am sure he will try again so...

#### **Deputy J.J. Huet:**

Not all the speeches have been said yet, Sir, so how can he possibly know which way?

#### **The Deputy of St. Martin:**

Could I say that, again, I think this is very discriminatory. It puts the States in a poor light because what we are saying, that voting for ourselves is more important than any other particular proposition to come before the House. I am not going to repeat what Senator Norman said because I think he said it all. All I would ask Members to do is urge you to not support this proposition.

#### **8.1.12 Deputy R.G. Le Hérisssier:**

Just one question I would like to ask the Senator. I think his proposition, were it not appearing to be heavily politicised, would have a lot of merit. He is an integral part of P.P.C. Why, when they embarked on their major programme or reform, did he and the other Members who now accept this principle, why did they not then pursue this particular principle? It looks very odd that two-thirds... or, having come to the end of that particular programme and trying to rescue some of it, which is the process we are in at the moment, it seems very odd that at this very late stage of the day, we should now be introducing this. I think it does have some merit but it does look awfully political. The second point I would make, Sir, on reform, Deputy de Faye and people like that are absolutely right, it has become the most boring and tedious issue because, to the public, a lot of it is seen as moving the deck chairs around on the Titanic. Basically, the frustration... I have this discussion time after time with people. I was lobbied. Last night somebody told me: "Do you realise just how disillusioned we are with all of you, you know? We are totally alienated. We are fed up, we are this, we are that." The problem is, Sir, it almost leads me to the solution of political parties, which I know is a heresy in some respects, in a legislature of extreme individualism, or one that worships it, to an extent. I said: "Look, Sir, if you want a real change in this government, you have got to will the way to make that change. At the moment there is no way of changing the government, I am afraid. There are some little incremental changes we can make. We can fiddle

around on the margins but, essentially, we cannot, as in America, for example, at the moment or when the Labour Party changed, which is not as good an example, or in France, for example, we just cannot have that kind of change. The system just does not allow for it and I am afraid your disillusion is just going to continue because it is very hard to shift the current group. They are entrenched. The Ministerial system has helped and good luck to them I say, in a sense. It has helped to entrench them even further. There is no opposition, in an organised sense, to deal with that entrenchment and the disillusionment will get worse because we cannot, under this system, except in a marginal and incremental way, we cannot bring in change and we cannot bring in a different group of people who will bring a fresh approach. You are lumped with the current lot and somehow you have got to work on them.” That is the system. If you want it reformed, you have got to reform the composition of the States and you have got to do it fairly radically, but, as we have had proven to us several times now, because of the sheer morass of self-interest and so forth, it is virtually impossible at the moment, to do this and it will probably, Sir, take an external crisis to do it because we are utterly, utterly incapable of reforming ourselves. Thank you.

**Deputy G.W.J. de Faye:**

I wonder if I could just ask the Deputy to explain one aspect of his speech in the latter stages? He used the general phrase: “You are lumped with the current lot.” Did the Deputy imply that he is part of the current lot or he is not in the current lot?

**Deputy R.G. Le Hérisier:**

No Sir, I belong to the marginalised party. I am not part of the current lot. Thank you.

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

I do rise with some trepidation, Sir, because I am going to alarm Deputy Southern because I am going to agree with him, which is a fairly rare event. I would like to refer Members back to last year, to one of the many debates we have had on the composition of the States and our views towards holding a referendum. The only reason I refer back to that is because I proposed an amendment at that time. It was for us to say that, if we were going to ask the public their view in a referendum, then it needed, in my view, to be an absolute majority of people entitled to vote that decided the results of that referendum. This was quite strongly opposed by certain Members and was lost. One of them said the following: “What we are saying here is that we should not listen to the public. What we are saying here is we should make sure we set the bar so high that we cannot listen to them.” The speaker then carried on to say the following: “I think that is about as undemocratic as you can get. This amendment is a spoiling amendment which would ensure we never do anything.” Those words were said by the proposer of this proposition. Sir, I suppose I should be quite flattered that the Senator is applying my logic to the States Assembly but surely we, as States Members, are the ones that are best placed to consider matters in the composition of the States and I am concerned that this is a device to scupper any proposed changes. Essentially, what path does this lead us down? I am sorry but I do not happen to consider this is such a vitally more important matter than all the various examples that were eloquently quoted by Senator Norman. You know, why apply this rule just to the composition of the States? Why not, well, to everything we do? Yes, increase taxes or sell Jersey Telecom or whatever it is. These are all pretty fundamental matters to the people they affect. Therefore, Sir, I think this is the first supporting motion of the day. I believe its logic is questionable in these circumstances. I think it is undemocratic, potentially and I believe it should be rejected. Thank you, Sir.

**8.1.14 Deputy G.C.L. Baudains:**

If I might, first of all, answer a question that Deputy Le Hérisier proposed, Sir; he did ask why P.P.C. had not sought to bring a proposition similar to this one sooner. Well, I think the simple answer to that is that the Committee was so busy assembling workable solutions to the States’ constitution and trying to deal with complications brought about by propositions brought by the



Members that they simply did not have the time to address it. But, as far as the proposition itself is concerned, Sir, I was rather hoping that Members would address this. It is a very important matter and I was hoping that Members would address this with some maturity but it seems that, once again, we have strayed off into personal areas. I have no doubt that those that are opposing this proposition today do so because they may well be the ones themselves who rely on only a dozen or so votes to get their propositions passed in this Chamber. As Senator Vibert said during his opening speech, Sir, is it right that fundamental changes to our constitution should be made by a minority? With a quorum of 27, you only have to have 2 or 3 abstentions then we have the possibility that the Council of Ministers alone could make fundamental changes. They could do away with Deputies if they felt like it. Do we really want that? Perhaps the Deputy of St. Martin does. I have to say that those who argue against this proposition are arguing against democracy and to suggest that it is a devious means of obstructing change, as some have done already this afternoon, makes me wonder how much they really do have to clutch at straws. As I have said, possibly because they themselves rely on a low number to get their own propositions passed. They could possibly only muster a dozen or more or so votes for their own. It does happen, Sir, that Senator Vibert and I do not always agree on matters that come before this House but I have to say, on this particular proposition, he has my full support. I was particularly disappointed by Deputy Troy's contribution because he spoke of attempting to wreck change and I have to say if fundamental changes rely on there being just a few Members in this Assembly, then that proposition does not deserve to succeed. I am sorry, Sir.

**Deputy P.N. Troy:**

I do not call 40 a few, Sir.

**Deputy G.C.L. Baudains:**

If nothing else, an absolute majority might encourage more Members to be in this House when major votes are called and that would be no bad thing. But, referring back to Deputy Troy, he does appear to be proud of his success at getting changes through previously when there were not that many Members in the House. I have to say it has obviously escaped his notice that the changes he brought, brought chaos.

**The Deputy Bailiff:**

Does any other Member wish to speak? Very well. I call upon Senator Vibert to reply.

**8.1.15 Senator M.E. Vibert:**

Thank you, Sir. I would like to thank everyone who spoke and I will apologise but I will try and group together some of the comments rather than answer individually. I think what I want to make clear at the start is that a lot of people - those who spoke against - seem to know my motive better than myself and my motive is not to wreck anything. My motive is to safeguard the public against changes being made by a minority of States Members that may not be in the public interest. I was pleased to see Senator Norman back to his old barn-storming best but I think the States has probably grown-up from not just listening at the tone but looking at the content. There was not much content because the suggestion was that we were comparing this change with everything else, very important issues. It is not. The reason I have brought this for this change is because this is something we are voting about ourselves, not affecting the Island and I think Deputy Martin summed it up very well as how it looks from the outside. People saying: "Look, you are feathering your own nest. You are extending your own term of office, *et cetera*, with a minority of States Members supporting you" because that is exactly what happened or could happen in the future, for any changes. So, I was sorry that Deputy Scott Warren could not support it, or thought she could not and she said, you know, if it was 20, she might have proposed it. Well, it was open to amendment and I am sorry that she did not amend it if she thought that but I do not think 20 is enough. I think that anyone who wants to make a major change and cannot get the support of the

absolute majority of States Members of this House, what are they really thinking? What have they got to be afraid of? That is all I am asking, is that at least the majority of Members in this House support what you are putting forward. It is not an onerous task. Deputy Power, again, talked about stealth, a blockade. No, Deputy Power, it is a safeguard. It is saying to the public that, if we are going to change ourselves, at least you can be assured that half the people you elected are in favour of such change, not a third of the people you elected or even less but at least half because that is democracy. Again, I will not go over the people who spoke in favour but thank them, generally, because that was the point they made. I had to have a smile because Deputy Troy was saying why do you want to introduce something that is different to everything else? Of course we all know about Deputy Troy's 20 per cent rule, which changed things and put a different barrier, a different test in. He was not arguing against that then; he was arguing passionately for it. Of course, I did not expect Deputy Troy, who won his proposition, albeit by 22 votes to 18 on the day, to be a great supporter of this but, really, this proposal is far more important, with all due respect to Deputy Troy's proposition. It is not about a single proposition; the Deputy's proposition or the Constable's proposition, it is about setting us up as a mature democracy to ensure that we put safeguards in place for any changes in the future and that is what I am looking; to the future. What I am saying is, in the future we should ensure that any changes to ourselves are supported by an absolute majority, by at least half the elected States Members. Deputy Le Claire and Deputy Le Fondré both mentioned referendums and, yes, I was supportive of a referendum on the P.P.C. proposals, if they had gone through, and Deputy Le Fondré was very kind enough to quote what I thought was a very good speech from me in that debate about an absolute majority. Yes, the reason I would not necessarily support an absolute majority in a referendum is because the public are not obliged to go and vote. All States Members should be here, voting when then they can and that is the difference, so you would have to have 100 per cent turnout in a referendum. You are not going to get it. We should have as near as 100 per cent turnout for every vote in the States, really and that is important. I mentioned Deputy Martin, and I think it is important that we think how it is perceived from outside. What would the public think if we have had one vote 22 to 18 and we have had another vote that was maybe, with a few people abstaining, 12 to 10 with a couple of abstaining, in favour of a major change to ourselves, would that be acceptable? Because, without supporting my proposition, this is what the States are leaving themselves open to in the future. The Deputy of St. Martin said mainly Senators were speaking in favour. I do not know if the Deputy noticed but it was mainly Deputies speaking against. Was there any self-interest there? I urge all the Deputies, please do not regard this as a vote on whether you can have an extra year in office. It is more important than that.

**Deputy C.J. Scott Warren:**

On a point of order, it will be the people who are re-elected, who will have the extra year of office, which may or may not be the current membership. Thank you.

**Senator M.E. Vibert:**

I have so much confidence in our Deputies and I think most of them will be returned **[Laughter]** but it is giving those Deputies seeking re-election possibly nothing. What I am saying is do not vote with that in mind. I have no problem at all if the majority of this Assembly - an absolute majority - want to make Deputies' terms 4 years, well and good. No problem. Surely every Deputy would want it to be a clear, absolute majority vote, as it was for the Constables. It was a clear, absolute majority vote. Surely the Deputies would want that. They would not want to change their terms on a minority vote of less than half States Members supporting that change, surely. So, I welcomed Deputy Baudains, who, though we are on P.P.C., we often do not agree on things and I did not know which way he was going to speak, and I thought he made a lot of very, very good points and particularly to say that to vote... **[Interruption]** particularly, when he made the very strong point that to vote against this and to talk against it and to argue against democracy, and I think it is absolutely right. Why did we not think of it before? Why did I not think of it

before? Well, I did not. I was very heavily involved in trying to find a way forward and so on and I did not think of it. It was the recent proliferation of all the different votes we had that made me think about it because the votes were getting quite confusing and there were so many propositions, and it occurred to me that perhaps there should be a higher test and that is what I think. So, Sir, my concern is simply to introduce a safeguard for the public so that at no time in the future could a minority of States Members change the rules regarding the numbers of States Members and how long they are elected for, to suit themselves. As I said, the States turned down an opportunity to allow the public to have a say on such changes by the holding of a referendum and I believe that the least States Members should do is to give the public the reassurance that any changes to the States will have the support of at least over half the people they have elected. That is all I am asking for, is that any changes to ourselves must have the support of at least half the people - half the States Members - the people have elected. That is democracy. Sir, surely any States Member bringing such a proposition would want such a level of support to truly legitimise what he or she was proposing and that is all my proposition seeks to achieve; is to ensure any future changes to the compositional election of the States must at least be supported by a majority of all States Members. Sir, I move the proposition and ask for the appel.

**The Deputy Bailiff:**

The appel is asked for, for or against the proposition of Senator Vibert. I invite Members to return to their seats.

**Deputy S.C. Ferguson:**

Can I ask a clarification, Sir? Just a point of clarification for the Senator. Is he saying that if you had a vote, for instance, which went 28 to 25, assuming everybody was in the House, that would be a valid vote, under your proposition?

**Senator M.E. Vibert:**

That is very clear. That would be a valid vote because it would be more than half of the elected States Members would be voting. An absolute majority.

**The Deputy Bailiff:**

Very well. The Greffier will now open the voting.

<b>POUR: 35</b>	<b>CONTRE: 16</b>	<b>ABSTAIN: 0</b>
Senator S. Syvret	Senator L. Norman	
Senator W. Kinnard	Senator F.H. Walker	
Senator T.A. Le Sueur	Senator B.E. Shenton	
Senator M.E. Vibert	Connétable of St. Mary	
Senator P.F.C. Ozouf	Deputy R.C. Duhamel (S)	
Senator T.J. Le Main	Deputy A. Breckon (S)	
Senator F.E. Cohen	Deputy of St. Martin	
Senator J.L. Perchard	Deputy P.N. Troy (B)	
Connétable of St. Ouen	Deputy C.J. Scott Warren (S)	
Connétable of St. Peter	Deputy R.G. Le Hérisier (S)	
Connétable of St. Clement	Deputy G.P. Southern (H)	
Connétable of St. Helier	Deputy of St. Ouen	
Connétable of Trinity	Deputy J.A.N. Le Fondré (L)	
Connétable of St. Lawrence	Deputy D.W. Mezbourian (L)	
Connétable of Grouville	Deputy S.S.P.A. Power (B)	
Connétable of St. Brelade	Deputy K.C. Lewis (S)	
Connétable of St. Martin		
Connétable of St. Saviour		
Deputy J.J. Huet (H)		
Deputy G.C.L. Baudains (C)		

Deputy J.B. Fox (H)			
Deputy J.A. Martin (H)			
Deputy S.C. Ferguson (B)			
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 of Trinity			
Deputy S. Pitman (H)			
Deputy A.J.D. Maclean (H)			
Deputy of St. John			
Deputy I.J. Gorst (C)			
Deputy of St. Mary			

**The Deputy Bailiff:**

Now, that would be principles.

**Senator S. Syvret:**

Could I just, Sir, say, I only voted for it in the hope that it would end all these groundhog days of torture about these kind of debates.

**The Deputy Bailiff:**

Just before we conclude on this, Senator, I think you must formally move, therefore, paragraphs one and 2 of the amendment.

**Senator M.E. Vibert:**

I formally move the paragraphs, Sir.

**The Deputy Bailiff:**

Are they seconded? **[Seconded]** Does any Member wish to speak upon the details? All those in favour of adopting paragraphs 1 and 2, kindly show. Those against? They are adopted, therefore the amendment to the Standing Orders is adopted.

**9. Draft Gambling (Remote Gambling Disaster Recovery) (Jersey) Regulations 200-(P.170/2007)**

**The Deputy Bailiff:**

We come next to the Draft Gambling (Remote Gambling Disaster Recovery) (Jersey) Regulations - Projet 170 - lodged by the Minister for Economic Development. I will ask the Greffier to read the citation.

**The Deputy Greffier of the States:**

Draft Gambling (Remote Gambling Disaster Recovery) (Jersey) Regulations: the States, in pursuance of Articles 3, 9 and 10 of the Gambling (Jersey) Law 1964, have made the following Regulations.

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

May I ask my Assistant Minister, Deputy Maclean, who has responsibility for gambling, to be rapporteur for this item?

**The Deputy Bailiff:**

Very well, Deputy, with this onerous responsibility, kindly make the proposition.

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

I would like to make one point abundantly clear at the beginning. This proposed new legislation is not about introducing any new opportunities to gamble in Jersey or encouraging local residents to gamble. It is further recognition of the importance of e-commerce and the desire to deliver diversification within our economy. I will refer to the broader issues relating to e-gaming or e-gambling during my speech to provide context but Members should remember that these Regulations are specifically and only about disaster recovery provision for the e-gaming sector, nothing more. On 1st March 2005, the States debated P.62 - "Modernisation of the Island's gambling legislation." As a consequence of that debate, it was agreed, in principle, that legislation should be brought forward for approval by the States to allow online or remote gambling and, overwhelmingly, to create a new independent regulator, the Jersey Gambling Commission. With the creation of the Shadow Gambling Commission in December 2006 and development of a new Gambling Commission (Jersey) Law, this proposition presents long overdue progress and is a first legislative step to putting that States decision into effect. The role of the Shadow Commissioner is to prepare for the transition to a statutory gambling commission and to advise the Minister on changes that may be required to the Island's gambling laws. Most of our existing gambling laws originate in the 1960s and are not as effective as they should be in this modern age, especially with the many new methods for the delivery of services, specifically electronically. The Shadow Commissioner's terms of reference are to ensure that Jersey retains its excellent international reputation as a well-regulated jurisdiction, to encourage business growth and investment, and to ensure that potential harm is minimised and programmes are introduced to protect the young and the vulnerable. The new Gambling Commission law will be brought to the States within a matter of months, as soon as the drafting process is completed. However, in supporting the case for online or remote gambling in P.62 of 2005, Members voiced a number of legitimate concerns that we have been careful to address in this legislation. For that specific reason, this Regulation does not go as far as it was envisaged in 2005 but instead seeks to create a much more limited and regulated sector that the States can then reconsider in due course when the proposed new gambling law is brought before the House next year. With the exception of the Channel Islands Lottery Regulations in 1975, this is the first totally new gambling Regulation to be brought before the States in 42 years. It has been produced in consultation with and having received advice from the Shadow Gambling Commission. Members will no doubt be aware that the development of remote gambling services has become recognised as a legitimate business activity, offering economic diversity with a low footprint as well as numerous other economic benefits. Furthermore, it would bring with it the additional use of bandwidth through the Island, offering the benefits not just to one sector of the Island economy, but all sectors and potentially consumers, in terms of more competitive prices. The recent Gambling Act 2005 in the U.K. is the most recent example of legislation to permit and regulate this gambling sector. On 31st October 2006, I attended the first international summit on remote gambling, organised by the U.K. Government and hosted at Ascot by the then Secretary of State for Culture, Media and Sport. Jersey attended, along with 31 other countries, to discuss the creation of a new enhanced and socially responsible set of regulatory guidelines. I am delighted that, along with other jurisdictions, we were able to reach a common consensus about overriding priorities when legislating in respect of remote gambling. It was agreed that it should be conducted responsibly and with safeguards necessary to protect children and vulnerable people. That it should be regulated in accordance with generally accepted international standards, to prevent fraud, money laundering and other crime, and that it should not be permitted to be the source of crime and that, where offered, it should be verifiably fair to the consumer. Governments also agreed to actively explore the scope for greater international co-operation in the regulation of remote gambling. I believe these priorities, in conjunction with the areas of co-operation also identified during the summit, provide governments and regulators with an excellent foundation to build on, to develop

the core standards necessary to address the risks associated with remote gambling. These guidelines, which we have chosen to voluntarily adopt, lie at the heart of this legislation and the passing of these Regulations will be the first step in putting these commitments into effect. In developing these Regulations, we have actively consulted and gained the views of diverse bodies, both within the Island and overseas. Members will no doubt recall that the Shadow Gambling Commission undertook a public consultation process on the future of gambling in the Island in the autumn of last year. The results, recently released, largely followed the established pattern of faith versus commerce. I do not propose to rehearse this familiar debate at any great length but suffice to say that these Regulations are not designed to promote the development of gambling in Jersey. That may seem a little odd but, in fact, this proposed Regulation is solely about disaster recovery or D.R., as it is commonly termed. Disaster recovery is about having what is termed as resilience in the electronic network that serves a business so that if the service suffers a genuine disaster, the disaster recovery backup will come online and keep the business running. In that way this draft Disaster Recovery Regulation is quite different to any other gambling Regulations that are currently enforced. No new premises will open as a result of approving these Regulations and no new opportunities to gamble will be offered to local residents. Absolutely none. What will happen, however, is that Jersey will be able to build on the already excellent reputation that it has for offering world class disaster recovery services. This is because Jersey is already well known as being a reputable and efficient host of disaster recovery to other sectors and, coupled with the excellent regulatory standards that exist across the Island, make us a compelling and competitive jurisdiction. Jersey is, as Members will be aware, no stranger to this market because, although extremely rare, natural disasters do occur. The devastation left across the Caribbean in 2004 in the wake of Hurricane Ivan made the case for disaster recovery services as part of a company's business continuity planning. The banking sector was one of the drivers of this need for resilience, with business services and, as the gaming market has matured, so it too recognises the need for disaster recovery planning to protect its ability to offer customers uninterrupted services in the event of a disaster shutting down its primary place of operation. Our main competitors in the global e-commerce market have already recognised this and sought to diversify their telecommunications industry even further by offering these products. As such, Jersey is arriving late but I would argue we are still very well placed to reap benefits. The greatest benefit is that the Regulation incorporates the regulatory principles agreed at Ascot, and for the industry and other regulators at least it is clear and comprehensible. The tremendous strength and attractiveness of Jersey is not merely the legislative framework but the skilled workforce and quality infrastructure that exists within our economy. Let us not fool ourselves into thinking this is an undertaking with no merit and little value. There have been constant calls from the local business community to develop this sector for at least the last 8 years and worldwide many other jurisdictions have already taken advantage of the many economic opportunities that exist. Only last month the Chamber of Commerce produced a report entitled *Silicon Island*, encouraging the development of a wide range of e-commerce opportunities. A priority of that report, which included input from more than 100 companies, asked for the introduction of gaming legislation to enable Jersey to start to compete in this booming sector. But how often does government produce extensive reports and plans that promise a great deal but often deliver very little? We need to show that we are a government with vision, that not only talks to business about the need for investment and diversification but that has the courage and the foresight to help them to achieve it. We need to show them that we are willing to move with the times and keep our legislative base fit for purpose; dynamic and competitive. We need to present this whole package, combined with the fiscal and regulatory advantages we have in order to marginalise our competition and make Jersey the compelling place to do business. There will, of course, be those in the business community who will still say that this Regulation does not go far enough but we have deliberately chosen not to produce a full licensing regime at this time so that we can take stock of how this proposal comes into effect and what additional challenges, if any, it will bring to the Island. We recognise the wider regime of e-gaming does pose a unique opportunity to the Island but we also recognise the need to proceed cautiously and to ensure that

our regulatory regime is properly tried and tested to ensure that the young and the vulnerable are effectively protected. The types of business we seek to attract for disaster recovery are all quoted companies and significant players in their sectors of the e-gaming market, ranging from traditional racing bookmakers through sports books to bingo and online casinos. They are looking for a well regulated firm licensing regime in which to host their back-up disaster recovery services, and many have stated that Jersey has presented itself as just such a jurisdiction. Just as there are those that say that this Regulation does not go far enough, so too will come the cries that it has gone too far. I cannot accept that and the evidence certainly does not support it. As I have already stated, this proposal will not create any new forms of gambling in Jersey, nor provide any new opportunities for local residents to engage directly in gambling. To suggest that we should not move to regulate e-gambling ignores the reality that we are powerless to prevent it. Large numbers already have access to it through the internet right now. By doing nothing except sticking our heads into the sand and hoping that this issue will go away, is not only ignoring the States' decision of P.62 in 2005 but also leaves vulnerable local residents who might already have developed an unhealthy attachment to it, without any protection. This danger, small but real, will continue regardless of what we agree today. It is worth reflecting on how effective regulation of e-gambling in the future could be. It would offer greater protection to residents, especially the young and the vulnerable. This is because, with traditional forms of gambling like those offered through licensed betting offices, an individual can, for example, make multiple bets, running up huge losses, unnoticed and untracked. Whereas with electronic gambling, the host jurisdiction can insist that licensed operators track their player habits, putting up warning signs for excessive periods of play or continuous losses and, if necessary, restricting play. We can make a small step in addressing problem gambling issues today. We can allow this Regulation and, with it, charge the Economic Development Department and thereafter the Gambling Commission to use some of its licensing revenue to better address the question of gambling addiction. This will allow counselling services where needed and ensure that there is a programme of education, prevention and research put clearly in place. Without funds from the industry, this will be more difficult to address satisfactorily. There will also, no doubt, be those that say that gambling places the Island's international reputation at risk. This might once have been the case but is clearly no longer so. Jersey is in fact now the only part of the British Isles that does not allow any form of e-gambling or, even less contentious, disaster recovery provisions that we are debating here today. The United Kingdom has created a regulatory regime for e-gambling within its 2005 Act and has done so without concern for the reputation of the U.K., nor the impact it might have on the city of London. This is because any impact is now recognised to be more likely to be positive than negative. The same is true of Guernsey, which allows the licensees to base their service there. Not only has Guernsey suffered no reputational damage or had any major financial institution leave the jurisdiction as a result of the introduction of online gambling. Instead, it has positively prospered. The decision last year of one of the largest e-gaming operators to base itself in that Bailiwick is reported to be worth £10 million to their economy from that single company alone. To suggest, therefore, that a full e-gambling regime or indeed the more modest disaster recovery provision that we are seeking today can lead to reputational risk and economic decline defies the evidence. Having considered the background to this draft Regulation and what it sets out to achieve, I now want to discuss how it seeks to put this into effect. The Regulations set out to attract operators who seek a comprehensive and tightly controlled regulatory regime. Applicants for disaster recovery services are anticipated to be, for the most part, large established gambling operators with major brands that they wish to protect. They are also the types of company that are most likely to conduct their business in a way that is consistent with the standing of Jersey as a highly reputable business centre. In order to apply to have their disaster recovery in Jersey, a company must first hold a licence to operate in another regulated jurisdiction. This merely allows them to apply. A foreign licence on its own will never be sufficient to operate a business from or within Jersey. Even if a company is eventually granted a licence, it is a strictly limited licence and would not allow them to operate from Jersey permanently. Disastrous to find in the Regulations but it is regarded as a major

disruption that renders the gambling site inoperable in its home jurisdiction from any legitimate cause, but which vitally creates an offence if the disaster has been caused deliberately by the operator. In this way it would not be possible for an operator to evoke its disaster recovery provision if, for example, it was facing an investigation in another jurisdiction or simply wanted to move for its own purposes. The Regulation faces 2 types of control upon companies wishing to have a disaster recovery presence in Jersey. The first is a series of controls upon local companies that offer hosting facilities. These companies will have a number of duties and obligations placed upon them to show that they are fit and proper and report gambling activities to the Minister to ensure that only licensed activity can indeed take place. The hosting companies will need to be in possession of a hosting facilities licence and, in order to receive one, they will need to undergo a rigorous form of probity investigation. Typically, probity investigations concentrate on criminal and financial health checks, both at the company level and of its key staff, directors and ultimate beneficiaries. Applicants sign waivers to disclose information in files held in their host jurisdiction and elsewhere in order to ensure that the Minister has full access to all relevant information. The Regulation provides for access to information relating both to the company applying for the licence and its linked or subsidiary companies. Probity is undertaken on a cost recovery basis and fees are not refundable. In the event that a probity check uncovers any form of criminal links, previous convictions or history to indicate that the candidate is unable to prove that they are fit and proper, they will, of course, be denied a licence. While the risk of such an event is low for a Jersey based company, it is important that they are not exempt. The second control is on the companies that want to have disaster recovery systems in Jersey. These controls are necessarily strong to ensure that the Minister can have confidence that a licensee can only undertake sanctioned gambling activities. The same probity checks, as for the hosting company, apply but the Minister will also have powers to add any other conditions to the licence that he sees fit. An example of where this might apply is with regard to responsible gambling, where an applicant might be deemed to require additional staff training or to provide additional information to their players. In this way an operator will have to comply, not only with the conditions of the overseas gambling licence, but also with any additional conditions that the Minister may think are reasonable to ensure the highest standards of regulation and ensure that the Island's international reputation is protected. An overseas licensee will also have to incorporate locally in order to ensure that there is a local company presence that can be dealt with directly. As such, they will also be subject to the full range of Jersey legislation designed to ensure that they comply with anti-money laundering procedures and the latest I.M.F. (International Monetary Fund) and F.A.T.F. (Financial Action Task Force) standards. This is vitally important to ensure that the regulator and the courts have ready access to records and information but also because the threat of losing a Jersey licence can be expected to attract the adverse attention of regulators and other law enforcement bodies worldwide. This is a powerful tool in ensuring compliance. Once probity is completed and the applicant is licensed, a gambling operator may invoke legitimate disaster recovery for 3 months. To ensure that such action is legitimate, the hosting provider must, within 8 hours, inform the Minister that gambling is taking place. Independently, the operator must also inform the Minister, in writing, that disaster recovery has taken place and provide documentary evidence that it was legitimate. As soon as the Minister has been informed, staff from the department and thereafter, if approved by the States, the Gambling Commission would attend the hosting provider facility and inspect and verify compliance with the Regulation. Once the legitimacy of the disaster has been verified the Minister has authority to extend the length of the disaster recovery licence to an absolute maximum of 9 months. When the gambling operator is ready to stop its disaster recovery operations in Jersey, they must inform the Minister before ceasing operations. The hosting provider must also inform the Minister once the gambling provider has ceased their disaster recovery operations in the Island. Failure to notify the Minister is, of course, a breach of the Regulations. This provision allows for a managed handover of responsibility from the regulator back to the original overseas licensing authority. It is important to realise that in reality it is unlikely that a disaster recovery licensee will need to invoke. It is possible but highly unlikely. For this reason, officials and the Shadow



Gambling Commission will undertake periodic reviews of all licensees and also make periodic unannounced inspections. This ensures that there is no complacency and that any reportable matters are brought to the attention of the authorities as soon as possible. Finally, I would like to confirm to Members once again that these Regulations relate solely to disaster recovery and in no way seek to introduce any new gambling opportunities to Jersey residents or indeed encourage gambling within the Island. Sir, I move the preamble to Regulations.

**The Deputy Bailiff:**

The principle is seconded? **[Seconded]** Does any Member wish to speak on the principles of the Regulations?

**9.1.1 Senator J.L. Perchard:**

Just a little question, Sir, for the Assistant Minister who I thought explained the disaster recovery proposals extremely well. Will the Assistant Minister confirm the Island's position with regard to bandwidth capacity? Presumably now our bandwidth capacity is all supplied by subterranean links with the U.K. Will the Assistant Minister assure me that we have sufficient capacity in the event that the disaster recovery was invoked in a huge scale? Have we got sufficient capacity to develop this sector, at the same time expanding our telecommunication links for other sectors or will Islanders be faced, in 2 or 3 years' time, with the huge cost of a new cable in case the disaster recovery industry needs to invoke and use the network?

**9.1.2 Deputy A.E. Pryke of Trinity:**

I have great concerns for the principle of this proposition. While it appears to deal with what appears to be a modest issue, I feel it is a step to opening the door and, yes, we have been reassured by the Assistant Minister but I still think, in years to come, it could be that step not only to introduce the internet but also to introduce gambling into Jersey. We are told that this online gambling has brought benefits to a number of jurisdictions with no adverse effect but it clearly states clear economic benefit, but what is the real evidence in Jersey? What are the downsides if we do not approve this proposition? I think nothing. The Assistant Minister mentions about the role of a Shadow Gambling Commission and I fully support that. I am pleased to hear that it will be put into place. But why does it not come first, before this proposition? What is the rush to bring in this proposition first? I think it is money, not people. The main aim must be, at all times, to protect children and vulnerable adults but are there any policies in place to protect them now? In the U.K., the Department of Culture, Media and Sport, a major online gambling jurisdiction outside Europe have to apply to be put on a whitelist. This list demonstrates that their licensing regime protects the adults and children, keeps out crime, ensures that measures are put in place to enforce compliance, operators are subjected to rules on money laundering. If this is approved, is Jersey aiming to be part of this whitelist? How can Jersey promote gambling when we are aware of the side-effects of gambling and the consequences both on family life, both emotional and financial? Online gambling is easy; you sit at home, go online, especially for young people. At present there is not much research available to look at the effect it has on them. It is big business. We are being asked to approve this because it is good for Jersey's economy. I just see it as a way of gaining money at other peoples' expense and I urge Members to think carefully and reject this proposition.

**9.1.3 Deputy G.W.J. de Faye:**

I was most impressed by the Assistant Minister's very comprehensive introduction to the proposition. Indeed, I am beginning to worry that I may be, myself, a remote gambling shadow disaster **[Laughter]** in need of recovery. I will not go into the detailed history of that. On a more serious note, though, Sir, I was very fortunate to attend with Senator Perchard a briefing last week with members of the Shadow Commission who have been assisting the Island in compiling this legislation. I was most impressed with not only the calibre and quality of the individuals I saw but also with what they had to say. It is a shame, and I am sure that she was not there for her own

perfectly valid reasons, but it is a shame that the Deputy of Trinity was not able to attend that meeting because I think her fears and concerns... I am happy to give way, Deputy, but I did not see you there.

**The Deputy of Trinity:**

No, you are quite right, I was not there, but Deputy Gorst and I had a private meeting with the Assistant Minister and several other officers a week or so before the meeting.

**Deputy G.W.J. de Faye:**

I am delighted to hear that the Deputy moves in those types of circle. **[Laughter]** Maybe shadow remote information or something. I think Members should first of all remind themselves that some time ago the States, while rejecting a casino, and all the upfront gambling activities that might ensue within the Island, did agree to e-gambling as a concept for Jersey to pursue. This is part of the straightforward mechanics that are required if Jersey is to continue down that particular path. It is vital that we have a level of control that is approved type of control. There is no doubt that this type of gambling is with us now, that is a matter of fact. What Members though may not be aware of, as indeed I was not myself, were the controls that exist over individuals who take part in online gambling. I was, I have to say on my part, extremely impressed to see how technology has developed in order that online gamblers can effectively be, in effect, both the self-monitoring and be monitored by the very companies they gamble with. Members will be familiar with things like pop-ups on their emails and so on; we all get warning messages, from time to time from various distributors. This is precisely how modern online gambling works. Where the gambling company's online customers are seen to be spending significant amounts of money they are quite literally advised of that, and they can, in fact, set their own gambling limits and when they hit them they are told they have hit them and they are asked whether you are convinced you really want to carry on. I am assured that one of the elements that the Commission would undertake... and do not forget this is handling business on behalf of companies who have had disasters elsewhere and are effectively relying on the Island for server opportunities to continue their businesses in a proper way, these operations go as far as taking care of the social welfare of clients who run into difficulties. It is very impressive and very sophisticated in the way these matters are now handled. I think this is a responsible way forward, and I should emphasise that it in no way opens the floodgates to gambling within the Island. This is about remote disaster recovery. What we are doing is we are offering a service, one I am very certain will be enthusiastically taken up by clients elsewhere around the world in such circumstances that when their own domestic online gambling facilities have for some reason hit a disaster - the more we have our own personal laptops and computers, I think the more we are aware that those disasters can happen all too often - that they will be an alternative opportunity to carry on their business in Jersey. In fact, so slick are these operations that the businesses can effectively carry on as though nothing had happened in the original zone of problem. However, this proposition has to be supported because it is important that Jersey has the right legislation in place so that we can ensure here that the proper probity is applied to the remote disaster operations, while the disaster is ongoing, as it will have been applied in the countries of operational origin. I do not believe, I have to say, that we have anything to fear from this legislation, and it certainly does, I think without any question, represent some good, solid and entirely - I am going to use the wrong adjective now - worthy business that the Island should be considering.

**9.1.4 Deputy J.J. Huet:**

Could I just ask a question because I know - I should imagine - the least about computers? The only thing I can remember is from the banking days obviously we did have disaster recovery, I never ever remember, in my particular bank, ever having to use it. I am just curious, this gambling disaster recovery, which, if I understand it, is here for people that are somewhere else, does it often happen? This is what I am trying to get at. I never ever remember the bank going down and

having to use the disaster area but I am curious, does this happen on a regular basis? Do we charge these people by how many times it happens or is it a regular income just for them to keep the disaster here? I would just like some general knowledge because I know so little about it, which I am sure I cannot be the only person that knows so little about it. I am sure there must be others and I would have liked a bit more general knowledge about this disaster area and how often it is anticipated being used because, presumably, we must have some figures that... we have not had a gambling disaster area, we have had other businesses that must have this disaster area and I am quite curious to know any details.

#### **9.1.5 Deputy C.J. Scott Warren:**

In my first Deputy term of office I was on the Gambling Control Committee. I would like to ask the Assistant Minister, when a Gambling Commission has been set up, we understand from what we have heard... we have had a lot of reassurance that really this is especially for e-gambling and for disaster recovery. I would like to hear from the Assistant Minister what the future plans are once you have got a Gambling Commission established. What I really want to know, Sir, has the Economic Minister got a wider game plan?

#### **9.1.6 Senator P.F.C. Ozouf:**

I will just say a couple of things. I will just start by addressing, if I may, some of the remarks of the Deputy of Trinity. I like the Deputy of Trinity, she is a very nice and honourable Deputy, but I think her position on gambling is clear to Members. She is a prohibitionist. She believes that gambling is absolutely wrong. I think, with respect, she exaggerated her remarks somewhat by bringing in children, *et cetera*, and the reality is, is that millions of people do enjoy gambling and a transaction on the internet, and are not affected by it in the same way that some people become alcoholics. Do we need to protect society against addiction? Yes, we do. That is why the Economic Development Department is putting in place tougher safeguards and a Commission and all of the things that we have been speaking about. I would hope that she would recognise the reality of the world, and the reality of the world that prohibition does not work, and that putting in place control measures is the right position to take and that this is also, because she said that this proposition was going to be the sort of thin end of the wedge and we were going to start having casinos in Jersey. That is not the Ministerial position on gambling. This is simply the issue of disaster recovery. We have an agenda and a game plan which I will leave my Assistant Minister to explain in more detail, also to deal with the issue of the whitelist which, I think, the Deputy has had it explained to her. I think the Deputy overcooked her remark somewhat and I would ask her respectfully to understand that the world has moved on, and understand that this is simply an issue of disaster recovery and that we want to put in place tougher controls for gambling and put in place those protection measures which I hope that she worries about. I will just say one other thing on the issue of telecoms infrastructure. Telecoms infrastructure, as Senator Perchard has said, is absolutely vital to the future of the Island. The very situation of having gambling in Guernsey has meant and has justified a further investment in their undersea cables which Cable & Wireless have announced, as I understand it. It is worth, I am told, a number of tens of millions of pounds of telecoms revenue, and in the context of Jersey telecoms revenue could be very significant to our own telecom company in Jersey. Do we have enough bandwidth? Yes, we do have for this, otherwise businesses would not be interested in coming to Jersey. Would we want to expand the bandwidth for Jersey if we were to develop further elements of disaster recovery? Yes, possibly. Would this be valuable to our telecoms infrastructure? Yes, it would and it certainly will be welcome and we will be discussing with telecoms companies providing it, if this happens. But the economic benefit for Jersey is there, it is real, it is here and it is now, and it is there for Jersey's taking with the bandwidth that we have available. I will leave my Assistant Minister to very eloquently deal with the rest of the points.

#### **9.1.7 Deputy J.G. Reed of St. Ouen:**

I would just like to make a couple of points. I am a little bit concerned. I would like to pick up the issue that I think the Deputy of Trinity raised about the chicken and the egg. I know time has passed since we debated the gambling issues on 1st March 2005, but I thought one of the main decisions made at the time was that we acknowledge that gambling already took place on this Island and we needed a form of protection to be put in place and support provided. It seems somewhat that that particular main predominant issue that was flagged-up during that debate has fallen down the list, and if not, perhaps, the rapporteur can kindly give examples of what protection is now provided, which was not prior to March 2005, for the vulnerable against problems associated with gambling. I am not sure that at the time it was decided also, when I look at the role of the Commission as described on page 3, that it was aimed to develop business growth and encourage investment. I thought, as I say, that the original principle was very much protection and management of the gambling that exists on the Island. So if, as I say, I could ask the rapporteur to expand on that for me, I would be grateful.

#### **9.1.8 Deputy I.J. Gorst of St. Clement:**

It is with great disappointment that I must stand today and oppose the proposition brought by my good friends at the Economic Development Department. I am particularly disappointed because in other areas they are working with great effort to diversify Jersey's economy, for example, in the fields of e-commerce and intellectual property. Why am I opposing this proposition when the Assistant Minister makes it appear so reasonable, balanced and an all round jolly good thing? Well, Sir, I oppose this move for the following reasons. Firstly, let us look at the suggested benefits. The report talks about economic benefits, but I ask Members, what are the expected economic benefits? Well, it cannot be millions of gross value added because this is a simple proposal for the siting of disaster recovery facilities which would only be used in the event of a disaster. This simply siting of D.R. (Disaster Recovery) facilities would be most unlikely to generate any substantial revenue unless this really is about creating a backdoor for all internet gambling operators in the future. What is the remaining benefit? Well, it appears to be a greater bandwidth. I suggest to Members that this piece of legislation is too high a price to pay simply to gain increased bandwidth. To my mind, increasing bandwidth is a matter for the telecoms industry and competition within that market. This proposition is also being positioned as creating control and offering protection over those partaking in internet gambling. While that is a nice idea, and I would like to believe it, it simply is not the case. This proposition will not create control over problem gamblers. It will only create control over those entities which use Jersey as a disaster recovery site. I make that statement based upon evidence produced by the U.K.'s own Gambling Commission in their report entitled *The British Gambling Prevalent Study 2007*. It demonstrated, sadly, that there has been no drop in the number of problem gamblers in the United Kingdom in the last 8 years. It also demonstrated that problem gambling is particularly high among internet gamblers. If this Assembly believes that by passing this legislation it will help those problem gamblers, it is very much mistaken. That claim has not been proved by the experience of the United Kingdom. This legislation, I believe, will not protect local problem gamblers. Sir, having looked at the perceived benefits of the proposition let me say why I am opposing it. Internet gambling can, on the surface, appear benign, however, the opposite is the case. Internet gambling is dangerous because people can participate any time 24/7 from the privacy of their own homes. There is no need to overcome the obstacle of getting to a casino and no one needs to know that you gamble or for how long you are gambling. A piece of work undertaken by Drs. Ladd and Petry - 2 psychologists from the University of Connecticut Health Centre - found that internet gamblers may be more likely to have serious gambling problems than other gamblers. The report surveyed the gambling behaviours of 389 people. They produced various statistics but there is just one that I want to relay to Members and that is that only 22 per cent of the participants without any internet gambling experience have problems, compared with 74 per cent of those who use the web. A director of GamCare told B.B.C. News online: "We recognise that internet gambling has the potential to push up the prevalence of problem gambling. It is relatively easy to get logged on to

hard gambling activity which is repeated time and time again, and to get totally absorbed by it.” He said: “That said, in common with other forms of gambling young people were potentially most at risk.” It is estimated that people under the age of 25 are up to 3 times more likely to become problem gamblers. Sir, I also ask the Assistant Minister why we are debating this legislation today. It seems to me the timing itself is back to front. We have this proposition today before we have the full Jersey Gambling Commission set up. We are still in the period of the Shadow Gambling Commission. I therefore ask the Assistant Minister to withdraw this proposition until he is in a position to bring forward the legislation to give the Shadow Commission formal status. I will take that as he is not prepared to, Sir. **[Laughter]** It is not an accident that there are so many organisations which have been set up to deal with problem gambling and, Sir, I promise to send on some of their email links to Deputy de Faye later this evening. Nor, I would suggest, is it an accident that internet gambling is illegal in the United States of America. Gambling is an activity wholly premised on the activity of gaining at someone else’s expense which may, in turn, fuel gambling related problems among the vulnerable and the young. We are not talking here about a raffle at the Parish fete. I ask Members: is this the type of diversifying of the economy that they want, a Jersey for offshore gambling? It certainly is not the vision I want for this Island or for future generations of Islanders. I urge Members to reject this proposition.

**The Deputy Bailiff:**

I call upon the Assistant Minister to reply.

**9.1.9 Deputy A.J.H. Maclean:**

Senator Perchard, I think, has had broadly an answer to his question regarding bandwidth. The telecommunications companies in the Island advise us that there is plenty of capacity and, indeed, that they are more than prepared to increase that to meet demand. So, we are not anticipating any cost that would be associated with this in the public perspective, and indeed the capacity is perfectly clear. We must also remember, as demand increases, costs will be driven down, which is clearly another significant advantage. The Deputy of Trinity raised issues which were not of a great surprise to me in some respects - we did have the pleasure of having a discussion before this debate - she raised the point about the whitelist. The whitelist is a difficult situation. It is somewhat of a chicken and egg scenario whereby in order to be accepted from an application point of view on to the whitelist we first of all have to have the Regulations and the Gambling Commission Law in place. Until we have done that we cannot be approved. The interesting situation about the whitelist is that within the European economic area any company that is operating within that area can automatically - and does automatically - gain access and a position on the whitelist. So it is not all things to all men. It is not the great saviour that one might think that it possibly is because under E.U. (European Union) legislation companies have every right to advertise as clearly and openly as they so desire, so they have open access to the whitelist. She raised the emotive subjects, which of course we are all concerned about with regard to family values and the effects that gambling addiction has on certain families that are affected by it. It is clearly central to our concerns when considering this particular Regulation. The reason that the Gambling Commission has not been constituted yet is quite simply a law drafting issue. It will only be a matter of months before it is brought before this Assembly. I have little doubt that it will get the support of the Assembly because it was overwhelmingly supported in 2005, when it was debated previously. It is the appropriate regulatory body that the industry needs and we must recall, of course, that we already have a significant gambling industry. We have 29 licensed betting offices. We have an industry that is already operating and, frankly, needs to be better regulated, and that is the purpose for the Commission. We have the Shadow Gambling Commission, which has been operating since December 2006, and carrying out some extremely valuable work, and was extremely useful in putting together these Regulations. There is a significant depth of knowledge within the organisation for us to draw upon, and it should give us all a great deal of comfort when considering this particular point. I thank Deputy de Faye for his kind words. His comments about

shadows and needing to recover and other bits and pieces were somewhat interesting, I think he got a bit confused there, but he was absolutely right in the comments that he made, and he raised some very good points about self-monitoring and also the fact that organisations that are licensed to operate e-gaming sites have the ability through the internet systems to closely monitor player usage. This is key in terms of carefully monitoring player behaviour and ensuring that protection can be put in place for vulnerable people and people that are clearly showing patterns of addiction. In fact, there has been a very interesting piece of work carried out by a lady called Rachel Volberg, which looked into this issue - she is somewhat of an expert - and she has drawn conclusions from various jurisdictions around the world, one of which was South Africa which shows that the incidence of problem gambling through e-gaming is falling now because of the conditions that have been put in place in terms of careful regulatory controls. Deputy Huet asked various questions about the cost and the value and as to whether or not much disaster recovery is invoked. She is absolutely right. In fact, disaster recovery is there as an insurance policy. The financial services sector have it for that very purpose, there is no difference proposed with regard to gambling operators. It is there for insurance. I am not aware of any instances where it has been invoked. That does not mean there are not benefits to the Island in terms of doing it. There are fees that are paid just for approving a licence or having your application approved, just in case. The insurance policy, if you like, cost is £10,000: £5,000 as a probity cost, which is not refundable and £5,000 which is an ongoing annual licence fee for having the service available should they need it. If it were to be invoked there is a further cost for the operator themselves - a further charge - which is revenue for the Island and that is £250 a day for the period of time that the service is utilised. Of course it cannot be more than 9 months.

**Deputy J.J. Huet:**

Could I just clarify something with the Assistant Minister? Is the Assistant Minister saying that if they just carry on and do not use it, because it is a disaster, they will pay £5,000 a year, and that is it? So this is worth to us, each one that puts their recovery unit in Jersey is worth £5,000 per year?

**Deputy A.J.H. Maclean:**

That is quite correct, Sir. It is worth £5,000 of costs relating to probity, which is a one-off charge and £5,000 per annum. The probity will be reviewed on a regular basis, so that charge will come around again probably on a 5-yearly basis, but it is £5,000 per annum for just having the position there available should they require it. Of course the additional economic gain is in the bandwidth because it is not just a case that the bandwidth benefits are there if it is invoked. Bandwidth is there and being utilised just if the provision is put in place, for example, in terms of having the insurance there of having the service, the bandwidth facility is still available in there so of course we are building up our bandwidth. It is anticipated that if 10 licences are issued that it would double the bandwidth usage in the Island - double. That would help, obviously, strike down costs. So there are distinct advantages with very few licences being issued. Those are licences issued not evoked, just issued. Deputy Scott Warren was asking about the Gambling Commission, again, I think I have covered that particular point that should be covered... the Gambling Commission Law itself should be coming to the States within the next few months. The Shadow Commission is carrying out all the functions that the Jersey Gambling Commission will indeed do, just not in a statutory basis. It is not just for e-gaming either. The Gambling Commission is there for the control and regulation of the industry as a whole. We have an existing gambling industry and it is quite clear and important that it is properly regulated. The Deputy of St. Ouen referred to chicken and egg, putting the protection in place first. I think I have more or less covered that point. He is right in some respects. In an ideal world, with the appropriate law drafting time, we would have liked to have had the Gambling Commission in first, however we have a Shadow Gambling Commission. Indeed, as far as remote casinos are concerned, that would fall under the Jersey Financial Services Commission. They would have a supervisory role until the Gambling Commission is in place so there is the role of control there. But I have to say that a number of Members in their comments

were, I believe, getting somewhat confused with regard to the fact that we were going down the route as if we were introducing e-gaming or e-gambling within the Island. This is not what this is about. This has got nothing to do with e-gaming and e-gambling. This is purely a disaster recovery facility, no new gambling in Jersey, no new operators, no new staff, nothing of that type whatsoever, and yet a lot of the comments are, in fact, going down the route as if we are introducing e-gaming or e-gambling. The States did, in fact, ask us to bring legislation forward to that effect, we have chosen deliberately not to do it at this particular point, as I commented on earlier. We do, in fact, want to see the effects of this move, should it be approved by Members today. We are taking a more cautious route as I think you would expect us to do with regard to this matter.

**Deputy C.J. Scott Warren:**

I wonder if I could ask the rapporteur if he could comment further. I did ask if there were any future plans by the Economic Minister.

**Deputy A.J.H. Maclean:**

Yes, indeed. There are future plans. It is a role that the Gambling Commission will, in fact, be leading on and that is the modernisation of Jersey's gambling laws. Our existing laws date back to the 1960s. They are not, frankly, fit for purpose for a number of different reasons, and they do need significant revision. That is one of the primary functions that the Gambling Commission will be involved in. It will also be involved, as I have stated, in regulating the existing gambling industry that we have and, in due course, will be preparing and bringing forward proposed legislation for the introduction of e-gaming and e-gambling before this Assembly. That is something that we were asked to do by this Assembly back in 2005 with P.62. We have not brought it at this particular time but that, indeed, is on the cards for the Gambling Commission to work on and advise on and bring legislation forward. Deputy Gorst, my good friend, Deputy Gorst **[Laughter]** - my former good friend, Deputy Gorst - he said that I presented this as if it was a jolly good thing. Well, I am not sure about a jolly good thing, but it is certainly a good thing to do. It is the right thing to do. More importantly, it is the sensible thing to do and it is interesting to note that every other area in the U.K. has already brought forward legislation. The British Isles - all members of the British Isles - have brought forward legislation that allow e-gaming and e-commerce. Just about every state in the European Union allow it in one form or another. We are, in fact, way behind in terms of the modernising of our legislation in this regard. Quite frankly, if we feel that we can stick our head in the sand and hope this is going to go away and be somebody else's problem, I am afraid it is not. It is here right now. Internet access is available to just about everybody. Young people, vulnerable people, everybody, has the ability to go online, they have the ability to gamble, they have the ability to run debts, become addicted, and if we just do nothing about it the situation will get worse. Regardless of what people may think and the views that are expressed by my good friends and colleagues here, I am concerned by the effect that e-gaming and e-gambling has on residents of this Island right now, and I really feel that this is one small step. It is nothing to do, as I keep repeating, this is disaster recovery, it is nothing to do with e-gaming and e-gambling in Jersey, this particular Regulation. But if we move in the future and bring forward legislation next year to that effect then I think it will be the right move to consider, providing - and it is a very important caveat - that it is properly, properly regulated, and we have the correct checks in place to ensure that people are effectively protected. I think I have covered most of the points raised by most Members.

**The Deputy of St. Ouen:**

I did ask the rapporteur to give us some examples of what the Commission had done so far to protect the vulnerable.

**Deputy A.J.H. Maclean:**

Sorry, Sir, can I ask for that question to be repeated; I did not quite catch it.

**The Deputy of St. Ouen:**

I did ask, subsequent to the decision on 1st March 2005 what examples could the rapporteur give regarding what the Commission had done to protect the vulnerable in our society.

**Deputy A.J.H. Maclean:**

First of all, since 2005 there has been no additional gambling introduced into Jersey, so the position with regard to Jersey has not changed at all. Secondly, the Shadow Gambling Commission that is currently in place only took up its role in December 2006. So it has been operating through 2007, it has been heavily involved in bringing forward this particular proposal and looking at ways in which the existing gambling laws within the Island can be modernised, which, as I commented on a moment ago, date back to the 1960s. Moving forward within the next few months when the legislation comes before this Assembly regarding the Gambling Commission Law, we would hope then at that particular point that the Commission will start providing instructions with regard to developing the necessary procedures to bring forward the e-gaming and e-gambling laws for the following year. But there is a great deal of work to be done, but I have to stress that there has been no additional gambling introduced into the Island prior to 2005 when the decision was taken to introduce the Gambling Commission. In summary, this Regulation is small but it is a measured step for Jersey. It allows the States to put into effect the decision that I referred to in 2005, but in a manner that is unobtrusive and which is unlikely to have any consequences in our opinion, damaging or otherwise, for the resident population. It builds on the real confidence in regulation that many jurisdictions have for Jersey, both in terms of gambling industry and, indeed, far beyond. Any decision to move further and establish the full licensing regime will, of course, require the full authority of the States, and I hope and expect the full endorsement of the Jersey Gambling Commission that we have been discussing. The benefits of passing this proposition however are very real, and in terms of possible bandwidth use and infrastructure investment by local companies, the impact should be felt in time across the economy. To quantify it, in savings alone, it is estimated the value will be just from the move of disaster recovery, to run into several millions of pounds. Sir, I maintain the preamble to the Regulations.

**The Deputy Bailiff:**

The appel is asked for in relation to the principles of the Draft Gambling (Remote Gambling Disaster Recovery) (Jersey) Regulations. I invite Members to return to their seats, and the Greffier will open the voting.

<b>POUR: 31</b>		<b>CONTRE: 14</b>		<b>ABSTAIN: 0</b>
Senator B.E. Shenton		Deputy of St. Peter		
Connétable of Grouville		Deputy K.C. Lewis (S)		
Deputy P.N. Troy (B)		Deputy J.A. Hilton (H)		
Connétable of St. Brelade		Deputy I.J. Gorst (C)		
Deputy C.J. Scott Warren (S)		Deputy of St. Mary		
Deputy of St. John		Deputy J.A. Martin (H)		
Senator L. Norman		Deputy R.C. Duhamel (S)		
Senator J.L. Perchard		Deputy S.C. Ferguson (B)		
Connétable of St. Martin		Deputy of Trinity		
Deputy R.G. Le Hérisier (S)		Deputy of St. Ouen		
Deputy G.W.J. de Faye (H)		Deputy S.S.P.A. Power (B)		
Senator F.H. Walker		Deputy P.J.D. Ryan (H)		
Connétable of St. Ouen		Deputy G.C.L. Baudains (C)		
Deputy J.B. Fox (H)		Deputy of Grouville		
Deputy P.V.F. Le Claire (H)				
Connétable of St. Mary				
Connétable of St. Saviour				



Deputy J.A.N. Le Fondré (L)				
Senator T.A. Le Sueur				
Deputy G.P. Southern (H)				
Deputy D.W. Mezbourian (L)				
Deputy A. Breckon (S)				
Senator M.E. Vibert				
Connétable of St. Helier				
Senator P.F.C. Ozouf				
Connétable of Trinity				
Deputy of St. Martin				
Deputy S. Pitman (H)				
Senator T.J. Le Main				
Connétable of St. Lawrence				
Deputy A.J.D. Maclean (H)				

**The Deputy Bailiff:**

Deputy Southern, I am advised that this legislation falls within the remit of your Scrutiny Panel. Do you wish to have the matter referred?

**Deputy G.P. Southern (Chairman of the Economic Affairs Scrutiny Panel):**

It does indeed, Sir, however we do not wish to scrutinise it.

**The Deputy Bailiff:**

How do you wish to take the Regulations, *en bloc*?

**Deputy A.J.H. Maclean:**

*En bloc* please, Sir, if possible.

**The Deputy Bailiff:**

I invite questions, very well. Do you propose the Regulations *en bloc* and the Schedules?

**Deputy A.J.H. Maclean:**

Yes, Sir.

**The Deputy Bailiff:**

Are they seconded? **[Seconded]** Does any Member wish to speak or ask questions on any of the individual Regulations? Very well. All those in favour of adopting all the Regulations and the Schedules, kindly show. Those against. They are adopted. Do you propose the Regulations in Third Reading?

**Deputy A.J.H. Maclean:**

Yes, Sir.

**The Deputy Bailiff:**

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

**10. Goods and Services Tax *de minimis* wavier (P.171/2007)**

**The Deputy Bailiff:**

We come next to the Goods and Services tax *de minimis* waiver - Projet 171 - lodged by the Minister for Treasury and Resources, and I ask the Greffier to read the proposition.

**The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion (a) to agree that the *de minimis* waiver of duty or Goods and Services Tax on imported goods below which the duty or tax due will not be collected should be fixed at £12; and (b) to request the Minister for Treasury and Resources, in conjunction with the Agents of the impôt, to implement the decision.

**Senator T.A. Le Sueur:**

Before I begin speaking I wonder if this is an opportune time for me to lodge another Goods and Services Tax related issue, and that was Projet 10.

**The Deputy Bailiff:**

Yes, indeed. So, the Minister has lodged the Draft Goods and Services Tax (International Services Entities) (Jersey) Regulations - Projet 10 - and that has been lodged today.

**10.1 Senator T.A. Le Sueur (The Minister for Treasury and Resources):**

Turning to this proposition now, this deals with one of the final details need before the introduction of G.S.T. in May this year. It relates to the entry of goods into the Island and the impact this will have on the workload of the Customs and Immigration Service. As Members are no doubt aware, the staff of the Customs Service are already involved in the administration of goods imported into the Island and a very good and cost effective service they provide. Indeed, it is so good that unless a Member is directly involved in the importation process they are probably largely unaware of the activities of the staff involved. The introduction of Goods and Services Tax has presented an additional challenge to them, and they have responded in a very positive way in redesigning and upgrading their systems to deal with the additional work involved. Because they already have a good working knowledge of the importation process I am confident, and so are the officers of that service, that they can cope with the introduction of our simple form of G.S.T. with only a small number of additional staff. However, when Members realise that well over 90 per cent of all the goods we buy are imported from outside the Island they will also appreciate how important it is that the clearance procedures at the port of entry are as simple and efficient as possible. Currently, the vast majority of dutiable goods coming into Jersey are imported by major companies who already have established procedures and accounting arrangements. These arrangements will be extended to many more companies to cover the G.S.T. requirements and there has been a good dialogue between the Customs Department and those importers for many months now. For other parties who only import on an occasional basis...

**The Deputy Bailiff:**

I beg your pardon, I have been advised that we are not quorate. We are now.

**Senator T.A. Le Sueur:**

I will continue. For parties who only import on an occasional basis, the opportunity will exist for pre-clearance and pre-payment of G.S.T., again to ensure that goods come into the Island with the minimum of delay and inconvenience. One significant exception to this rule is in the case of the goods imported occasionally, usually by a private individual, and one who is not registered for G.S.T. and does not wish to, or is unable to, pre-clear. For these persons there will be paperwork to complete involving Customs Officers as well as the importers concerned and, potentially, a tax to be paid based on 3 per cent of the value of goods imported. The same difficulty exists at the present time in respect of those imported goods for which Customs duty is liable. It has been commonplace for many years now not to seek to collect that duty when the sum involved is less than £10. This recognises the potential inconvenience to the importer as well as the additional Customs Officer resource which would be required. That has been in place, as I say, for many

years now and simply on an inflationary basis should now be a figure of a value of about £16. What I am proposing, to maintain the simplicity and, of course, the effectiveness of the system, the threshold for duties and tax collectible by Jersey Customs in aggregate should be set at £12. Indeed, Sir, I could make a Ministerial decision to do just that but in fairness to the States Members and the community I felt it only right that I should bring the matter to this Assembly. I am aware of the different views expressed by different sections of the Island community, some of whom think the limit should be lower, some of whom think it should be higher. I know that whatever figure is used it will be a disappointment to one party or another. It is a very subjective and emotive subject and there is no absolutely right answer. In this context I have read the comments of the Corporate Affairs Scrutiny Panel whose work I have generally found very helpful in ensuring that we reach reasons and reasonable decisions. In this instance I fear that they have been able, at the present time, only to reflect the views of those who have spoken to the Panel. I think that in this case the conclusions of the Panel are based largely on personal opinions rather than on evidence. I appreciate that the Panel may have felt that they were hampered by lack of time available to them, although my proposed *de minimis* limit has been public knowledge for some months now. I am grateful that the Panel accepts the need to keep the operation of the Customs Service as simple as possible, and in this context I note that they would therefore like a further review within the first 12 months operation of G.S.T. to see whether another alternative quite radical approach would be beneficial. I am happy to confirm that I am prepared to carry out such a review. As part of that process I am happy to consider the legal implications of a different approach whereby the onus for collection of duty or fee rests with the carriers or the importers rather than with the Customs Service. Meanwhile, I have tried to take a middle-of-the-road approach between those whose business is the importation of goods, who would like a higher figure, and some local retailers, who would like a lower figure. However, I have not chosen the sum of £12 simply because it is halfway between the 2 extremes. Instead, I have tried to gauge the impact on the economy of the Island offsetting the *de minimis* limit at different figures. In deciding on a figure of £12 which would translate into an import value of about £400 if no other duty or taxes were payable, I have had to reply on the limited amount of information and evidence currently available to me. That evidence has been well presented on pages 12 to 15 of the Scrutiny Panel report and I shall do no more than summarise it here. Briefly, the evidence before me is that other than those brought in by commercial importers or retailers the majority of goods imported into the Island have a value of less than £100. Samples taken show that 70 per cent of all personal imports were below £100 in value and 85 per cent were below £200. I do not have a figure for what was below £400 but I can say with reasonable certainty that it is more than 90 cent. Secondly, I can advise Members that the Jersey Post alone bring over 150,000 parcels a year or roughly 500 a day. As Members can see from page 15 of the Scrutiny Panel report, on average each package would take 15 minutes for Customs to process. So if all those 500 parcels were processed we would require another 16 Customs Officers working a 7.5 hour day and that, Sir, it simply not cost effective. It does not, indeed, include the time of the Post Office or courier staff which would add to their overheads. There is, therefore, clearly a need for some *de minimis* figure, and, as I say, I am proposing a figure of £12. Purely from a Customs Duty point of view the break-even figure comes out at something like £6 or, indeed, £200 in value for a non-dutiable package. However, if one assumes that a similar time involvement of the staff of the importers and retailers and couriers, and the economic disbenefit to the Island and the consumer, the value comes to more like £300 or £400. This delay in throughput would also call for increased warehouse facilities at the airport and for somebody at the harbour. I therefore settled for a *de minimis* figure of £12 based as being the lowest figure which could be economically justified. Indeed, I was minded to go higher to the figure of £15 which is the one recommended to me by my professional advisers. Ultimately, that may be a better figure but for the present time I am prepared to live with that of £12. Some may argue that local retailers will suffer as people are inclined to shop outside the Island. I would respond that people shop outside the Island for a variety of reasons and that those who do so have to balance the uncertainty of the condition of what they are buying against the possible cost saving or increased choice. I

appreciate the pressures already faced by local retailers, many of whom have indeed voiced their feelings. But given the analysis that most of the imports are currently valued at below £100 I do not think that, of itself, will significantly worsen the problem. I point out, Sir, that some people think that this is a new factor linked to the growth of internet shopping, and I point out to Members that many Members of our community, including some of the less well-off, or those without access to the internet, already currently purchase goods through catalogue shopping. The same principles will of course apply to them, so it is not even the case that the well-off would benefit from shopping outside the Island. Finally, there is the situation of the consumer who is also the importer. If that person buys some goods outside the Island on holiday or business and then brings them back to the Island with him or her, he is potentially liable to G.S.T. on such goods, but policing would be very difficult unless a pragmatic solution was adopted. Then, of course, there is an even more complex situation where the goods being brought in happen to be dutiable as well, and I think of tobacco and spirits and wines - people coming back from holiday in France and so on - because a *de minimis* figure I am talking about relates to the total sum being collected by Customs, which includes duty as well as G.S.T. So clearly the amount available within the *de minimis* limit is affected by both those items. Given that duty is based on alcoholic strength and G.S.T. based on value the scope for confusion and acrimony can only increase if we have a low *de minimis* figure. In summary, Sir, I have tried to keep the guiding principle, agreed at the initial stage, of keeping G.S.T. as simple as possible and trying to keep the cost of administration as low as possible. On that basis I believe that the figure of £12 is a reasonable one to apply and that is what I propose to do. I hope that Members agree with me, Sir, and I move the proposition.

**The Deputy Bailiff:**

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

**10.1.1 Deputy P.J.D. Ryan of St. Helier:**

First of all I note the comments of the Treasury and Resources Minister about the conclusions in our report being based on our own personal preferences, but it is interesting to note that the very next thing he said is that he accepted all of the recommendations in our report. So, I think that probably speaks for itself. I would like to start by just saying quite clearly that I believe that the Minister has made a decision to set the *de minimis* waiver at £400 and that this decision is based almost exclusively on the cost of collecting G.S.T. by officers of the Customs Department. Sir, I feel a bit like Helier Ecobichan when a hire car driver asked him the way to Rozel from outside the Farmers in St. Ouen: "Oh, by cri, I would not start from here if I were you." Right at the start the Minister decided that import G.S.T. was to be collected by the Customs Department, thus discounting at an early stage the better option of having the private sector collect the tax, passing on any costs of collection to those doing the importing and using the service. We have seen time and again how, given time, the commercial pressures of competition in the private sector are capable of driving efficiency and providing the impetus for companies to find solutions to any logistical issues and minimising costs involved. Surely, Sir, the proper starting place would have been to have reached a conclusion based on equivalent waiver levels and the relative retail market power of our immediate trading neighbours, the U.K. and France, and then formulate a collection policy second. Using the private sector to collect the tax would have allowed a much lower *de minimis* which would, in turn, be much fairer to local businesses and equitable to all consumers. Why is it that the U.S.A., Canada, the United Kingdom, and many, many others do it this way? If Members want proof of this I suggest they turn to page 10 of our report and study the Canadian model and the economic circumstances surrounding their system and its comparability to Jersey. Further considerations such as how much tax revenue are we giving away, became secondary once the Minister's original decision on method of collection had been made. My Panel found it quite difficult to assess the revenue loss from the information provided by the department, the same information available to the Minister. What difference would a level of £150 instead of £400 make? What little information there is, is of necessity full of assumptions and with very significant

gaps. Sir, I believe, and my Panel believes, that we do need to rapidly change our attitude towards the collection of accurate information on the value of parcels and packets being imported so that at least the Minister of the day can make an informed decision in a year's time rather than one based largely on guesswork with huge margins of error. That is why we need a review in 12 months' time when hopefully we will have all of that information. I do congratulate the Minister on accepting the need for that review. Now, if you believe that those who take the trouble to shop around on the internet or mail order deserve to get the benefit of lower prices and that this is good for local competition, you would be right. If you believe that off-Island businesses often have lower overheads, wider stock ranges, larger markets, and can often undercut local traders, again, you would be right. But if you believe that as a government we should have a policy that gives a further 3 per cent price advantage to non-Jersey businesses over local taxpaying and employing businesses you would be wrong. This is not going to be a long speech, Sir, so finally let us be clear. The Minister is seeking approval from the States for a long-term policy, for a long-term policy of a high tax-free limit - some 4 times higher in tax take terms than that of our neighbours, and 20 times higher in value terms. This policy ignores most socio-economic considerations and relies for justification on the very narrow criteria around the cost of collection by highly paid public sector staff. Anyway, in my view, a government decision on taxation that is based exclusively on the cost of collection is unlikely to be a sound one. Let us be clearer still. The Minister does have the legal power to make a decision on this regardless of today's vote. That is why it is important to send a clear message to him for the future. In the short term, and on a practical level and at this very late stage, he has little choice other than to start G.S.T. now with a high *de minimis* but I, Sir, will be registering my disapproval of this policy as a long-term feature of our G.S.T. by voting against it. I hope other Members will consider doing the same.

#### **10.1.2 Deputy P.V.F. Le Claire:**

I think for a lot of ordinary people it is a confusing issue, and perhaps we can see more of an ordinary explanation as this unravels. During the recent elections in town for Constable I was asked by a number of businesses about the procedures that they would have to go through, and those were mentioned in the Minister's speech this afternoon in respect of the complications of assessing whether or not money would be paid or forms needed to be filled in, *et cetera*. While I believe this is generally understandable to allow consumers to receive goods below a certain amount of money - it would not over-encumber the States of Jersey with small purchases - one recognises that the local businesses may be in a position of less advantage on top of the Zero/Ten proposals that are in place. The question I have is maybe a little naïve but nevertheless it is in there, among all the other questions, and that is how, if any way, will this affect businesses that import to export, such as fulfilment companies, *et cetera*? Will they be able to manage their imports in such a way that they do not contribute in that way and they do not contribute on exports in any event? I just wondered, if it all, has this been thought about?

#### **The Deputy Bailiff:**

I call upon the Minister to reply.

#### **10.1.3 Senator T.A. Le Sueur:**

I thank the 2 Members who have spoken, and appreciate the concerns which the Chairman of the Corporate Affairs Scrutiny Panel raises about how this could be approached. Yes, it is true, I have looked at this from a point of view of the costs of administration, because that was one of the key messages which came out of the G.S.T. consultation process: that the public wanted administration costs kept simple. Now, I appreciate that one could still keep the administration costs simple by filing them out to a third party - such as the importers - to do, and that is why I am prepared to consider the recommendation of the Panel to investigate that within 12 months and report back. But I think we have difficulty in simply trying to compare Jersey with any other jurisdiction, and part of the difficulty in trying to make those comparisons is because we have such a low rate of

G.S.T. So this is not designed in order to give local traders a disadvantage. This is done in order to keep the economy of the Island - keep the running of the Island - as simple and efficient as possible in order that the economy runs in the most efficient way and that therefore those businesses have the benefit of greater turnover and greater business activity. So, I am sorry that the Chairman having accepted that I will accept the recommendations of his Panel then still decides he wants to vote against this proposition just to record a message. I am not sure what message he is going to give, and it strikes me the only message he is giving me is that he is rather confused. I hope Members are not confused because this is a simple and pragmatic proposal which I am putting forward. I turn to Deputy Le Claire and the concern which he has in respect of the paperwork for local traders. I think one of the great benefits in respect of this particular proposition which is really dealing with import at the port of entry, is that all that paperwork - or the majority of that paperwork - will be done by importers who are already well-versed in the activities of the Customs Department because they are already involved in importation and paperwork, and this simply adds an additional layer. Those businesses concerned are quite happy - happy may not be the right word - are quite able within their resources to take on the additional paperwork involved. There will be difficulties, I agree, for some of the small businesses, and that is why we have set a high turnover threshold of £300,000 a year below which businesses do not need to register. Finally, he asks how this would affect businesses who import to re-export. Well, clearly, they will have to suffer G.S.T. on the goods when they bring them into the Island, they will be able to recover the G.S.T. when they export the goods from the Island and assuming that is done within, say, a couple of months of importation then one should be off-set against the other within the accounting period available and there should be no cash flow difficulty or other drawback to them. So, from those businesses point of view there is no additional complication, apart from having to keep proper accounting records, which they will no doubt be doing anyway. So, I think, Sir, this is, as I say, a fairly pragmatic approach to a solution with no right answer. What we have here is a figure which is reasonably balanced, as I say, some may say to high, others too low, but it does bear some resemblance to the costs of collection, the costs of administration and I am sure Members would not want me to set a figure which was so low that I would have to employ another dozen or more Customs staff in order to deal with this problem. If we can deal with it in another way in the future, I am quite happy to look at it. In the meantime, we have to start from where we are, and that means that we have to have a realistic *de minimis* limit. The limit I am proposing is, I believe, realistic and I maintain the proposition.

#### **The Deputy Bailiff:**

The appel is asked for. I invite Members to return to the Chamber in order for there to be a vote on pour or contre on the proposition of the Treasury and Resources Minister. The Greffier will open the voting.

<b>POUR: 38</b>		<b>CONTRE: 9</b>		<b>ABSTAIN: 0</b>
Senator L. Norman		Connétable of St. Helier		
Senator F.H. Walker		Connétable of St. Martin		
Senator W. Kinnard		Connétable of St. Saviour		
Senator T.A. Le Sueur		Deputy C.J. Scott Warren (S)		
Senator M.E. Vibert		Deputy J.A. Martin (H)		
Senator P.F.C. Ozouf		Deputy G.P. Southern (H)		
Senator T.J. Le Main		Deputy S.C. Ferguson (B)		
Senator B.E. Shenton		Deputy P.J.D. Ryan (H)		
Senator F.E. Cohen		Deputy S. Pitman (H)		
Senator J.L. Perchard				
Connétable of St. Ouen				
Connétable of St. Mary				
Connétable of St. Clement				
Connétable of Trinity				

Connétable of St. Lawrence				
Connétable of Grouville				
Connétable of St. Brelade				
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 P.N. Troy (B)				
Deputy J.B. Fox (H)				
Deputy of St. Ouen				
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 A.J.D. Maclean (H)				
Deputy of St. John				
Deputy I.J. Gorst (C)				
Deputy of St. Mary				

## **11. Draft States of Jersey (Amendment No. 4) (Amendment) (Jersey) Law 200- (P.173/2007)**

### **The Deputy Bailiff:**

We come next to the Draft States of Jersey (Amendment No. 4) (Amendment) (Jersey) Law - Projet 173 - lodged by the Chief Minister. I will ask the Greffier to read the citation.

### **The Deputy Greffier of the States:**

Draft States of Jersey (Amendment No. 4) (Amendment) (Jersey) Law 200-; a Law to amend the States of Jersey (Amendment No. 4) (Jersey) Law. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

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

Could I ask that Deputy Le Fondré as my Assistant Minister act as rapporteur for this item please.

### **11.1 Deputy J.A.N. Le Fondré (Assistant Minister, Chief Minister's Department - rapporteur):**

It is hopefully a short item correcting a minor oversight at the time. In September of last year the States approved the new Employment of States of Jersey Employees' Regulations which basically allowed certain categories of States' employee who are deemed to be politically eligible to stand for election to the States. The States also approved Amendment No. 4 to the States of Jersey Law in order to allow politically eligible States of Jersey employees to stand for election. Unfortunately, Sir, the amendment to the Law was shown as coming into effect on the same date as the new Regulations and that cannot happen because the amendment to the Law has to go for approval by Privy Council and then be registered in the Royal Court. All this does, Sir, is make it clear that the amendment to the States of Jersey Law relating to States' employees standing for election to the States will not come into effect until approved by the Privy Council and registered in the Royal Court. That is it, Sir, thank you.

### **The Deputy Bailiff:**

Do you propose the principles? Are they seconded? **[Seconded]** Does any Member wish to speak on the principles? All those in favour of adopting the principles kindly show. Those against. The principles are adopted. Deputy Ryan, I think this technically falls under the auspice of your Scrutiny Panel.

**Deputy P.J.D. Ryan (Chairman of the Corporate Services Scrutiny Panel):**

No, thank you, Sir.

**The Deputy Bailiff:**

Do you wish to propose the articles together, Deputy?

**Deputy J.A.N. Le Fondré:**

Yes, Sir.

**The Deputy Bailiff:**

You propose Articles 1 and 2? Seconded? **[Seconded]** Does any Member wish to speak on the individual articles? All those in favour of adopting Articles 1 and 2 kindly show. Those against. Articles 1 and 2 are adopted. Do you propose the Bill in Third Reading?

**Deputy J.A.N. Le Fondré:**

Yes, Sir.

**The Deputy Bailiff:**

Seconded? **[Seconded]** Does any Member wish to speak in Third Reading? All those in favour of adopting the Bill in Third Reading kindly show. Those against. The Bill is adopted in Third Reading.

## **12. Draft Companies (Amendment No. 2) (Jersey) Regulations 200- (P. 175/2007)**

We come next to the Draft Companies (Amendment No. 2) (Jersey) Regulations - Projet 175 - lodged by the Minister for Economic Development, and the Greffier will read the citation.

**The Deputy Greffier of the States:**

Draft Companies (Amendment No. 2) (Jersey) Regulations 200-: the States, in pursuance of Articles 59, 73, 124A, 127YN and 220 of the Companies (Jersey) Law 1991, have made the following Regulations.

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

This is going to be an important amendment to the Companies Law and the Regulations: I am going to ask that my Assistant Minister, the Constable of St. Lawrence, act as rapporteur and then I will take the Law. I ask for your permission for the rapporteur for the Regulations.

### **12.1 Connétable G.W. Fisher of St. Lawrence (Assistant Minister for Economic Development - rapporteur)**

The purpose behind the amendment to the Regulations is to modernise aspects of the Companies Law in accordance with international developments to introduce more flexibility and simplicity. All jurisdictions have found that company law needs updating on a regular basis and Jersey is no different in this regard. For example, the U.K. has just completed the most sweeping and significant changes to U.K. company law in the last 20 years with an almost complete replacement of the 1985 Companies Act. The proposed changes to be debated shortly reflect up-to-date thinking and sweeping away outdated concepts such as the reliance on share capital in order to protect creditors and moving towards solvency statements. There will be further changes shortly to be debated. The Commission is currently working on Companies Law (Amendment No. 10), this will reflect changes in company law which are essential in order to prepare for the I.M.F.



(International Monetary Fund) assessment in 2008. The proposed changes to the Regulations have been through the normal consultation process. The proposals have been subsequently comprehensively discussed with industry following a consultation paper published on 30th April 2006. The draft legislation has been considered by a steering group, industry and the Commission, none of whom object to their adoption. The Regulations contain a number of substantial and important changes to the Companies Law, all designed to ensure that Jersey companies remain flexible vehicles suitable to the widest possible range of corporate activity. The most significant changes are as follows. Regulations 5 and 6 remove the prohibition against a company giving financial assistance for the purchase of its own shares. This has been a longstanding problem as it effectively makes it difficult for a person to require a company using a loan and at the same time uses the shares in the company as security for that loan. As with many changes to the new law, the principle is that provided the company remains solvent the actions of a company are its internal affairs. The prohibition against financial assistance has been lifted in the U.K. and it will significantly assist the finance industry to follow suit in Jersey. Regulation 7 introduces treasury shares, which will permit a company that purchases its own shares to hold them for a limited duration rather than cancel them. This means that the company can purchase its own shares and then transfer them to a new investor much more easily which will be of popular use to the funds sector. Regulation 8 permits a regulated financial services business to act as a corporate director of a Jersey company which will, again, assist the financial services industry. In practice many directors are provided by regulated businesses and it makes sense that those businesses, rather than its employees, should act as directors. Regulation 12 permits cells of cell companies to have different boards of directors to the main company. There are also a number of minor changes of a technical nature. There are temporary articles proposed. These are transitional provisions to ensure that offences introduced by regulations have tariffs in the period after the Regulations have passed and prior to the amendment number 9 being passed by the Privy Council. As previously stated, industry has commented on and is in favour of the amendments. Sir, I move the preamble.

**The Deputy Bailiff:**

Are the principles seconded? **[Seconded]** Does any Member wish to speak in respect of the principles? All those in favour of adopting the principles kindly show. Those against? The principles are adopted. How do you wish to propose the Regulations, Connétable?

**The Connétable of St. Lawrence:**

I would like to just go through them, Sir, and propose them at the end, if that is all right?

**The Deputy Bailiff:**

You propose them *en bloc*?

**The Connétable of St. Lawrence:**

Yes, but I will explain them going through.

**The Deputy Bailiff:**

I do beg your pardon, I have forgotten to ask Scrutiny. Deputy Ryan, is the Corporate Services...

**Senator P.F.C. Ozouf:**

I think it is Economic Affairs. My legislation is normally the Economic Affairs. I am the only Minister to enjoy the attention of just one Panel, Sir.

**The Deputy Bailiff:**

I am sorry about that. Deputy Southern, do you wish to have this matter referred to your Scrutiny Panel?

**Deputy G.P. Southern (Chairman of the Economic Affairs Scrutiny Panel):**

No, thank you, Sir.

**The Deputy Bailiff:**

Connétable, it is a matter for you to take them all and give such explanation as you think necessary.

**12.2 The Connétable of St. Lawrence:**

Yes, Sir, that is what I propose to do, if that is all right? Turning now to the Regulations where there are very minor changes, these will not be discussed. Regulation 2 puts a temporary provision into part 11 of the Law until Part 1 of the Law and Schedule 1 to the Law can be amended by Amendment No. 9 to ensure that there are penalties in place for breaches of Article 55 concerning the making of solvency statements. Regulation 3 amends Article 55 to remove the requirement that directors may only make solvency statements in relation to the redemption of shares after having made full inquiry into the affairs and prospects of the company. This is believed to have placed too onerous a duty on directors who should have to form the opinion that the company is able to discharge its liabilities prior to the redemption and looking forward over the next year of trading. Regulation 3(b) amends paragraph 12 of Article 55 so that requirements placed on directors relating to an authorisation of the redemption of shares shall only relate to those directors who authorise the redemption and not the directors generally. Regulation 3(c) amends Article 55(18) to dovetail with the amendments permitting treasury shares to be held which will be permitted under the changes proposed in Regulation 7. That article currently states that when a par value company is about to redeem shares it may issue shares up to the nominal amount of the shares to be redeemed as if those shares had never been issued. Regulation 3 see removed from the ambit of the paragraph redeemed shares that are to be held as treasury shares since such shares will not automatically be cancelled on redemption. Regulation 3(d) inserts a new Article 55(21). The new paragraph (21) makes clear that shares redeemed by a company are cancelled on redemption. This article does not apply to shares redeemed by a company and held as treasury shares. Regulation 5 removes the prohibition on Article 58 of the Law against a company giving financial assistance for the purchase of its own shares. This has been a longstanding problem as it effectively makes it difficult for a person to acquire a company using a loan and at the same time using the shares in the company as security for that loan. As with many changes to the new Law the principle is that provided the company remains solvent the actions of a company are its internal affair. The prohibition against financial assistance has been lifted in the U.K. and it will significantly assist the finance industry to follow suit in Jersey. Regulation 7 introduces the concept of treasury shares which will permit a company that purchases its own shares to hold them for a limited duration rather than automatically cancel them and reduce the share capital of the company. This change will mean that a company can purchase its own shares and then transfer them to a new investor much more easily which will be of particular use to the funds sector. Regulation 8 permits a regulated financial services business to act as a corporate director of a Jersey company by altering Article 73. This measure will assist industry and bring significant costs to regulated businesses. In practice, many directors are provided by regulated businesses and it makes sense that those businesses rather than its employees should act as directors. However a body corporate may be a director of a company only if the body corporate is registered as a director under the Financial Services (Jersey) Law 1998 and if the body corporate itself does not have a director that is a body corporate. This check is to ensure that there is always a human person who must be directors of the corporate director and who may be found liable for the actions of the corporate director. Further, the corporate director is regulated by the Commission to prevent abuse and ensure that the corporate director operates to the high, regulatory standards required by the Commission. Going on to proposed Article T127YDA does more than this however, in that it alters the existing policy in relation to cell companies. Currently a cell of a cell company must have the same directors as the cell company itself. The amendment will change this by permitting cells of cell companies to have different boards of directors from the cell company. The duties imposed on a cell of a cell company under part 9, Duties to Relating to Registers and Certification of Shares, are, under this article, imposed on the cell company and

accordingly the cell comes under an obligation to furnish such information to the cell company in order for the cell company to comply with such duties. Regulation 15 replaces Article 127YG. The current article places the obligation to prepare regular accounts on the cell company in relation to a cell rather than on the cell itself. Subsequent to the amendment, the cell will be obliged to keep the records rather than the cell company. The amendment will also limit the information that the cell company will be entitled to obtain from the cell to such information as is necessary to enable the cell company to prepare its annual return, which must include information in relation to each cell. Regulation 19 amends Article 127YM, so that a memorandum and articles of a company may be altered so as to enable the company to become a cell company, if the alteration is sanctioned by the court as an arrangement under Article 125, without, as is currently the case, a special resolution of the company being required. The Regulation also establishes in proposed paragraphs 8 and 9 certain requirements in relation to certification of cells that have been created after alteration of memorandums or articles. Sir, I move the Regulations.

**The Deputy Bailiff:**

Are all the Regulations seconded? **[Seconded]** Does any Member wish to speak on any of the individual Regulations.

**12.2.1 The Deputy of Grouville:**

I just wonder, is Economic Development, by bringing these Regulations forward doing the Treasury out of some revenue? Because whereas before separate annual returns would have to be lodged for separate companies we can now lodge one annual return with lots of different cell companies information on it, therefore the Treasury, as I see it, will not receive the same sort of revenue as they would if the cell companies were all individual companies and therefore the revenue for lodging the annual returns would have to be handed over for each company. It is a very complicated subject, Sir, and I am not doing...

**The Connétable of St. Lawrence:**

If I may interrupt, I think I understand what the Deputy is getting at, Sir.

**12.2.2 Deputy P.V.F. Le Claire:**

One hesitates to admit when one does not know what one is doing, but I think really now is the time to confess all perhaps. I think the States needs to consider whether or not in the future this type of proposal needs to be better scrutinised in the future. I personally think that many similar types of pieces of legislation come before the Assembly ill-understood and ill-scrutinised by the majority of Members. I may be speaking as an individual, but I get the feeling that perhaps these complex pieces of legislation tend to go through very, very little debate whereas we can have an hour and a half on whether or not we want to have disaster recovery in relation to the internet because we have all been online at some time or another, and we know how to gamble. I think that in relation to the obligations from the international community perspective, it is all very well having a very high level of qualification among our jurisdiction in relation to the Jersey Financial Services Commission and a very high set of regulatory standards for companies. But I just get the feeling - and maybe it is only me - that most States Members do not understand the vast majority of these types of pieces of legislation that come before us. While they are supported because everybody wants to support the main industry, I just wonder whether or not we need to consider in the future individual briefings on these with a little bit more clarity, maybe a little bit more opportunity for discussion, rather than coming in on the first session after Christmas and New Year, at the end of the first busy day, I just do not think that many Members... I get the impression many Members are like me, Sir. I may be wrong, but I certainly am not as *au fait* with these Regulations as perhaps I would like to be.

**12.2.3 Deputy S.C. Ferguson:**

Yes, I note Deputy Le Claire's comments and one of the things that has been sculling around in the Chairmen's Committee from time to time is the necessity, perhaps, for a specialist legislative Scrutiny Panel, however, that is not what we are here for today. One of the problems of cell companies that has always been a niggle of the regulators has been the possibility of sort of cross-contamination of one cell to another. Now, this talks about non-cellular assets and liabilities. I wonder if the rapporteur would like to, for the benefit of the more simple-minded States Members, like myself, like to give some Mickey Mouse examples of what he means by this because if you start including non-cellular assets and liabilities then you are, it seems to me, getting into the cross-contamination area and this is something that has always been, as I say, a great problem for regulators. Certainly it was when I was at the Financial Services Commission.

#### **12.2.4 Senator P.F.C. Ozouf:**

I think I probably need to, as the Minister responsible, address the remarks - I think the very understandable remarks - of Deputy Le Claire and hopefully give him, and other Members some assurance that I fully appreciate that we are being asked in this proposition and then the changes to the Law, to deal with matters which are extremely complex, commercial legislation which I know that my Assistant Minister has a lifetime of experience, as a qualified accountant, dealing with company law. He probably understands it, I try and understand it, but it is not only the recommendations and it is not only the views that we bring as Minister and Assistant Minister to this Assembly, but before it gets to this stage, this has been through an exhaustive scrutiny process by, for example, the Commission, themselves equipped with lawyers and experts. The drafting instructions; there is a working party of the Law Society and Jersey Finance, a working party dealing with company law amendments; themselves lawyers looking at this, examining this. Indeed, this amendment has been in the drafting stage for something of the order, I think, in excess of 12 months, and even as late as November was there some extremely complex e-mails between the different members of the group of exactly what the different provisions of different articles meant. There were some arguments about some certain subtleties. That is the working group. Then, of course, we have got our own officials. Within Economic Development we have our own lawyer who advises myself and the Assistant Minister and, not forgetting, beforehand we have to go through the Law Officers' Department and this has the eye... and indeed the Attorney General, it must be said, does form an important function of scrutiny of law in this Assembly that perhaps we would not accept or we would not expect Attorney General's in other Assemblies to do. He has given, I know, details and other of his staff have given detailed assessment and critique of the legislation that is before Members. I know that that is not going to mean that everybody in this Assembly is going to understand the pollution of cellular areas like Deputy Ferguson raised, and whether or not that compromises the integrity of the cell company that we have tried to put forward. We cannot all be experts in, I am afraid, commercial law. What we can do is we can put in place the correct safeguards and procedures to ensure that when we do have bits of commercial legislation such as this, then I can assure Members that it has been through that appropriate consultation period - consultation process - that more-than 2-eyes principle of bringing commercial legislation through. There is an issue, I have to say, that Deputy Ferguson and Deputy Le Claire raise, that the former Deputy Dorey raised, that in fact this Assembly should be equipped with a standing scrutiny committee for legislation that would be a final also revision body/review body/scrutiny body of legislation. That may well be something that Privileges and Procedures should look at, partly perhaps even if it is to simply test the fact of whether or not the Minister or the Assistant Minister has been through the appropriate controls that he sees fit to ensure that the legislation is fit for purpose for the Assembly's consideration. I just make those observations to attempt to, I hope, allay some of the completely understandable concerns of Deputy Le Claire, but to assure him there has been a lot of work done on this, a great deal of eyes have been poring on it, a great deal of greater minds than mine, and certainly than my understanding of it have done it, and I would hope that that would assure Members in passing. What is important for competitiveness of the Jersey economy and the use of the company for the benefit of the economy - because the

Deputy of Grouville, the Assistant Minister will comment on this - what is important is that our company structure, and our company law, remains competitive so that our financial services partners can use it to the best effect and that is what is going on with the 12,500 people that work in financial services. They are using Jersey companies, Jersey company law, to the benefit of providing economic growth, and that is at the heart of effectively of why we are doing it, but without compromising for one second the standards of the Island.

**12.2.5 Deputy J.J. Huet:**

I do believe in the U.K. that they have got Scrutiny that looks for this. We have not got it here and, it is fine, and I do trust Senator Ozouf, and the Constable - the Connétable of St. Lawrence - but if there is something wrong here that has not been picked-up, it will not be picked-up by me because I do not understand it, and when I looked round the Chamber I would have said the majority of the Chamber did not understand it. I might be wrong but that is the impression I got. All I am saying, is if there is something wrong we are the ones to blame because if it bounces back on us we were the ones that sat in this Assembly and passed it, and we passed it not really understanding it, Sir, taking it on good faith. I hear that, but I have heard we have passed things in this Chamber before on good faith and then a bit further down the line we find out: "Ah, something in that was wrong. It could not apply in Jersey." Back it had to come to the Chamber and then we looked very stupid because we had passed it the first time round. I just have to say that. I find it very dangerous to just pass something on something that we are not understanding. I mean - dare I say, Sir - I would have had much more chance of understanding if it had come through Jersey Overseas Aid because I would have got an accountant, a lawyer and a banker on it. But I do not think there are too many accountants, lawyers and bankers in this Chamber, and that is why I do not think that we are really understanding it, and I think we are treading on dangerous ground.

**12.2.6 Deputy J. Gallichan of St. Mary:**

I just wonder if I could bring the House's attention to the Machinery of Government Review which does deal with this particular aspect and recommendation 25, and ask Members to please give their comments on that, Sir.

**12.2.7 Deputy G.P. Southern:**

I, too, want to just refer briefly back to Deputy Le Claire, and he is absolutely right when he says: "Yes, this is an issue, an item that could have been looked at and examined in some depth" in fact a great deal of depth, by my Scrutiny Panel. However, it is a reality that we have a limited budget, a limited resource. The fact is that Scrutiny, in whatever area, will only get whatever - 3 or 4 per cent - of anything of all the Bills that come past us, and that we did, in fact, look at that and think this is a heavyweight, serious piece of work, can we afford the time to do it? Can we get the expertise to cast that special eye, second or third eye, that sceptical eye, that perhaps Scrutiny possesses over it with certainly a different perspective? We did consider it and the answer was no, in terms of getting the workload that we already have and the amount of effort that would have been required to analyse this properly, and not just give it a superficial gloss over the top, would have been significant. So it was considered, and is correct to say it would have been exactly the sort of material we would love to have the time and resource to examine a bigger part, put back together, but unfortunately that is not the case, we will always be just picking things and we will not get more than 3 or 4 per cent of the amount of work that comes past us. That is the reality of Scrutiny as we have it currently set up.

**12.2.8 Deputy I.J. Gorst:**

Yes, I for one would like to rise and thank Economic Development that normal service appears to have been resumed with this proposition after the slight blip of their earlier proposition in the day. In fact, I think it is probably fair to say that in the past government departments have been a little bit slow in amending company law and bringing forward products which keep Jersey on the

competitive edge of its major industry, and I would like to thank the rapporteur for his clear description of these articles. Thank you.

**The Deputy Bailiff:**

Do you wish to reply, Connétable, in relation to Regulations 1 to 23?

**12.2.9 The Connétable of St. Lawrence:**

Yes, Sir. I, first of all, address my comments to the Attorney General just in case I slip up on the legal points on one or 2 questions, because I do not have the Law in front of me with regard to cell companies and therefore I cannot go into the detail. But my understanding, first of all relating to annual returns, I think here the Deputy of Grouville might well be referring to annual reports, which are not the same as annual returns, but in any event, if we are talking about annual returns, a company has to file an annual return, so there is one return for that company. If a cell were to file an annual return in addition, that would be additional annual returns and, I guess, the intention would be that there would be an additional charge for each return. So, therefore, the revenue would be greater. Maybe I am not answering the question that you raised.

**The Deputy of Grouville:**

If I could just interrupt in order to be helpful. I was talking about annual returns: Article 13 sets it out whereby it says: "There will be one annual return and the information of each cell will be contained in that." So therefore the company gets away with one annual return for maybe many activities within it.

**The Connétable of St. Lawrence:**

An annual return relates to the shareholders in a company and therefore the fact that a company might have a number of cells would not require more annual returns to be made, I think that is the correct position. I do not know if the Attorney General wants to comment on that - he probably does not.

**Deputy P.V.F. Le Claire:**

Could I ask, Sir, before the Attorney General does, if there is a provision within the legislation that different cell companies can have different directors? Normally in an annual return the directors are identified so I wonder how...

**The Connétable of St. Lawrence:**

The directors are only identified if we are talking about a public company. A private company does not have to divulge the names of its directors, I think I am right in saying. That used to be the case anyway.

**Senator P.F.C. Ozouf:**

Would my Assistant Minister give way? I think the point needs to be made that there is going to be a reduction in the amount of annual returns that are given in respect of the individual cells and that one return will be given in relation to the overall company. This is, at the end of the day, a lot of these changes are made in order to make Jersey companies competitive against other companies that Jersey is in a competitive marketplace to do, and that is one of the trade-offs that is considered, and that is why we have industry working groups looking at this to ensure that Jersey companies remain competitive, and at the end of the day that we are providing a product and a company which is going to command the best economic return for Jersey and provide the greatest economic value. So there are some trade-offs. In some cases we could be increasing company returns, but we would reduce the competitiveness of the Jersey company, and that really is, in simple terms, at the heart of the reason why some of these changes, and this particular change, is made in relation to cell companies which are a real engine for the Jersey economy.

**The Connétable of St. Lawrence:**

The next comment was from Deputy Le Claire, I think that has probably been dealt with - that was in relation to scrutiny generally, and I think is really beyond the ability of me to comment on at the moment. Deputy Ferguson talked about cross-contamination with non-cellular assets and liabilities. The fact that a cell might have assets and liabilities and there are other assets and liabilities outside that particular cell makes those non-cellular assets and liabilities, and therefore there is no cross-contamination. Senator Ozouf spoke next and dealt with the scrutiny issue. Deputy Huet, thank you very much, also commented on scrutiny. The Deputy of St. Mary reminded us of the need to complete our questionnaire, and Deputy Gorst, thank you very much for your comments. Sir, I maintain the Regulations.

**The Deputy Bailiff:**

The appel is called for in relation to Regulations 1 to 23.

**Deputy S.C. Ferguson:**

I said that cross-contamination was a problem and I said we are talking about non-cellular assets and liabilities. My impression was that a cell company was complete in itself, and I asked for Mickey Mouse examples, of what were non-cellular assets and liabilities.

**The Connétable of St. Lawrence:**

Sorry, Sir, perhaps I did not make that as clear as I might have done. If a cell company has a number of cells, say, 5 cells, let us take cell number one, it has assets and liabilities that are specific to itself. All the other assets and liabilities are non-cellular as far as that cell is concerned. Does that answer the question?

**Deputy S.C. Ferguson:**

In the paragraph then it is saying that you might have a situation where a cell says those are my assets and the court will say: "Well, you are mistaken, those assets belong to another cell." Is that the purpose of this article?

**The Connétable of St. Lawrence:**

Yes. The non-cellular assets, in that case - you mention the 2 cells - to the first cell, the non-cellular assets are not its assets but they belong somewhere else in the company to another cell.

**The Deputy Bailiff:**

The appel has been called for, so I invite Members to return to their seat, and the matter before the Assembly is for or against the adoption of Regulations 1 to 23. I invite the Greffier to open the voting.

<b>POUR: 41</b>		<b>CONTRE: 2</b>		<b>ABSTAIN: 0</b>
Senator L. Norman		Deputy G.C.L. Baudains (C)		
Senator F.H. Walker		Deputy S. Pitman (H)		
Senator W. Kinnard				
Senator T.A. Le Sueur				
Senator M.E. Vibert				
Senator P.F.C. Ozouf				
Connétable of St. Ouen				
Connétable of St. Mary				
Connétable of St. Clement				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Lawrence				
Connétable of Grouville				

Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy A. Breckon (S)				
Deputy J.J. Huet (H)				
Deputy of St. Martin				
Deputy P.N. Troy (B)				
Deputy C.J. Scott Warren (S)				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (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 K.C. Lewis (S)				
Deputy of St. John				
Deputy I.J. Gorst (C)				
Deputy of St. Mary				

**The Deputy Bailiff:**

Do you now propose the Regulations in Third Reading?

**The Connétable of St. Lawrence:**

Yes, I do.

**The Deputy Bailiff:**

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

**12.3 Deputy P.V.F. Le Claire:**

I would like to thank the Minister for standing up and explaining to me and other Members the process in which these Regulations have had a check and balance in respect of their legality. The only point that I would make out of all of this is that perhaps the Chairmen’s Panel and members of Scrutiny really do need to consider whether or not independent Members... only one of which I heard with confidence speak, and he is an accountant, about his knowledge on these issues. One must, one understands, respect the need for Jersey to remain competitive but one must also bear in mind that we have a duty of responsibility to make sure that the legislation we pass is not only competitive but equitable and protects the shareholders, and not just offers competitive advantages to companies that operate in Jersey, and there is a deficiency at this time. I am glad that we have spoken a little bit about it, while we support the finance industry we need to be a little bit more mindful, in my view, of how much we support it so willingly, so blindly.

**12.4 Senator P.F.C. Ozouf:**



I just wish to comment on that. I think the Deputy has made some good points about the understanding of Members in relation to complex legislation. I am the promoter of legislation, with my Assistant Minister; we have scrutinised on the invitation of the Scrutiny Panel, but the message is clear, what I think we should be doing, because I am afraid that this is not the last bit of complex company law amendment, there are other company law amendments, Deputy Gorst was very kind and said that we are progressing matters, we are making matters more competitive. Yes, we are, and we are doing so with suitable speed. But what I suggest to Members is that I invite the Scrutiny Panel to arrange at least a hearing where we can be examined in public, perhaps they can invite an expert to sit with them in order to ensure that we are being asked the correct and appropriate questions for the protection of the Island and all the rest of it, and that there could be an additional safeguard put in place. I will ask the Scrutiny Panel to do that when we propose company law next time, and I hope that will be of assurance to Members.

**The Deputy Bailiff:**

If I may from the Chair, I understood it be suggested that perhaps presentations by some of the experts to States Members to which they could go would be helpful.

**Senator P.F.C. Ozouf:**

Indeed. Normally I think our track record on presentations is pretty good. On this occasion we did not do it, and I accept the point, Sir.

**12.5 Deputy S.C. Ferguson:**

Could I also ask that when particularly complex pieces of legislation like this come through then in the principles section we have a - I hate to say it - a rather more simplistic approach to ... instead of just going ... This one went just through the Regulations and said this is going **[interruption]** it would have helped to have a few introductory paragraphs for the layman approach. This was rather the expert approach, and it would help, I think.

**Deputy G.P. Southern:**

With your permission, since Scrutiny has been referred to - my Panel in particular. I wish to point out that it is not for Ministers to devise the programme for Scrutiny. It is for Scrutiny to devise a programme for Scrutiny. It is for Ministers to present properly the information, and that is a problem for the Ministers and not for Scrutiny to solve on their behalf. So, I would encourage the Minister, he did say we obviously got it slightly wrong this time, to improve on his presentation in future.

**Senator P.F.C. Ozouf:**

I am not sure that I can accept that. **[Laughter]** I know that this is not an argument, Sir, but I invite and give briefings, including on the financial services and ask my officials to give the Scrutiny Panel briefings. I think the comment - the suggestion - that yes, on this occasion the detail... but the fact that the Scrutiny Panel is briefed on what we are doing is a reality upon our invitation.

**Deputy G.P. Southern:**

Then give it to Members by all means, not necessarily just...

**The Deputy Bailiff:**

I think we have heard enough from both of you.

**12.6 Deputy P.V.F. Le Claire:**

On a point of, perhaps, finality - hopefully - could I just ask on a point of information: if the generous offer by the Minister to demonstrate the application as it pertains to the changes in

company law in the future would be available from him and his officers and his professionals, to all Members? That would be most helpful.

**The Deputy Bailiff:**

Does any other 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.

**ADJOURNMENT PROPOSED**

**Senator M.E. Vibert:**

Could I propose the adjournment so that Members can study the Draft Companies (Amendment No. 9) (Jersey) Law [Laughter] overnight which is the next item of business and perhaps we will get through it a bit quicker tomorrow morning.

**The Deputy Bailiff:**

Do Members agree to the adjournment? The Assembly is adjourned until 9.30 a.m. tomorrow morning.

**ADJOURNMENT**