STATES OF JERSEY

OFFICIAL REPORT

TUESDAY, 11th MARCH 2008

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

QUESTIONS

1. Written Questions

1.1. TO THE MINISTER FOR PLANNING AND ENVIRONMENT by the CONNETABLE OF JOHN REGARDING THE NUMBER OF SITES IDENTIFIED IN THE 2002 ISLAND PLAN WHICH REMAIN UNUSED:

Question

"Would the Minister inform members how many of the H2, H3, H4 sites identified in the 2002 Island Plan remain unused and the number of units they have the potential to yield if used?"

Answer

H2 sites

Most of the eleven H2 sites, which were zoned for Category A housing purposes in the 2002 Island Plan, are either completed (ie sites H2 (3) – (6) and H2 (11)), or are nearing completion (e.g. H2 (7), Field 690A, Maufant and H2 (9), Field 40, St. Clement). Only two rezoned sites remain where development has yet to commence, and planning permission is pending for one of these. The approved or anticipated yield of completed homes from those remaining is around 140 dwellings, as detailed in the following table.

Site	Total homes	Status
H2 (1): Fields 848, 851, 853 and 854, Bel Royal, St. Lawrence	102	71 units currently under construction. Further 31 units awaiting completion of Planning Obligation Agreement.
H2 (2): Field 1218, Mont-a-l'Abbe, St. Helier	Up to 14	Proposed extension to Clos Vaze development – yet to receive planning consent
H2 (8): Fields 190, 191 and 192, La Rue de la Sergente, St. Brelade	26	Planning application pending
H2 (10): Field 873, Bel Royal, St. Lawrence	0	Owner unwilling to develop. Estimated yield was 14 homes
Total Outstanding H2 Site Homes	**142**	

H3 sites

The H3 sites were identified in the 2002 Island Plan for further consideration as Category A housing sites with a view to the most suitable being brought forward for rezoning, as required, following a public consultation exercise to confirm their acceptability.

One of the sites has, with the approval of the States, already been developed for Category A housing (i.e. H3 (3), Field 821A, Bagot Manor Farm, St. Saviour). The potential yields from the remaining H3 sites are set out in the following table. It should be noted that these are theoretical

yields based on the application of a density rate (of approximately 12 three-bedroom homes per acre) to the gross area of each site.

It is important to stress, however, that estimates for any individual site could change as a result of more detailed site feasibility work, or future public consultation, or, indeed, any future application process.

It is also important to point out that not all the sites identified are likely to be considered suitable for (and therefore brought forward for) Category A housing purposes following detailed site evaluation and public consultation. An internal department review in February last year identified three H3 sites which were not considered suitable for Category A housing purposes. Taking this into account, and a recent Ministerial decision to reduce the size of the CTV site, the envisaged potential yields from H3 sites is of the order of 280 homes.

Site	**Est. no. of homes**	**Comments**
H3 (1): Field 391 (part), La Longue Rue, St. Martin	28	
H3 (2): Field 1368, La Rue de Mont Sejour, St.Helier	12	
H3 (3): Field 821A, Bagot Manor Farm, St. Saviour	-	Already developed for 16 Category A homes
H3 (4): Fields 413, 415, 415A and 470, Five Oaks, St. Saviour *	37	* Part of the site to provide public open space
H3 (5): Field 139, Les Quennevais, St. Brelade	25	
H3 (6): Field 525, La Rue de la Mare Ballam, St. John	22	
H3 (7): Field 76B, La Vallette, Gorey, Grouville	24	
H3 (8): Channel TV site and Field 1248, La Pouquelaye, St. Helier *	49	* Potential yield reduced from 64 units, following Minister's decision removing the existing high value commercial part of the site.
H3 (9): Field 402, La Grande Route de Faldouet, St. Martin	17	
H3 (10): Fields 890 and 888, La Rue de Cappelain, St. Peter	14	
H3 (11): Field 410, La Rue des Buttes, St. Martin	19	
H3 (12): Field 633, La Verte Rue, St. Peter	10	
H3 (13): Field 1341A, Le Mont de la Trinite, St. Helier	0	Not considered suitable. Use of site would lead to an extension of development into the countryside and would have an unacceptable

		landscape impact.
H3 (14): Land to east of Field 729, Le Fonds de Longueville, Grouville	0	Not considered suitable. Site would only yield 2 dwellings and considered too small to be of any significant use.
H3 (15): Field 423, Le Mont de la Mare Ste. Catherine, St. Martin	0	Not considered suitable. Use of site would lead to an extension of development into the countryside and would have an unacceptable landscape impact
H3 (16): Field 1551 and 1552, Westmount Road, St. Helier	23	
Total envisaged potential homes	**280**	

** sites included in current public consultation exercise on housing sites for lifelong retirement dwellings and first time buyer homes.*

H4 sites

The H4 sites were identified in the 2002 Island Plan as being safeguarded as potential longer-term Category A housing sites. These include a number of urban town sites and / or sites zoned in previous approved development plans and propositions. In addition, there are seven peripheral sites (Nos. 15 - 21) which were only to be brought forward in response to future demand, if their development status was confirmed following public consultation.

Potential yields from those H4 sites within the town (Nos. 1 - 10) were investigated as part of a recent in-house 'Town Capacity Study' undertaken by the Department. This involved a desk-top calculation of potential yield based on gross site areas and a range of development densities. The study envisages that the total yield from the 10 sites in question could range anywhere from a low of 350 homes to a high of 760 homes.

At this time, it is considered prudent and perhaps more realistic to adopt a cautious approach and assume the yields will be at the lower end of the range. The table below indicates a total yield of some 355 homes for the 10 sites in question, based on applying a similar density of development as at that achieved at the recently completed Le Coie site, Janvrin Road, St. Helier (approximately 140 habitable rooms per acre).

In any event, it should be borne in mind that many of these sites may not be available for development in the near future for one reason or another (including the continued viability of the existing use and the need for a suitable site to relocate the existing use).

Site	Est. no. of homes	Comments
H4 (1): Randall's Brewery Site, Savile Street, St. Helier.	80	Existing commercial & residential uses - complicated site assembly
H4 (2): Jersey Brewery Site and warehouse, Ann Street, St. Helier.	52	Warehouse site already developed for 17 no. CIT staff flats

H4 (3): States Offices (PBS and T&TS), South Hill, St. Helier.	64	
H4 (4): Former Jersey College for Girls, Rouge Bouillon, St. Helier.	56	Approved for 47 flats and 9 houses for category B accommodation.
H4 (5): Le Bas (Health and Social Services), St. Saviour's Road, St. Helier.	50	1987 Island Plan Site
H4 (6): Deanery Garden, Byron Road, St. Helier	11	1987 Island Plan Site
H4 (7): Car Park, Common Lane, St. Helier.	7	1987 Island Plan Site
H4 (8): Used Car Sales Site, St. Saviour's Road, St. Helier.	7	1987 Island Plan Site
H4 (9): Box Factory, Le Breton Lane, St. Helier.	18	1987 Island Plan Site
H4 (10): Car Park, Royal Crescent, Don Road, St. Helier.	10	1987 Island Plan Site
Total envisaged potential homes	**355**	**(*equivalent to lower part of range indicated in the 'Town Capacity Study')***

It is presently envisaged that the remaining H4 sites (Nos. 11 – 21) might potentially yield in the region of 390 homes, but this is subject to further detailed feasibility work, public consultation and future decisions about site suitability. It should be noted that these are theoretical yields based on the application of a density rate (of approximately 12 three-bedroom homes per acre) to the gross area of each site.

The sites in question are set out in the table below.

Site	Est. Homes	Comments
H4 (11): Field 494, rear of Midlothian Close, St. Mary	19	Zoned in St. Mary's Village Development Plan 1994
H4 (12): Field 145, adj. to Priory Farm, St. Clement	12	Zoned before 1987 Island Plan. Existing Commercial Use
H4 (13): Field 284, La Grande Route de la Cote, St. Clement	12	1987 Island Plan Site
H4 (14): Glasshouses, La Rue de la Lourderie, St. Clement *	24	* 1987 Island Plan Site
H4 (15): Samares Nursery, La Grande Route de St. Clement, St. Clement	130	

H4 (16): Field 605, La Route de Nord, St. John*	12	*
H4 (17): Le Mourin Vineries, Les Chasse du Mourin, St. Saviour	115	
H4 (18): Field 114, Le Passage, Carrefour Selous, St. Lawrence	18	
H4 (19): Field 1404, La Grande Route de St. Jean, Trinity	12	
H4 (20): Field 785, La Rue des Cosnets, St. Ouen	17	
H4 (21): Fields 236 and 237, La Rue de la Cimetiere, St. John	17	
Total envisaged potential homes	**388**	

** sites included in current public consultation exercise on housing sites for lifelong retirement dwellings and first time buyer homes.*

In summary, the 2002 Island Plan that was approved by the States, sought to ensure that sufficient land was made available to meet, as far as possible, housing requirements to 2011. At the time, it was envisaged that the H2 sites would meet the requirements for Category A homes over the first five years of the Plan (2002-2006), with the potential for rezoning of other sites that had been safeguarded for the provision of homes (sites H3 and H4) to meet housing needs beyond 2006.

As stated above, only one of these sites (H3 (3): Field 821A, Bagot Manor Farm, St. Saviour) has been rezoned and developed to date. The question of whether the remaining H3 and H4 sites, or any other sites, should be rezoned to meet a need for homes in the Island, subject to further assessment and consultation as necessary, remains a matter for the States.

1.2 TO THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES BY THE CONNÉTABLE OF ST. HELIER REGARDING DELAYS IN ESTABLISHING A RESIDENTS' PARKING SCHEME AT CHEAPSIDE:

Question

Would the Minister state -

1. when the Parish of St Helier first supplied the Transport and Technical Services department with the final version of the feasibility study for the Cheapside Residents' Parking Zone (RPZ)?
2. when he indicated his willingness to take forward a revised scheme, omitting the provision of parking spaces in Elizabeth Place?
3. given that the Parish Assembly approved the projet to implement the Cheapside RPZ on 25th September 2007, would the Minister advise members whether any progress has been made to date, and if not, why?

Answer

1. The final version of the feasibility study for the Cheapside RPZ was received on 31st March 2006 by which time the Parish had been informed that the department's priority was

drafting the Integrated Travel and Transport Plan and that the RPZ should not be considered until this had been completed.

2. I am not aware of ever indicating a willingness to approve the project to date, as I have always harboured a number of concerns and reservations. At the lower end of the scale, I have been anxious not to be seen to be biased toward my own constituency of St Helier No.3, of which the Cheapside area forms a part. There is also the question of the ongoing review of parking in St Helier as a whole, which is not yet concluded, as well as the entire issue of loss of provision and possibly revenue to the public of the Island for each public parking space that is handed over to St Helier residents, who pay their RPZ fees to the Parish of St Helier. However, in the light of the continuing setbacks to the finalisation of the ITTP, I undertook to take forward the revised scheme which omitted parking on the ring road (which the department had indicated was not acceptable) in November 2006. This was subject to a resolution as to who would pay for the policing of these zones. An agreed formula had been reached in respect of the first RPZ (Stopford Road) and it was anticipated that this formula would be utilised for all other RPZs. Unfortunately, the Constable of St Helier objected to paying the Car Park Trading Fund for policing what is, exclusively, a Parish zone. I held a meeting with the Constable in October 2007 at which he agreed, subject to discussions with his officers, for the Parish to take over the policing. Disappointingly, the matter remains unresolved.

3. Since September 2007, a definitive law drafting brief (as required by both the department and the law officers) has been finalised and forwarded to the Law Draftsman's Office.

1.3 TO THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES BY DEPUTY P.V.F. LE CLAIRE OF ST. HELIER REGARDING THE SALE OF COMPOST:

Question

"(1) For 2006, would the Minister advise –

(a) the amount of revenue generated from the sale of 1.6 million litres of "Genuine Jersey" soil improver from composting;

(b) how these were funds disbursed?

(c) how much profit or loss each litre of compost sold resulted in?

(d) how these figures were derived?

Answer

It should be noted that due to a change in the chart of accounts between 2006 and 2007 and operational difficulties encountered during 2007, direct comparisons between the costs of the green waste operation between the two years are difficult to make.

It must also be stated that the primary reason for the green waste composting site is to dispose of commercial and domestic green waste in accordance with the principals of the waste hierarchy and prevent such arising from entering the Energy from Waste facility at Bellozanne. The green waste disposal site's fundamental role is not for generating income

and the Genuine Jersey Soil Improver is an engineered by-product of the green waste composting process.

(a) In 2006 1,858,800 litres of Genuine Jersey Soil Improver were sold and this generated an income of £63,157.

(b) The income from the sale of Genuine Jersey Soil Improver was used to help offset the operational costs of running the Green Waste Composting site.

(c) In 2006 it costs £0.29 per litre to produce Genuine Jersey Soil Improver. It should however be noted that if no Genuine Jersey Soil Improver had been made, the overall cost of operating the green waste composting site would have been £63,157 higher.

(d) The profit / loss figure is the operational cost of the green waste composting site divided by the quantity, in litres, of Genuine Jersey Soil Improver produced and sold. The base financial figures are from the 2006 accounting records and the quantity of Soil Improver sold is from the Departments own records.

Question

(2) In 2007 would the Minister advise –

(a) how many litres of "Genuine Jersey" soil improver the department sold?

(b) how much money was derived from these sales and to whom the money was disbursed?

(c) how much profit or loss each litre of compost sold resulted in or attained?

(d) what the total expenditure in 2007 for compost operations was, including machinery purchased?

(e) how these figures were derived?

Answer

(a) In 2007 the Department sold 403,000 litres of Genuine Jersey Soil Improver.

(b) The income generated was £46,423 and this was used to help offset the operational costs of running the Green Waste Composting site.

(c) In 2007 it costs £1.75 per litre to produce Genuine Jersey Soil Improver. This cost is completely different to the 2006 cost due to the change in accounting and the reduced quantity of Genuine Jersey Soil Improver produced.

(d) In 2007 the operational costs of running the green waste composting site was £705,278. In addition to this a new green waste shredder was purchased at a one off cost of £222,000.

(e) The profit / loss figure is the operational cost of the green waste composting site divided by the quantity of Genuine Jersey Soil Improver produced and sold. The base financial figures are from the 2007 accounting records and the quantity of Soil Improver sold is from the Departments own records.

Question

(3) Is the Department currently mixing sewage with compost?

Answer

The Department is not mixing sewage with compost.

Question

(4) What stage is the department currently at in identifying and providing a contained compost operation?

Answer

A Ministerial Decision (MD-T-2007-0113) was taken by the Minister TTS on 11 December 2007 to approve the selection of the La Collette industrial area as the confirmed preferred location for the replacement enclosed composting facility and the Transport and Technical Services Department is now looking to progress a full Environmental Impact Assessment and Health Impact Assessment.

Question

(5) What were the States' contributions in 2006 and 2007 in terms of pensions for employees involved in the compost operations?"

Answer

Based on the permanent staff employed to manage and operate the La Collette Green Waste Composting site and taking 20% of the external manager pension costs, the total States pension contribution, not including the employee's contribution for 2006 was £15,839 and for 2007 it was £16,913. These figures do not take into account the pension contributions for staff drafted in to cover for sickness, holidays, weekend cover or irregular labour demands.

Note: The difference between the income per litre in 2006 and 2007 is due to the fact that Soil Improver is sold on a sliding price scale which is dependant on the quantity ordered. In 2007 emphasis was placed on the sale of bagged Soil Improver to the garden centres. This method of sale gives a greater income than that of loose or bulk bag delivery.

1.4 TO THE MINISTER FOR SOCIAL SECURITY BY DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT REGARDING THE ABILITY OF HOSPITAL CONSULTANTS TO PRESCRIBE MEDICATION UNDER THE HEALTH INSURANCE SCHEME:

Question

Will the Minister -

a) explain the reasoning behind the 1993 change to the Health Insurance legislation, the effect of which was to prevent hospital consultants prescribing on health insurance prescriptions?

Answer

The Health Insurance (Jersey) Law 1967 was enacted to provide financial assistance for primary health care, namely the cost of consulting a GP and any subsequent prescriptions arising from this. At the creation of the Health Insurance scheme, specialist consultant services were deliberately excluded because they were (and are) provided for the public by the Health and Social Services Department.

Under the Health Insurance (Jersey) Law 1967, a doctor must be approved by the Social Security Minister. Initially approval of doctors to practice medicine rested on the registration of doctors in Jersey under the Medical Practitioners (Registration) (Jersey) Law 1960 and conditions of approval were not linked to post graduate training for general practice.

Subsequently, mirroring developments in medical education in the UK, the Health Insurance Law was amended under the Health Insurance (Conditions for Approval of Medical Practitioners) (Jersey) Regulations 1993. The 1993 Regulation required a doctor seeking approval under the Law to demonstrate completion of GP training and so ensure a minimum standard of general practice in Jersey. This was done in consultation with the Jersey Medical Society.

Such conditions are inextricably linked with the GP registration requirements of the General Medical Council (GMC). A hospital consultant is a specialist in a specific, defined field and undertakes different training which does not meet the conditions for Health Insurance approval.

Question

b) Inform members whether consultants employed prior to 1993 continue to be able to so prescribe?

Answer

Consultants employed prior to 1993 satisfied the approval conditions of the time, in that they were registered as doctors under the Medical Practitioners (Registration) Law. There are therefore, a small and diminishing number of hospital consultants prescribing under the Health Insurance Law as they would have applied for approval before the 1993 amendment. Given that consultant services are provided by Health & Social Services, such consultant prescribing under the Health Insurance Law will be for private consultations.

Question

c) Undertake to amend the present legislation to address this anomaly if it can be shown that it would be of benefit to consultants, patients and the hospital pharmacy if consultants were able to prescribe?

Answer

Given the principles of the Health Insurance legislation and the requirements of registration by the GMC, consultant prescribing for primary care does not represent best practice.

Extensive work has been undertaken in the development of a single Island formulary. This formulary has been approved and ratified by H&SS Drug and Therapeutic Committee in addition to approval by local professional consultative bodies. It is therefore based on best

practice and medical evidence. It effectively moves long term prescribing of medicines from hospital specialists to GPs and uses shared care prescribing agreements. The development removes the situation in which a patient under the care of their GP must also continue to receive prescribed medication from their Health & Social Services consultant for the complete treatment of their condition.

This unnecessary fragmentation of services was inconvenient to the patient and made inappropriate use of costly consultant services. The introduction of the joint formulary released savings to Health & Social Services in terms of improved efficacy of specialist resources within Health & Social Services and reduced drugs costs.

I therefore have no reason to believe that it would be of any benefit to patients or to the community at large to enable consultants to prescribe under Health Insurance legislation.

1.5 TO THE CHIEF MINISTER BY DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT REGARDING THE EMPLOYMENT OF PUBLIC RELATIONS ADVISERS:

Question

Would the Chief Minister inform members whether his Department still employs the services of public relations advisers whose remit is to ensure that correct messages are relayed and, if so, can he further state whether these advisers were used during his recent interviews by the national media?

Answer

My department does employ a team of people to handle communications and ensure that ministerial proposals and departmental priorities are relayed to the public, the media and our staff. They provide a wide range of communication support, including management of the States of Jersey Website, internal staff communications, major public consultations, such as Imagine Jersey, and liaison with the media. They are generally resourced and set up to deal with the local media on a daily basis and to undertake occasional work with the national and international media.

However, they were not equipped to deal with the unprecedented level of media activity that broke after the Police statement on 23rd February 2008 that human remains had been found at Haut de la Garenne.

The cost of the Communications Unit has frequently been challenged in Business Plan and other debates. I have long believed they are under-resourced and not set-up to deal with emergency situations, but it would have been impossible for me, in the climate of controlling States expenditure, to propose further increases to their budget. We had previously employed the services of a London-based public relations company, but that contract was ended a few years ago as part of the States cost cutting programme.

In dealing with the national media on the child abuse allegations I had the support of the Communications Unit team and most of the 20 or so interviews I conducted went smoothly and were, I know from reports, generally well received.

However, many have expressed their concern and disappointment at the Newsnight interview and the press conference, which I acknowledge and share. Lessons have been learned.

I think Members will nonetheless be interested in the attached record of events around the Newsnight programme and what was said and by whom.

NEWSNIGHT TRANSCRIPT

What was actually said between me and Senator Syvret was:-

SS: "Frank we're talking about dead children."

FW: "Yes Stuart exactly. **So you shouldn't be politicising it you should now be throwing your support behind the Police and behind every effort to find out who was responsible."**

SS "Indeed I have repeatedly expressed my full support."

FW – "No you're trying to shaft Jersey internationally."

What the BBC broadcast was:-

SS -"Frank we're talking about dead children."

FW –"Yes Stuart exactly. So you shouldn't be politicising you're trying to shaft Jersey

internationally."

Mr Paxman then put the following question to me:-:

"In response to the remark 'We're talking about dead children' you said 'We're trying to promote the international image of Jersey'.

Those were not my words and that is why I challenged them.

I will leave Members and others to judge the above for themselves. In the meantime I am extremely grateful to members of the public, in Jersey and in the U.K., who made their own judgment and complained to the BBC.

1.6 TO THE CHAIRMAN OF THE PRIVILEGES AND PROCEDURES COMMITTEE BY DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR REGARDING THE OBJECTIVES OF THE 'WHAT IS SCRUTINY?' CONFERENCE:

Question

Would the Chairman identify the objectives which were achieved at the "What is Scrutiny?" seminar and those that remain to be achieved?

Answer

The primary stated aim of this conference was for all States members and some stakeholders to discuss how scrutiny is developing in Jersey, how the system of scrutiny can be developed in the Jersey context, and to open up discussions and share views on what scrutiny is, and what scrutiny is *not*.

It was noted that this was the first opportunity for all members to meet to discuss progress since the States' debates introducing scrutiny.

The "What is Scrutiny?" conference arose out of the initial findings of the Machinery of Government Review Report (R.105/2007) (MOGR). In particular, the conference was designed to explore recommendations 15, 17, 20, 25, 26, 27, 29, 37, 38 and 41.

Broadly speaking, these recommendations were –

- What is Scrutiny?
- Should legislative scrutiny be an integral part of scrutiny?
- timely access to information
- Should Scrutiny review the process of decision making?
- Panels should analyse decisions, not general activity of a Minister
- Review of structure of scrutiny function/sub panels R20
- Canvass views of public from time to time
- Chairmen's Committee (CC) CC should coordinate scrutiny; What does 'co-ordinate' mean? CC should take the lead on the Annual Business Plan and Budget scrutiny, and monitor Panels' progress;
- CC should prioritise allocation of resources;
- CC review processes and clarify in the Code.

At a meeting on 2nd January 2008 with the President and Vice President of the Chairmen's Committee a list of topics was agreed which should form the basis of the conference workshops.

The objectives were necessarily reduced because it would not have been possible for participants to give full and proper consideration to all of them in the time available. For example, it was decided not to attempt to cover whether assistant ministers should participate in scrutiny on this day.

The objectives discussed were –

1. There is no single agreed definition of scrutiny, and a primary objective therefore was to enable a discussion to take place to either agree a definition or to realise that there are different approaches which are all valid. The discussion resulted in a greater understanding of the different scrutiny styles and how each was useful, and this proved to be a helpful discussion.

2. A review of access to information, the timeliness of provision of information and the level of detail provided to scrutiny. The need for Green and White Papers was clearly understood by the end of the day as being of value to the public, to the scrutiny panel, and to States members during the debate, and it is to be hoped that these will systematically be produced for new policy in the future, and also in relation to draft legislation.

3. To seek a measure of agreement on when scrutiny of policy should start and how long it should take. It was clear from the discussion at the conference that there were several views on when scrutiny of policy should begin. Concern was not expressed on the 'right' or 'wrong' time to commence scrutiny, and it therefore appears that this is not an issue.

4. To ensure that forward plans of work be produced by the Scrutiny Panels and the Ministers, and exchanged, so that each party is better informed about the proposed work plans of the other. The Chairmen's Committee and the Council of Ministers should co-ordinate these.

5. To underline the need for legislative scrutiny of new legislation or major amendment to existing legislation. The workshop groups agreed that reviews of draft legislation (but not all legislation) should look at whether a law was needed or not, the policy objective of a

draft law and whether the draft delivered that objective, and the resource implications. Given the measure of agreement on this subject, the objective was attained.

6. To gain greater clarity on the Chairmen's Committee (CC) role. There was useful discussion on whether CC should have a stronger monitoring role, and provide quality assurance of reports, or whether CC had sufficient political influence to be able to encourage Chairmen to comply without strengthening its role. There was some variance in views, but there was general agreement that the CC might take a firmer line. Note was also taken that progress had been made since the end of the review period into, for example, procedures for scrutiny of the Annual Business Plan and Budget.

7. Improved Scrutiny of the States' Strategic Plan. The conference noted that a lot of work had taken place to improve procedures for the future, and that a real improvement was anticipated for the next States Strategic Plan.

8. To clarify the role of the PAC. The conference agreed that there was a need for better communication of the PAC's role and activities, and that the PAC should take steps to action this.

It was stressed at this time that this conference was but the first step in taking forward the findings of the MOGR.

What the conference achieved:

Items highlighted for further consideration in the context of the ongoing MOGR work, including…

- Reflection of what was envisaged for scrutiny and how the reality measures up. Are any changes to Standing Orders required?
- Discussion and acknowledgment of the importance of scrutinising legislation.
- Discussion of meaning and use of Green Papers.
- Acknowledgement of the time constraints on scrutiny, in respect of legislation and business plan/strategic plan.
- Promoted better knowledge of the aims, methods and limitations of the scrutiny process amongst Executive and officers.

Sir Robert Phillis gave some early feedback on the conference, and advised that he genuinely believed that the parties are much closer together in their thinking than they seem willing to admit. If and it is a big if, the commitments made during the day to fulfilling the agreed terms of reference together with the necessary coordination of activities on behalf of both the Chairman's Committee and the Council of Ministers are followed through and there is the necessary provision of information in a planned and timely way, he believes that Scrutiny can be made to work effectively. But clearly this comes down to questions of confidence and trust between the Council of Ministers and the Scrutiny Panels. He believes that there is a genuine issue about resourcing and supporting the Scrutiny Panels, but noted that there is scope within the available budgets to provide some assistance here if a case can be made. The next phase would be to place concerted attention on putting the procedures and processes in place which would allow for a more effective and planned process of all Scrutiny activities.

1.7 TO THE CHIEF MINISTER BY DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR REGARDING A POLICY FOR DEALING WITH CONCERNS RAISED BY 'WHISTLE-BLOWERS':

Question

Would the Chief Minister state the date by which he intends to bring proposals to the States to put in place an independent person or agency to receive approaches from persons raising serious concerns ("whistleblowers")? Will the development of the proposal be undertaken by person(s) independent of the Chief Minister's Department?

Answer

My Department's Business Plan for 2008 includes, as one of its key objectives, an assessment of "the need for an independent person or agency to receive approaches from persons raising serious concerns".

The planned activity associated with this assessment of need is contained within the Business Plan for 2008 for the Director of Human Resources and his team. He has a target date of July 2008 for the completion of this work.

The assessment will undoubtedly examine those arrangements currently in place (e.g. the existing "Policy on Reporting Serous Concerns" and the ability for members of the public to raise concerns, as "whistleblowers" with the Comptroller and Auditor General). Additionally, I expect his work to consider best practice from elsewhere.

I cannot, therefore, give a specific answer to the question as to the date I will bring proposals to the States as that presupposes that the outcome of the assessment will be that such proposals are necessary.

1.8 TO THE MINISTER FOR HEALTH AND SOCIAL SERVICES BY DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR REGARDING THE ESTABLISHMENT OF A COMPLAINTS PROCESS IN TANDEM WITH GUERNSEY:

Question

What degree of lay involvement, if any, will there be in the complaints process which is being established in concert with Guernsey?

Answer

The new Complaints Procedure which incorporates a 'second level' of appeal was introduced in January 2008. The new Complaints Procedure – which is obviously in the public domain – and has two formal stages of complaints resolution. The first (lower) level of appeal is for local resolution. The second (higher) level of appeal is for an independent review which will be conducted by the Department of Health and Social Services of the Bailiwick of Guernsey.

Of fundamental importance to this new Complaints Procedure is the means by which a complaint can pass through – or not pass through – from the lower to the higher level of appeal. The mechanism by which this happens is a consideration of the case by three people. The first person is the Medical Officer of Health, who for professional matters is formally accountable to the States Assembly itself. The other two people are lay representatives. This triumvirate will decide whether the case should proceed to the independent (higher) stage.

I would like to thank the Deputy for his involvement in the formulation of this new Complaints Procedure. It was he who suggested that two lay people rather than one be involved in this 'filtering' process. As a result of his wise counsel we adopted his recommendation without hesitation.

1.9 TO THE MINISTER FOR TREASURY AND RESOURCES BY DEPUTY G.P. SOUTHERN OF ST. HELIER REGARDING ANONYMOUS ASSET HOLDINGS:

Question

"(i) Will the Minister inform members of any differences between Liechtenstein and Jersey, which justify his confidence in the face of increased pressure from Germany over offshore tax, in terms of -

(a) overall approach

(b) withholding tax

(c) regulation of trusts

(d) registration of trusts?

(ii) In particular, in his answer, will he illustrate the capability of our own trust entities to hold assets anonymously and to withhold the names of beneficiaries or trustees?

(iii) Will he further state whether this position will be altered by measures proposed in the new law on foundations due to be put out to consultation soon?"

Answer

There is a very significant difference between Jersey and Liechtenstein. Jersey is committed to the OECD principles of transparency and exchange of information on tax matters and Liechtenstein is not. As a result Jersey has been prepared to enter into negotiation of a Tax Information Exchange Agreement with the Federal Republic of Germany and a date is in the process of being agreed by Ministers when that Agreement will be signed. Subsequently the Agreement will be submitted to the States for ratification following which it will come into force. This Agreement will enable information to be obtained on request in respect of individuals, companies, trusts and foundations in accordance with the terms of the Agreement. However this does not mean that service providers are vulnerable to 'fishing expeditions', as information on specific individuals is only available on application. In this respect the German Agreement will be in the same terms as those signed with the United States in 2002 and with the Netherlands in 2007 both of which the States have ratified. The German authorities would like Liechtenstein to adopt the same approach, but to date they have had no success.

To bring the Tax Information Exchange of Information Agreements into force the States have made Regulations (e.g. the Taxation (United States of America) (Jersey) Regulations 2006) and these Regulations require the provision of the information that can be requested under the Agreements. In this respect Jersey is in a stronger position than many countries including OECD member states because we regulate trust and company service providers and as regulated entities they are required to know their customer and hold information on the beneficial ownership of companies and the settlers and beneficiaries of trusts. Any proposals for Foundations will include equivalent provisions.

1.10 TO THE MINISTER FOR EDUCATION, SPORT AND CULTURE BY DEPUTY I.J. GORST OF ST. CLEMENT REGARDING APPEALS AGAINST THE CURRENT NURSERY EDUCATION PLACEMENT POLICY:

Question

"(i) Can the Minister confirm the number of appeals made, both in writing and in person, against the current Nursery Education Placement Policy each year over the last three years, and can he state the grounds on which these appeals were made?

(ii) Of the appeals made, how many have resulted in a child subsequently being found a place after initially have been unplaced and on what grounds were the appeals upheld?"

Answer

(i) Over the last three years we have received four formal appeals against the non-allocation of a nursery place. Three of these appeals were made in 2007 and one in 2006.

One appeal was made on the basis of previously undisclosed health issues, two related to financial hardship, and in the remaining case it was claimed that the application had not been handled correctly by the school.

To place this in context, I should advise members that a total of 520 full-time nursery places will be available in September 2008, and approximately 700 applications have been received for these places. 540 of these applications will be granted, and the reason for the apparent disparity in figures is because approximately 40 places have been allocated on a part-time basis.

(ii) Two of the appeals resulted in the allocation of nursery places, whilst the other two did not.

A range of criteria are taken into account when considering appeals, and these are set out in Section 2.3.3 of the Policy for Nursery Classes in Provided Primary Schools. These criteria include social/educational needs, children with siblings in the school, date of application etc.

The first successful appeal was upheld because the applicant brought forward evidence of previously undisclosed serious health issues, whilst in the second case evidence was provided of extreme financial hardship.

1.11 TO THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES BY DEPUTY C.J. SCOTT WARREN OF ST. SAVIOUR REGARDING THE PROGRESS OF A SCHEME TO CREATE A PEDESTRIAN CROSSING AT LONGUEVILLE ROAD:

Question

"At a meeting on 2nd December 2002 the former Public Services Committee approved a scheme for a Longueville Road crossing, with £20,000 being allocated for this project from the £100,000 funding made available from the Car Park Trading Account for sustainable transport initiatives, to accelerate the Committee's programme of pedestrian improvements.

Would the Minister provide members with full information regarding the following:-

(i) Why, in view of the subsequent work carried out which included financial negotiations with a third party in order to secure some additional land for road widening prior to the construction of the proposed island refuge at Miladi Parade, Longueville Road, and having gained approval for funds from Treasury and Resources and submitted a planning application in 2006, the negotiations were not concluded and the construction work on the island refuge did not proceed?

(ii) Whether the formerly identified funds from the Car Park Trading Account are currently available for this project, and, if not, can the Minister give members the reason why and the current whereabouts of these funds?

(iii) Whether the Minister still supports the implementation of an island refuge at this location?"

Answer

(i) The construction of a central refuge in this location did not proceed because the required land could not be purchased. The Minister for Treasury and Resources is responsible for the department whose responsibility this was and should respond to this question.

(ii) The 2005 States Accounts identifies that £75,000 of the £100,000 budget had been expended leaving sufficient to progress this project. These funds were able to be spent on non-car parking initiatives under the previous Public Finance Law which allowed the Finance and Economics Committee to agree specific projects.

Furthermore, the States approved a Report and Proposition in 2004 (P147/2004) which allowed surplus funds from the Car Park Trading Fund to be utilised for the funding of transport initiatives. In particular, the States wanted to ensure that, if car parking charges were raised above the level required to run, maintain and provide for parking facilities, that this income could be used on, for instance, the bus service, highway maintenance or other transport initiatives.

However, the new Public Finance (Jersey) Law 2005 and relevant regulations issued thereunder currently prevent the Minister for Transport and Technical Services, or any other Minister, from allocating funds from Jersey Car Parks Trading Fund for anything other than car parking provision. For this reason, the £20,000 originally allocated is now not available for this project. Having recognised this fact, TTS allocated the sum in its revenue budget in 2007 so the project could proceed if the land transaction was finalised. As this did not happen, these funds were spent on other projects and there is now no funding for any minor traffic works.

(iii) The Minister continues to support the implementation of an island refuge at this location. However, should the land now become available, there is no revenue funding available in the 2008 budget.

1.12 TO THE MINISTER FOR TREASURY AND RESOURCES BY DEPUTY C.J. SCOTT WARREN OF ST. SAVIOUR REGARDING THE FUNDING OF A SCHEME TO CREATE A PEDESTRIAN CROSSING AT LONGEVILLE ROAD:

Question

At a meeting on 2nd December 2002 the former Public Services Committee approved a scheme for a Longueville Road crossing, with £20,000 being allocated for this project from the £100,000 funding made available from the Car Park Trading Account for sustainable transport initiatives, to accelerate the Committee's programme of pedestrian improvements.

Would the Minister provide members with full information regarding the following:-

(i) Why, in view of the subsequent work carried out by the Transport and Technical Services Department, which included financial negotiations with a third party in order to secure some additional land for road widening prior to the construction of the proposed island refuge at Miladi Parade, Longueville Road, and having gained approval for funds from Treasury and Resources and submitted a planning application in 2006, the negotiations were not concluded to enable the construction work on the island refuge to proceed?

Answer

(i) The company which owns the land has been a very unwilling seller from the outset – negotiations between the company and Property Holdings (formerly Property Services) have been ongoing since 2003. However, in early 2006 a deal was agreed and the necessary formalities were then progressed, ie, approval under standing order 168, planning application, instruction to the Law Officers' Department etc. Unfortunately, the company has since reneged on the agreement and is no longer willing to sell the area of land required. The project has therefore reached an impasse. In order to acquire the necessary land, compulsory purchase procedures would have to be invoked. The Transport and Technical Services Department, which is leading this project, would have to submit a case to justify the use of compulsory purchase, which is normally restricted to situations of paramount public importance where no other alternatives exist.

Question

(ii) Whether the formerly identified funds from Treasury and Resources are currently available for this project, and if not, can the Minister give members the reason why and the current whereabouts of these funds?"

Answer

(ii) I understand that as a result of the land acquisition not being completed in 2007, the funding which the Transport and Technical Services Department (formerly the Public Services Department) originally proposed to use for this project has since been allocated to another project. This excludes the sum which had been allocated for the land acquisition, which falls within a budget managed by Property Holdings.

1.13 TO THE MINISTER FOR TREASURY AND RESOURCES BY DEPUTY G.P. SOUTHERN OF ST. HELIER REGARDING THE IMPACT OF R.P.I.(Y):

Question

"(i) Following his reply to a written question on 26th February 2008 (3737) that "RPI(Y) should be the basis for pay awards in 2009 and thereafter" will the minister inform members what his estimates are for RPI, RPI (X) and RPI (Y) for the first quarter 2009, on which public sector pay awards will be negotiated?

Answer

(i) The Minister for Treasury and Resources does not undertake forecasts for the various measures of inflation outlined in the question. To do so would be a massive task that would involve forecasting trends in all the various components of the indices from food and clothing prices to those for household and electronic goods as well as changes in indirect taxes and mortgage interest payments. The department does not have the resources to undertake such a task and, even if it did, forecasting such trends a year in advance would be subject to significant margins of error.

Question

(ii) Will he further illustrate what the impact would be on weekly take-home pay of awards negotiated at the estimated RPI(Y) rate above for the ten groups used by the Statistics department to discuss average earnings by sector in the Jersey Economic Digest 2007 (p.24) and compare it with the full impact of RPI on the cost of living in each of the quintiles given in the Jersey Household Expenditure Survey 2004/5 updated to June 2007?"

Answer

(ii) Given the answer to question 1 above it is not possible to undertake the calculations requested in this question. As Minister, I would also point out that it is not my normal role or that of my department to undertake calculations at the request of States members on data published by the Statistics Unit.

1.14 TO THE CHIEF MINISTER BY DEPUTY G.P. SOUTHERN OF ST. HELIER REGARDING THE IMPACT OF GROWTH IN THE FINANCE SECTOR:

Question

"Does the Chief Minister consider that the option of growing the proportion of workers in the finance sector by a further 5% to occupy 30% of the overall island workforce, as considered in the Oxera contribution to Imagine Jersey 2035, is a viable and realistic one given that Oxera suggests that for every additional high-skill immigrant worker there will also be a requirement for a low-skilled service worker?"

Answer

Over the course of the next 25 years it is realistic and viable to think that the future growth of the Jersey economy could be managed in such a way that more people are employed in high value added sectors such as finance and fewer people in low value added sectors. The extent to which this is achievable will depend on a whole host of factors including demand from outside the Island for the goods and services we produce, the ability to achieve productivity growth within low value added sectors but also the policies the States pursues for example in applying the Regulation of Undertakings Law.

This type of structural change within the existing workforce and population level does not actually require more people in the Island. It is therefore a different type of economic growth to that which would involve more people coming to the Island and Oxera make that clear in their analysis. Oxera do also consider how it would be possible to maximise economic growth from bringing additional people to the Island. It is this work that shows that for every

additional worker in high value added sectors such as financial services, an additional worker is required in the rest of the private sector to supply support services.

1.15 TO THE MINISTER FOR SOCIAL SECURITY BY DEPUTY G.P. SOUTHERN OF ST. HELIER REGARDING THE DISPROPORTIONATE GROWTH OF SOCIAL SECURITY SUPPLEMENTATION:

Question

"Further to his previous answers on the disproportionate growth of Social Security supplementation, will the Minister inform members of the latest estimates for supplementation, and the results of the promised investigation into the causes of the unexpected growth, and if not, will he tell members when he will be in a position to report to them on this issue?"

Answer

The principle behind the funding of the Social Security Fund is that the cost is shared equally between taxpayers, employers and employees. On that basis, supplementation, the contribution by taxpayers, should be one third of the total cost. At present supplementation represents approximately 30% of the contributions made into the fund and I would challenge the Deputy's assertion that there has been a "disproportionate" growth in supplementation.

The additional cost of supplementation in 2007 was a result of unusual labour market conditions in 2006. Yet, at the end of 2006, supplementation still only represented 31% of the total contributions made into the fund. If anything, supplementation is contributing at a level somewhat below the long established principle.

An interim report on supplementation has already been issued and we are continuing to explore options to contain supplementation within existing cash limits.

The principles of funding the Social Security Fund will be included as part of the review of the Social Security and Health Insurance schemes. This work has been planned for some time and will be started during 2008.

The predicted spend on supplementation for 2007 is £58.6 million. This is an increase of 4% over 2006. The final figure will not be known until the last quarter (October to December 2007) is processed in March 2008 and then audited. Of the additional funding request of up to £2.65 million for 2007, in the proposition from the Treasury & Resources Minister and approved by the States in September 2007, only £1.17 million has been needed, based upon draft figures.

The Business Planning timetable requires forecasts to be made in May each year which use estimates on the average earnings increase, the changes to average earnings and the impact of the changes to the labour market. Actual data is unavailable within this time frame which can result in outturn costs exceeding forecasts. For 2008, the current forecasts show that the level of supplementation will remain within the amount voted of £61.2 million, yet the Minister stresses again that this forecast will be further reviewed once the final quarter for 2007 is finally closed and the Accounts are audited.

1.16 TO THE MINISTER FOR HOUSING BY DEPUTY G.P. SOUTHERN OF ST. HELIER REGARDING THE DEMAND FOR 3-BED SOCIAL RENTED HOMES:

Question

"(i) In response to a question on 26th February 2008 regarding demand for 3-bed social rental homes, the Minister stated that "the demand can be met" by a total of 29 homes on 2 sites. Will he now explain to members how 29 homes can be deemed sufficient to meet the needs of 91 families in need of 3-bed accommodation detailed in R.17/2008, 'States Rental Waiting List', issued on 3rd March 2008?

Answer

The Waiting and Transfer lists are very fluid lists and indeed many of the families included in these figures will already have been re-housed and replaced by new applicants.

The average waiting time for applicants requiring three bedroom homes during 2007 was, for Waiting List applicants, less than three months.

In respect of the internal Transfer List, a number of those currently waiting to be re-housed are themselves already occupying three bedroom homes which, for one reason or another, are not deemed adequate for their needs. Other figures from the same period as above indicate 19 families under occupying three bedroom homes waiting to be moved to two bedroom properties, 9 couples also under occupying three bedroom homes that need to move to one bedroom accommodation and 93 couples living in two bedroom homes waiting to move to one bedroom units.

I remain confident that the issue in respect of demand for larger homes is the need for additional life long homes which will give the Department the ability to recycle the existing stock. The Waiting List and waiting time for an adequate home are at historically low levels.

Question

(ii) Will he also explain to members why the 2007 figure given in Table 21 'Projections of States rental waiting list to 2009' contained in R.94, 'Planning for Homes 2006 - A Review of Current Information on Residential Land Availability', has more than doubled to 139 from 53 given in the equivalent Planning for Homes document of 2005?"

Answer

The Planning for Homes documents are of course produced by the Planning Department, albeit with input from the Housing Department. The reports are very clear in saying that such projections of future need are to be treated with some caution. The Planning for Homes document 2006 did not of course have the benefit of a Housing Needs Survey. Planning for Homes 2008, will be revised in 2008 and will of course have data from a Housing Needs Survey that is informed by an excellent response rate.

Accurate figures showing the movement on the Waiting List are presented in R.17/2008, which shows the actual numbers of people on the list at the beginning of each year over the last five years.

1.17 TO THE MINISTER FOR SOCIAL SECURITY BY DEPUTY G.P. SOUTHERN OF ST. HELIER REGARDING THE TREATMENT OF PUBLIC SECTOR EMPLOYEES UNDER THE EMPLOYMENT RELATIONS LAW:

Question

1. Following his response to a question on 26th February 2008 concerning codes of practice associated with the Employment Relations Law, does the Minister accept that comparison between States employees and employees in the UK is more properly made with Local Authorities with a similar sized workforce, where none has drawn a distinction (as the States have) between the employees of different departments of the same Authority?

Answer:

No.

Question

2. Will the Minister seek legal advice as to whether the treatment applied by the States to its employees could be deemed a disproportionate restriction on the right of States employees to take industrial action?

Answer:

The Minister does not intend to seek legal advice, being satisfied that no disproportionate restrictions exist.

Question

3. Notwithstanding his partial response to that part of the question asked on 26th February dealing with articles 31 to 35 of code 2, will the Minister state clearly:

a). which persons or body is responsible for enforcing articles 31 to 35,

b). which persons or body will decide to which services articles 31 to 35 should apply, and

c). what actions will he take, and in what timescale, to ensure that articles 31 to 35 are put in place?

Answer:

a) The Deputy has misinterpreted the purpose of Codes of practice. The provisions of the Codes are admissible in evidence and may be taken into account in determining any question arising in proceedings before the Jersey Employment Tribunal or a court.

b) Employers and trade unions are responsible for agreeing which services (or elements of services) such minimum service agreements should apply to.

c) It is not the Minister's responsibility to ensure that agreements are in place; it is for employers and unions to negotiate and reach an agreement, which may be reached with the assistance of the Jersey Advisory and Conciliation Service, where necessary.

1.18 TO THE MINISTER FOR TREASURY AND RESOURCES BY DEPUTY G.P. SOUTHERN OF ST. HELIER REGARDING THE FUNDING OF THE MILLENNIUM TOWN PARK:

Question

"Notwithstanding his comments made to P.1/2008 ("Millennium Town Park: Funding from Strategic Reserve"), what steps will the Minister take to assure members that sufficient funding will be found through the "clear process for States approval of capital expenditure" to ensure that the Millennium Town Park is delivered in the timescale promised recently by the Chief Minister, and in particular where will this funding come from?"

Answer

As stated in my earlier comment, the Transport and Technical Services Department has submitted a bid for the remainder of the capital funding needed as part of the 2009 Business Plan process. Within the next two months the Council of Ministers will collectively consider and propose their capital priorities for the 2009 Business Plan, within the allocations agreed by the States in September 2007.

I have no reason to doubt that funding will be provided for in the forthcoming 2009 Annual Business Plan, as part of the ongoing Capital Programme. Again, as I have previously stated, if that were not the case it would still be open to any States Member to bring an amendment to the 2009 Business Plan.

1.19 TO THE MINISTER FOR ECONOMIC DEVELOPMENT BY DEPUTY G.P. SOUTHERN OF ST. HELIER REGARDING GROWTH IN THE FINANCE SECTOR:

Question

"(i) Will the Minister inform members of the extent to which Jersey Finance's plans for future growth of the finance sector are dependent on the securitisation market which has now contracted due to the sub-prime and Northern Rock crises?

(ii) Will he further indicate to members what estimates he has for growth in the finance sector in 2008 and 2009 today, and how this compares with previous estimates?

(iii) Is the Minister confident that the economic case for the building of a new finance centre with over 500,000 sq. ft. of office space at the Waterfront is unaffected by these recent developments?

Answer

Jersey Finance's role is to facilitate product development as well as to work to promote the finance industry in order to respond to the challenges and opportunities facing the finance sector. This assists in the strategic development of the finance sector. However, the finance industry is extremely diversified and strategic development does not rely solely on the securitisation market. For example, one area where work is currently being undertaken by Economic Development and Jersey Finance is into developing a foundation product. It is anticipated that introducing such a product to Jersey will permit the Island's trust company businesses to have increased success in reaching out to investors in civil law jurisdictions where trusts are not fully understood. In the area of securitisation itself, mortgages receivables which are the products at the heart of the sub-prime issue are only one part of a diversified securitisation market including other types of receivables such as credit card receivables and hire purchase receivables.

However, we are clearly in a time of uncertainty and no-one across the world claims to be able to accurately predict the full effect of the sub-prime issue and the degree to which it will spread to and affect other financial markets. In Jersey, there are no governmental growth estimates for the finance sector. However the Statistics Unit publishes a Survey of Financial Institutions each year. The last report was made in July 2007 using data collected in the previous few months before the sub-prime issue had impacted significantly on world markets. Further data will be collected over the next few months which may give a more accurate picture of the effect so far as well as the sector's expectations of profits for 2008.

There are also figures prepared by the Jersey Financial Services Commission which show that at the end of 2007, year on year, the amount of funds under administration were up 37% to £246billion, funds under management were up 27% to £79bn, and bank deposits were up 12% to £212bn. However, although these figures show strong growth they probably do not reflect the effect of the sub-prime issue. The Economic Development Department will continue to monitor the performance of the finance sector and respond in an appropriate manner to developments.

Turning to the third part of the question, the Minister for Economic Development is not responsible for the Waterfront Enterprise Board ("**WEB**") WEB report to the Chief Ministers Department. However, in order to assist the States, I am informed of the following by WEB.

The developer has approached potential occupants for the proposed offices to be constructed within the Esplanade Quarter both at Head Office and at the local level subsequent to the sub-prime issues in the US and Europe. The developer is confident that sufficient demand exists to fill the space over the proposed period of construction and indeed the demand is such that construction may need to be accelerated. This demand has been independently verified by consultants of international standing.

The developers will be building between four and six buildings immediately that planning permission is granted to satisfy the short term demand and these buildings can be delivered within two years from commencement.

The developer is strongly financed with high equity funds and low leverage and has a history of developing mixed use schemes much larger than proposed at the Esplanade Quarter. The developer is a long term holder and manager of schemes that it constructs and is fully committed to a long term presence in the Island already demonstrated by its activities within the site from Liberation Square to Castle Street."

2. Oral Questions

2.1 Deputy G.P. Southern of St. Helier of the Minister for Housing regarding the purchase of buy-to-let properties through share transfer methods:

Will the Minister explain to Members what action he intends to take, if any, and in what timescale, over the purchase for buy-to-let purposes through share transfer of Jersey residential properties by non-qualified persons or companies, whether resident in Jersey or elsewhere, and will he inform Members what the likely effect of these actions will be on the housing market?

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

As I have previously said, I have asked for a review of the current policies. As part of this review, we are seeking legal advice and when I receive this legal advice I will then be in a position to

outline in more detail whether or not and in what way and over what timeframe any change may or may not take place.

2.1.1 Deputy G.P. Southern:
The Minister, in a previous answer in the States, suggested that all timeshare purchase activity was down to commercial activity. Does he have any figures to back this up with?

Senator T.J. Le Main:
I do not understand what the Deputy means by "timeshare".

Deputy G.P. Southern:
Sorry, I apologise. I meant share transfer; too many shares. Share transfer purpose of commercial properties by non-residentially qualified parties or persons.

Senator T.J. Le Main:
The Housing Law does not apply to commercial properties in purchases of share transfer by individuals or companies. The question would be far better directed to the Treasury and Resources Minister. The Housing Law specifically allows individuals or companies to purchase share transfer residential property but that property is regulated by having occupancy conditions.

2.1.2 Deputy G.P. Southern:
Will the Minister, further to his answer, outline the proposals he has under consideration and what legal advice he is seeking?

Senator T.J. Le Main:
I cannot, at this time, give any indication, although I share my Housing Law and population issues with the Migration Advisory Group and we have had one or 2 discussions and we have asked officers to go away and seek views of the Crown Officers.

2.1.3 Senator S. Syvret:
Does the Minister for Housing accept that the purchase of residential accommodation by private individuals or companies from outside of the Island has the effect of driving up inflation in the Island's housing market and depriving local people of more easily affordable accommodation? If so, will he say whether he, in principle believes that something should be done about that?

Senator T.J. Le Main:
No, Sir, I do not believe that is the case at all. In fact, I believe that some investment in the market by non-qualified people or investors has been a great asset for people who want to rent in the private sector. It has certainly eased the burden on the Housing Trust and the Housing Department. In fact, it has brought a lot of rental units in the market, which I welcome.

2.1.4 Deputy P.V.F. Le Claire of St. Helier:
I was told this morning that there was one purchase of the recent development at the harbour front by a gentleman of 5 flats in one time, after he queued up overnight. If that was correct, which I do not have any evidence to back that up, although this has been reported to me, does that not indicate that there is a great market for a landlord to enter into in Jersey, to keep people in high rented accommodation?

Senator T.J. Le Main:
As I have explained before, there are approximately 16 per cent of share transfer apartments or flats that have been purchased by local residents without housing qualifications or investors from outside the Island and that percentage I consider to be not detrimental but to have provided good rental opportunities in the market for local people.

2.1.5 Senator S. Syvret:
Could the Minister for Housing outline to the Assembly which economic theory and philosophy he bases his assertions on in which he essentially gave me an answer in that he denied that the influx of purchase power into the particular market has an inflationary effect?

Senator T.J. Le Main:
As I am not an economic guru, I would prefer that any questions from the Senator would be put in writing.

2.1.6 Deputy S.C. Ferguson of St. Brelade:
Does the Minister not understand that if there is a lack of demand for a product, then the price will come down? If the outside investors are not buying our property then the price will come down.

Senator T.J. Le Main:
I well understand what the Deputy is saying but let me just say that there is a market in Jersey that people need rental accommodation. There have to be investors. If one remembers, years ago, when price control was the issue in Jersey - when all properties were controlled by prices - it caused a huge problem where people did not invest in providing homes for local people. What I have got to say to you, Sir, is that the market at the moment in the flat market is fairly static. There is a good mixture of investors, of around 16 per cent that are providing homes for local people at affordable prices in today's market. The issue is, of course, that the only way to drive prices down is to put more supply in the marketplace and it is quite clear that there are high prices, particularly in residential houses, particularly in houses because there is a shortage in the marketplace. The same can be said for this first time buyer market. At the moment there is a huge demand for first-time buyers. Prices have reached an all time high because there is not enough in the marketplace.

2.1.7 Deputy G.P. Southern:
Will the Minister inform the House when he expects to be in a position to bring forward some information on this contentious issue?

Senator T.J. Le Main:
I have promised that I will, once I have all the information before me, the legal advice and the advice shared by Deputy Gorst and Senator Ozouf on the Migration Advisory Group, then I have always said that I will come back to this Assembly to advise Members of any changes or otherwise and, if there need to be changes, then, of course, it is this Assembly that will decide.

2.2 Deputy R.G. Le Hérissier of St. Saviour of the Minister for Health and Social Services regarding the workings of political and administrative accountability with regard to the allegations made about Child Care in the Island:
What conclusions, if any, has the Minister reached in relation to the workings of political and administrative accountability with regard to the allegations made about childcare in the Island?

Senator B.E. Shenton (The Minister for Health and Social Services):
I have read this question a few times and I was wondering if the Deputy may be permitted to elaborate on exactly what question he is asking me, Sir, so that I may reply?

Deputy R.G. Le Hérissier:
The question has gone around slightly, hence the fact it has ended up on the Minister's desk but I will attempt to draw out its meaning. Is the Minister satisfied, Sir, that within his Ministry, there is strong administrative accountability in terms of the officers who are in charge of a critical area such as childcare? Secondly, Sir - and in a way this is asking about himself - is he convinced that the

manner in which he is held accountable for the performance of that particular function is strong and that we, as an Assembly, have enough information and that he has enough information to be politically accountable?

Senator B.E. Shenton:
As Minister for Health and Social Services, I have specific responsibilities, not only with my Ministerial household but also through the Children's (Jersey) Law 2002. In order to uphold those responsibilities I have a very able Assistant Minister - Senator Perchard - who has been given responsibilities on the Social Services side. Having said that, ultimate political responsibility lies with myself. To achieve that, I have given written direction to my Chief Officer of the standards that I would expect him to uphold within the Children's Service. While I have passed on responsibility in certain areas to Senator Perchard, I do still keep a close eye on what is going on in Social Services. To give you an example, I telephoned a local children's home last week and spoke to the manager just to make sure that the children under our care were not being adversely affected by the recent events going on in the Island.

2.2.1 Deputy R.G. Le Hérissier:
I thank the Minister for that. I wonder if he could elaborate on what kind of information he receives which makes him feel confident that he and his Assistant Minister have a complete overview and a complete understanding of what is going on in terms of childcare?

Senator B.E. Shenton:
We currently have the Williamson Review being undertaken plus other reviews taking place. As a Minister, not just in Social Services but throughout Health and Social Services, I am very keen to have independent input into the services that we provide in many, many areas. This is a very high priority at Health and Social Services at the moment, to provide me with more independent findings so that I do not have to rely on the word of my Chief Officer or the word of the staff, so that I can have independent verification of all aspects of Health and Social Services.

2.2.2 Deputy P.V.F. Le Claire:
At the Williamson briefing the other morning, where the Minister was present and so was I and other Members, I made the point about the line reporting and the necessity - an essential aspect - of political oversight. Is the Minister confident that the line reporting is satisfactory within the Ministry and is he actively encouraging staff to speak to him and his Assistant Minister directly if they have an issue?

Senator B.E. Shenton:
I am taking the final point first, Senator Perchard and myself, we do speak to staff in confidence on various issues, just to get feedback. With regard to lines of responsibility, there are areas that we need to address because ultimately you cannot have more than one person responsible for any particular area and you have to have political responsibility and managerial responsibility in every area of the department.

2.2.3 Deputy F.J. Hill of St. Martin:
It has been reported that there are no occupants at all at Greenfields. Will the Minister confirm that is a fact? If so, has it got anything to do with the Williamson Report, i.e. with any concerns raised that would mean that there are no longer any people there at Greenfields?

Senator B.E. Shenton:
As far as I am aware, there are no people at Greenfields but it does not have anything to do with the Williamson Report. It just means that we do not have any people remanded to Greenfields at the moment.

2.2.4 Deputy C.F. Labey of Grouville:
The Minister answered a question just now; children under our care. When Mr. Williamson answered a question or tried to answer a question posed by Deputy Mezbourian at the briefing last week, when he was asked: "When a child absconds from one of the children's homes who is responsible?" He replied by saying: "I am not a lawyer. It is complicated." Who does the Minister feel or believe is responsible for children under their care?

Senator B.E. Shenton:
If a child absconds while under our care, he is still under our care and this is an area where Senator Perchard and I do have concerns and, as I have previously answered, we have spoken to the Attorney General on it. But it is of great concern to us because ultimately that child is under our care.

2.2.5 The Deputy of Grouville:
Is it not of concern to the Minister that Mr. Williamson finds this area complicated and does not exactly know what that means, children under our care?

Senator B.E. Shenton:
I am not quite sure what the Deputy means by that.

The Deputy of Grouville:
Well, the Minister seems to know what it means "children under our care", but Mr. Williamson does not. It does not concern him.

Senator B.E. Shenton:
That would be a better question to put to Mr. Williamson. I cannot speak for Mr. Williamson.

2.2.6 Deputy R.G. Le Hérissier:
Notwithstanding some of the heartening information that the Minister has conveyed, could the Minister outline, other than private chats with he and the Assistant Minister, what secure arrangements are in place if there is a whistle-blower who wishes to convey information?

Senator B.E. Shenton:
I believe that the States has an ongoing whistle-blowing policy. There is not a policy specific to Health and Social Services but certainly it is an area which is covered by States Employment.

2.3 The Deputy of St. Martin of the Minister for Home Affairs regarding the outcome of an internal enquiry by the Head of the Customs and Immigration Service into the activities of a number of Customs Officers:
Will the Minister advise Members whether the internal inquiry by the head of Customs and Immigration Service into the activities of a number of Customs Officers has been completed following police investigations from which no criminal proceedings were instituted and, if so, will she advise of the outcome and whether the report will be made available to States Members?

Senator W. Kinnard (The Minister for Home Affairs):
The internal inquiry was completed on 21st December 2007. I received a subsequent report on 11th January 2008. The report contains references to Customs Law enforcement operational activity that must remain confidential. Disclosing the detail of the type of operational activity undertaken could compromise future drug operations conducted by the Service. Consequently the report is exempted from disclosure under paragraph 3.2.1(4) of the Code of Practice on access to official information and that disclosure would prejudice the prevention, investigation or detection of crime or the apprehension or prosecution of offenders. Sir, I am currently taking advice as to how the findings of the report can be addressed.

2.3.1 The Deputy of St. Martin:
It does seem that the Minister has had the report for at least 6 weeks. I would have hoped that she would be a bit more progressed with her inquiries. Can I ask the Minister whether, if she is allowed to mention this from the report, whether there is any justification whatsoever for the police inquiry or was it really more to do about a bit of a squabble and ill feeling between the customs officers and the police officers themselves? Maybe the best approach may have been by an internal inquiry first and then, if it was felt necessary, then to have the police investigation?

Senator W. Kinnard:
We answered questions on this very issue on 9th October of last year. I have given my answer. I do not intend to discuss it any further on this particular point as I am awaiting, as I say, advice on the findings of the report.

2.3.2 The Deputy of St. Martin:
Am I going to get an answer to my question? Would it not have been better to have had an internal inquiry first to see whether there was any justification for a police investigation?

Senator W. Kinnard:
The answer to that particular question was given on 9th October and I helpfully have it here for the Deputy. I could take the time of the States and read it out. Alternatively, I could hand it to him later on, Sir.

2.3.3 Deputy R.G. Le Hérissier:
Although the Minister has always propounded a policy of strict separation between operations and policy/strategy, how does she react when somebody reports to her that there is an apparent conflict which, with a heavy dose of common sense within her department, there is an intra-departmental conflict? What is her reaction to that, when such an episode is reported?

Senator W. Kinnard:
Generally - and I am going to make it clear, I am not just talking about this specific issue of this specific question - those matters would be dealt with at the operational level by the officers; the heads of departments at first instance and then my Chief Officer of Home Affairs. Thereafter, if it is a matter which involves human resources, of course the Chief Executive would be involved.

2.3.4 Deputy S.C. Ferguson:
Does the Minister not think that a little leadership should be exhibited in this instance, as defined by Deputy Le Hérissier? Does she not have meetings with her Chief Officers? Should she not be involved in discussions of this sort? Surely it demonstrates leadership if she did.

Senator W. Kinnard:
I would say it demonstrates leadership to know when not to meddle inappropriately. Thank you, Sir.

2.3.5 The Deputy of St. Martin:
I would remind the Minister that, on 20th November a number of questions were asked of the Minister which were answered by the Assistant Minister. I would like to follow on from that: from the result of the internal inquiry, are any discipline proceedings being actioned at all against any of the customs officers?

Senator W. Kinnard:
As I say, I am taking advice and I have yet to receive the outcome of that advice so it is impossible for me to answer that question.

2.3.6 The Deputy of St. Martin:
I would have thought that was quite a simple answer; yes or no. One the Minister could know at the time whether any proceedings have been taken.

Senator W. Kinnard:
It is not a simple matter. I have to await the outcome of the advice that I am taking on this report. It is quite a simple matter. It is not appropriate at this time for me to be able to make or comment upon any such potential decision. It is too early to say so.

2.4 Deputy R.G. Le Hérissier of the Chairman of the Privileges and Procedures Committee regarding alternatives to a Freedom of Information Law:
Given the Committee has announced intention not to proceed with the Freedom of Information Law, would the Chairman identify the alternatives which will be put forward?

Connétable D.F. Gray of St. Clement (Chairman, Privileges and Procedures Committee):
P.P.C. (Privileges and Procedures Committee) has not stated that it does not intend to proceed with an F.O.I. (Freedom of Information) Law. It does however have concerns in connection with value for money, as stated in my reply to the Deputy's oral question on 29th January. The introduction of any legislation is not a step taken lightly. It is usually done to remedy a problem. P.P.C. has not been provided with evidence that there is currently a problem and, given the low number of appeals - only 2 over a 6-year period, and the complete absence of any application to the Complaints Board, this being a final independent appeal stage - the Committee finds it difficult to recommend that the States spend £500,000 a year to introduce a law. As I also stated on 29th January, it is possible that part of this £500,000 is necessary to enable departments to comply with the Public Records Law introduced in 2002 and the F.O.I. Law is not solely responsible. Nevertheless, P.P.C. felt it would need to provide the States with compelling evidence that the code is not working or could not be improved at lower cost. The Committee does not dispute that the F.O.I. law is desirable. It is currently trying to establish whether it is essential and whether any of the cost identified by the departments are in fact more properly attributable to the implementation of either the Public Records (Jersey) Law 2002 or are existing costs to the current code of practice on public access to official information.

2.4.1 Deputy R.G. Le Hérissier:
Would the Chairman, on the basis of that evidence, therefore say categorically, he will not be proceeding with the Freedom of Information Law?

The Connétable of St. Clement:
No, I cannot say that, Sir.

2.4.2 Deputy R.G. Le Hérissier:
Would the Chairman acknowledge that in answers to me on 16th July of last year, he spoke - or the Committee spoke - very positively and analysed the law and analysed how it could be simplified? They have now committed a u-turn since the provision of that information.

The Connétable of St. Clement:
We have not committed a u-turn.

2.4.3 Senator S. Syvret:
Could the Chairman of P.P.C. explain to the Assembly what methodology or what independent peer review his Committee has commissioned or undertaken to assess the validity of the alleged costs of the law which are put forward by the different departments of the States? It is standard

practice in the introduction of F.O.I. laws that all government departments grossly over inflate the likely costs and I would have expected the P.P.C. to have undertaken an independent peer review of those assertions. Have they been?

The Connétable of St. Clement:
We have not at the moment instituted a private or independent process but it is something that the Committee will review.

2.4.4 The Deputy of St. Martin:
Will the Chairman not accept that the House has approved the Freedom of Information Law and is incumbent on his Committee to bring to the States for the House to agree it, not for P.P.C. to keep it under wraps?

The Connétable of St. Clement:
I do agree, Sir.

2.4.5 Deputy C.J. Scott Warren of St. Saviour:
Will the Chairman accept that sometimes the cost of legislation should be considered as secondary to the importance of the provision of the law, such as in this law? Thank you, Sir.

The Connétable of St. Clement:
I think that is what we are trying to do, Sir. Investigating the exact cost of this law by asking the relevant people.

2.4.6 Deputy C.J. Scott Warren:
I am sorry, I think I have been misunderstood in my question. I asked whether the cost should be put as secondary in the fact that an important law, really - a law such as this that has been agreed by the States - should be paramount to putting the cost above the law, which appears to be the case from this Committee. Thank you.

The Connétable of St. Clement:
I do not think we are putting the cost above the law at all. As I said before, the P.P.C. is committed to introducing a Freedom of Information Law but once we establish that it is affordable and relevant.

2.4.7 Deputy G.P. Southern:
Does the Chairman accept that all parts of this House are firmly committed to freedom of information and will he commit himself to bringing a law to the House in this session so that this House can make up its mind?

The Connétable of St. Clement:
It will be for the Committee to decide.

2.4.8 Deputy R.G. Le Hérissier:
Would the Chairman not admit that it seemed very strange that the estimates for the complex law and the simplified law were both £500,000? Would he not accept this is very strange?

The Connétable of St. Clement:
Yes, we do accept that and that is why we are looking into it further.

2.4.9 Deputy R.G. Le Hérissier:
A date as to when the look-in will be completed?

The Connétable of St. Clement:

I will give you that.

2.5 Deputy J.A. Martin of St. Helier of the Minister for Housing regarding the future of the Ann Court site:

Given that R.17/2008 concerning the States rental waiting list contains a statement that the greatest demand by far remains for ground-floor or lift-served one-bedroom units, will the Minister justify why he is prepared to lose Ann Court, which meets all the criteria for lifelong homes or sheltered housing, due to its location, close to all amenities, and could be easily refurbished?

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

Ann Court currently provides a mix of bedsits, one, 2 and 3-bedroom units with no lift access; 21 of these units are one-bedroom. The estate was due for major refurbishment and, in some parts, demolition due to structural problems. The nature of the work necessitated decanting the estate in any event. The decision to bring forward in the refurbishment plan was in order to allow this Assembly to make decisions regarding the town park, *et cetera*. It is for this House to make those decisions. If the States decide that Ann Court should be used for a car park, then the units lost at Ann Court will most definitely be replaced by 2 sites, namely the Sunshine and Salisbury Crescent. I am not prepared to lose this number of homes from the States rental stock and I will not. I reiterate therefore that Ann Court has merely been moved forward in the refurbishment programme in order to allow you, States Members, to make a decision regarding the town park. That is a corporate approach and seems sensible to me. We just have to wait and see what decision this Assembly makes.

2.5.1 Deputy J.A. Martin:

Sorry, Sir, I am surprised to hear that the Minister says it is going to be a States decision. From what I can understand, it is being decided at a Ministerial level and because of the agreement with the Housing Minister. My question, though, Sir, is in the waiting list figures, going back to September the Minister states in a letter to States Members that there is an increased need for one-bedroom accommodation. This can be explained by the added numbers of those having to move from Ann Court who largely require one and 2-bedroom flats. It also says that the Sunshine site would take care of some of these people, for sheltered housing. When the Sunshine was up for debate, Sir, I begged the Housing Minister to reconsider it for States rental housing for sheltered and the elderly. In hindsight, Sir, at least 3 times the Minister has told me it is not suitable. So, can he answer those 2 questions?

Senator T.J. Le Main:

In regard to the Sunshine Hotel site, at that time, Sir, to build on that site was not feasible. Since then, this House very wisely approved the Property Plan. So the Salisbury Crescent site and, in particular, the Sunshine Hotel site can now have some development on where we are able to alleviate some of the costs by doing some sell-offs to first time buyers on part of the site. So, it is a win-win situation now, with the Property Plan in place and I am confident that the 67 units or 70 units lost at Ann Court… if the States decide - the Assembly will decide. If you do not want a car park on Ann Court, then I am very happy to proceed on developing it for sheltered housing, as outlined by the Deputy.

2.5.2 Deputy J.A. Martin:

I am again pleased to hear that it will be our decision because the Minister and his department have approached all the tenants at Ann Court and told them that Ann Court is not an option to be moving back, Sir, they are demolishing it for a car park. So I am glad to hear that we will get a decision on this. Unfortunately, the tenants do not know. My question, Sir, is it not the fact that we have an ideal site, before we go out to the town and greenside country zone, persuading the Parishes, and I

am all for other Parishes participating, but we have a site here, ready by the end of the year, for fantastic sheltered housing in States ownership and the Housing Minister has just rolled over again, as usual, Sir, with the rest of the Council of Ministers and is not coming back to the House.

Senator T.J. Le Main:
The Housing Minister does not roll over for the Council of Ministers. He does not roll over for anyone, by the way. **[Laughter]** Let me just say I might have done years ago but not now. **[Laughter]** Let me just say, Sir, that 16,000 people supported a petition wanting, as a desperate need in the eastern part of St. Helier, a town park. What I am doing is playing my part, corporately, with my department, in decanting early, the residents of that estate, so that the House can then make a decision what they want to do with that site. It is crucial, I am being advised, to the production of the town park. 16,000 people supported it and I thought that the Deputy of St. Helier No. 1, would have supported that as well because everybody else that I speak to in this Assembly are in 100 per cent support of providing a town park. What I am doing is laying the foundations for a site that the House decides they can utilise. We have now been able, because of our property plan, to relocate some of the development on Salisbury Crescent and on the Sunshine. If the States do not decide to use it as a car park, I will welcome its retention for housing.

2.5.3 Deputy J.B. Fox of St. Helier:
When the Minister brings it back to the States, I wonder if he would also include the propositions that were not brought to the House but proposed, where the private sector in the Le Mausurier Group and also in C.I. Traders with the old Ann Street brewery factory, where the proposals, among others, were that they were going to seek planning permission for change of use for public parking to replace that on the new proposed town park? I gather things are changing but I would ask if that could be included? Thank you, Sir.

Senator T.J. Le Main:
Let us make it quite clear, the Housing Minister will not be coming back to the States Assembly with plans for the Ann Court site. The Housing Minister is vacating the site. It will be the T.T.S. (Transport and Technical Services) Minister or whoever is bringing forward the final town park plans that we will offer to this Assembly that site as it lays empty at the time. So the Housing Minister has no involvement in the production of the town park. All I am doing is playing corporately in producing a site where it has been identified by the T.T.S. and others as it would make an ideal site for car parking to allow the town park to take place.

2.5.4 Deputy J.A. Martin:
Yes, thank you, Sir, I am glad the Minister really takes notice of 19,000 signatures, or was it 16,000? I know which way he voted on the signatures on G.S.T. (Goods and Services Tax). My question is, Sir, the Minister says it is not going to be his job, as usual, to come back and say: "I do not want this property." Can he tell me how many meetings he has had with the Island Plan Review Group and the Town Regeneration Working Party on this development, losing it for housing to a 1,000 place car park?

Senator T.J. Le Main:
I have had no meetings with those groups because it has been delegated to my Assistant Minister who has been leading some discussions on the matter and leading the group. I have certainly - personally - delegated that area, the housing part of it and I know that the Council of Ministers did delegate Deputy Hilton to take charge of bringing that to fruition.

2.5.5 Deputy J.A. Martin:
Sorry, Sir, could I just comment? Does the Minister not find that there is some conflict? That the Assistant Minister for Housing is also the Project Manager for the new town park?

Senator T.J. Le Main:
I just cannot understand where the Deputy is coming from. I hope she goes back and tells her 16,000 people that she is opposing a town park, a much needed facility in the Island.

Deputy J.A. Martin:
I am opposing a car park, Sir.

Senator T.J. Le Main:
Because it seems to me, on the advice given to me, that it is crucial that Ann Court is used as a car park.

The Deputy Bailiff:
I think, Minister, you have given your answer.

Senator T.J. Le Main:
Yes, Sir, you usually give me 15 minutes anyway, so thank you. [**Laughter**]

The Deputy Bailiff:
That, for you, is the last question. **[Laughter]**

2.6 Deputy G.P. Southern of the Minister for Social Security regarding changes to Disability Transport Allowance:
Everyone is due their 15 minutes of fame, are they not? In the light of changes to benefits scheduled to take place in October 2008, will the Minister inform Members what credence recipients of D.T.A. (Disability Transport Allowance) can give to the statement: "This allowance has been awarded for life", contained in a letter - D.T.A. 55 - from his department that many may have received?

Senator P.F. Routier (The Minister for Social Security):
Members no doubt recall the 3 major debates we had on the subject of D.T.A. and I am sure that Members will be aware that the Disabled Transport Allowance Law has now been rescinded and replaced by the Income Support Law. The changes to benefits planned for October are an up-rate of the value in income support component levels, together with the planned reduction in the protected transitional arrangement payments for households with incomes above the appropriate income support level. The letter which the Deputy refers to - D.T.A. 55 - was superseded at the end of 2004 by a new letter, F304. Both letters indicate that the medical condition giving rise to the benefit was unlikely to improve in the lifetime of the beneficiary and the department would not review the medical status of the individual in their lifetime. However, if the financial circumstances of the recipient of the disability transport allowance changed and the individual acquired an income in excess of the income limit, the allowance would have been reviewed because the individual no longer satisfied the income conditions for the benefit. There will be individuals who received either letter, who have now transferred to the Income Support Scheme. If the individual qualifies for income support on financial grounds, then the previous agreement that no medical review would be required is transferred to the Income Support Scheme and the individual will receive the mobility component for the rest of their life, as long as they still are eligible for income support.

2.6.1 Deputy G.P. Southern:
What interpretation should recipients of D.T.A., who receive this letter, which says, clearly: "If the date of the stop date mentioned above reads 2098 - and this one reads February 2098 - or similar, then this allowance has been awarded for life." What interpretation are recipients of this letter to

take on the phrasing: "This allowance has been awarded for life"? Is that the case or is it not the case? Is that wording correct or incorrect? Is that wording justified or not?

Senator P.F. Routier:
What the Deputy fails to go on to comment on is that in bold letters at the bottom of the letter there is a line which says: "Please read the notes on the back of this letter as they may affect your entitlement." Then the notes which are attached to the letter… and it is on both of the letters which have gone out, both D.T.A 55 and the F304. Both of them comment along similar lines that it is a letter which is sent out which is after the medical assessment and they refer to if your medical condition improves, you will have a review and if your income increases significantly. So, the Deputy is not concluding with the remainder of the letter so that the people can get a true picture of what is being said.

2.6.2 Deputy C.J. Scott Warren:
I would like to say to the Minister that I have heard from somebody whose medical condition has not been proved and I would like to ask the Minister whether he accepts that this letter, that was received by probably a lot of people that need this money, that, really, this letter was not worth the paper it was written on? Thank you.

Senator P.F. Routier:
If people have come to the conclusion that the award would be for life from the way that the letter was written, that may well be the case and I apologise for that but the circumstances in both letters do recognise that if somebody's financial circumstances are different, that they would no longer be able to have the allowance and, as we know, the States have debated, several times, the failings of the D.T.A. system and have required us to change the D.T.A. benefit. Income support was brought in to achieve that. We must remember that benefits are now paid because of people's financial circumstances and, secondly, the medical element.

2.6.3 Deputy G.P. Southern:
Is it not the case that the Minister's answer is incorrect because, in many cases, the medical circumstances have not changed? These people are reliant on transport and their financial circumstances have not changed. They are on exactly the same level of income or savings as they previously were when they were eligible and were guaranteed this benefit, this allowance, for life. The fact is, without any change in their circumstances, they have either had this allowance reduced by half or reduced to zero. These are people in dire need of transport to live a reasonable life. Is that not the case?

Senator P.F. Routier:
The Deputy makes a statement as if people are in financial need.

Deputy G.P. Southern:
I did not say they were in financial need, I said, clearly, their finances have not changed. The Minister said if those finances have changed, that is not correct.

Senator P.F. Routier:
Members are aware that the debate around income support has been solely regarding the redirection of particularly D.T.A., which people were criticising for a number of years, that it was being paid to people whose finances did not really mean that they needed the financial resource. The States approved the Income Support Law which rescinded the D.T.A. Law. We all went into that with our eyes wide open and understood what was happening. It was a requirement of the States and the public, to a certain extent, who were saying that disabled transport was being paid to those people who were not in financial need and the States made that decision to go along that route.

2.6.4 Deputy G.P. Southern:
Does the Minister not accept that he has vastly reduced the quality of life of a number of seriously disabled people by his measures?

Senator P.F. Routier:
I would say that if anybody who is a disabled person who is in financial need, the income support system is there for them to apply to. There is no need for them to be in financial need because income support is there for them.

2.7 Deputy P.V.F. Le Claire of the Minister for Transport and Technical Services regarding safety concerns at the end of Garden Lane from traffic turning from Val Plaisant into Devonshire Place at Reid's the Chemist:
After over 2 years of concerns expressed by the Constable of St. Helier, residents and users of Garden Lane and myself, what action, if any, is the Minister taking to address the potential danger and fear of injury that is being incurred by users of Garden Lane from traffic turning from Val Plaisant into Devonshire Place at Reid's, the Chemists?

Deputy G.W.J. de Faye of St. Helier (The Minister for Transport and Technical Services):
This particular location is just one of many that have been identified as requiring further investigation and possible remedial work to improve pedestrian and vehicle safety. Some design work has been undertaken to identify a preferred solution. I can confirm that it is on Transport and Technical Service's list of works to be progressed, along with 12 other higher priority projects throughout the Island. Unfortunately, Transport and Technical Services has no revenue budget to undertake any works of this nature. In fact, I am about to sign a Ministerial decision advising all Parishes that no further work can be undertaken until a funding route is identified. However, since the road configuration in that particular location has changed, there have been no reports of any vehicle or pedestrian accidents, unlike many of the other high priority schemes on the list. As the question indicates, the danger here is perceived as opposed to actual.

2.7.1 Deputy P.V.F. Le Claire:
I am quite surprised that there are 12 other higher priority projects identified within the Island and no doubt other Members will be aware of those issues. I am certainly concerned, as are residents and users of Garden Lane, about the safety issues, whether they are perceived or whether there have been statistics on people who have been injured or not. Statistics are basically people with the tears removed. At the moment, people using Garden Lane are in fear for their lives and the lives of their children. Is the Minister now telling us that, after having spent money on information services to test buses, that his department has no money to protect children and the users of our streets?

Deputy G.W.J. de Faye:
I have been very grateful to Deputy Le Claire and indeed the Constable of St. Helier, both of whom I know have regularly used this particular route through town, I believe on many occasions with their own young children in prams or push chairs and they are very familiar with the site. But I have to tell the Assembly that the Deputy is somewhat over-egging the case because the reality is that the only complaints that I have had, that I am aware of to date, come from both the Deputy and the Constable and, in addition to that, I have had one complaint from a resident made to me of Garden Lane. I am not of the opinion of the Deputy that residents of Garden Lane are in fact living in fear of their lives.

The Deputy Bailiff:
I am sorry, I have just been advised by the Greffier that we are not quorate so could the usher round some of the Members back? Thank you. Very well, I think we are now quorate.

2.7.2 Senator S. Syvret:
As a user of that route myself, I can say, certainly I would like him to register this as a complaint that I have on 2 occasions, nearly been hit by vehicles rapidly turning around that corner. This corner is manifestly a serious danger because Garden Lane is predominantly used by pedestrians and children and they enter out on to a corner which has high volumes of traffic turning into it. Will the Minister say that he will take the case seriously when somebody is seriously injured and killed or would he rather avoid that eventuality and take measures to calm the traffic in this area?

Deputy G.W.J. de Faye:
I think that is a particularly outrageous statement for the Senator to make. Of course neither myself nor the department are waiting for accidents to happen, although if I had £1 given to me for every time someone told me that there is an accident waiting to happen somewhere in the Island, I would be a very wealthy man. The straightforward facts of the situation, for Members who may not be aware of where this junction is, is that as Val Plaisant traffic turns right into Devonshire Place at Reid's the Chemist, there are in fact 2 pedestrian crossings with light controls that are manually operated by pedestrians. They have been installed already at considerable cost. I have visited the site with officers of the department and in company with officials from the Parish of St. Helier and we have already suggested the one clear solution, certainly in respect of vehicles exiting from Garden Lane on to the junction is quite simply that the direction of Garden Lane should be reversed so that all vehicles exiting from Garden Lane exit at the northern end. That would make a very dramatic improvement in safety. But, for some reason that is inexplicable to me, the Parish steadfastly refuse to change the direction of the road. The pedestrian situation is a slightly different matter and I will doubtless have another question to address that.

2.7.3 Deputy P.V.F. Le Claire:
It is a shame it is the final question, Sir, because it has been going on now for over 2 years and we are trying to get this sorted out. If the traffic is reversed, it addresses the danger of vehicles exiting the street, but it does nothing to address the danger - or fear of danger - that the residents and, more importantly, the users which predominantly are made up of mothers and children - as Senator Syvret has mentioned - on their way to and from Rouge Bouillon School on a daily basis. There is a perception of fear. Would the Minister, if I supplied him with 200 signatures of fearful parents, be more willing to address the issue and identify the budget that he says he cannot identify to address this issue? Because certainly, the answers that he has given this morning are similar to the answers that he has given over the last 2 years, which do not address the issue and continue to prevaricate the issue.

Deputy G.W.J. de Faye:
Clearly I am not getting through to the Deputy. There are 12 other priorities that merit higher retention around the Island than this one. There are other areas where it is quite clear that accidents are happening. There are no records of any accidents happening at this junction since the road configuration was changed. In any event, I have no more money to deal with the issue whether I wish to deal with it or whether I did not wish to deal with it and that is the existing position.

2.7.4 Deputy P.V.F. Le Claire:
Could I press on this rather than asking another question? I did ask specifically, would he identify where he needs to progress the identification of the budget? We all understand he has got no money; we all understand he has spent it all on other things other than the necessity of providing safety for our pedestrians. There are 12 other areas where people are getting hit and run over, which he also needs to address. Where is the money going to come from? Can he tell us?

Deputy G.W.J. de Faye:
I would remind the Deputy that I wasted nearly £100,000 of public funds on his investigation into composting. Sir**,** that is indeed the case. If the Deputy wishes to know where money goes, he is

one of the people responsible for one of the more enormous outlays we have made, to tell this Assembly what we knew already, except it took us nearly 18 months to do it.

2.8 Deputy P.V.F. Le Claire of the Chief Minister regarding the financial and manpower commitments of the Communications Unit from its inception to date:

Would the Chief Minister advise members of the financial and manpower commitments of the Communications Unit from its inception to date, please?

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

Before 2003 a number of committees employed their own P.R. (public relations) or communications agencies at a cost to the States in the region of £250,000 per annum. Between 2003 and 2005 the then Policy and Resources Department employed consultancy support for its communications. The Communications Unit as we know it today was formally established in May 2006 with 3.6 full-time equivalent posts, one of which was transferred from the Social Security Department. Last year the staff complement stood at 5 full-time equivalents, one of which was funded by the Economic Development Department. The 2008 budget for the Communications Unit as agreed by the States is £294,000.

2.8.1 Senator S. Syvret:

That is quite a significant account of taxpayers' money given the kind of discussion we have just had in the previous answering session. Will the Chief Minster say to the Assembly whether he is going to demand our money back from these people given their catastrophic performance?

Senator F.H. Walker:

I am not going to be drawn into yet more sparring with Senator Syvret. I think I will merely say that I gave well over 20 interviews in the days after the Haut de la Garenne story unfolded and while I will accept that the Newsnight interview and the press conference were not anywhere near as well handled as they might have been, there were extenuating circumstances. The other interviews where I was supported by the Communications Unit were well received.

2.9 Deputy G.C.L. Baudains of St. Clement of the Minister for Education Sport and Culture regarding the consultation on the possibility of Jersey having a 'National Gallery':

Would the Minister advise whether the consultation on the possibility of Jersey having a National Gallery is being co-ordinated by the Steering Group and not the Education, Sport and Culture Department? And if so, why?

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

A report has been submitted to me on the creation of a National Gallery for Jersey by a Steering Group established by the Jersey Heritage Trust and it is this report that is currently out for consultation. I have made it clear and the Steering Group acknowledges this in its own report that it is most important, that it is an opportunity for the public to respond to the contents of the report. I as Minister have therefore undertaken this consultation exercise. The report and the supporting document are published on the States website and hard copies available in the normal way from the Public Library, the States Bookshop and from the contact centre at Cyril Le Marquand House. Respondents are invited to make known their views to one of the Assistant Directors of Education Sport and Culture at my department. The consultation is therefore being conducted by my E.S.C. (Education Sport and Culture) Department on my behalf.

2.9.1 Deputy G.C.L. Baudains:
I am grateful to the Minister for his answer, Sir, but there does appear to be some confusion as to who is co-ordinating the consultation response. Does the Minister agree that such collation of input not only needs to be independent from those promoting the scheme, but also has to be seen to be independent as well? Does the Minister agree with that?

Senator M.E. Vibert:
Yes, the Minister does and he thinks it is absolutely clear in the consultation paper I put out, in the press release I made and in what I have just said. In the comments in the consultation paper, that is available to people, it specifically says that I am undertaking it and says: "Send comments to the Assistant Director" not the Steering Group. In the news release I did, which was extensively reported, it says the E.S.C. Minister - myself - is seeking views on the proposal. So, very clear that I am seeking views on that proposal.

2.10 Connétable A.S. Crowcroft of St. Helier of the Minister for Planning and Environment regarding measures taken to reduce the amount of packaging imported by the Island:
While the Minister is to be commended on having taken steps to reduce the Island's use of plastic carrier bags, would he explain what additional measures, if any, he is taking to reduce the amount of packaging we import?

Senator F.E. Cohen (The Minister for Planning and Environment):
I am grateful for the Connétable's recognition of my involvement and that of the Assistant Minister - the Deputy of Trinity - in this ground-breaking initiative to reduce the approximately 30 million plastic bags and 450 tonnes of plastic waste generated annually in Jersey and Guernsey. The initiative as part of the ongoing ECO-ACTIVE campaign is further notable as a joint initiative with the Guernsey Environment Minister. Last week's announcement was, however, only the first step, and we have agreed to meet with the supermarket groups, probably in June, to review the effectiveness of the bag charge, and to consider additional measures to reduce plastic waste in the form of unnecessary packaging. The Women's Institute, Durrell and the One World Group will be represented at this meeting together with the Minister for Transport and Technical Services, who of course has responsibility for waste and is equally enthusiastic to reduce plastic waste. I will certainly be encouraging local supermarkets to consider the commitment to reduce packaging over time.

2.10.1 The Connétable of St. Helier:
Would the Minister not agree that reducing the amount of waste we have in the first place is at the top of the waste hierarchy, and perhaps the Island should be spending a little bit more of its attention on this matter given our unique position of being able to control how much packaging is being imported into the Island? Perhaps we should be addressing this as a high priority as well as pursuing recycling schemes.

Senator F.E. Cohen:
Yes, Sir, a jolly good idea. But we should also bear in mind that we are dealing here primarily with plastic waste and plastic waste is extremely expensive to dispose of appropriately. A lot of the plastic waste that is recycled in the U.K. (United Kingdom) has to be shipped out to the Far East and it is very expensive to do. We need to be aware of that so the more that we can reduce plastic importation the better.

2.10.2 Deputy P.V.F. Le Claire:
I would like to applaud and congratulate the Minister and his handling of the introduction of this measure on behalf of the supermarkets and plastic bags. Can I ask him - because this is an

important issue to reduce and return and recycle these kinds of plastics and oil products - what measures does he think would be possible in terms of, for example, applying a purchase tax based upon an environmental tax on products such as tyres, which are also difficult to deal with and export? In France, for example, they add the environmental tax at the time of purchase so that the cost of dealing with those tyres is taken into account when the item is purchased. Is the Minister looking into these types of environmental taxes and these types of measures?

Senator F.E. Cohen:
Comprehensive work is being carried out on proposals to introduce environmental taxes and the Council of Ministers will be discussing that shortly. I am not aware of whether or not a specific tax on tyres has been considered. I certainly will check and it sounds like a good concept that is worth exploring. Thank you, Sir.

2.10.3 Deputy G.C.L. Baudains:
I wonder if the Minister has considered that his decision may be counter-productive, because as we all know plastic carrier bags quite often have more than one use during their life span? I fear that may not be the same for the alternatives that are used. We are all familiar with collecting a polythene bag from the supermarket but it is rarely its final journey. It can be used to store rubbish afterwards before it goes into a black plastic bag so here may be a case where more black plastic bin bags are going to be used rather than fewer as a result of this. Has the Minister considered that?

Senator F.E. Cohen:
Such a measure has recently been introduced, effectively voluntarily, with the local supermarkets and is, of course, dependent on Islanders making environmentally conscious decisions. I believe that Islanders want to make environmentally conscious decisions and want to have the opportunity. Simply to say that by introducing this charge we are going to affect the secondary uses of plastic bags; I do not really think is valid. The objective of this is to make people aware of their decisions and the consequences and to reduce overall, the consumption of plastic bags in the Island.

2.10.4 Deputy R.G. Le Hérissier:
Is the Minister aware that the calculations have been redone as to fishing marine fatalities resulting from the ingestion of plastic bags and that this situation, although dire, may well have been considerably overestimated? And secondly, Sir, will he be using his formidable energies to reduce the consumption of plastic bottles?

Senator F.E. Cohen:
Plastic bottles is certainly on the list. I was not aware that the calculations have been recalculated; however, that is not really the point. We are all aware that using excessive plastic is environmentally detrimental and therefore anything we can do to reduce the 450 tonnes of plastic bag waste produced in the Islands per year I think is well worth pursuing. I intend to do as much as I can generally to reduce plastics in supermarkets, whether it be bottles or bags. Thank you.

2.10.5 The Connétable of St. Helier:
Deputy Le Claire referred to levies which were applied to the purchase of most large products, particularly white goods to offset the cost of their disposal; does the Minister not fear that the States decision to impose a 3 per cent G.S.T. has narrowed the range of options open to him for applying such environmental taxes in Jersey?

Senator F.E. Cohen:
Clearly, the introduction of another tax on top of another tax is something that this House will have to consider very carefully. But environmental taxation is a different principle. Environmental taxation, providing it is accompanied by hypothecation, is a system of taxation where the measure

of success is how little you collect because you change behavioural patterns. So, I think that they are 2 entirely different forms of taxation. Thank you.

2.11 The Deputy of St. Martin of the Minister for Home Affairs regarding whether Parish Hall sanctions for various breaches of the law which the public receive during the course of a year are considered to be convictions and subject to the requirements of the Rehabilitation of Offenders (Jersey) Law 2001:

Will the Minister advise whether the Parish Hall sanctions for various breaches of the law, which the public receive during the course of a year are considered to be convictions and subject to the requirements of the Rehabilitation of Offenders (Jersey) Law 2001?

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

Parish Hall inquiry sanctions are not considered to be convictions within the terms of the Rehabilitation of Offenders (Jersey) Law 2001, and during drafting it was expressly intended that such sanctions would not fall within the scope of the Law. The intention complied with the then existing and continuing advice of the Law Officers Department to both the States and Honorary Police, that an offence admitted and punished at a Parish Hall inquiry has never amounted to a conviction in law. And further, that the Constable or Centenier is empowered to impose such a penalty only with the agreement of the offender. A Parish Hall is not a court of justice.

2.11.1 The Deputy of St. Martin:

Is the Minister aware that when an applicant applies to the States Police for a list of his or her previous convictions the States Police do include Parish Hall sanctions as part of that list?

Senator W. Kinnard:

I think there is some confusion and conflation of the 2 Laws here, one of which is the Data Protection (Jersey) Law and one is the Rehabilitation of Offenders (Jersey) Law. If I begin with the Rehabilitation of Offenders (Jersey) Law; it is possible, Sir, that within the vetting process that in some instances, where appropriate, the form signed by an applicant requests that details will be given of Parish Hall sanctions. For example, an enhanced check for sensitive posts may disclose such sanctions. But, Sir, it has come to my notice that individuals have been asked to - if you like - get their details through enforced subject access requests. Sir, under those circumstances of course the person is entitled to all the information that is held about them under the Data Protection (Jersey) Law and under those circumstances, Sir, they will also be provided with details of any Parish Hall sanctions that have been made against them.

2.11.2 The Deputy of St. Martin:

I thank the Minister for the answer but I always understand the difficulties and the complications of it and that is why I am trying to bring it out again this morning. But if a Parish Hall sanction is not deemed to be a conviction, then surely once that has been resolved at the Parish Hall then that record should no longer exist and should no longer be passed on by the police to the applicant or anyone else for that matter. Would the Minister not agree?

Senator W. Kinnard:

I am afraid the Deputy is again confused because the Law does not allow for any records to be removed from the system, including Parish Hall sanctions, and there are certain circumstances when it is appropriate that those sanctions should become known to an employer particularly with sensitive posts. Sir, this is a complicated area and I have agreed to give the States a report on the issues surrounding the complications of the Data Protection (Jersey) Law as it relates to enforced subject access and the Rehabilitation of Offenders (Jersey) Law. Also, Sir, my department is looking very seriously at how best to provide advice to the public on how the Law should work in

practice with a view to producing a layperson's guide. I think, Sir, that would be appropriate really if we await the outcome of that report. It is a very technical and complicated area and in a sense trying to answer bits of questions like this is not necessarily going to provide Members with the best information. I think if they await the outcome of the report my department is preparing that will probably be a more sensible approach.

2.11.3 Deputy S.C. Ferguson:
As a former Centenier, I can assure the Minister that this is not a difficult area. An important part of the Parish Hall inquiry is to keep youth out of the court system and a conviction for a youthful indiscretion can ruin a life. Does the Minister not think that including Parish offences as part… which could be scrumping apples. Does the Minister not think that including Parish offences as part of a criminal record is totally reprehensible? **[Approbation]**

Senator W. Kinnard:
Again, I think that people are confused.

Deputy S.C. Ferguson:
I am not. I was a Centenier.

Senator W. Kinnard:
If someone makes an application under the Data Protection (Jersey) Law, they are entitled to all the information that is held on them, which will include as I say, Sir, Parish Hall inquiry sanctions. It is a matter for the individual as to whether or not that information is passed on. I am very concerned at the extent to which employers are using what is known as enforced subject access to obtain information under the Data Protection (Jersey) Law in an inappropriate way. As I said at last sitting, Sir, this practice is being looked at and it is a matter of concern and is hoped to bring forward legislation to prevent this practice in future. But, Sir, there is confusion in this House and elsewhere about the workings of subject access under the Data Protection (Jersey) Law and the workings of the Rehabilitation of Offenders (Jersey) Law. As I have said, Sir, the Rehabilitation of Offenders (Jersey) Law does not cover Parish Hall sanctions. This is why I intend to bring a clear report with all of the details so that Members can, as I say, look at all the arguments that are there logically. There is confusion in the Deputy's mind and confusion in the public's minds, Sir, which I seek to address.

The Bailiff:
Well, I think you have made your point on that, Minister.

2.11.4 The Connétable of St. Helier:
While I welcome the Minister's assurance that she will be investigating this matter further and bringing forward a report, would she not agree with me that the Parish Hall inquiry system is not just about sanctions; it is also about giving advice and steering members of our community away from the criminal justice system, and it is worthy of our support? **[Approbation]**

Senator W. Kinnard:
Absolutely. So, I think my views on the Parish Hall inquiry system are well known in this House from my taking forward the Criminal Justice Policy. I believe it is the jewel in the crown of our criminal justice system, particularly in relation to keeping young offenders out of the court system. I am an absolute supporter of it and nothing I have said this morning undermines that.

2.11.5 Deputy S.C. Ferguson:
There is no confusion in this Deputy's mind. A Parish Hall inquiry is not a court of law. Does the Minister not realise that local employers will disregard Parish Hall inquiries but unfortunately imported employers or employers in other countries do not realise the distinction. It is not a court

of law, therefore, it should not be included in a criminal record. Does the Minister not understand this?

Senator W. Kinnard:
The matter, as I have said, depends on whether it is an enhanced check for sensitive posts. I have made it clear that I cannot speak or put myself in the mind of employers, either in the Island or from outside the Island, as to what they may or may not understand, Sir. But it is clear that we would all benefit I think from a layperson's guide into how the law should work and what is appropriate for employers to ask for and what is not appropriate. That, Sir, is what my department is working upon now that we have the opportunity to link into Disclosure Scotland where we have not had the opportunity previously.

2.11.6 The Deputy of St. Martin:
Can I say, I too welcome the Parish Hall Inquiry and it should be seen as it is, giving friendly words of advice, warnings, *et cetera*, with the purpose of keeping people - whether they are young people or older people - out of court. So, I hope that that system will continue to exist. But what I would ask the Minister is that the Minister will be aware of the Cooper Opinion, which touched on the Parish Hall inquiry, and as it gives sanctions it was questioning whether in actual fact the Parish Hall inquiry - as it is with giving out sanctions - is human rights compliant. Will the Minister give consideration maybe to looking in to see whether the Parish Hall inquiry which delivers sanctions is human rights compliant?

Senator W. Kinnard:
I think in response to the Scrutiny Panel Report it was agreed that all matters that were raised in that report would be looked at.

2.11.7 The Deputy of St. Martin:
I have got to press the Minister. The Centenier's report did not touch on the Parish Hall inquiry and whether it violated the Human Rights Law. Will the Minister give consideration to carrying out a human rights audit on the Parish Hall inquiry where it delivers sanctions - as I have inferred this morning - delivering fines and official cautions?

Senator W. Kinnard:
The advice I have had is that the Parish Hall inquiry is not a court of justice so these issues do not arise. **[Approbation]**

2.11.8 Deputy P.V.F. Le Claire:
I have not been a Centenier Sir, so I am just an ordinary… **[laughter]** I am getting hassled from the police over here. Sir, I would like to know if it is not a judicial court then how are the records transferred from the Parish Hall inquiry to be contained within the records that are available for information under the Data Protection Law? Should they not be held at the Parish and not transferred to the police station where they are being accessed? Or is that inappropriate?

Senator W. Kinnard:
I believe that the whole issue of how records are kept, how they are transferred, and whether or not they are disclosed is attendant upon the advice of the Attorney General. So, I cannot answer that specifically. I do not know whether the Attorney General would like to attempt to answer it himself or not.

2.11.9 Deputy R.G. Le Hérissier:
Just to confirm, I thank the Minister for her study into exemptions. Would she now acknowledge that despite her commitment to this area it is totally pockmarked; the current legislation is a disaster; and she will as soon as possible bring new legislation to that?

Senator W. Kinnard:
I do not believe the actual legislation is the thing that is at fault. I think it has been the misuse of enforced subject access requests under the Data Protection Law that has caused the greatest concern to those that have certainly contacted me. We have already said that the Data Protection Commissioner - now that she has the ability to have access through Disclosure Scotland - would see that it is appropriate that we should bring forward an amendment to the Data Protection Law to outlaw enforced subject access. I think, Sir, once that is completed and once we are able to sort out the other aspects of vetting and barring I think we will find, Sir, that it is not the Law itself that is at fault; it is the way in which it has been used inappropriately.

2.12 Deputy G.C.L. Baudains of the Minister for Transport and Technical Services regarding the cost and quality of the recent road re-surfacing at Brig y Don:
Would the Minister advise of the cost of the recent road resurfacing at Brig y Don? Whether it was completed to any known standard, e.g. B.S. (British Standard) standard and whether he is satisfied with the result?

Deputy G.W.J. de Faye (The Minister for Transport and Technical Services):
The final cost of the road resurfacing and strengthening works at La Route de la Côte was £111,500. I am pleased to report to the Assembly that only recently I was privileged to be in the company of the Deputy of St. Ouen as we drove along it in the Deputy's very large executive limousine **[Laughter]** and it may have been the luxurious comfort of the seats but both of us remarked on what a significant improvement to the road had taken place. In the second element of the Deputy's question, when specifying resurfacing works the department applies Britain's national standards for highway works, which is known as the Specification for Highway Works and in accordance with department standard practice, upon completion of a resurfacing project, a formal joint inspection of the works with the contractor is undertaken and a record of defects, called a snagging list is compiled. The defects identified on this snagging list must then be rectified by the contractor within a 12-month defect correction period. I can inform the Deputy that the department has identified already one or 2 areas of concern where we feel that the works may not conform with the tolerances it set out so I am slightly conflicted in that I have enjoyed driving along the road. So, I am satisfied with the general result but then I cannot say that I am also satisfied because I know that there will be advice telling me that there are some defects that need to be corrected.

2.12.1 Deputy G.C.L. Baudains:
Obviously, the car in which he was travelling had some superior form of suspension because I **[Laughter]** have had a number of complaints from parishioners that driving along this stretch of road is somewhat akin to a cobbled street. From personal experience I can say that the resurfaced road is not as smooth as the old road that it adjoins, and I wonder if the Minister could explain why that is?

Deputy G.W.J. de Faye:
Well, it may be that I had been lulled into a false sense of security by luxury transport but I can assure the Deputy and his constituents that the department is in the process of carrying out this formal inspection and I am certain that if, as he says, the road is more akin to a cobbled street that will indeed be rectified. Although I have to say to his constituents - and I regret this - the period of time for corrections to be made is a 12-month period so it may not be something we will be addressing in short order.

Deputy I.J. Gorst of St. Clement:

Perhaps I could make a suggestion to the Minister and his department could see their way clear to issuing my parishioners with BMWs themselves with which to traverse this road so they will not feel the bumpiness.

Deputy G.W.J. de Faye:
I think I should have to refer the Deputy's constituents to the Deputy of St. Ouen who I am sure must know a very good car dealer.

2.12.2 Deputy C.J. Scott Warren:
While I applaud the fact there are more funds than was the case years ago for road resurfacing works, I would like the Minister to give the House an assurance that there will be funds; that he will work hard to find the funds which the Minister now says is no longer in the budget for minor traffic works. I would like him to give that assurance, Sir?

Deputy G.W.J. de Faye:
It is quite ironic that Deputy Scott Warren asks that question because of course one of the reasons that the department's funds have been depleted over recent times has been her own legislation on planning and appeals. I regret that, like any other Minister, I can give no such assurance because as the Assembly well knows, my business plan is ultimately in the hands of the Assembly itself. Frankly, if Members do not vote enough money either for major road improvements, small road improvements, waste disposal, sewerage treatment works, sea defence works, then I regret that I simply cannot come out with the goods because I do not have the cash.

2.12.3 Deputy G.C.L. Baudains:
I thank the Minister for his answers and could I just ask him that when he does revisit the quality of the road surface, could he look not only at the manholes - some of which are causing a slight difficulty - but also there are one or 2 stretches which have a ripple effect in them?

Deputy G.W.J. de Faye:
I can confirm to the Deputy that those are the issues that I am aware of and I am sure that we will find a way of addressing them.

2.13 Deputy J.A. Martin of the Minister for Education, Sport and Culture regarding the future closure of Parish primary schools due to reduced pupil numbers:
Is the Minister considering closing any Parish primary schools in the next few years due to reduced pupil numbers? If so, is he able to indicate which schools are most at risk? Thank you, Sir.

Senator M.E. Vibert (The Minister for Education, Sport and Culture):
There are no plans to close any Parish primary schools in the next few years. My Education, Sport and Culture Department closely monitors demographic movement and demand on a continuing basis and a range of measures are open to the service in order to manage variations in pupil numbers including reductions in the number of forms of entry in individual primary schools. So, Sir, just to allay any concerns that may have been raised by this question being asked, may I say unequivocally no, there are no plans whatsoever to close any primary schools in the Island in the next few years.

2.13.1 Deputy J.A. Martin:
I thank the Minister for his answer. In the strategic plan the primary education says that the class size should be no greater than 26 pupils in provided schools. Could he tell us when a class becomes non-viable, and how many primary schools are working with classes well below the 26, please?

Senator M.E. Vibert:
Perhaps the best way I can answer this is by referring to the overall way we judge primary schools and a few examples. In the U.K. the benchmark which we look at for efficient utilisation of school places is 75 per cent of their maximum capacity. Those with a capacity of greater than 25 per cent of their planned maximum are considered inefficient and looked at. The overall spare capacity in Jersey's primary sector at present is just 10.2 per cent. Only 2 primary schools, d'Auvergne and Samares record capacity figures above that benchmark figure. d'Auvergne's roll was designed to accommodate approved housing developments in the vicinity and is increasing as planned. Due to demographic movement and to a diminishing roll the number of classes in Samares has been reduced from 14 classes to 10 classes. The school capacity may be increased in future providing further classes as the Le Squez estate area is repopulated following the housing refurbishment currently underway in the area.

2.13.2 Deputy D.W. Mezbourian of St. Lawrence:
I am not sure what Deputy Martin's definition of the term in the next few years is, but I would like to ask the Minister what his definition of that term is? My understanding is that it is likely that the closure of a primary school will be necessary by 2035 if the population does not increase.

Senator M.E. Vibert:
My definition of the next few years is not 27 years to 2035, and I do not think anybody could presumably expect that. That is the work we did and that is a serious consideration for States Members and the Island to take into account when considering the future and how the Island develops. Because there are a number of factors there; one is the reduction overall in the number of young children and the other one is where they are all situated and, in my view, it will not do the Island any good if all young families are situated in the urban area. We must ensure that there is a spread throughout the Island and in the Parishes. But to give the Deputy some sort of thought and confidence, in the primary sector - looking ahead to 2017 - we indicate that there will be 113 less pupils in our 22 non-fee paying primary schools by the year 2017. That is a reduction of about 5 children per school and we believe that can be managed. But looking ahead to 2035, 27 years; if the numbers continue to drop at a considerable rate, we would have to consider in the children's best interests, whether all primary schools could be maintained if that happened with no change in 2035.

2.13.3 Connétable K.A. Le Brun of St. Mary:
Coming from one of the smaller rural Parishes… there are 3 Parishes with small schools who are at the present time I know feeling under pressure because of low numbers mainly because they are not having any nursery schools. Would the Minister reassure that either it will be taken into account or would the Minister possibly confirm or not that there will be added nursery classes to these schools? Because at the present time it is feeling very unfair in the sense that some within these Parishes are finding that some of the people there are having to pay for a nursery. Yet on the other hand, there are people in many of the other Parishes who can well afford but are getting free nursery classes. It is these smaller schools that are feeling under pressure because they do not have the advantage of having free nursery education at the primary schools.

Senator M.E. Vibert:
The question of nursery education has been well rehearsed in this House and the States in their wisdom decided not to add money to my budget so that we could adopt a system providing free nursery education for a certain amount of time to all pupils at 3 to 4 years of age. When we look at schools, the planned capacity takes into account whether they have got a nursery class or not and so does not have any indication on the size of the school. In St. Mary - the Constable's Parish for example - the planned capacity is for a normal school without a nursery, which is 175 pupils. The last figures I had were that St. Mary had 149 pupils, well within the benchmark figure and really

the figure we would like to see in most of our schools around because it leaves some slack - if I can put it like that - or capacity for when people move in and out of Parishes, and for when people arrive. It is more difficult to accommodate pupils in those schools that are operating at capacity if they have people who want to move into them. As I said, none of our primary schools, apart from the 2 I mentioned for very good reasons, are over the benchmark figure and there are no plans whatsoever to close any primary school in the Island.

2.13.4 Deputy J.A. Martin:
Sorry, Sir, could I just have the last question? It does concern me that the Constable of St. Mary has stood up and has mentioned 3 Parish schools that are quite under-subscribed, if that is the word. I do know of… and St. Helier, when I talk about Parish schools I do include St. Helier schools because we are in the Parish. Maybe it is the largest: I was inquiring about all schools. But I would say there are some schools, and the Minister has mentioned, Sir, in St. Helier that are over the 26 per primary school. If we had 3 Parish schools that do not reach or could do with a few more pupils is there any way that these could be used if it is suitable to the parents? How will the children be getting to these Parish schools? Is the Minister willing to talk or discuss things with T.T.S.?

Senator M.E. Vibert:
The Minister is always willing to discuss things with the T.T.S. But parents like to go to the primary school which they wish to go to usually because it suits them best; either because they are in the catchment area, which is the normal position; or where possible, if there is capacity, if it suits their work or for other reasons they may wish their children to go there. The few schools that are slightly over capacity are within our guidelines and that is - if there is a demand - we sometimes allow one or 2 more children in a class and we make the appropriate provision for it. We always try where possible but some schools are over-subscribed and we cannot allow them in. We do look to see if anybody wants to go to other primary schools and we do the best we can to ensure that everybody is placed where they would like to go. But we have a finite number of schools; some are full, some have a small capacity. I repeat again, all primary schools - and I took the question to mean St. Helier as well, which is why I said all primary schools - we have no plans whatsoever to close any primary school in the Island.

The Deputy Bailiff:
Very well, that completes oral questions on notice. Before we come to questions without notice can I just inform Members that 2 sets of comments I think have been passed around by the Economic Affairs Scrutiny Panel; one on the Draft Price Indicators (Jersey) Regulations 200- and another on the amendment to those Regulations.

3. Questions to Ministers without notice - The Minister for Economic Development

The Deputy Bailiff:
So, we come now to questions to Ministers without notice. The first period is to the Minister for Economic Development.

3.1 Deputy J. Gallichan of St. Mary:
Following concerns raised last week regarding the availability of funding to secure the guarantees for all entrants to the Battle of Flowers, will the Minister advise the House of any progress he has made in this matter?

Senator P.F.C. Ozouf (The Minister for Economic Development):
Yes, I restate my 100 per cent support for the Battle of Flowers. I regretted reading in the *J.E.P.* (*Jersey Evening Post*) that there was even any suggestion that Battle would be suspended or cancelled. Discussions I can say are ongoing with the Association and I am hopeful I have already - I am pleased to report - one commercial sponsor that is perfectly willing… who has

offered to deal with the £14,000 worth of additional funding. But there are other issues with Battle, which we are discussing and I am hopeful to find a solution which is good for float builders, good for the community and good for our tourists, and will put Battle back on the map where it deserves to be.

3.2 Deputy P.J.D. Ryan of St. Helier:
I would like to just bring the Minister's attention to the shortly to the start of Goods and Services Tax and particularly with reference to the conference industry. The financial services industry is being treated in a special way for G.S.T. purposes. Does the Minister feel that there may be a need to make some special concessions for the local conference industry? The issue being that U.K. companies that hold conferences in the U.K. can reclaim the G.S.T. because they are likely to be G.S.T. registered, whereas conference businesses in Jersey where there are U.K. companies will not. So therefore, the local industry will be disadvantaged in terms of conference business. It is something that Corporate Services brought to the attention of the Treasury Minister and the Economic Minister some 18 months ago. Has he done anything about it? Does he intend to? Thank you, Sir.

Senator P.F.C. Ozouf:
I would say that financial services or course are being treated in a separate way but they are raising at least, if not more, amounts of money than the simple way - than the straightforward 3 per cent. So, let us be clear; financial services is raising approximately £7 million of the 45. The issues concerning conferences are not unique to conferences. Tourism is being asked to contribute towards the 3 per cent; everybody is aware of that. I am not sure that 3 per cent is the tipping point between people making a decision to come for conferences or not. But there are ways we can assist conferences by putting more resources into the Conference Bureau, discussions about a conference venue, *et cetera*, and that is the way to deal with it. Not I am afraid, complicating G.S.T. any further.

3.2.1 Deputy P.J.D. Ryan:
May I have a supplementary on that? The issue of course is that the financial services industry, well, ranging between 95 per cent to nearly 100 per cent of their business is export so they would be exporting and zero-rating under the normal generic G.S.T. treatment. The point is that conference business… again, the clients are overseas so they could be loosely viewed as exporting and there is a view in certain sectors of the conference industry locally that they are being treated in a different way as far as exporters. If the Minister would like to comment on that?

Senator P.F.C. Ozouf:
I respect the issue, I understand the issue, but it is not different to that of the whole of the tourism industry. The way to deal with these issues is to concentrate on what we can do to support the conference industry to ensure that they get… we already put resources into the Jersey Conference Bureau and that is the way that we can deal with it. I am very keen on building Jersey as a destination for top conference business. I am not persuaded that 3 per cent is going to be the tipping point of getting a conference here or not. But we can assist financially by putting resources into the Conference Bureau and that is something which we will continue to do.

3.3 The Connétable of St. Helier:
The Minister will, in common with the other Ministers on the Council of Ministers, be aware that in respect of the investigation into historic child abuse at Haut de la Garenne, our top priorities must be the conduct of the inquiry, the support of the victims and ensuring that our current child protection apparatus is of top quality. However, the lives of most Islanders do depend on the finance and the tourism sectors and I would like to know what steps the Minister is taking to ensure that the reputational damage to the Island is being addressed by his department, particularly in respect of tourism?

Senator P.F.C. Ozouf:
I am sure that I am not the only one in this Assembly to note that your arrival, Sir, in this Assembly is the first time this year. **[Approbation]** I hope that is not going to eat into my 15 minutes. **[Laughter]** But I am sure, Sir, that that speaks volumes for your welcome back into the Assembly.

The Bailiff:
Well, I appreciate very much those words and the sentiments of all Members. Thank you very much indeed.

Senator P.F.C. Ozouf:
Turning if I may, Sir, to the Constable's question: Of course he is absolutely right that the number one concern of this Assembly, and indeed the Council of Ministers, as clearly explained by the Chief Minister is to support the police investigation, support the judicial investigation independently to ensure that victims are supported and to ensure that childcare provisions are absolutely world class. Those are the primary issues. But of course, he is absolutely right to say that there are economic considerations that are secondary. Economic considerations are secondary but they nevertheless have to be understood. I understand that there has been unintended - perhaps in some ways intended - consequences to our economic interests. Day-to-day life for the economy of Jersey must continue. Hotels are open, taxi drivers need fares, shops must continue to trade, small businesses have businesses and employees to pay for. These are serious issues. I am quite sure that the Constable will agree that there has been intense media coverage concerning this whole sad issue in Jersey. Some of it fair to Jersey, some of it quite unfair. The fact that anybody could have heard Jersey related to a Ceauşescu Romanian jurisdiction on Radio 4 is extremely concerning. It is as hurtful as it is damaging to our reputation and I despair in having heard some of those issues. There is no doubt going to be a very difficult series of weeks ahead to come. There are going to be some terrible revelations no doubt, and we need to prepare for that and act. He asked me specifically about the tourism campaign. Against this background, I am quite clear that it was right to temporarily suspend the tourism marketing activity. It would have been insensitive to continue with a high-profile tourism campaign getting £19 million. Members would expect me - and the department - to be monitoring very carefully what is going on with tourism. We conducted a 1,000-person survey just over the weekend about whether or not people were aware, affected, whether their intentions for Jersey would change; and I am afraid to say that there are implications. They are not as bad as we thought, but they are serious and I am going to have to deal with this issue sensitively, and I have to say that I will probably be needing to speak to my colleague, the Minister for Treasury and Resources, for consideration whether or not additional resources are required. We have lost no money in suspending the campaign. The issue is whether or not we are going to carefully and sensitively - I think we are - invest money into restoring some of the reputational issues which had been so damaging to our beloved Island.

3.4 Connétable G.F. Butcher of St. John:
Given that we will be debating P.18 later in this sitting for the Draft Civil Aviation (Jersey) Law 200- to get a part-time Director of Civil Aviation as we are told. If this projet does go through, will this mean that the Airport Director's job will become part-time?

Senator P.F.C. Ozouf:
I think the Constable needs to raise the quality of his question if I may say. **[Members: Oh!]** I think it is quite clear that the Director of the Airport has an extremely important role in promoting and running Jersey's airport appropriately. Safety considerations were delegated to another individual; it is appropriate upon advice from U.K. authorities at C.A.A. (Civil Aviation Authority), *et cetera*, that that role was to be split. Frankly, the Airport Director's responsibilities can now be fully directed appropriately to building the interests of Jersey to ensure that we have got an airport

fit for purpose, to ensure that capital projects are run efficiently, and to make sure we get as many visitors through that airport as possible.

The Connétable of St. John:
I take it that that is a no?

Senator P.F.C. Ozouf:
I do not think that is worthy of a response. The question was whether or not the Airport Director would be part-time, and I think it speaks volumes as to whether or not that is an appropriate answer.

3.5 Deputy P.V.F. Le Claire:
Information circulated this morning in regards to written questions identifies the fact that the Council of Ministers are in the process of preparing to enter into a negotiated tax exchange information agreement with the Federal Republic of Germany. Is the Minister satisfied, given the recent revelations - including Liechtenstein - that the level of information that is available in regards to tax information exchange agreements in Jersey demonstrates the difference internationally between ourselves and places like Switzerland, Monaco and Liechtenstein?

Senator P.F.C. Ozouf:
I am grateful for the Deputy's question. Certainly, the whole issue of Liechtenstein has given some opportunities for national media across Europe and indeed across the world to focus on the issue of offshore financial centres. We have been very careful in trying to differentiate ourselves on the facts. We are not Liechtenstein. We do not have banking secrecy and this Assembly has supported on numerous occasions the initiatives, for example, signing a bi-lateral agreement supporting the issue of exchange information agreements with different territories. We have done - I hope - very well in differentiating ourselves but we clearly have more work to do on that issue. The particular issue of the agreement with the Federal Republic of Germany is underway. We already have a bi-lateral agreement under the E.U. (European Union) savings directive. We have a regulatory M.O.U. (Memorandum of Understanding) with the German regulator, neutral assistance, of which there have been a number of cases and the discussions about an actual information exchange agreement with the Federal Republic are ongoing.

3.6 Deputy C.J. Scott Warren:
Mine was a follow on from the first question asked about the Battle of Flowers, which obviously I feel the Island does… we have to find the sufficient funds to continue and I think it is very necessary that this is done as soon as possible. I want to ask whether there will be included in that, is there going to be a Mr. Battle this year?

Senator P.F.C. Ozouf:
I am going to stop short significantly, Sir, of suggesting that the Minister for Economic Development has any decisions about details of the Battle. What the Minister does is he agrees a budget and he agrees a grant to the Battle, and according to a service level agreement that is what the Battle does. I refer the Deputy to my comments some moments ago; I fully support Battle, we are going to find a solution to it, I am afraid to say that following discussions with the Battle, Battle's financial matters I am afraid are a little more complex than simply just the float building issue. But we will work to resolve Battle's funding and I would remind the Assembly that they are the number one event sponsored by Economic Development to the tune of already £144,000, up from under my Ministerial period of responsibility.

3.7 Deputy R.C. Duhamel of St. Saviour:
Will the Minister outline to the Assembly his understanding of the 2 terms sustained growth and sustainable growth?

Senator P.F.C. Ozouf:
I would expect the Deputy to mean that sustained growth if we were continuing to have growth at 10 per cent per annum, over a period of 10 years that would be a sustained growth rate of 10 per cent. Sustainable is whether or not it is appropriate to the circumstances of the resources of the Island, whether or not it makes sense in terms of inflationary factors and of course issues concerning the environment. I am working very closely with my friend, the Minister for Planning and Environment, to ensure that businesses are aware of sustainable practice for business. We are raising the bar about the importance of the environment. We have launched ECO-ACTIVE last week; that will ensure that we have sustainable economic growth in the long-term in this Island.

3.8 Deputy J.A. Martin:
Earlier this morning the Chief Minister answered questions on the Communications Unit and said there were 5 full-time staff; total funding was £294,000 but one of the staff was fully funded by the Economic Ministry. Could the Minister explain why he funds one full-time member, how much he pays, and what is the benefit against the other 9 Ministries as him having his own communications member on the unit?

Senator P.F.C. Ozouf:
The first thing I would say, Sir, is that I try and take Economic Development to be absolutely corporate in the workings with other Ministries and other departments. I am sure the Deputy will well understand that Economic Development is a little different in some of the commercial aspects of what we have to do. We have to promote the Island, we have to understand the needs of business, we have a whole range of different departments, whether they be consumer affairs, whether they be the airport, the harbour, financial services, agricultural, tourism; the list goes on, and we have a communications requirement. Now, that is a communication requirement that I judge would be best fulfilled corporately by putting somebody not in a silo somewhere else but in the corporate centre. That is the reason why I judged that it was the appropriate thing to do, to put the communications person in the central Communications Unit. But I have to say I fully endorse the remarks of the Chief Minister earlier that the experience of the last 2 weeks has indicated that we need to raise our game in terms of the communications issue and States Members need to be under no illusion that that is going to require investment. That is not spin; that is communicating effectively, telling the world what Jersey is about and telling, as far as I am concerned, what Jersey has in terms of business opportunities, which pay ultimately for the services that this Assembly is so fond of constantly funding, which we all agree with. It is important communications.

Deputy J.A. Martin:
Sorry, Sir, you never told me the amount they contribute and obviously saying it is not well invested.

Senator P.F.C. Ozouf:
It is well invested and indeed I would put more investment in communications if my budget allowed it. I will not reveal the individual figure because it would relate to one individual and therefore salary comparisons would be able to be made and that would be inappropriate, because I am sure the Deputy would wish to know. But if her Scrutiny Panel wishes to know it confidentially, of course she can.

The Bailiff:
I am afraid even making a generous allowance for Members' generous welcome back that expires the first question period. We come to the second question period, which is of the Minister for Planning and Environment.

4. Questions to Ministers Without Notice - The Minister for Planning and Environment
4.1 Deputy D.W. Mezbourian:

I understand that in the 2002 Island Plan it was indicated that a Coastal Zone Management Plan should be implemented and indeed consultation for this took place in 2005. Item 4.75 of the Strategic Plan states that it will be brought forward for consultation and debate in 2006; that what will be brought forward is the Coastal Zone Management Plan to which I have referred. I have 2 questions for the Minister; when will this plan be brought forward, and why has there been such a long delay?

Senator F.E. Cohen (The Minister for Planning and Environment):
I am grateful to the Deputy for raising this matter as this has been a long-running issue and the question is indeed timely. In 1995 the Planning and Environment Committee were charged with the responsibility to start a Coastal Zone Management strategy process to provide the starting point for more efficient management of the Island's marine resources. This was initiated in the St. Ouen's Bay planning framework and in the R.A.M.S.A.R. Designation of 2000 and 11 topic papers were produced in 2005 covering the full range of issues. These were summarised in a document entitled, *Making the most of Jersey's Coast*, and the official consultation was concluded on this document in February 2006. I am pleased to inform Members that the final version of the coastal zone management plan will be completed by the end of this month and then it will be brought to the House for debate. The reason that it has taken so long I am told is that it comprised essentially 11 different topic areas; the department is significantly under-resourced and has had to deal with the delivery of a number of major documents and I am afraid that has a time effect.

4.2 Deputy A.D. Lewis of St. John:
Mindful of the Senator's actions to exempt certain planning applications last year, which were most welcome, can he advise the House of any plans he may have to make further exemptions, thus helping alleviate the considerable backlog of applications currently being processed by his department?

Senator F.E. Cohen:
I have a new and excellent - albeit only temporary - Chief Officer and one of the key areas that we are currently looking at is whether we can significantly reduce the number of applications that need to be considered carefully by the department. For example, is it appropriate that on an ordinary house that an application should be made for a porch? So, we are looking through our applications and I hope to bring forward significant further exemptions. As far as how this affects delays is concerned, it would be worth informing Members that last week the department had an intensive exercise of going through applications that had been in the process for more than 13 weeks and determining them and we hope that that will result in the delays having been now significantly dealt with. But we are on the case and I will be bringing forward as significant exemptions in the near future.

4.2.1 The Deputy of St. John:
What does he mean by the near future, Sir? Can he give any timescales? The Minister may be interested to know that Guernsey is currently 9 months behind, so your department is doing pretty well.

Senator F.E. Cohen:
Certainly within the next 3 months I would intend to bring forward proposals to significantly reduce the number. Other jurisdictions may be longer, but we do have a problem, we are under-staffed and too many applications are taking too long so the simple way of dealing with that is to look at exemptions and concentrate on the more important applications.

4.3 Deputy R.G. Le Hérissier:
Has the Minister been able to finally wrestle to the ground the issue of pre-application advice and the impact it has on the final planning decision? Is there now a clear link or break in the link

between the 2 processes so that pre-application advice is not, so to speak, held in evidence against the department?

Senator F.E. Cohen:
This is rather a conundrum, because the issue of pre-application advice is a very important issue in delivering my agenda of delivering exceptional design. Quite simply, the best way of doing that is to give clear pre-application architectural advice and to follow that process through to the point of determination. It is made very clear in relation to all applications that pre-application advice is not binding on the Minister. If, in the vast majority of cases it is very clear that if pre-application advice was in one direction and Ministerial decisions were in a completely different direction, the system itself would break down because there would be a lack of confidence in pre-application advice. So providing pre-application advice follows the lines established in the Ministerial design code, then I think applicants have a right to rely on it, but it will not in any way prohibit the Minister, the Panel or the Assistant Minister from determining in another direction and that is made very clear at all times.

4.3.1 Deputy R.G. Le Hérissier:
Can the Minister indicate whether there are any cases at the moment, either underway or pending, where pre-application advice is being used as a reason for an appeal against a decision?

Senator F.E. Cohen:
I am sure there must be one or 2, but I cannot think of any specifically at the moment. If the Deputy has any in mind, obviously I cannot discuss particular appeals on the floor of the House, but I would be very happy to discuss them with him in private.

4.4 Deputy R.C. Duhamel:
What steps is the Minister taking or intending to take to plan for improved sea wall defences to give protection against any sea water inundation of low lying areas, either within the built-up area of the town or Island that might be attributable to global warming, climate change or sea level rises?

Senator F.E. Cohen:
The main remit lies not with me but with the Minister for Transport and Technical Services. All I can say is that we are factoring into our plans issues around global warming and climate change. For example, the measures in relation to the Waterfront are specifically designed factoring-in the expected sea rise heights. It will change a bit because when U.K.C.I.P. (United Kingdom Climate Impacts Programme) release their climate change data in November of this year, we will be able to more precisely define the likely changes in sea level and test the scenarios on a probabilistic basis. It may change at that point, but we are doing all we can to factor in whatever is necessary in major planning applications.

4.5 Deputy J.A. Hilton of St. Helier:
I wish to ask the Minister a question about the provision of residential car parking in St. Helier. I understand the Minister was minded to approve a development of 6 new houses, 2/3 bedroom houses, without car parking and I want to ask whether he believes that in predominantly residential areas that this would be appropriate. Is the Minister intending to change his policy with regard to car parking provision on new residential developments in St. Helier?

Senator F.E. Cohen:
There is a simple question here. Do we design our town for people or for the motor vehicle? In relation to the application in Brighton Road, this area comprises mainly 19th century rather attractive houses. The section between the school and the 19th century listed house presented an opportunity to complete the streetscape in the vernacular style, providing 6 new 2-bedroom houses. I felt that in that particular case, an exception should be granted and the applicant should be

allowed to build what from the plans appear to be 6 exceptionally well designed vernacular houses. I do not propose to make this a general exception, however I would point out that other jurisdictions do seem to manage with significantly less car parking per new dwelling than we do in Jersey. As an example, Deputy Duhamel, the Constable of St. Helier and I recently, as you know, visited Malmö. There it was very interesting to find out that in the new waterfront development they rely on 0.7 car parking spaces per dwelling - that is not per bedroom - and they seem to manage. Quite simply, if we are going to encourage new residential units in the town, we are simply not going to be able to provide individual car parking spaces on site for every single dwelling. It is a conundrum, but I am afraid that there will not be any formal change of policy at the present time.

4.5.1 Deputy J.A. Hilton:
These are 2 and 3 bedroom family homes and I think it is unreasonable to expect families in St. Helier to manage without a car. My only suggestion to the Minister is - I do not particularly want to discuss this, but I think it is very important - if he lopped off one of the houses on this plan, he could get access to parking from the other end of the development, which would not affect the pedestrian usage of Brighton Lane, which was what I believe the suggestion was.

Senator F.E. Cohen:
I am advised that in fact lopping one house off the end, as the Deputy has put it, would only provide 2 car parking spaces. I am afraid the Deputy and I are going to have to differ on this. I do not believe that town dwellers require, in every case, on-site car parking. This is not the norm in many cities around Europe and if we are to encourage town dwelling, we are going to have to encourage less reliance on the motor vehicle. That is all about having an integrated transport policy that works. It is about sending out the right messages, and I think generally we will see a shift over time - admittedly it is a long time - against everyone having a motor car. It simply will not be the norm in decades to come.

4.6 The Connétable of St. Helier:
Perhaps the Minister could encourage the Minister of T.T.S. to bring forward the residents' parking scheme for on-street parking. I would like to ask the Minister if he is aware that the timetable for the Hopkins… or the sinking of the road has slipped. We were due to hear the transport proposals yesterday. Would he update the States on when he hopes to unveil his scheme for the burying of La Route de la Liberation and whether he still thinks it is a good idea in light of this morning's storms?

Senator F.E. Cohen:
I will deal with the last point first. The current master plan relies on the highest standards of architecture, landscaping and engineering. One of the tasks being undertaken by this world-leading group of professionals is of course ensuring that the proposed basement and roads do not flood. The proposals include Seacant Piling the whole area and members need not worry. Anyone who has used the car park under Lake Geneva and elsewhere will know that engineering solutions required have already been successfully implemented elsewhere. In relation to the first part of his question, the delay on T.T.S's presentation of the transport solution is relatively short. I understand that within the next few days that will be completed and will then be presented to Scrutiny as soon as they are able to fit us in. The delay is very minor indeed.

4.7 Deputy P.V.F. Le Claire:
Not to steal the Minister for Transport and Technical Services' thunder from his statement he is about to make, I would like to take this opportunity to inquire of the Minister for Planning and Environment in regard to the measures that are going to be taken - that will be announced in his statement - to place big bags filled with sand and aggregate in front of the wall that has been damaged overnight from the floods, which will accumulate several hundred of these bags in the

very near future for the next few months. Will the Minister have oversight as to how those bags are placed and filled, regarding the fact, as he is well aware, that the surrounding sand should not be a source for the filling of these bags as it contains the natural environment?

Senator F.E. Cohen:
I am not really sure of the answer to the question. I do not think that the Planning Department or the Environment Department will have much control over the temporary use of sandbags, but I will certainly seek the advice of the Director of Environment and Director of Planning and revert to the Deputy later in the day.

4.8 Deputy I.J. Gorst:
Will the Minister admit that in answer to a written question this morning, he has given developers a green light on H4 site indicative yields? Will he give a categorical undertaking that these numbers may not be used by developers as an indication as to what is acceptable to his department if or when applications are submitted?

Senator F.E. Cohen:
Yes, Sir.

Deputy I.J. Gorst:
Was that yes, he admits, or yes, he will give a categorical undertaking?

Senator F.E. Cohen:
The latter. I admit nothing, Sir,

4.9 Deputy J.B. Fox:
In answer to questions today from the Constable of St. John, there is a series of explanations as to the future H3 and H4 sites. I find it incredible the H3 sites - which appear to be first in line - are the Greenfield sites predominantly; and the H4 sites - which are the urban areas and account for approximately 355 dwellings - are the commercial sites which appear to be done afterwards. All except for the H3 site, which is a Channel Television site, and Field 1248, which originally on the Island Plan was part of the Channel Television site, would be for first-time buyers and social rented housing, but which now are being excluded …

The Bailiff:
Sorry to interrupt, but we are going to run out of time and you will not get an answer.

Deputy J.B. Fox:
Sorry. Why is the Channel Television site being excluded from the H3, from where it originally was, especially when you look at the H4?

Senator F.E. Cohen:
To be very brief, all I can say is that all the sites are being rolled-up into the Island Plan Review and of course any decision in relation to rezoning is a matter for this House to consider.

STATEMENTS ON A MATTER OF OFFICIAL RESPONSIBILITY

5. Statement by the Minister for Economic Development regarding the issuing of a permit to HD Ferries:

The Bailiff:

That concludes the second question period. We now come to Statements on a Matter of Official Responsibility. I have noticed that the Minister for Economic Development wishes to make a statement.

Senator P.F.C. Ozouf (The Minister for Economic Development):
I have deputed responsibility for harbours and airport matters to my Assistant Minister. With your permission, Sir, I would ask Deputy Maclean to make the statement for me.

5.1 Deputy A.J.H. Maclean of St. Helier (Assistant Minister for Economic Development - rapporteur):
On 5th December last year, the Assembly passed an amendment to the Harbours Administration Law, giving the States wider powers for making Regulations. That amendment received Royal Assent on 12th February and is being registered in the Royal Court. Yesterday, the Minister signed a Ministerial decision to lodge 'au Greffe' the Draft New Harbour Regulations which, if passed, will replace the existing ramp permit legislation. The new Regulations make provision for a number of present terms and conditions currently included in the service level agreements to be absorbed into a permit for passenger and car ferry services. Until Members have debated these new Regulations, it remains States policy for all combined passenger and car ferry services to have service level agreements, which are additional to having a ramp permit. HD Ferries is seeking to commence its 2008 services on 20th March, which will be before the new Regulations come into force. Because of this, we have asked them to sign a service level agreement under the current procedures, showing their commitment to minimum levels of service. That service level agreement is substantially the same as the one currently in force with Condor and the one signed by HD Ferries last year. I regret to inform Members that HD Ferries are not willing to sign either the service level agreement we have offered, or indeed any service level agreement at all. Members will be aware that HD Ferries have already sold many tickets in anticipation of being granted a permit. We in turn anticipated that they would sign an agreement, as indeed they did last year. At the moment, the Minister has not yet agreed to issue a permit. Indeed, HD Ferries met officers only very recently to ensure that the company meets all necessary safety, security, scheduling and financial terms and conditions. While I find it highly unsatisfactory to be placed in this position, to avoid distress to passengers and providing these other terms and conditions are indeed met, we intend to issue a permit to HD Ferries without their being a service level agreement in place. If in due course the Assembly adopt the new Regulations, HD Ferries can then be granted a permit under the new procedures. In that case, they will be bound legally to abide by all the terms and conditions, including some of the minimum standards that we would expect are included within a service level agreement.

5.1.1 Deputy J.A. Martin:
Could the Assistant Minister please inform the House which came first? Did HD Ferries start selling and promoting their routes and timetables before they were approached by the department to sign a service level agreement?

Deputy A.J.H. Maclean:
No, HD Ferries are perfectly well aware and have been communicated with on a regular basis by officers from the department about all the requirements necessary for them to be able to commence their service. They were perfectly aware of the requirement for service level agreements and other requirements before that selling of tickets.

5.1.2 Deputy J.B. Fox:
With reference to the service level agreement, this statement says: "Substantially the same as the one currently in force." Could the Assistant Minister enlighten us as to what the word "substantially" is saying? What are the differences?

Deputy A.J.H. Maclean:
Yes, Sir, there are in fact 2 differences to the agreement. The first one is a reference to the J.C.R.A. (Jersey Competition Regulatory Authority) and that is quite simply that should they provide advice that would need the agreement to be altered or indeed removed, then that would come into effect. The other point was that there should be a renewed commitment to provide a winter service. In other words, a year-round service. We did have a further conversation in fact with HD Ferries and asked them whether or not they would have signed the agreement as it was last year, as they agreed and in fact did sign last year, and in fact they said they would not sign any agreement under any of those terms.

5.1.3 Deputy C.J. Scott Warren:
I want to ask the Assistant Minister if he could clarify whether they have given reasons why, because it would appear not to be in their best interests for this situation that we are hearing of this morning.

Deputy A.J.H. Maclean:
Yes, Sir, they have. HD Ferries believe that service level agreements are in fact anti-competitive and by agreeing to sign it is giving tacit endorsement to an anti-competitive arrangement. They also believe that it could compromise their future interests in other markets, specifically the northern route.

5.1.4 Deputy S. Power of St. Brelade:
Can the Assistant Minister confirm whether HD Ferries have told him that service level agreements are not legally enforceable and what does the Assistant Minister propose to do if Condor now in turn refuse to sign their agreement?

Deputy A.J.H. Maclean:
I am not aware, Sir, that HD Ferries have stated that they believe them to be legally unenforceable. The reasons that have been passed to me for them not wishing to sign are, as I have just stated, competitive issues. They believe them to be anti-competitive. I am sure, Sir, that Condor Ferries will not be particularly satisfied with this arrangement. Condor have indeed agreed to sign service level agreements on both the northern and the southern routes, those agreements are in place until the end of 2008 and I think it is to their credit that they are abiding by minimum levels of services contained within that particular agreement.

5.1.5 Deputy J.A. Martin:
The service level agreement may not be enforceable or legally binding. The one that was signed by HD Ferries last year, could the Assistant Minister inform us if it was to cover the winter service and if it was to cover service, obviously it was not binding because I do not think HD Ferries are in any court proceedings. Could he inform the House of this please, Sir?

Deputy A.J.H. Maclean:
Yes, Sir, the Deputy is absolutely right. It was to cover the winter service. Sadly, Sir, their services withdrew before winter in part, to be fair, because they had technical issues relating to the operation of the vessel and its engines.

6. Statement by the Minister for Transport and Technical Services regarding the major structural damage to the sea wall:

The Bailiff:
I have received notice that the Minister for Transport and Technical Services wishes to make a statement. Minister, the floor is yours.

6.1 Deputy G.W.J. de Faye (The Minister for Transport and Technical Services):
Members will be aware of the major structural damage that occurred to the sea wall between West Park and First Tower at last night's high tide and severe storm, with the resultant flooding of Victoria Avenue and as far back as Gloucester Street. A section of the wall spanning some 400 metres has been damaged. Initial inspection indicates the damage is limited to the top coping stones and parapet wall, however a full survey of the main wall and its foundations will be carried out this morning on the low tide to ensure there is no major structural damage. I am pleased to advise Members that this morning's high tide has not resulted in the same level of flooding as we experienced last night. The tide did flow through the damaged sections of the wall, which resulted in localised flooding on the promenade in Victoria Avenue, but no further. The roads are being cleaned of debris and should be open about now. To minimise the impact of any further over-topping of the sea, my department is today constructing a large temporary wall in front of the damaged area, using big bags filled with sand and aggregate of the type used by the construction industry to transport material around the Island. By the end of today we aim to have several hundred of these in place to provide temporary protection. The department will immediately deploy resources to commence repairs to the damaged section so that essential repairs can be completed before the next set of spring tides, due later this month. However, the full renovation of this wall is likely to take months rather than weeks to complete. I would like to assure Members that this particular stretch of sea wall has been maintained as part of the ongoing sea defence capital maintenance programme and had major works carried out to the foundations in 2004/5 and regular checks and maintenance are carried out on the above-ground structure. The issue of sea water flooding back along Victoria Avenue and up to Gloucester Street is one that I will be reviewing to see if any alternative measures can be implemented to prevent or at least reduce the impact on this busy junction and surrounding properties. Finally, may I say thank you to all of the Transport and Technical Services staff, Parish staff, emergency service personnel and the Honorary Police for their tremendous efforts over the past 24 hours. They have all had to endure some of the worst weather conditions we have seen for many years and, as usual, have provided the Island with a tremendous service. **[Approbation]**

PUBLIC BUSINESS

7. Code of Practice for Scrutiny Panels and the Public Accounts Committee (P.198/2007)

The Bailiff:
If there are there no matters arising from that statement by the Minister, we come now to Public Business. The first item of Public Business is Projet 198/2007 - the Code of Practice for Scrutiny Panels and the Public Accounts Committee. I ask the Greffier to read the proposition.

The Greffier of the States:
The States are asked to decide whether they are of opinion to approve the Code of Practice for Scrutiny Panels and the Public Accounts Committee (P.A.C.) set out in the appendix of the report of the Chairmen's Committee dated 28th December 2007.

The Bailiff:
Before I call upon the Chairman of the Chairmen's Committee, I wonder if I might just say from the chair that given the context of the debate which is likely to ensue, it may be helpful to Members to make clear what the position of the Chair will be in relation to interventions by the Attorney General or by the Solicitor General. Both Law Officers of course have a right to speak, but they will be able to speak on the substance of any debate only once. That does not prevent Members of course, as is customary, from asking for clarification on any legal issue but the chair will be astute to restrict the questions and the answers to strictly legal matters. I call upon the Chairman to address the submission.

7.1 Deputy S.C. Ferguson (Chairman, Chairmen's Committee):
A bit of housekeeping first. Members will all find on their desks a document called *Governing Well*. May I suggest that they unearth it and bring it to the top of the pile because I shall be referring to it throughout the debate. This appears to be merely a simple Code of Practice. It is not. It is a fundamental underpinning of transparent government. For Ministerial government to be effective and accountable, it is essential that relevant information is communicated in a timely manner to the Scrutiny Panels. Most of the Council of Ministers' amendments will make the acquisition of information more difficult for Scrutiny and thereby increase the difficulty of bringing Ministers to account. The public are demanding more open government. After all, it is their and our money that is being spent. They are entitled to have some say in the matter and we are here to say it on their behalf. Please do not be misled into thinking that simple amendments, such as "may" for "will", are insignificant. They are not. The changing of a single word can mean that the whole thrust of a requirement is changed. I may give you £100 is entirely different from I will give you £100. Some of the arguments being put forward state that this Assembly is not part of the upper case Government. This is a fine theoretical argument, however most constitutional arguments appear to rest on theories and practice in other jurisdictions. There will be wonderful legal arguments made, using the various laws which define the work of this Assembly. I would contend that in practice - and practice often differs from theory - upper case governmental power rests with the body which can approve or reject legislation, which is this House. I would in fact maintain that we have more in common with the United States of America than we do with Westminster. In the U.S. they have an Executive but the passing of legislation depends on the whole legislature, not on the dictate of the White House. The Executive may propose bills, but the legislature may reject them. This contrasts with the U.K. where the Executive commands the legislature. Then there is Jersey, which is not quite like either, where we have effectively held on to consensus Government in this House. The Ministers and Assistant Ministers are the Executive in practice and the whole of this legislature is Government, again in practice. I have the utmost respect for Her Majesty's Attorney General, but I would maintain, like many things in this life, the practice has developed rather differently from the theory. That is life. The very fact that the Attorney General gives advice to the entire Assembly would appear to support my view. I do not intend to enter into an esoteric debate with the Attorney General or the Solicitor General; I am but a simple engineer. With the greatest of respect, I use lawyers as what in a manufacturing environment would be a service department - for advice. Particularly on collateral effects. I do not allow them to dictate policy and neither should they. George Bernard Shaw said: "Some people perceive things as they are and ask why. I see things as they might be and ask why not." That is our job in this House. A can-do approach. But to can-do, we must have information. The Attorney General's comments wax lyrical on the theme of trust between the Law Officers and the Executive. I would maintain that the most important trust to be maintained is that between the Scrutiny Panels and the Executive, but in fact this is second only to the trust between the public and this Assembly. I have no desire to enter into a prolonged legal wrangle with the Attorney General. As I have said, I am only a simple engineer and, anyway, he is bigger than I am. However, he has a diametrically opposed viewpoint to that of the Chairmen's Committee. It was therefore more appropriate that the argument be brought to this House for debate. Members will have read his submission and some Members, sadly not as many as I would have liked, availed themselves of the opportunity, which he kindly gave, for them to question him in person, for which we thank him. We have cleared up some of the myriad amendments originally brought by the Council of Ministers. They have been reduced from 12 amendments to 7, but there are some sticking points. These will be dealt with in due course. I would emphasise that each of these, though not as comprehensive as amendment (e) on the legal opinion, are also extremely important. It is important to remember that we are Jersey. Frankly, I do not care what the rest of the world does, what we need to do is what is right for our Island and our Islanders. We live in a large village. This is a fact which is not easily understood by immigrants from elsewhere. Churchill once said that a lie gets half way round the world before the truth has a chance to get its trousers on. He had obviously not been to Jersey. The truth can get

round the Island before the Chief Minister has had his second cup of coffee. A rumour gets round before he has drunk his first. The point is, how much of the information we handle is truly confidential? Much of the substance of the Council of Ministers' amendments relates to confidentiality. I would concede that some information is commercially sensitive and some is confidential. The Chairmen's Committee and the Scrutiny Panels are really quite adult enough to appreciate this, but in some instances we really are being overly secretive. I would remind Members that for some years we all attended the fundamental spending review meetings and there were no problems with confidentiality then. I would also emphasise that Scrutiny does not leak information. The other point which is often overlooked is that in common with Guernsey and unlike the rest of the world, we are not partisan. Being not partisan, we are all in the States because we think we can further the best interests of all Islanders. We do have differences in how this can be achieved, but the important point is that our main and joint aim is to get the best run Island possible, not to put the opposing party in power. I would therefore maintain that much of the secrecy cult is over-done. I recently circulated the document called *Governing Well* to all States Members and, as I have said, you have it on your desk. In some ways the recommendations are already being effected in Jersey. For example, the budget proposals are already submitted to the Assembly reasonably well in advance. The thrust of the recommendations in the paper is for more open and less partisan government in the U.K. The document discuses a number of areas where the U.K. Government falls short of best practice. I recommend the report to the Council of Ministers, particularly the section under R42 which concerns the training of Ministers. It does occur to me that the capability of Ministers to run their departments might be an interesting Scrutiny Report. I would remind Members however, that Scrutiny already has training programmes in place. The paper stresses the importance of good Scrutiny at a very early stage in policy formation. I quote: "The capacity of parliament to scrutinise the proposals of the Executive and to hold it to account for its decisions should be strengthened. Parliament should provide for more rigorous initial analysis of policy proposals and retrospective review after a suitable period of time has elapsed of the cost and outcomes of policy and legislation achieved against those in the initial proposals." The proposals. Please note. On page 5, after R19: "Parliament cannot perform its function of holding the Executive to account …" [note the wording: "Parliament", "Executive"] to account unless it is provided at a formative stage with a full written statement and analysis of the problem the Government wishes to remedy and options for action and that the implementation stage with a full explanation of the basis on which decisions have been taken." I think those are all very relevant. It also says, page 3, recommendation 8: "Pre-introduction tests should be required to ensure that legislation is operationally, as opposed to presentationally, necessary and that the intended results of proposals are specified clearly enough to be used as criteria and post-implementation assessment." Something I think which would be useful to us. Then again, on page 5, recommendation 20: "The Government should commit itself to provide Parliament with full and timely written explanation of its legislative and major policy proposals, normally in the form of Green Papers and subsequent White Papers." Why do I mention this? These are part of the efforts of the U.K. bodies to provide better government. The common factor is that better government necessitates better scrutiny. Good scrutiny will result in better government. Good scrutiny needs good information. Our Code of Practice is aimed at producing better information and hence better scrutiny and better government. Members are also aware of the confidentiality requirements inherent in the scrutiny of the Business Plan. I would refer you to page 4 and recommendation 11. I will not go into this because we are ahead of the U.K. on this - Scrutiny and Treasury are already working on being involved at an early stage in the broadest use of comprehensive spending reviews. Scrutiny tests the quality of the decisions taken by Ministers. An integral part of this is ensuring that the policy has been properly formulated, all alternatives properly addressed and valid reasons given for why particular courses of action have been followed. We address the quality of the decision-making rather than the decision itself. If there are any flaws in these processes then it will be painfully obvious that the decision is questionable, but for this to work, for there to be transparent government and for Scrutiny to operate effectively, there must be open and effective

sharing of information between the Executive and Scrutiny. What this Code of Practice is setting out to do is to provide a framework which will enable Scrutiny to perform its job. It is an attempt to make sure that there is a level playing field, that there is transparency of government and that trust can be maintained between all branches of government and that the Island is best served. I commend this Code of Practice to the House.

The Bailiff:
Is the proposition seconded? **[Seconded]** Now there are a number of amendments in the name of the Chief Minister and the proposed grouping of amendments I think has been circulated to members by the Greffier. The Greffier tells me, Attorney, that you might have difficulty in terms of time, is that right? Do you wish to request the Assembly to deal with paragraph (e) before the others?

Mr. W.J. Bailhache Q.C., H.M. Attorney General:
No, Sir, I shall be here until lunchtime tomorrow so I am sure we will be there before then.

The Bailiff:
Very well, we will take the amendments therefore in the order set out in the Greffier's grouping. The first amendments to be taken are paragraphs (b), (c) and (d) of the amendments. I ask the Greffier to read those amendments.

The Greffier of the States:
(b) In paragraph 9.23 after the words "the information", for the word "will" substitute the word "may". (c) In paragraph 9.24 for the words "Part B reports and the Council of Ministers meetings will be promptly forwarded following consideration by the Council and relevant Minister", substitute the words "If it has been agreed that a part B report from a Council of Ministers' meeting will be provided, this will be promptly forwarded following adequate consideration by the Council and the relevant Minister." (d) In paragraph 9.26 after the words "and the Chairman, Privileges and Procedures Committee", delete the words "for resolution".

Senator T.A. Le Sueur (Deputy Chief Minister):
This is lodged in the name of the Council of Ministers and on behalf of the Council of Ministers I would like to ask Senator Vibert to act as our rapporteur.

7.2 Senator M.E. Vibert (The Minister for Education, Sport and Culture - rapporteur):
It is very interesting to listen to the Chairman of the Chairmen's Committee and much has been said about the role of Scrutiny and how it interacts with other parts of the legislature. I wish to make it clear from the outset that although the Council of Ministers is proposing a small number of amendments to the proposed Code of Practice, this is in no way a criticism of Scrutiny's role. We recognise that a strong and fair scrutiny process is vital to good government and whole-heartedly back proposals that are likely to enhance its ability to fulfil its remit. The Council of Ministers recognises that Scrutiny was a new process introduced as a fundamental check and balance to Ministerial government and, 2 years on, I am sure that everyone will agree that it has come a long way since the early days of Shadow Scrutiny, therefore it should not come as a surprise that the Council of Ministers broadly welcomes the proposed Code of Practice for Scrutiny Panels and the Public Accounts Committee. Furthermore, we support the vast majority of the points within it. Of course, Sir, it is very important that the set of rules - for that is effectively what the Code of Practice is - are both fair and fit for purpose in enabling Scrutiny to hold the Executive to account. In order to ensure that this is the case, the Council of Ministers and the Chairmen's Committee have worked closely together since the first draft of the Code of Practice was issued by the Chairmen's Committee over 12 months ago. The prime goal has been to agree a code that will provide an effective framework within which Scrutiny can operate, while showing how Scrutiny and the Executive can work together in a way that will improve accountability, transparency and

government as a whole. I am glad to be able to say that to a very great extent we have met this goal and both sides have made compromises to achieve this. This is in no small part thanks to the level of communication and co-operation attained between the Council of Ministers and the Chairmen's Committee. This has resulted in a number of important changes to the early drafts of the code. However, despite these positive endeavours, it would be unrealistic to expect unanimous agreement on every clause or word in the code. Unfortunately, areas of disagreement remain and although few in number, these deal with fundamental and important issues. As a result, the Council of Ministers is proposing a small number of amendments to the Code of Practice. These amendments can be grouped into 4 distinct areas and, Sir, I would like to propose that Members vote on each of these areas as a block. The 4 areas are: amendment (a), relating to the right of members to legal professional privilege and privilege against self-incrimination. Amendments (b), (c) and (d) that relate to Scrutiny's access to Council of Minister's Part B agenda papers. Amendment (e) - a most important amendment - which relates to Scrutiny's access to legal advice provided to Ministers and *vice versa*, and finally, amendments (f) and (g), which relate to draft Scrutiny Reports. In conclusion to this introduction, Sir, I am once again commending the Chairmen's Committee for the huge amount of collaboration with the Council of Ministers that enabled us to arrive at a Code of Practice which the Council of Ministers is largely in agreement with. As I have already said, the Council of Ministers believe that a strong and fair scrutiny process is vital to good government and the Council believes its amendments are absolutely fundamental to that. Sir, if I may now turn to the individual amendments.

The Bailiff:
We are only dealing with (b), (c) and (d) at the moment?

Senator M.E. Vibert:
That is the one I would like to start with, Sir, and that is area 2, amendments (b), (c) and (d), which relate solely to access to Council of Ministers' Part B agenda background reports. We are not talking about access to confidential information as part of a Scrutiny review. That is dealt with elsewhere in the Code of Practice and provides for full access to all information as part of the review. This amendment just refers to Part B agenda background reports. The Council of Ministers supports full access to all papers under the terms of a formal Scrutiny review. What is proposed is different. What is proposed applies to all Part B papers. In respect of Part B agenda papers and background papers, the Council supports the presumption that the Part B papers will normally be supplied and it would only be on very rare and exceptional circumstances that such papers would not be shared. However, there may be such occasions where information is highly confidential and its circulation needs to be restricted. Similarly, amendments (b) and (c) to paragraphs 9.23 and 9.24 respectively seek to clarify that while there is a presumption that confidential Part B papers will be supplied to Scrutiny on request, if necessary in accordance with a confidentiality agreement, there may be exceptional cases where, for example, information is of a personal, commercial or legal nature and cannot be shared. Paragraph 9.26 provides a safeguard should such circumstances arise. That is, in such circumstances the issue will be explained to the Panel Chairman and if there is still disagreement, referred to the Chief Minister and President of the Chairmen's Panel and the Chairman of the Privileges and Procedures Committee. Amendment (d) recognises that the Minister, who will need to justify his or her position, must still have the final say as to whether to provide the papers or not, for the reasons that I have already outlined, as it is the Minister who is legally accountable for information under his or her control. Sir, I propose these first amendments.

The Bailiff:
Amendments (b), (c) and (d) are proposed. Are they seconded? **[Seconded]** Does any Member wish to speak on these amendments? Deputy Ferguson.

7.2.1 Deputy S.C. Ferguson:

As you all heard, these amendments refer to the supply of information from the Part B minutes to the Scrutiny Panels. Basically, as the Minister for Education, Sport and Culture has said, it is the Minister controlling the information. I think we ought to look a bit more closely at these. In paragraph (b), the Council of Ministers proposed to change "will" to "may". This sounds very minor. As I have said before this morning, it is not. "May" implies that the information belongs to the Minister and that the Minister can decide that "may" shall be "may not". Whose information is it anyway? It is ours. It is the taxpayers. By the time the matter has been submitted to the Council of Ministers, if it is approved it is policy in formation and should be a normal part of Scrutiny's briefing. What is the problem? This is in the interests of the Executive as well as Scrutiny. The sooner the matter is available for Scrutiny to consider, the less delay there will be in bringing legislation to the Assembly. Under *Governing Well* principles, Scrutiny should begin at the proposals and options stage, recommendations one and 2. I repeat, the sooner Scrutiny can consider proposals, the less delay in implementation. Amendment (c): this has been made into a completely new paragraph. Originally, in our Code of Practice, this paragraph was just a follow-on from 9.23. You may need to look at your Codes of Practice because I am quoting the paragraph numbers in the Chairmen's Committee Code of Practice. Paragraph (c) has been made into a complete new paragraph. Originally, for us, it was just a follow-on from 9.23 which sets out the terms and conditions under which Part B reports will be supplied to Scrutiny Panels. The Scrutiny version of 9.24 just emphasises that once the conditions under 9.23 have been met, and all confidentiality agreements signed if necessary, then the reports will be dispatched without delay. This all seems fairly straightforward to me, but then I am just a simple engineer. Then we suddenly get a paragraph which effectively negates paragraph 9.23. I cannot for the life of me see any grounds for refusing to supply a copy of a Part B minutes report speedily once it has been through the mill of the Council of Ministers' meetings. The Council of Ministers in their report state that the Minister may refuse access to information of a personal, commercial or legal nature. Sorry, this does not wash in this day and age. Provision is made in paragraph 9.23 for confidential matters and it is quite simple for the Minister to explain the background to the Scrutiny chairman. I have said before that I am of the mind that much of this so called confidential information is not. This is not our money we are dealing with. We are stewards for the Islanders. Unless it is truly a matter of life and death, I see no reason for the excessive secrecy. It is a bit like the minutes of the Corporate Management Board, which do not exist. Paragraph (d): this amendment of the Council of Ministers deletes the words "for resolution". There is no explanation for this in the comments. I am not surprised. What on earth is the point of referring anything to the Chief Minister, the President of the Chairmen's Committee and the Chairman of the Policy and Procedures Committee if not for resolution? Do we 3 just sit round like the witches in *Macbeth*, verbally stirring the pot? Where is the common sense in that? I find the amendments quite extraordinary and inappropriate in this day of transparent government and I call upon Members to reject this amendment.

7.2.2 Deputy J.A. Martin:

I really do think that there is enough covered in our Code of Practice. The Council of Ministers want to change the word to say "will", but then it goes on to say at the very last of paragraph 9.23: "Part B reports will be treated as confidential until [and this is where they already have us, everyone else in the House] the Minister specifies otherwise or until the report is made public." Now, Sir, I have worked on Scrutiny and I think I have worked on most Panels, and I have piles and piles of information in confidence and until the Minister who is in the Ministry or the Council of Ministers tells me I can make this public. I have, and I think all on Scrutiny have, respected this. So the will is again given slightly more, we will. Will we not? Will we? We will. That may? No, Sir. They will because if we are to perform as a government, we need this information. We, as Scrutiny, will decide what more information we may need from these reports. It may be background papers. Again, all in confidence. Now, as Deputy Ferguson has said, they completely changed 9.24. Again, it is covered because the reports that we will get are all in confidence. It

would be the same argument, they want the words, if it has been agreed that the Part B minute from the Council of Minister's meeting will be provided. I think that opens up Scrutiny to go to every Part B minute and ask them before whether they can have them or not, then there will be an argument, Sir, about why do you want them. The obvious thing is, it comes under our Scrutiny Panel and we want them. Again, we do not ask for everything. We have been going for 2 years and we do not ask for everything that the Council of Ministers choose, Sir, and I will say choose because when I have seen some of the Part B conversations and minutes - I cannot for the life of me see why they are even on the Part B agenda - then get to Scrutiny with again a confidentiality agreement in place, which we, as Scrutiny, are not disagreeing to. I think the Council of Ministers are being quite precious with their words. Precious I think with work that they think only they should know and they may decide that Scrutiny will be allowed to have. We have worked for 2 years and 3 months and this has been a long time coming. I think Scrutiny has backed down on a few things and worked well with the Council to get where we are. Before we had Ministerial government and we had all the rules in place for the Ministers and they are written in the States of Jersey Law. This is a Code of Practice for Scrutiny and we still have problems with the Council of Ministers wanting to change small words that mean a lot. As for adding, as Deputy Ferguson says, for resolution, well, who else do we want to call in? If all these people, which is all of us, sitting somewhere between those 4 parties, cannot decide where the minutes are going to go and who is going to see the Part B minutes, there is no point in any of us being here. Our Code of Practice, which they are trying to amend under (a), (b), (c) and (d) is perfectly straightforward. It is very easy, as I said at the beginning, they will not release anything to Scrutiny unless there is a confidentiality agreement and it is signed and we are all bound by it. We do not breach these confidentiality agreements and if the Minister can prove where we have I would be very disappointed, but if he can prove, in working with the Ministries for over 2 years that we have breached any of the confidentiality agreements, I would certainly be surprised and, as I said, disappointed. The wording is already there, Sir. I ask the House to reject these amendments. They are petty, they are not needed in a grown-up government and I think Deputy Ferguson has said we want to be a grown-up government, and I think it is about time we started to act like it and not start debating amendments that say "may" and "will" in a legislature of Jersey.

7.2.3 Deputy G.P. Southern:

Senator Vibert proposed his amendments, (b), (c) and (d), but unfortunately he did not do what Scrutiny is supposed to do, which is supply any evidence for these amendments. He simply reiterated them. It must be for Senator Vibert and the Council of Ministers to make the case as to why these amendments, which are, as my colleague has said, very trivial and very petty. This simply has not happened. I was waiting for the example. Where was the example? There may be cases where an item which has been examined to see if it contains personal information identifying somebody; legal information, a pending court case, a possibility of a court case; or a commercial reason why it should be kept confidential. It goes through that in 9.23. What the amendment says is having gone through that process and having agreed that it will be kept in confidence, and I believe we have kept that confidence consistently throughout our dealings with the Ministers, whenever we have received Part B or background papers we have kept them in confidence. It is a difficult thing to do sometimes because you know what is going on but you cannot tell anybody. It is a very difficult process but we have done that. We have not leaked. I believe the Council of Ministers themselves have occasionally leaked, but we have not. The important thing here is that Scrutiny must be in charge of Scrutiny. If it is to have integrity, we must make up the rules as best we can to fit in with Ministerial government. It is not for the Ministers to bind us and say: "Ah, yes, this is a binding." So having gone through 9.23, having signed a confidentiality agreement, having kept that confidentiality agreement the Ministers - some Ministers I believe, not all Ministers - there is a variety of experience in working with some Ministers very open and very amenable to working together with Scrutiny. Others are less so. Certainly this amendment (b) contains the element that says, yes, but having gone through that process we might still want to

withhold it. It is absolutely unjustified. There is no evidence - give me the case, give me the case. It is not there. What might be the circumstances in which having gone through this process, gone through the hoops, you might say, yes, but still we do not want to give it. We do not want to give it. Not justified. No evidence. No examples. What we have here is belts and braces. The braces are on, we know how we deal with each other, we deal in an open and transparent manner, where confidence is required we keep it. But we need this belt as well, just for somebody, in some circumstances, to hide behind. These amendments are a nonsense. They do not make sense. They should be booted out now.

7.2.4 Senator T.A. Le Sueur:
It strikes me listening to the last couple of speeches that we are in danger of entering into a form of trench warfare here where the Council of Ministers are digging one trench and the Chairmen's Committee is digging another trench, we are busy trying to dig deeper and deeper trenches to make our positions more and more insular. I have had experience of Scrutiny Panels over the last couple of years and they have been good experiences on the whole. Certainly I can testify that where information had been given to me in confidence that confidence has been respected and understood, on both sides. But that is not, I think, the issue here because as Senator Vibert made quite clear in his opening remarks, there is a presumption that the Council of Ministers and individual Ministers will fully disclose to Scrutiny all the information and all the background that is required. It would only be in exceptional circumstances that there would be any exception to that rule. This is not a general rule that Ministers would never give up their right to information and it is strictly being unrealistic in asking for it. It is a general presumption that information will be given. Why then could that not be an obligation in all cases? I think in order to answer that question one has to look a bit more closely at what a Minister is and what his legal status and legal responsibilities are. I think it was Deputy Martin who said that we were being petty here and being precious with words. I put it to Members, particularly those who are not in their trench - one side or the other - that being precious with words or perhaps more precisely, being precise with words is exactly what this House should be about. Making sure that when we have, even a Code of Conduct - especially in the case of legislation - we understand the words and their precise implications. It is in that context that I think we have to look at this block of amendments because they do relate to the role and the status and the obligations and the legal obligations - the status - of a Minister. That is why, again starting off at line 26 and the need to preserve the autonomy of a Minister, where a Minister is making a decision in his name as a corporation sole, it is his decision not that of the Council of Ministers, not that of anybody else. It is from that concept that the other obligations I think would follow. But I do urge people to get away from their trenches and to try to look at this in the spirit of co-operation which I know the Chairmen's Committee intended and which equally the Council of Ministers wish to endorse. So I think while there are differences here which may appear petty to some, I put it to people that with a clear understanding of why those amendments are there they are not being trivial, they are not petty, they are vital to getting the wording correct, getting the understanding correct and ensuring that in those very exceptional circumstances where information is disclosed there is good reason for that. Not the case of the information itself so much, as the status of the person giving that information.

7.2.5 Deputy R.C. Duhamel:
There is a well-known saying that I think I would like to add to it. It sums up the situation explicitly. Where there is a will, there is a way. Where there is a may, there may not be. The amendments are not needed. I think we must vote.

The Bailiff:
I call upon the Rapporteur to reply.

7.2.6 Senator M.E. Vibert:

I hope we are not descending into the trenches as Senator Le Sueur said. We did have a lot of similar speeches from what appeared to be the Chairman and the Scrutiny Panel members which did not add any light at all to what we are debating, I feel. They just said, it is not needed, not needed. They did not give any evidence why it is not needed. It is an interesting area and I am concerned that they are not appearing to appreciate why and the evidence for needing these amendments. As Senator Le Sueur said, a Minister is a corporation sole - the legally responsible person - not the Council of Ministers, not the States, not Scrutiny Panels. It is the Minister who is legally responsible. The individual Minister. Seems to me something akin to misunderstanding of the Ministerial government we have agreed to set up. The Ministerial government this House agreed to set up makes individual Ministers legally accountable. Not anyone else, not Scrutiny, not the Council of Ministers, not even this House. It makes Ministers legally accountable. Because of that though, the presumption would be to release all papers when requested, but because the Minister is legally accountable it is felt there is a necessity that the Minister must retain that final responsibility as the person who is legally accountable as to whether to release any of his or her papers individually in the final result. Then that decision could be reviewed by, I think what Deputy Ferguson referred to as the witches from *Macbeth*. The Minister would have to justify why he or she was going against the presumption, and quite right too. But the Minister is legally accountable. That is why this amendment was brought. Deputy Southern, in not appreciating the evidence which is laid out in the Council of Ministers' report on the amendments also said, give me the case, give me the case. Give me the case where confidentiality has been broken, give me the case relating to this. Well, I notice Deputy Southern did not give any case where reports had been denied. Members have to decide, Sir, whether they accept that when they established Ministerial government they made Ministers legally accountable, therefore the Minister has to have the right in the final instance over matters in their responsibility, because they are a corporation sole and legally responsible for it, or not. That is all this amendment is seeking to do. We are trying co-operate as much as we can with the Chairmen's Committee and Scrutiny. We are saying the presumption is we will always make papers available but if the Minister - if he or she who is legally responsible believes, could be for legal reasons, it could be for reasons of a mention of a person's details in there, even if it is given in confidence it would not be right to share it - then they must retain the right not to provide it. These are background papers - that is all we are referring to. We are not referring to full Scrutiny Reports, it is background papers and they must retain the right and be able to be questioned as to why they have made that decision. Sir, I hope Members will support this amendment which I now make and call for the appel.

The Bailiff:
Very well, I ask any Member in the precinct who wishes to vote to return to his or her seat. I ask the Greffier to open the voting which is for or against amendments (b) (c) and (d) of the Council of Minister's ...

Deputy J.A. Martin:
I thought the rapporteur asked that they be taken ... that is fine.

Senator M.E. Vibert:
No, what I asked, Sir, was that we could take it in 4 tranches (areas). This is one area, all the amendments in this area refer to the same.

The Bailiff:
The vote is for or against paragraphs (b), (c) and (d) of the amendments of the Council of Ministers. I ask the Greffier to open the voting.

POUR: 15		**CONTRE: 25**		**ABSTAIN: 0**
Senator W. Kinnard		Senator L. Norman		
Senator T.A. Le Sueur		Connétable of St. Mary		

Senator P.F. Routier		Connétable of St. Clement		
Senator M.E. Vibert		Connétable of St. Helier		
Senator P.F.C. Ozouf		Connétable of Trinity		
Senator T.J. Le Main		Connétable of St. Lawrence		
Senator B.E. Shenton		Connétable of Grouville		
Connétable of St. Ouen		Connétable of St. Brelade		
Deputy J.B. Fox (H)		Connétable of St. Martin		
Deputy J.A. Hilton (H)		Connétable of St. John		
Deputy G.W.J. de Faye (H)		Connétable of St. Saviour		
Deputy J.A.N. Le Fondré (L)		Deputy R.C. Duhamel (S)		
Deputy A.J.D. Maclean (H)		Deputy of St. Martin		
Deputy I.J. Gorst (C)		Deputy C.J. Scott Warren (S)		
Deputy of St. Mary		Deputy R.G. Le Hérissier (S)		
		Deputy J.A. Martin (H)		
		Deputy G.P. Southern (H)		
		Deputy S.C. Ferguson (B)		
		Deputy of St. Ouen		
		Deputy P.J.D. Ryan (H)		
		Deputy of Grouville		
		Deputy of St. Peter		
		Deputy P.V.F. Le Claire (H)		
		Deputy D.W. Mezbourian (L)		
		Deputy S.S.P.A. Power (B)		

LUNCHEON ADJOURNMENT PROPOSED
The Bailiff:
The adjournment is proposed. If Members agree we will adjourn until 2.15 p.m.

LUNCHEON ADJOURNMENT

PUBLIC BUSINESS (continued)
The Bailiff:
The Assembly now comes to the second of the amendments of the Council of Ministers. It is a long amendment and I wonder if Members would agree to take the amendment as read rather than requiring the Greffier to read it out? I take that as tacit assent from Members. I call upon the rapporteur to propose the amendment.

7.3 Senator M.E. Vibert (The Minister for Education, Sport and Culture - rapporteur):
This amendment - amendment (e) - is the most important of all. The one that has caused considerable delay in this Code of Practice being brought to this House. It, of course, relates to access by Scrutiny to legal advice given to Ministers by the Law Officers. Taking up the analogy Senator Le Sueur used earlier, Sir, can I ask Members in particular for this debate, not to be entrenched, not adopt defensive positions, but to listen to the arguments; in fact to act like Scrutiny? To scrutinise the evidence and make a decision accordingly. The Chairmen's Committee has proposed in paragraphs 9.27 to 9.31 that copies of legal advice should be shared between the Executive and Scrutiny functions. The Council of Ministers does not agree with this proposal and nor, as Members will have seen from their comments, do the Law Officers. The sharing of legal advice would represent a radical departure from the current arrangements and in the Council's view would be detrimental to good government. It would also contradict general practice in other jurisdictions where it is accepted that the Executive should have access to legal advice on a

confidential basis. I believe Deputy Ferguson in her opening speech referred to that she did not care what the rest of the world did, this was Jersey. I think what we should all have a care for…

Deputy S.C. Ferguson:
May I be quoted correctly please? I wanted best what was for Jersey.

Senator M.E. Vibert:
Perhaps the whole quote. I believe I had written down: "Do not care what the rest of the world does, I want the best for Jersey." I hope we all want the best for Jersey, but I think we should all be grown-up enough to be able to learn and to be able to look elsewhere and to see if they believe what is good practice and whether if we are proposing something that is totally out of line, that is the best for Jersey and in the best interests of the Island. As I say, going along with what the Chairmen's Committee are proposing would contradict general practice in other jurisdictions where it is accepted that the Executive should have access to legal advice on a confidential basis. There are good reasons for not sharing the legal advice between Scrutiny and the Executive and these reasons are considered by the Council to be equally relevant to both the Executive and Scrutiny functions. These reasons have been clearly set out by the Attorney General and the Solicitor General in their comments to P.198/2007, which I know Members will have read carefully, and earlier comments to P.101/2006. Those comments are referred to in paragraphs 9.27 to 9.31 of the Council of Ministers' amendments. The Council of Ministers share the view expressed by the Attorney General and the Solicitor General that there should be no inhibition on the part of Ministers or departments or Scrutiny both in seeking advice and in giving all the relevant facts. Equally there should be no inhibition on the part of the Law Officers' Department in the giving of full and frank advice. The Council is therefore proposing an alternative arrangement - these amendments - in which both the Scrutiny function and the Executive function would be able to seek advice from the Law Officers in the knowledge that this advice would remain confidential to them separately. There is nothing in this arrangement that would prevent a Scrutiny Panel from making a statement as to its understanding of the legal position and the same would apply, of course, to the Executive. It is clear from their published comments just how strongly the Law Officers feel about the proposal in the proposed Code of Practice which they believe would be very damaging to the work of the States. I believe Members will wish to give very serious consideration to the views of the Law Officers on an issue so close to them. Of course, speaking of Panels, they have always been entitled to ask the Law Officers for advice themselves and will be able to continue to do so. But for very good reasons, both legal and practical, they should not have access to the specific advice given by Law Officers to Ministers and *vice-versa*. As is explained in the comments by the Law Officers allowing such a practice as sharing legal advice could lead the States open to the risk of weakening the public's legal position in any possible court action, and there is a real danger that access to the legal advice provided to Ministers may well lead to Scrutiny independently engaging external lawyers on a regular basis. This could lead to a situation where the States Assembly is asked to consider the merits of 2 sets of competing legal advice. This Assembly, I believe, is clearly not the place for that. To sum up, I say in the strongest possible terms that no other parliament that we know of in the world does what the Chairmen's Committee is proposing; the sharing of legal advice between Executive and Scrutiny. The paper that the Chairman of the Chairmen's Panel put before us on *Governing Well*, as far as I can see in a quick look through it, does not make any reference or suggestion that legal advice should be shared between the Executive and Scrutiny. While it might be nice to think that in principle there should be a sharing of legal advice - because we are all Members of the States, we have the Island's best interest at heart - the Council of Ministers has nevertheless been convinced that the only practical way forward is to maintain confidentiality otherwise we could harm the States and thereby the public interest. There are times that in the interests of good government it is necessary that legal information be kept confidential and legal advice is one example of that. I propose the amendment.

The Bailiff:
Is the amendment seconded? **[Seconded]** Does any Member wish to speak? Deputy Ferguson.

7.3.1 Deputy S.C. Ferguson:
In reply to the rapporteur I would say, how can you comment on the legal position without knowledge of the primary legal advice? As I shall go on to show, legal opinion is one of the pieces of information and advice given to a Minister when he is formulating his decision. Not to be able to see it means that a vital part of the decision is not able to be scrutinised. In my opening speech I emphasised the areas where I thought Jersey should be treated as a special case. Our form of government is not quite like anywhere except perhaps in Guernsey. How it operates in practice is perhaps not quite like the theory. This Assembly is supreme in that the Executive cannot assume that the Assembly will pass its legislation automatically. One area identified in the *Governing Well* report is the requirement to ask, is this legislation really necessary? Page 3, recommendation 8: "Are there alternative powers to achieve the same result?" We have been very poor in assessing this and it is an area where I would want there to be a solid input from the Law Officers as part of the legal opinion. This being the case then this is an area where Scrutiny should have sight of the legal opinion. If there is no commercial interest at stake what is the problem? It seems to me that the essence of the problem is that there is a fear that legal advice will be included in full in the Scrutiny Report and end up in the public domain. Members of this House are well aware of the protocols attendant on confidentiality and have been scrupulous in their observation. The leaks which have worried the Executive have been Executive leaks and are not from Scrutiny. The heart of the matter is that there is an idea for policy. The first port of call should be to the Law Officers to evaluate whether the policy can be effected under any existing legislation. Unfortunately I think we are rather prone to say it is a new policy, we need new legislation. The advice would explain what steps would be required to effect the policy. It is therefore an integral part of the quality of the decision made by the Minister. If Ministers can hide behind a quasi fifth amendment statement then how do we assess the quality of the decision? Paragraph 9.30 paragraph 4 in the Council of Ministers amendment gives the Executive the ability to hide behind legal privilege. Open government? I think not. The Council of Ministers amendment suggests that Scrutiny Panels should obtain legal advice from the Law Officers. It is explicit in the statement that the advice given by the Law Officers to Scrutiny will be consistent with that given to Ministers. So effectively the Law Officers are giving themselves twice as much work. Am I missing something here? Furthermore the Council of Ministers amendment states that there will be a duty of confidentiality imposed on Scrutiny with regard to the legal advice from the Law Officers. However the report can contain the statement in a Panel report on its understanding of the legal position. The Law Officers will want to review the report to ensure that legal privilege has been maintained. It should be noted that our basic Code of Practice states that those parts of a report which relate to the submission made by a witness, such as the Law Officers, will be sent to the witness before publication. So the Law Officers will automatically receive the relevant information. The Council of Ministers amendment states that if a Scrutiny Panel takes advice from the private sector then the Law Officers request the Panel to allow the Law Officers to have sight of that advice. If we adopt the amendment of the Council of Ministers - and we are really on a level playing field - why should Scrutiny not have the same privileges as the Executive? We are really getting a bit pernickety here. The Attorney General makes a number of other points: "All jurisdictions accept the need for the Executive to have access to confidential legal advice." They are partisan jurisdictions, apart from Guernsey, and usually in most of those jurisdictions the Attorney General is both partisan and is very often an elected member. It is important to have trust between the Executive and the Law Officers. Is that really more important than trust between the Executive and Scrutiny? How can we have public trust if we do not trust the other? It will affect the qualitative performance of the Law Officers and their advice. I have heard it said it might well improve their advice, if such a thing is possible. Legal advice privilege might be lost in the case of litigation between a Minister and a member of the public. I do not know how many times I have to

say this: Scrutiny members are well aware of their duties with respect to confidentiality and have observed this strictly. It is likely to drag the Law Officers into political disputes. Assuming that the legal advice is sound - I am quite sure it will be - the question will be whether the Minister followed the advice? Which is not a recipe for dispute. Or whether he did not? Which is a recipe for dispute. It does not work technically. It is quite straightforward but perhaps everyone is looking for the hidden agenda, we do not have one. This is what-you-see-is-what-you-get. If I run through our Code of Practice regarding legal advice - this is the original Code of Practice, the numbering is slightly different in the Council of Ministers one: 9.27: "Scrutiny may need to seek legal advice." No problem there, we all agree on this. 9.28: "Whatever the theory says, in practice we are all part of government." As I have already argued. 9.29, general paragraph admitting that it is not the job of Scrutiny or this Assembly to decide on the merits of competing legal advice: "The ultimate forum for testing legal advice is a court of law." Yes, I think we all agree on that. 9.30: "Our main interest in legal advice is the way it has contributed to the quality of the decision taken by the Minister." I mentioned this premise earlier in my opening speech and as an integral part of Scrutiny is ensuring that the policy has been properly formulated; all alternatives properly addressed and valid reasons given for why the particular courses of action have been followed. Paragraph 9.31.1: "The Minister will support their intention for a policy with a statement of the legal position." This is quite straightforward, this is something which should be done as a matter of course in good government. It is a method of justifying a need for the legislation. *Governing Well*, recommendation 8, page 3, paragraph 9.31.2: "The Panel may ask for a copy of the legal opinion." Notice "may" not "will". 9.31.3: "Legal advice received by the Scrutiny Panel in these circumstances [i.e. after they have had a copy of the advice and obtained this from the Minister] will be treated with the same level of confidentiality which has been accorded to the Executive." We must read this paragraph in the context of the whole section. In 9.28 it states that: "The Law Officers will provide legal advice to both the Executive and Scrutiny. This paragraph is merely to emphasise that Scrutiny will observe the protocol with regard to legal advice in the circumstances when a copy of the advice is received from the Minister." The Executive are reading this in isolation and have overlooked the fact that the legal advice under discussion in this paragraph, the copy is given by them. The paragraph merely emphasises that Scrutiny understands their obligations. 9.31.4: "Scrutiny will observe the confidentiality." No problem there. 9.31.5: "Settlement of a dispute will be in private." Absolutely accepted. 9.31.6 refers to legal advice given directly to Scrutiny: "If the Law Officers do not have time to advise Scrutiny then Scrutiny will use external advice." Which is straightforward, agreed with the Law Officers. 9.31.7 merely states that if we need a lot of external advice then it will be expensive, no problem there. I am sure the Treasury Minister will bear that in mind. A nice simple set of principles. Compare it with 9.28 in the amendment by the Council of Ministers: "This means that the Law Officers will not properly fulfil their job if they know that Scrutiny will review the legal issues." Again the legal position is part of the information informing the Minister's decision. If the Minister ignores or only partially follows the advice then this is the part that interests Scrutiny. For example, if the Law Officers say that the policy can be achieved under existing legislation but the Minister insists on new legislation, I would very much question the quality of the decision in those circumstances. 9.29, these are the reasons why the advice should be confidential: "No damage to the public interest." Our version states quite clearly that Scrutiny will observe confidentiality of advice. No inhibition in taking advice. If you desire to be thought omnipresent then you will not want people to know you take advice. Frankly, I worked on the principle that the only stupid question is the one you do not ask. Only God is omnipresent, everybody else needs a second opinion. There should be no inhibition on the part of the Law Officers in giving advice. We have already said that we will observe confidentiality of advice, what more can we say. The protocols in the Council of Ministers amendment - these are their numbers: "The Scrutiny Panels will not publish the fact that legal advice has been sought, the facts that have been given and the legal advice which has been received from the Law Officers." We have undertaken to observe confidentiality. What more can we do other than have our lips sewn together? Honestly if there is a summary of the legal position and

issues, if it is relevant to the report it is obvious to anyone with common sense that legal advice has been taken. In this day and age no one with any sense would look at something with legal implications without taking advice, legal advice. It is not necessary to publish the advice but it would be necessary to the understanding of a report that referenced to the legal issues made. Common sense. The Law Officers want to review the report to make sure the advice is not articulated. Scrutiny operates on a basis of transparency. As I have already pointed out, all witnesses are given the opportunity to review the parts of the report relevant to their testimony. In this context the Law Officers would be treated as witnesses and would automatically receive the relevant information. No implication that anything in the report has been endorsed by the Law Officers. These are Scrutiny Reports and Scrutiny stands or falls by its own reports. We do not give free advertising. 9.34: "Ministers can hide behind legal privilege." Why? If there are sound commercial reasons that is one thing, it is quite another if for instance we are discussing legislation for a new policy to allow on the spot fines for speeding. We return to my earlier comments on whether the degree of secrecy is essential. This merely gives a Minister, who has made a questionable decision, the opportunity to hide behind legal privilege. No such ability is given by Standing Orders. The Regulations state, Article 2(b): "The Regulation shall not confer any privileges or immunity on a Members of the States." Yes, uh-huh, I hear you say, paragraph (a) states that the Regulations shall not confer any power to issue a summons requiring the appearance of or the production of documents by a Member of the States. However, Standing Orders - and I would suspect Standing Orders take priority - Schedule 3(9): "Elected Members shall co-operate when requested to appear and give evidence before or produce documents to a Scrutiny Panel." To which the answer is found in paragraph 10.14 of our Code of Practice: "Panels may agree to take oral evidence in a private session if the matter under consideration is of a sensitive, confidential or private nature." I think we have touched all the bases there. I think the real question is: should there be a different standard for a Minister or a States Member when being held to account? Are not higher standards required of us? After all, the legal privilege and self-incrimination provisos are not included in Schedule 3 to Standing Orders. 9.30.5: "Public interest may require legal advice to be published." Common sense dictates that there should be discussion. This would normally be at the draft report stage, again I cannot see a problem. Paragraph 6, we are in agreement. Paragraph 7, this is the paragraph it is recommended that Scrutiny Panels asking for legal opinion should supply documentation and information to the points they are inquiring on. Nobody in their right minds would ask for legal opinion without supplying the required documentation and information. Sorry, it escapes me. The final paragraph is 9.30.8: "This might cause problems if the Law Officers have no time to supply advice as in 9.30.5, in the ultimate the decision would arise at the draft report stage." I would remind Members that we are discussing communication and information allied to the fact that we are stewards of the public purse. We are all accountable to the public of the Island whose money we are spending. We are committed to transparency in government which is the only way to regain the trust of the public. We have a duty to have the minimum of necessary secrecy. This amendment of the Council of Ministers is not in the interests of good transparent government and I urge Members to reject this amendment.

7.3.2 Senator T.A. Le Sueur:

I think Members listening to that explanation may be wondering why the Council of Ministers feel any need to oppose the view of the Chairmen's Committee. It all sounds very reasonable and very plausible. Openness, transparency, sharing information. I would like to pick up on one thing that the Chairman said and that was when she referred to the fact that in some assemblies the Attorney General comes from the elected members. I nevertheless suspect that in those jurisdictions that Attorney General is still legally qualified. I am probably correct in saying that there are very few, if any, of us as States Member who have legal qualifications. So when we try to pontificate about legal advice I would far sooner listen to someone who does have the ability to give proper legal advice. I think what we are perhaps guilty of here is a bit of a misunderstanding. I would invite one of the Law Officers, who I am sure will speak during the course of this debate at some stage,

just to explain to me more clearly, and maybe to Members of this House, the difference between confidentiality - which I am sure we all want to maintain - and legal privilege. I think there is a view in some Members minds that that is the same thing. I am satisfied that it is by no means the same thing. Just as we wanted to ensure confidentiality we also want to ensure that we can maintain legal privilege where it exists. I think the proposals of the Chairmen's Committee sound very nice in the context of confidentiality and openness and sharing, because they are. But that is only half the story. It is because the Council of Ministers have tried by getting advice, getting evidence to see the whole story, we have had to come up with the amendments that we have. I suppose it would have been one way of dealing with these proposals, simply for the Council of Ministers to oppose them, and say: "No, we do not like them." We have tried to be constructive, to work with the Chairmen's Committee, maybe that is why it has taken longer than, I think, any of us would have liked for this Code to come before the States today. Because we have tried to find a workable solution. I believe in the amendments presented by the Council of Ministers we have come up with a workable solution. A solution to the whole problem, not to three-quarters of it. That, I think, is the beguiling danger of the proposals of the Chairmen's Committee, it only deals with three-quarters of the problem and ignores what is potentially a gaping hole. I think we have to be clear about how stringently we should hold us, as Ministers, to account. I have no objection to being held to account in the strongest possible way. I have no objection to being questioned on why I have made proposals I did; on what basis; on what information; or on what evidence; and I will co-operate fully with any Scrutiny Panel who asks me those questions. I think that is a totally different subject from the question of specific legal advice in the context of privileged advice. It is maybe a narrow argument, it may be too narrow for some people to see, but I do urge Members because it is an important part of the argument which we overlook, not just at our peril but in the words of the Chairman of the Chairmen's Committee, the interests of the public of the Island as well. Because if we leave this lacuna and it is exploited to the detriment it will not be to our detriment as Ministers, it will be to the detriment to the people of the Island. So I say to Members that we should think very carefully and that we, who are not legally qualified, should take particular heed of advice on the subject of law from people who are legally qualified. I say that, Sir, because I think that the amendments from the Council of Ministers are necessary in order to make that picture complete and accurate. I urge Members to support this amendment.

Deputy G.P. Southern:
May I make a request that the Attorney General makes a contribution at this stage. We have had 2 layman's versions of what the problem is, including a definition of… or difference between legal privilege and confidentiality, could the A.G. (Attorney General) step in at this stage and give us…

The Bailiff:
It is a matter for the Attorney General, he may not seek to intervene. He has heard what you say, anyway.

7.3.3 Senator P.F. Routier:
I came to this with a fairly open mind, would you believe, because when the suggestion came up originally I thought it was a fairly reasonable thing to seek to have - that everybody would be able to share information. I recognise from having read the opinion of our legal advisers and also obviously had the benefit of their views within the Council of Ministers that it is not as simple as that. Once there has been a legal opinion either to Scrutiny or to a Minister that is privileged information which should remain with either Scrutiny or that Minister. What I find… I think it has been very clear, I know people are anticipating a legal adviser speaking, but I think from the information which they have submitted in the document before us, it is very, very clear that they see it being a problem that sharing that information does leave the States vulnerable. I say the States generally. We have to recognise that once that information is shared it is likely that that privilege that was given to the Scrutiny Panel or to a States Member or to a Minister could be lost.

It is all of us that loses that privilege. The Ministers lose that privilege that is attached to that legal advice. Scrutiny loses that privilege. Deputies, Constables, Senators, we would all lose that privilege. We are here for the benefit of the Island. The Island loses that advantage. Those people, the Ministers and Scrutiny, that have shared that information… then it is available for somebody outside of the States to challenge and ask for that opinion. So we would be letting down the Island in leaving a door open for somebody from outside of the Island - outside of the States - to ask for that information. That is very clear information which has been given to us by the Attorney General. From my position where I was before thinking about this is not such a bad thing, I have shifted completely to wanting to protect the Island. I think there is only one way forward, is to accept the advice of our legal advisers. They are the ones who are advising us, if we are going to ignore that advice, well, that is a matter for Members but certainly I am not going to ignore that advice and I urge Members to accept the amendments.

7.3.4 Deputy G.W.J. de Faye:

This is all very well, I think, arguing the theoretical aspects of how a Code of Conduct may or may not work. There seems to be a feeling being expressed here that as long as things are kept confidential that is okay then. I am going to break all my own rules, which under normal circumstances I would not indicate whether I have taken legal advice, I would not say what the legal advice was. I need to explain a practical situation that has occurred that I think will help Members understand that there are a multiplicity of contradictions in how things work in practice. It is absolutely vital that from time to time a Minister must be able to retain knowledge of legal advice and not be under any level of requirement to impart it to a Scrutiny Panel. Under what circumstances might you consider that is the preferred option? Not so long ago an abatement order was issued against the Transport and Technical Services Department with respect to the perceived nuisance of composting at La Collette. I think Members will be well aware that the political instigator was a member of the Environment Scrutiny Panel - namely the Constable of St. Helier - who, quite legitimately pressured the Minister of Health and his Health Protection Department to do something about this perceived nuisance risk caused by the odours emanating from the composting plant at La Collette. Because it was the Minister of Health who initiated the legal action he initially engaged the Crown Officers to act on behalf of that department. Clearly Members will realise that from my end of the proceedings I was then in really a required position to make some sort of a response. Essentially my hands were tied because I could not practically go and ask the Crown Officers to advise my department while they were also advising the Minister of Health. Therefore it was incumbent upon me - because legal advice was certainly required - to take private legal advice. That is an unfortunate situation to find oneself in because I am sure as Members will know once you move down the avenue of being required to take private legal advice the bill racks up at a spectacular rate. That advice was sought, and I wanted comprehensive advice because it was likely that I was going to take the abatement notice to the statutory appeal which would have ended up in the Royal Court. It also was incumbent upon me to explore the local definition of statutory nuisance as well as the various statutory defences available to the department. That all required a considerable amount of work, and indeed resulted in having to bring in Queen's Counsel from the U.K., a specialist in the area of nuisance. It must therefore be fairly clear to Members that if I was in a situation where (a) I am obliged to admit that I am taking legal advice, and (b) I would be obliged to pass on the detail of that independent advice to the relevant Scrutiny Panel, who would I be giving the advice to? I ultimately found myself in a position of being required - under the types of proposal that you are being encouraged to accept - I would have given that information to the Environment Scrutiny Panel, on-board of which was the Constable of St. Helier, the prime political agitator in the abatement notice in the first place. It is a bit like just being asked to just hand in an automatic surrender. I do not think that circumstance would have been in the public interest in any way whatsoever. I think if Members care to reflect soberly on the position that I found myself in I think it would have been - although, of course, the circumstance did not occur because the Code of Conduct was not in place and the types of Code

Regulations that are being proposed do not currently exist - I think Members can see quite clearly that it would have been certainly in the interests of the department - I would suggest in the public interest as a whole - that I should have been under no obligation whatsoever to provide legal advice to the Environment Scrutiny Panel. I am not - and I want to say this very clearly - I am not casting any aspersions on the integrity of anyone on that Panel or suggesting for a moment that they would have breached confidentiality by leaking the information, but what I am saying to Members is that confidentiality is one thing, having the information is something else. Knowing what my legal advice is gives a certain advantage to anyone who has it that frankly I think is unacceptable. This is not as easy as it sounds by any stretch of the imagination. This is not necessarily a matter between Ministers and Scrutiny. As I have just explained it can be a matter between Ministers and Ministers and Scrutiny. There are a number of contradictions that Members will see quite clearly in the practical situation I have outlined. That is just one example. I am sure that there are many other circumstances where at the end of the day it is incumbent upon a Minister to make a critical decision in the public interest that says, no, this advice must remain confidential to myself and the department, and it really cannot go any further. That is - apart from anything else - to ensure that no one else could possibly be put at risk of having had that knowledge of legal advice. I realise that this might be a difficult subject to grapple with but it really is of vital importance.

Deputy R.G. Le Hérissier:
I wonder if I can ask the speaker for 2 points of clarification? First of all upon notification when the Constable was moving this, did he make it clear that the Constable had a conflict and therefore he was not permitted to act on the Scrutiny Panel at the time? Secondly, was he aware in the Chairmen's Committee recommendations there is a procedure to deal with this very thing where a Minister may lay a complaint if he feels his advice has not been processed and he can stop the process while this is reviewed in private?

Deputy G.W. J. de Faye:
In answer to the Deputy, Sir, I am not at all convinced this was initially a Scrutiny matter. My understanding is that this was effectively a private initiative of a Scrutiny Panel member. As I said at the beginning, I have no complaint about that action, as an action putting pressure on a Minister is something that every Member of the States - or indeed members of the public - are entitled to do. I have no query with that and I am not suggesting for a moment that the Scrutiny side have in some way breached disciplinary codes or anything of that sort. What I am saying is that there are, in my opinion, clear areas where it is the common sense approach not to disseminate legal advice, frankly, no matter to whom, Scrutiny Panel or anyone else. That is what concerns me about the proposed Code. That is why I think that the amendments put forward by the Council of Ministers are right, are considered and do the one thing I want them to do. Let us be quite honest and fair about this, in many circumstances I would be relatively relaxed about sharing the information, and in the same way as I am happy to give information out to the Panel on a regular basis about departmental activities. There will be many occasions where I would not feel it would be an issue, but there are occasions where, as it were, you might call them occasions of last resort or exceptional circumstances, where I simply think it is wrong for any Minister to find themselves bound by a protocol or a Code that says: "You must declare and you must hand it over" albeit under a Code of Confidentiality. As I say to Members, it is one thing about maintaining confidentiality and not leaking an item of information; it is another issue to know precisely what that information is.

7.3.5 Deputy C.J. Scott Warren:
Originally, I did believe that legal advice could and should be shared. I have since changed my opinion. I do believe that the quality of legal advice given to the Executive and the openness of Ministers when wishing to take legal advice could be compromised if that advice always has to be shared with Scrutiny Panels. Scrutiny Panels obviously should have good access to their own legal advice. I am now a member of a Scrutiny. I had my conversion when I stood in for Senator Syvret

for several months last year at the Council of Ministers. While there at the meetings, I listened to the arguments in detail about this issue and the logical thing that I had always believed was the argument that has been put forward today by the Chairman. When you look into this in great detail, as I did last year, and hear many arguments, my opinion was changed. I had thought it was a simple issue and that it seemed right to have all this House able to share legal advice. It has been said by the previous speaker. I am sure that 90 per cent of the time, or 99 per cent of the time, that may be quite right to do so. It is just that I do believe there could be serious problems at times if it is the law that legal advice must be shared at all times.

7.3.6 The Attorney General:

It is with quite a heavy heart that I am here in this debate today because I recognise that the Law Officers are, for probably the first time I can recall, being put in a position of opposing directly a proposition of a States Committee. Members will know that the Solicitor General and I, and indeed as far as I am aware all the lawyers in our department, are very strongly opposed indeed to this part of the Chairmen's Committee Code of Practice which deals with legal advice. I will explain why briefly in this speech, although the detailed reasons are set out in our comments, and I very much hope that Members will have had the opportunity of reading those comments very carefully. It is not just that if the Chairmen's Committee proposals were to be accepted, we as lawyers would find our working conditions very much more difficult, and Members will forgive me for saying they are quite difficult already. It would not be fair not to admit to Members that the additional difficulty for us as Law Officers is a factor in our opposition. Of course, it is. We would not view with any sort of equanimity a difficult job becoming more difficult, but that is not the real reason; it is not the motivating reason for the opposition by any stretch of imagination indeed. The dominating feature is what is best for the Island? What is best for our system of government, what is best for Ministers, best for Scrutiny Panels, best for the States, and as a result, best for the people of Jersey? It is on that basis that we have no doubt at all that the Chairmen's Committee proposals would be little short of a disaster and the Council of Ministers amendment is, in our view, absolutely essential. The Chairmen's Committee proposed that Scrutiny should have access to legal advice given to Ministers and that is damaging for 2 reasons in particular, although there are others. First of all, it is likely to inhibit Ministers and their departments from asking for legal advice. Secondly, where we are asked, it is likely to inhibit us and the lawyers in our department from giving it in the way in which it is given at the moment. The reason that Ministers and departments may be inhibited is that it is essential if you want to get good, relevant legal advice that you hold nothing back from your lawyer, even the things that work against or which you think may work against you, even the things of which you may not be particularly proud. It is essential that you say all these things to your lawyer so that he can give you advice which is relevant. They may be important things in assessing the legal position in the round. It is essential that the lawyers get this information in order to give good relevant advice. Accordingly, one simply must not inhibit Ministers and departments from making that information available to the lawyers when they seek advice. I ask Members to ask themselves this question. Do they think that Ministers and departments will absolutely freely make over all the information, including the sorts of things that they think may work against them, if they know that what they have said is going to become available to Scrutiny Panels and thereby be capable of being used in a political sense? I think it is inevitable that often they will not. Ministers and departments will be less inclined to be forthcoming with the lawyers and in that case the advice may not be on point. It is no good saying that Scrutiny is not going to ask to see the advice on every occasion because at the time that the Ministers or the department ask for advice, and at the time the lawyers are giving it, they will not know whether Scrutiny are going to want to see this particular advice or not. They will not know whether Scrutiny are going to want to see all the relevant facts which are going to be disclosed on this particular point or not because we will not know, and the Ministers will not know, whether this particular decision will be scrutinised. From our perspective too, the lawyers need to know that they will not be caught up in the politics of the argument by giving the advice that they give. As

Law Officers we both recognise how difficult it is to give legal advice in a political context without being accused of acting politically. No doubt, sometimes I get that judgment call wrong. I hope I may be forgiven for saying that in my view I do not get it wrong nearly as often as a few Members, including some senior Members, say I get it wrong. It is very difficult to give legal advice in a political context without being accused of acting politically. It is right to add that the Law Officers do not give all the legal advice and we are concerned that if the lawyers in our department are forever looking over their shoulders, wondering how an expression might be construed, wondering if it is read by a Panel hostile to or critical of the Minister, whether that is going to lead to argument between the lawyer and the Minister who is being advised. There can be only one result: the advice will be more cautious, it will be less direct, it will be less useful and it will be safe, legal advice, difficult to criticise except perhaps because the lawyer has not got off the fence to say what he or she really thinks. In case I should be criticised, I ask every Member to look into his or her heart of hearts and ask Members whether in fact they are careful with what they say to other Members about what they believe about a particular argument. It is true, is it not? All Members are very careful what they say to other Members about what they think. Members really cannot be surprised to know that lawyers too would be very careful about saying what they thought and that is why it is so damaging to the way in which legal advice is given if the lawyers are frightened that they might get drawn into the politics of an argument between Scrutiny Panel and Minister. So if the Chairman's proposition is liable to have the result that the Executive is less likely to ask for advice or, if it does, less likely to give the information that the lawyer needs to advise properly, and if it is true that the result is that the lawyer is less likely to give the same type of advice and more likely to give less relevant, less constructive and less useful advice, then it follows, does it not, that the proposition is really not a good plan. In fact, it is a very, very bad plan. It is such a bad plan that despite having made quite a few inquiries we have not found any other jurisdiction in the world which has this rule. I have spoken to the Commonwealth legal secretariat who have themselves previously not come across anything anywhere in the Commonwealth similar to that which is being proposed, and who tell me that as far as they are concerned it would be very damaging indeed, as though I need to tell you that. Nowhere in the world, as far as I am aware, and that point has been made and so far, as far as I am aware, nobody has come up with a jurisdiction which goes against that. But, of course, unfortunately, although the objections that I have put up to the Chairman's proposition have been quite clear for a long time, they have not been addressed by the Chairmen's Committee, not been addressed in the report that comes before Members today. If one looks at the report there is nothing in it which justifies this position, no pointing to another jurisdiction where it works perfectly adequately apparently. All that has been said today, and it is the first time I have heard it, is that the Attorney General in other jurisdictions is partisan. Well, I am not sure that it is true everywhere in the Commonwealth. Quite a lot of the Commonwealth jurisdictions have appointed Attorneys General who are not partisan, and it does not seem to me to be a good answer at all. Instead, the proposition seems to be based on this idea of transparency. Perhaps I can just say a word about the United Kingdom Government paper on which the Chairman apparently relies so heavily, and yet it is no good relying on this paper to show that there should be access to legal advice because the position in the United Kingdom is that there is not access to legal advice. Legal advice there is privileged and is not disclosed, so it is no good pointing to statements about transparency in this sort of paper to justify a proposition that Scrutiny should have access to legal advice. The fact is that legal advice is different from other types of information. That is clear; it is clear from looking at Freedom of Information Acts all over the world. Legal advice is protected; it is protected because sooner or later there is the risk that a particular issue is going to get litigated in court and it is essential that that legal advice which is privileged should remain privileged and should not be disclosed. Indeed, I think this is probably what the Treasury and Resources Minister was meaning to ask me when he was taking the distinction between confidentiality and privilege. Ministers are corporations sole - that means they are different, they have their own legal status. In the comments which I lodged on behalf of the Solicitor General and myself, at paragraph 7, I said this: "The proposed protocol carries a risk the extent of which we think it is undesirable to say in a

public document that legal advice privilege might be lost if there were to be litigation between the Minister and a member of the public." I could have put it down in writing and it would have the same effect as saying it in public today, in *Hansard* recorded for ever. I am still reluctant to go into the arguments in any great detail at this stage and I would just ask Members in a sense to accept that there is a risk and I put it as a serious risk, that legal advice privilege might be lost if there were to be litigation and it is known that the advice given to Ministers as corporation sole has been shared with Scrutiny Panels because they would have been shared with a different legal entity. I should say straight away that there are arguments to be put on the other side, except that we can try and construct arguments on the other side and one would not know until there is a court decision, a judicial decision, on it. There is a serious risk it would be lost and I can say this to Members, that it is unlikely we are going to find any legal authority on the point which we can cite as being relevant to the court because, as far as I am aware, nobody else contemplates that this is a sensible proposal. There is that serious risk that privilege would be lost and it is not saved by the rather airy statement - if the Chairman will forgive me for saying so - that we are all part of Government with a capital G. Traditional thinking is that there are 3 arms of government: the executive, the legislature and the judiciary. There is no doubt that the Ministers as corporation sole are the executive. There is no doubt that the legislature has put in place a system of scrutiny so that the Scrutiny Panels are, in effect, part of the legislature. It is no answer to this question of privilege to say that we are all part of Government with a capital G, in my view. I add that what is being proposed presently by the Chairmen's Committee is a departure from the way we have always done things in the past. This is not a question of Ministerial government under the Committee system. Advice given to Committees was treated as privileged so it is nothing new to expect advice given to Ministers to be treated as privileged. The Solicitor General and I are very anxious that our approach should not be seen in any sense at all as belittling the Scrutiny process, absolutely far from it. In our view, and I am talking now as a matter of structure, the Scrutiny Panels have a vital job to do in holding Ministers to account politically for what they do or what they do not do. That vital job is not the job of the Executive; it is not the executive arm of government, it is the holding to account of Ministers before the legislature. Scrutiny themselves cannot be part of the Executive; they cannot hold the Executive to account and be part of the Executive themselves. It seems to be to be worth emphasising that Ministers as corporation sole and Scrutiny Panels, like every private citizen, should be entitled to their own legal advice, their private and confidential legal advice, for all the reasons that I have given already. I would also like to emphasise to the Assembly that the Law Officers expect in nearly all cases to be able to advise Scrutiny Panels directly on the law if Panels want to have that assistance. We expect to have the same confidential relationship based on mutual trust with Panels as we expect to have with Ministers. We expect to have, and certainly hope to have, the confidence and trust of this Assembly in the advice that we are called upon to give in public. That trust should be rooted in the knowledge that we will be able to give the independent advice that our mode of appointment by the Crown guarantees. Our position will become impossible if, when advice is not followed as unfortunately is the case from time to time, the fact that the Minister is not following our advice becomes public. I ask Members rhetorically, what do they expect Ministers in those circumstances to do? Are they going to say: "We are awfully sorry, sorry we did not follow the Attorney's advice? Are we not naughty, we should have done better?" It does not seem very likely to me. Much more likely is that the Minister will robustly stand his or her own ground and set out all the reasons why they think the Attorney General's advice was nonsense or not to have been followed, or they have got a better idea. That is likely to lead very much to the politicisation of the Law Officer's advice. It is very rare, as Members will know, for the Law Officers to respond to public criticism by Members because it is unhelpful for the relationship in the future between Members and ourselves to do so. Nearly all Members respect that and accordingly, do not draw us into that position. If we have the position where that conflict between what we have advised and what the Minister has done becomes public it is inevitable, in my judgment, that one will get to the stage where Ministers are criticising the advice of the Law Officers and the Law Officers consequently having to consider either to let their

reputation go by the board or else to defend their advice in public. So, in the longer term, the Chairmen's Committee proposition is likely seriously to damage the relationship between Ministers and Law Officers and that is very bad for Ministers, very bad for the Island, very bad for the States. I would like to say something more about receiving information in confidence because the Chairmen's Committee seems to place a great deal of store by that. When I say this, I do not wish for a moment to imply or allege that the Chairmen's Committee have in any sense broken the confidences which they have received so far. I want to say this; let us suppose that the legal advice does, in fact, contain some form of smoking gun which can be used against a Minister and let us suppose that the Panel has received that in confidence. Does it respect the confidence? It has found out something which can be very useful politically but it is not allowed to use it. Is that sensible? Of course, it is not; it is absolute nonsense. The Panel ought to be able to use whatever information it can legitimately come by and for a Panel to receive information in confidence is something which, in my view, is to be handled very cautiously indeed because Panels need to be able to use the information they have properly to hold Ministers to account. It seems to me that the probability is that when there is some useful advice, useful in the political sense, that advice Panels get which they cannot use they are in the impossible position of either breaching the confidence, in which case *Q.E.D. (Quod Erat Demonstrandum*) it is as far as our concerns are concerned, or having relevant information that they cannot use. Indeed, it is far better that Panels should be able to ask for their own legal advice, and get the position quite clearly from the lawyers and it may well be the Law Officers as well, which they can then use politically. How does that resolve itself in this Chamber? They use the information they have got which they have received from the lawyers. They put the Minister on the spot and the Minister can hardly say: "That is not the law" because he will know what legal advice he has got. The smoking gun in that sense can be used but it is used respecting the confidentiality of the Law Officers. These are very, very difficult areas for all sides; very difficult areas indeed. I think that the Law Officers can show sufficient discretion and judgment to find their way through these difficult waters and I would ask Members to trust that judgment today and to vote against the Scrutiny Panel's proposition in favour of the Council of Ministers amendment. It is very rare that the Law Officers will ask Members to vote in a particular way but this is so important that I do not have any hesitation about doing so.

7.3.7 Deputy R.C. Duhamel:
In a paper to the Council of Ministers a request was made to check out other jurisdictions to see whether or not, as the Attorney General has intimated, there were any other places worldwide where legal advice was shared. The outcome of this paper which is dated 13th July 2006 was not as the Attorney General has just told us that the search did not find any places. It found 3 places and those places, out of the 9 that were looked at, were Australia, Tasmania and Guernsey. The report has been discussed by the Council of Ministers on more than one occasion and it is very clear that legal advice is shared by the legal advisers to both sides of the House, whether they be the Executive or the Scrutiny or the parliamentary.

The Attorney General:
Will the Deputy accept a point of information? That report from the Council of Ministers was referred to us for checking. It was found to be incorrect. It was prepared by a research student in the Council of Ministers Department, found to be incorrect and that is no longer the case. Indeed, if one looks at the report which I have filed you will see that there is a reference from Australia that makes it plain that it is not the case and I took that up with the Attorney General of Australia myself.

Deputy R.C. Duhamel:
Clearly this is a case for sharing the advice because it does say in black and white, and one wonders why we are paying civil servants to perform these functions if the advice they are uncovering has to be double-checked or triple-checked before we can believe it. Anyway, point taken. The paper is

there for people to read. There have already been cases as well during the shadow period where legal advice has been shared. I wish Members to remember or be advised of one of the cases under the Vibert Panel looking into Waste Management Strategy. The Panel requested legal advice on international conventions regarding the transportation of waste- and this was hazardous waste and not just general waste - across national boundaries and it received a detailed response from the Attorney General on 9th March 2005. The advice was asked for by the Panel and it was fully expected that it would only be given to the Panel but in fact the legal advice was copied to the Environment and Public Services Committee by the Attorney General on the basis that the Committee had already received legal advice from the Law Officers Department albeit less detailed. The Attorney General said that as this was a structural policy matter concerning international conventions there was no problem in sharing advice with both sides. He told the Panel, and I quote: "I think it is important that both sides are not caught unawares when you come to have the political arguments which undoubtedly you are going to have." We have it on record at least in one instance, there are a couple of others but I will not go into those, where the Attorney General has already acted in the way the Chairmen's Committee is suggesting he should act. It is probably useful to read out - and I apologise in advance because it is 3 pages - the letter that was sent to all States Members when this particular proposition for the Code of Practice for Scrutiny Panels was withdrawn in 2006. I will try and read it as quickly as I can. This was sent out on the basis of a Chairmen's Committee meeting that I convened in order to get agreement from all the participants that indeed pulling the previous report was the best way forward at that time. It is dated 2nd November 2006: "Dear colleague, you will be aware that the Chairmen's Committee has lodged the Code of Practice P.101/2006 relating to the functioning of the Scrutiny Panels and the Public Accounts Committee. The Code of Practice includes a section in respect of legal advice. This section has been criticised by the Attorney General in his comments on the proposition P.101/2006 presented on 1st September 2006 and the Council of Ministers have lodged an amendment seeking to replace the section in question." The proposals put forward are similar in that respect today: "The Chairmen's Committee considered that the comments set out by the Attorney General raised more fundamental issues about the whole operation of the new system of government and I therefore wrote to the Attorney General on behalf of the Committee seeking his advice on these matters. The Chairmen's Committee has received a lengthy reply from the Attorney General but I regret that I have not been able to obtain permission to release that advice to anyone outside the Committee now that the proposition is being withdrawn." There was argument at the time as to whether or not the advice that I had received to my Panel was able to be shared to all Members. I think a decision was taken by yourself that I could and subsequently the decision was reversed: "For reasons that are set out below, the Chairmen's Committee with the agreement of the Chief Minister and the Chairman of the P.P.C. has decided to withdraw P.101 in order to undertake further discussions with the Attorney General, the Council of Ministers and the Privileges and Procedures Committee. The Attorney General's comments on P.101 concentrate on the relationship between the Law Officers and Minister and make an implicit connection between Ministers and government. It is important to consider the way in which Ministerial government has been introduced in Jersey. There are major differences between the framework in which Jersey Ministers act and the framework provided in most other democratic parliaments. Most democratic parliaments are based on political parties with the governments being formed from members of the party or parties in a coalition situation gaining the most seats in parliament. The political party forming the government has the power to choose the Prime Minister and other Ministers and the power to remove or move these Ministers to other positions from time to time. Ministers from the government party will put forward legislation and budgets in the knowledge that they hold a majority of votes in the parliament and they are thus able to control public spending and the introduction of new laws. The Ministers in Jersey with no party system must operate in a very different way. Ministers are elected by the States Assembly and can only be removed by the States Assembly. Legislation, the Strategic Plan, the Annual Business Plan and the Annual Budget must all be approved by the States Assembly and the Council of Ministers does not work with a built-in

parliamentary majority. Ministers and Assistant Ministers by definition, therefore, form a minority of Members in the States Assembly and thus are not in automatic control of any of these processes. While it is clear that the Ministers hold an executive function in the current Jersey system, the Chairmen's Committee in common, I believe, with the majority of States Members does not consider that they form the government within the usual meaning of that term and as the legal interpretation of the current position appears to be that they do, the Chairmen's Committee believes that the legislation must be amended. The Attorney General refers in his comments on P.101/2006 in paragraph 3 to the need for the Executive to have access to confidential legal advice. In paragraphs 11 and 23 he quotes examples to explain that legal advice is not disclosed outside Government. This blurring of the distinction between Executive and Government seems to lie at the heart of the current problem. With regard to the disclosure of legal advice to Scrutiny Panels there are 2 quite separate situations to consider. Situation one: if the Minister is acting in an executive role, making decisions within the framework laid down by the States Assembly legislation, strategic direction, business plan, budget, then the Minister is wholly responsible for his or her decision. In that case it is clear that the lawyer/client relationship described at length by the Attorney General is appropriate. If the Minister in this situation relies on legal advice and takes a decision which is subsequently challenged or leads to a vote of no confidence in the Minister, then the Minister must take responsibility for the legal advice and possibly lose his or her job as a consequence. In this situation some would argue the Minister should be allowed to claim legal privilege. Situation 2: the Minister will also act in areas which require the approval of the States Assembly. In this case the Minister will be putting forward the proposal to all States Members. The Minister, and indeed the Council of Ministers, cannot control that decision as they are in the minority within the Assembly and the Assembly is responsible for those decisions. In this case, the Minister may well seek legal advice but the lawyer/client relationship is not well defined. The Attorney General is a member of the States Assembly and although his functions are not set out in the States of Jersey Law 2005 one must assume that a major element of this role is to provide advice to the States Assembly in respect of those decisions reserved to the States Assembly. Having set up the Council of Ministers and Scrutiny Panels, again one must assume that the States Members expect Scrutiny Panels to be able to scrutinise proposals on behalf of all States Members so that when the matters are put before the States, States Members are able to listen to the arguments put forward by the Minister and hear the results of the Scrutiny Panel's investigation. If legal advice has been taken during the drawing-up of the proposal this should be available to the Scrutiny Panel to enable it to report to all States Members as they are responsible for taking the decision and they are responsible for the ramifications of the decision. In this situation, the Minister should normally share on a confidential basis legal advice within the appropriate Scrutiny Panel. Under the Council of Ministers' amendment advice given to a Minister for the development of a new law or majority policy for approval by the States would not be made available to any other States Member. This raises an interesting side issue. If the concept of the Minister as corporation sole requires that the legal advice cannot be shared then the Minister cannot share such advice with an Assistant Minister and nor with the Council of Ministers. Policy: although the States of Jersey Law 2005 and the Public Finances (Jersey) Law 2005 set out specific documents and actions which require the approval of the States Assembly, both are silent as to the role of the States Assembly with respect to policy decisions. That the States should retain control over major policy is a recurrent theme in statements from both the former Policy and Resources Committee and the Chief Minister. P.122/2001 which was the initial proposition relating to the introduction of the new system of government states that: "The States Assembly continues to ... approve general policies as previously and would continue to take the major executive decisions that do not fall within policies which have been approved by the States." Much more recently, the Chief Minister stated any new legislation and major policy proposals will still have to be referred to the States Assembly for a decision. There are various ways in which the States of Jersey Law 2005 could be amended to provide a proper mechanism which would ensure that major policy proposals were approved by the States and the Chairmen's Committee would like to initiate discussions with the Privileges and

Procedures Committee and the Council of Ministers to agree an appropriate way forward. The simple solution might be to abandon the concept of Ministers as corporations sole and return executive power to the States Assembly. The Assembly would then delegate all executive decision making and all policy making, except that specifically identified, to the Ministers, as happened under the old Committee system. Policy making to be retained by the States Assembly could be identified in terms of the size of the project, resources, impact, *et cetera*, or by identifying specific projects within the Strategic Plan or the Annual Business Plan, as it is suggested we do now. In respect of powers delegated to a Minister, in the event of a legal challenge presumably the Minister could be sued in the same way that a Committee used to be sued under the previous system. Alternatively, a provision could be added to either the States of Jersey Law 2005 or the Public Finances (Jersey) Law 2005 to allow States Members to identify proposals within the Annual Business Plan which would need to be approved by the States Assembly before they could be affected." We do have difficulty in Scrutiny with the Annual Business Plan because we do not appear to be doing this: "Given that the States Assembly already has the power to direct Ministers through amendments to the Strategic Plan and the Annual Business Plan, there would seem to be no qualitative difference if this additional control was exercised over the Ministers. Having implemented either of these 2 suggestions it will be straightforward to identify the Minister's role in respect of any particular policy relevant. Policies to be implemented by the Minister without reference to the States will be covered by the first situation set out above and those referred back to the States will be covered by the second situation. Conclusions: the discussion surrounding the suitability of the Code of Practice have lead to a much broader discussion on the division of responsibilities between Ministers and the States Assembly. Given that Ministerial government is still in its infancy it is almost inevitable that adjustments will be needed during the first few years in either the legal framework and/or in its actual operation. The suggestions in the previous section indicate some of the possible ways to amend the current statutory framework. The reluctance of the Policy and Resources Committee and the Privileges and Procedures Committee to address the issue of policy making within the States of Jersey Law 2005 can be understood. However, it is important that this issue is well understood and a proper legal framework put in place as soon as possible to ensure that the government in its wider sense maintains its high reputation. The suggestion that Ministers are accountable to the States Assembly only via the mechanism of votes of no confidence is not satisfactory. In view of the current uncertainty that exists about the exact nature of the system of government put in place last December, the Chairmen's Committee considers that any debate on P.101/2006 and the amendment would be very difficult and likely to lead to real confusion if it went ahead. The Committee has therefore decided to withdraw the original Code of Practice and will seek to agree with the Council of Ministers and the Attorney General a revised Code which will incorporate legal privilege for Ministers acting on their own authority, executive and minor policy decisions subject to challenge from Scrutiny in exceptional cases, and sharing of legal advice between the Minister and the Scrutiny Panel on a confidential basis when the Minister is preparing a proposal for the approval by the States Assembly of major policy decisions and legislation subject to withholding by the Minister in exceptional cases. However, in order to implement the code of practice it will be necessary for the States to agree a mechanism by which major policy decisions are identified as requiring States approval. This will almost certainly require amendment to the States of Jersey Law 2005 and the Chairmen's Committee intends to discuss how this could be done with the Council of Ministers and the Privileges and Procedures Committee to ensure that the statutory framework for the new system of government matches the expectations of the majority of Members." That letter was written in November 2006. Work then stopped for a while. Some discussions took place with the Attorney General's office and the Council of Ministers, but in essence it would appear from some of the comments that are made today those persons who have already spoken are missing the point. It is probably wise at this point that I just re-read, or ask Members to turn to page 19 and 20 of the report and proposition P.198, and in particular to put a couple of the remarks made about the absolute requirement for legal advice into its proper context. 9.30 states that: "The Panel's interest in the legal position." It is not

a general one, across the board: "We want to know everything. We do not have to know everything there is to know on legal aspects across the whole of the department." Where the Panel's interest: "Is focused on the way it has helped in the formulation of the decisions taken and the policies developed by the Executive." So it is legal advice for policy making and we have admissions from the Attorney General and the Council of Ministers that the States of Jersey Law is particularly ambiguous in its interpretation in this respect. We did not hit the right clauses when we all agreed to bring in the revisions to that particular Law. We did not discuss it in detail enough and there are amendments that need to be sought in order to top and tail it and to put into a form so that everybody in this House knows where they stand in relation to their particular function in carrying out the government of the Island. It is quite clear that 9.30 tells us that we are not interested in every legal position but primarily interested in decisions that are surrounding policy making. It goes on, under 9.31(1) to say: "The Law Officers will provide legal advice to both the Executive and Scrutiny. When a Minister presents a policy proposal it will specify whether legal advice has been received, and if so, contain a statement of the legal position. The legal advice itself will remain confidential." So, again, it is quite clear. We are not talking about cases as Deputy de Faye was suggesting, where one side of the House is fighting the other side or whether or not the House in general is being taken to court by some other third party. We are talking about legal advice that we need in order to assess whether or not particular policy proposals that are being brought forward to this House are reasonable or not. I think that it is entirely reasonable to expect the legal positions to be explained; we would not want anything else. It goes on under 9.31(2): "When a policy is under consideration by a Scrutiny Panel, the Panel may decide to scrutinise the legal position." Are we talking about whether or not Deputy de Faye is being taken to court by a particular Member of the House? No, not at all, we are talking about policies. It goes on and I think it is quite clear. I did have a hand in the drawing-up of the words within this report and I have maintained from day one that our prime objective is to scrutinise policy. You can only scrutinise policy if you have full information. It is something that we need to do and we need to have access to information. It is very, very clear. I am a little bit disappointed, but I will not dwell on it too much, with the Attorney General's point of view. I can quite understand as a defence lawyer he has to protect whoever he is defending and probably, in the way we have drawn-up the States of Jersey Law, it certainly looks as if there is a case to suggest that the Ministers come higher up the pecking order than the rest of us. Whether or not that is acceptable, I personally think it is not. Do I think it should be discussed and amended and put right if indeed the general assessment after discussion is that it needs changing? Yes, I think it is something we should be looking at. This House should not be divided in how it discharges the governmental functions. To argue that legal advice can only be available for one side of the House will only seek to widen the gulf between the haves and the have-nots, those who are Ministers and those who are not. There is a whole grey area with the Assistant Ministers as well because we read the States of Jersey Law and the Standing Orders and everything else. Their particular role is almost as blurred as the role of all non-ministerial Members in this House. It is not acceptable. I am asking Members not to be swayed by the remarks from the Minister for Treasury and Resources who says that if faced with an expert we must necessarily agree with that expert. Advice is advice is advice, and I have stated from day one that advice goes from being something which is a statement of the obvious - something which you are certain as to the correctness - to something to which you are completely uncertain. There is a whole spectrum of legal advice and it is fundamentally flawed to make the argument that any coming from an expert is always going to be of the sort that it is the gospel word, and true, and the only way of looking at things. It is not and we should be balanced in that respect. I think I have probably said enough but before I get too much stamping of feet, I just want to finish off. For me it is a very clear message. We all want to be working together to discharge the very best that we can for government in order to do the job of Scrutiny properly and we take the job for those who are on Scrutiny benches very seriously. We will have to make requests from time to time for the legal advice that lies behind the particular policy directions that the Minister would wish to take this Island in. In asking for that I think it is entirely reasonable and I hope that the majority of Members, if you consider those points,

will be in full accord and we can usefully vote out the minor amendments that have been put forward in the wrong fashion. I hope Members will vote against the amendments and for common sense.

7.3.8 Deputy P.V.F. Le Claire:

You will recall, Sir, when I came to your office and spoke to you about when I thought the States privileges had been impugned and I sat with you and laid out in front of you 6 pieces of paper and the letter from the Chief Executive Officer of the States in relation to the law advice that was circulated in relation to my work permit proposition and the differences in the 4 pieces of paper that I laid in front of you, compared with the 2 pieces that I laid in front of you that I was given some weeks before. We were in a position where I had been elected on a strong call for work permits. I tried to bring for debate a call for work permits on a general policy. My request for the debate had been put off because the President of the Policy and Resources Committee had argued that all States Members needed to see the Law Officers advice prior to entering into the debate that had been long planned and subsequently managed to argue away the fact that we should debate my proposition that had been sitting on the blocks for about a year at the time. Within an hour those comments from the Law Officers had been circulated to all States Members. In fact, I think it was the first set, probably the only set, of Law Officers advice that I have ever seen. They were drawn up by one of the legal team within the Attorney General's offices - one of the Law Officers - and parts of that information which I had been circulated some weeks before by the Chief Executive Officer of the Policy and Resources Committee were in my possession. More importantly, it was a topic of great interest to the Island at the time - population pressures - and we have had those ever since. It was quite disappointing to receive a telephone call from my mother at the time because I was in France with the Lourdes Pilgrimage Group to hear that the *Jersey Evening Post* had covered across the whole of its entire front page that work permits were against human rights. I remember receiving some racist telephone calls and accusations of being a racist for those headlines and felt rather peeved, to tell you the truth. I came to see you, Sir, and I sat down with you in your chamber and I put in front of us the 6 pieces of paper as they related to the 2 pieces of paper from the Chief Executive Officer and the 4 pieces of paper as they related to the Law Officers advice and underneath that I placed my 3 pieces of paper which was the letter from the Chief Executive Officer and my 2 pieces of paper which was all that I had been given from the Law Officers advice. Interestingly, as I pointed out to you, if you may recall, not only had the page numbers been removed but the opening statements and the closing remarks which stated quite categorically that in principle work permits were not against human rights, those were absent and had been removed. Now, I said at the time that I thought the privilege of the States had been impugned by this and you pointed out quite rightly that I had had the opportunity and had not seized upon it, being a new Member, of requesting a copy of that Law Officers advice from the President of the Committee at that time. I conceded, not having known the system as well as I do now, that I had made an error in not asking for that. Whether or not it would have been provided for me at the time or not, the issue was that I had not asked for that advice. I had brought this up recently with the Attorney General and he quite rightly said, and quite encouragingly: "Yes, I remember this and I would not, in my opinion, have let my advice be misconstrued in the way it was, in that manner." I am certain that the Attorney General of the day that gave the advice would not have either let that occur, but the fact is that the Attorney General cannot be in the Chamber all of the time. As has been evidenced by me to this Assembly on this issue before and again today, there has been occasion where a policy was going forwards for population measures to be introduced or controlled that was rebuffed by the Executive on the present taking of Law Officers advice that had been tailored to suit their argument. The overall point, conclusion and page numbers to those conclusions had been completely removed. I thought that was reprehensible, as I am sure other Members do, yet the advice I remember receiving was: "That is politics and that is the business we are in." I would say today that this decision comes down to politics. Are we going to ask to see the legal advice when we concern ourselves with the policy-making and decide today to receive that advice? Whether it

is timid advice or whether it not be timid advice, it will at least be the advice not with the page numbers removed, not with the conclusions removed, and not with the overall reverse emphasis that was used in my situation and the truth put before us. I would be far happier with timid advice that was numbered correctly and full, than misrepresented advice that was cut, tailored and removed and presented in an inaccurate way, and distributed to the media for consumption by the public. So we get to this decision, Sir; today we either decide to continue this States of Jersey thing where we are all part of the budget, where we are all part of the policy making, where we are all part of the strategies and the vision statements and the corporate move forwards, or we do not have the advice and we entrench because if the advice is not available to Scrutiny then in the future Scrutiny's role, and I would suggest the States of Jersey's role, should only be seriously in scrutinising legislation, asking questions and requesting action from the Executive in support of initiatives that we ourselves in our electorate want. If the States Assembly decide politically today not to have the sharing of legal advice then let us set aside the charade. Let us set it aside, do not ask me to come to anymore briefings, do not ask me to be more involved with the statements and the mission policies and the budgets, and everything else, because it will not wash. This critical friend will become an independent isolated individual that may or may not seek executive office but this individual will certainly not continue to try to be the States of Jersey because without access to that advice we are not the States of Jersey. We need the advice, whether it is timid or not. If any Member doubts what I am saying I would gladly show them the information, the page numbers removed, and the conclusions and everything else. It is only one example, but it is one example.

7.3.9 Deputy J.A. Martin:
I will be brief because I think a lot of what I wanted to say has already been covered. I will just like to comment… I respect the Attorney General's comments, and I know he has never changed his mind going back 2, 3, even 4 years, but I am surprised at, say, maybe the way the argument was put from the Attorney General today. I understand the Attorney General to be the legal adviser to the States Assembly and the Ministers and the Government, and "all". I found his argument, and being a total layman, Sir, as a lawyer and a client. I was particularly worried about the comments that he would expect or we would expect - and he was talking, Sir, about Ministers because that is where he would like the legal advice be kept - you would want the Minister or the department to feel open to tell their lawyer anything, even if it was something they were ashamed of. It quite surprised me, Sir, because I might have political disagreements with some of our Ministers, I would hope that there would be many - or most - there would not be anything they were ashamed of. I was also quite surprised when the Attorney General said it could be the case where the legal advice sought by the Attorney General was not followed by the Minister or the Ministry and department. I find this very surprising knowing who we are in this House and, as has been stated by Senator Le Sueur, only our legal advisers have legal qualifications, we should - those in Scrutiny or the Ministry - take advice from the Law Officers. The Attorney General even went as far as to say if put in a position where he could not get all the arguments he would only be able to give - and I quote the words - "safe legal advice." Well, I thought that was what we were all getting from the Attorney General. I really cannot understand the great division, and if you do study the proposition put by the Chairmen's Committee and the amendments by the Council of Ministers they are so far apart that this has taken 2 and a half years to go nowhere because there is no movement I would say on either side. But I do not have the problem that the advice is going to end up all the time in court. When was a Committee taken to court? Very rarely, if ever. But as Deputy Duhamel has said, it is on policy ... sorry, Sir, I think Senator Ozouf wants me to give way.

Senator P.F.C. Ozouf:
Genuinely, to Deputy Martin, I say that having discharged the responsibility of the Planning and Environment presidency and Economic Development in terms of industry, there are many issues which are challenged or nearly challenged in court. She must be aware of that.

Deputy J.A. Martin:
This is getting into the Planning Law and I think most of the Planning Law is there for people to know and then people can go to a lawyer and challenge the Planning Law in court, and that has been always the way. I am talking about policy making and legal advice given at the time of the policy. I think that the Attorney General or the lawyers should be there to give the Minister and Scrutiny safe legal advice, and that is why I think, Sir, that the Chairmen's Committee and Code of Conduct does that. The other - in 5 - lets any Minister hide behind a decision either with legal advice or without legal advice. I know it is not the Attorney General's fault he has been put in this position today but if there are smoking guns to be found, if there are issues so fundamentally wrong with a policy we will not need the legal advice to work it out. It will come to light anyway. If in defending, if it went so far as a vote of no confidence and a Minister did stand up and say: "Well, I was told it would be better to do it this way or that way by the legal advisers and I went straight down the middle or I ignored it totally" I do not think the vote of no confidence would carry on for much longer, because we do not want Ministers who do that. We want Ministers who listen to good, sound, safe legal advice and Scrutiny Panels will only want that same advice, we have never gone any further, and that is what the Chairmen's Committee proposal does so I please ask everybody not to believe that we are trying to uncover everything or anything. Please vote against these amendments because other than that the Code of Practice for Scrutiny really is not going to work.

7.3.10 Deputy G.P. Southern:
We are into the meat of this debate now and I must admit I am thoroughly enjoying it. I asked earlier that the A.G. speak nice and early because I did not want to get too many layman's views on what the advice meant. Also, because I do so enjoy hearing the A.G. speak on this particular topic. He produces a wonderful argument. Each time I hear it, it impresses me. But it is a political argument. It is a well-structured, well-presented but one-sided argument. Specifically he made reference to the U.K. Government paper *Governing Well* and he said: "In addition you will find no sign of this rule [the rule brought forward by Scrutiny] in that document and, in fact, you will not find any other jurisdiction in the world where you will find a rule like this." That, by itself, sounds particularly striking. But a little bit of consideration soon puts that into perspective. Why do we not find this rule anywhere else? Because no one in the entire world tries to govern the way we do, where we have put a Ministerial system on top of a non-party political system where we have got 53 Members, all of whom are individuals bar 3, of 3 different types. No wonder you do not find this anywhere else because nobody else, I think, if they were starting from scratch would want to govern like this. We have a very, as it were, peculiar system in both senses of the word. No wonder it is not there. He then went on to suggest that this position that he maintained on legal privilege is… and here perhaps we get into nuances of legal argument, certainly it is not something I have consulted other legal experts on in any formal way, but informally when I have spoken to lawyers about the position that the A.G. takes they seem to take the position that while they can see his point he is holding out a very extreme position of legal privilege, and in the words of the A.G. himself he has presented one side of the argument and, as he said, there are arguments on the other side. Indeed, we have been on the receiving end of a piece of legal opinion. It may be right, it may be wrong. It is not - as Deputy Duhamel said earlier - gospel. No lawyer's opinion is fact until it has been put through the court and tested. Deputy Duhamel said very clearly, and spoke very clearly, on the multiplicity of issues before us. It is not the purest viewpoint that Ministers are always and uniquely corporation sole, but that in many occasions those Ministers, because of our system, have to come back to this House and this House has to make decisions based on the evidence and the facts at its disposal, one of which must be the legal position on any decision, and that the question of who is government does, in fact, still reside with this Chamber on many, many issues of policy and strategy, the big issues, which is what concerns us. The A.G. went on to say that what we have produced on Scrutiny is not a sensible proposal, and that is his opinion. One

must, again, have a look at the alternative. It may well be true that this is not a sensible option but the alternative is, I believe, far far worse and not sensible either. Perhaps I can just illustrate why it is not. For example, in his speech the A.G. talked about a system that is best for Ministers, best for Scrutiny Panels, best for the States Assembly and thereby best for the people of Jersey. That is a wide-ranging political statement if ever I heard one; we all claim that. We are acting in the best interests of the people. Just look at that for a moment. Best for the Ministers, best for the Panels, and best for the whole Assembly. One has to ask why is that so; because the A.G., according to the A.G., is the legal adviser to all 3 of those aspects of government. When he says: "I cannot possibly reveal what legal advice I have given to a Minister, to Scrutiny, or to the Assembly" then what is he saying? He said: "I cannot do that because of 2 reasons: it might inhibit Ministers from asking for legal advice and if it did not it might inhibit me and my officers from giving that advice." One has to ask why. I wrote it down straight away "why" and an arrow, then I got the explanation. Because the Minister has to treat his lawyer as if he is some form of priest confessor between him and his God and has to speak about all the facts that he has, even if they might support an argument against the decision he wants to make. Just think about the other side of that coin. What about when he comes to Scrutiny? That is okay. He can hide as much as he likes and dissemble and try not to skate, and that is okay. But not between him and his lawyer, but certainly that is perfectly permissible when it comes to Scrutiny because - and there was much use of the word "political" - we are holding him to political account. Too right we are. We are holding a Minister to account, and the Minister's decisions and the Minister's policies, that is our job to hold that Minister to account. To suggest that in doing so, by having access to the legal advice we are somehow testing the legal advice as layman is not the case. It is the case that a Minister will seek advice. He will seek expert advice from those around him. He will go to his officers and say, perhaps, and I wish it did happen: "Give me 3 options by which I can deliver this and give me some pros and cons on each of them." Then he might take the one that comes to the top of the list and say take it to an expert and say: "Right, if I do this tell me about it in terms of cost, in terms of effectiveness because this looks like a good thing to do." If at the end of that decision the adviser, the expert, comes along and says - sharp intake of breath: "Would not do it that way, you have ignored these disadvantages, blah blah blah" and the Minister then goes ahead and does it anyway, well, by God do I want to hold that Minister to account. I want to know why he has come to that decision. I need to know what the advice in the background paper, in the Part B minutes about what the discussion was and what the advice was, otherwise I cannot hold that Minister to account. It seems to me that legal advice is, and should be, treated on exactly the same basis. The A.G. maintains the position that he is the legal adviser to all of the parties of the State. Let us examine what that means. It means that I, in Scrutiny, can go to the A.G. and talk to him about a situation, a policy, a decision and say: "Can you give me some legal advice on this particular issue or this particular decision?" The A.G. says: "Of course I will give you that advice, ask me the question and I will give you the advice." I have done this as part of 2 scrutiny investigations so far. In one case I asked a question and got legal advice on the situation. I then thought about a more specific scenario in this particular case - and here we are talking not about is this against the law or is it not, we are talking about a legal opinion in terms of proportionality. It may be the way my mind works but often I come across; how does this fit with human rights? Right to possession, right to ... whatever. There the issue is, is the Government's restriction of your right proportionate or not in particular circumstances? That is a legitimate call. One lawyer will say: "Yes, probably", another might say: "Ooh, it is a bit near the line, it does constitute a restriction", some judges might look at that and say: "It is a disproportionate restriction." Perhaps the line is around that mark. But if I ask the right question with the right particular circumstances around it, i.e. if I am asking the question that a Minister has already asked and received advice the result is the A.G. will not tell me, not give me any advice. That is the case. I am in a position now where, as Scrutiny, I am investigating a Minister, his actions, his policies, his decisions, and I am interested in the legal situation so I ask some questions and I get answers. What is the function of those answers? Only to tell me that I am asking the wrong question because the Minister asked the right questions in discussion with his

adviser, who is the same adviser, and has got the answers. When I hit on the right question to ask, which is similar enough to what the Minister asked and received advice then my adviser, the A.G., will tell me that he cannot advise me, and perhaps tell me to go away and seek advice from the private sector, and I have done that twice. I do not have a problem with that. I am quite happy to go and spend ... it is expensive, but if I want to know the answer and I think it is part of holding my Minister to account and examining the way in which a decision has been made then I will do it, and it costs around, often, £4,000 a pop. But I have to do that because I cannot get the advice from our legal adviser, and the absurdity of the position we are about to adopt if we do not adopt this amendment was demonstrated absolutely impeccably by Deputy de Faye, as Minister for Transport and Technical Services. One might have supposed that the Constable of St. Helier acting on behalf of his ratepayers was making an inquiry and making a challenge; perhaps he might have sought the Parish legal advice rather than the A.G.'s advice and perhaps then the problem would not have occurred. Nonetheless the absurdity of where we are is advice sought from one Minister cannot then be transmitted to another Minister, so not only are we talking about Ministers and Scrutiny and Executive and Scrutiny, and individual Members, all reliant on the same source, the fountain of all knowledge in terms of legal terms, we are talking about Minister and Minister cannot access that same source.

Deputy G.W.J. de Faye:
I do think I need to point out to the Deputy that under the circumstances where 2 departments are likely to end up in the Royal Court it would be an entirely improper approach if we were exchanging advice prior to legal hearings. It is just unheard of.

Deputy G.P. Southern:
Absolutely. But nonetheless you make the point that the solution is to go outside and to take advice outside. Now I am quite happy to do that but, as I say, it is an expensive process. If we do not accept these amendments, which will mean perhaps that advice is more bland, is safer, but given if we do not accept this amendment then we put ourselves in the absolute absurd position of we have one adviser for all Members in this House who from time to time, and we know it will happen, will not be able to give his advice and will say: "Go outside." In which case we should simply go outside. But to pretend that what is proposed is a sensible way forward is not true. I finish with one quote, and I paraphrase the A.G. in conversations perhaps 2 years ago, and I hope he will not get up and interrupt me because I think I paraphrase him fairly accurately, he said: "But if I tell you the legal advice I have given to the Minister you will know the way in which he is thinking" and at which point I said: "Yes, and would that not be a good thing for Scrutiny."

7.3.11 Senator S. Syvret:
This particular amendment dealing with the access by Scrutiny Panels to legal advice as tabled by the Council of Ministers is one of the most extraordinary propositions I have seen in all my time in the States. I think Members really need to think objectively about what is being argued here and what is being said. If Members of this Assembly believe - as I am sure most of them do, if not all of them - in the concept of accountability, of people being accountable for their actions, then I cannot see how this amendment can even be entertained because until such time as the Scrutiny Panels are able confidentially to scrutinise legal advice and the resultant decisions made by Ministers then they are not in a position to gauge whether the Minister has acted competently and appropriately. Neither are they in a position to judge or assess whether the legal advice has been good or bad. So without the access to legal advice by the Scrutiny Panels then there is simply no way that the system, the Executive, can properly be held to account in a number of important ways. It is as simple as that. As Members believe in accountability the Scrutiny Panels have to have access to the legal advice. I will just work my way through the amendment just briefly; 9.27(i) it says: "The States Assembly is not a proper forum for argument about which 2 sets of competing legal advice is correct." I mean, that assertion is, I am afraid, demonstratively wrong and arguably

so, as I will move on to later. (ii) says: "There will be a potentially significant cost to the public purse if Scrutiny Panels engage external lawyers on a regular basis." Well, maybe, maybe not, but if it does; so what? I am sure we could all cite certain examples of the performance of the public sector over the years where legal advice or the absence of legal advice may well have ended up costing the taxpayer a significant amount of money. So maybe a bit of money spent on some effective peer review, some independent alternative view, a second opinion as it were, may well be money well spent. The next paragraph really contains some truly extraordinary statements which members of the public may not be aware of, but I think it is worth spelling out. It says in the next paragraph: "The advice is given on a consistent basis and does not by any inconsistency cause embarrassment to States Members." Since when did embarrassment to States Members matter? When was that a realistic consideration of public policy? If we are all profoundly embarrassed several times in our term of office by getting things wrong and acting on the wrong legal advice, making mistakes, well, so what? It is not the job of this apparatus or this Assembly and of those who advise us to protect us from embarrassment. We make mistakes, we get embarrassed by it, the public holds us to account in the ballot box. It is quite extraordinary that there should be some assertion that it is important to protect States Members from embarrassment. The general argument goes on to say that generally it could result in problems for the States legally if legal information were to be risked being made public or if the confidentiality of the legal advice, the legal privilege, could be challenged. I am rather curious about this argument too, because in my view I am not bothered about the States simply defending their position. I attach greater importance to the rule of law. If a Minister or this Assembly or the Council of Ministers are legally wrong, and the analysis by a Scrutiny Panel demonstrate it to be so, well that is good, as far as I am concerned because the rule of law trumps all. If the State or an arm of the State is breaking the law, acting incorrectly, *ultra vires* in some way, then it is good that that be exposed. The notion that we should be worried about protecting the States from legal vulnerability, legal consequences, is truly quite extraordinary. It would effectively be a denial of justice for many people. I am not in this Chamber to protect the States of Jersey. I am here as a representative of the public out there. That means rigour, it means scrutiny, it means making sure that the public have access to justice and if the States are wrong legally, well, tough. That should be exposed. It is quite plain to me that we cannot remotely go down the path of denying Scrutiny Panels access to legal advice. If that were to be the case then huge ranges of political decisions made by Ministers, executive decisions, would not be open to effect of scrutiny because very often Ministerial decisions, particularly important ones, possibly contentious ones, will often hinge on the legal advice that was given. If the Scrutiny Panels cannot scrutinise that legal advice then they cannot scrutinise the efficacy and the competence and the correctness of the decision. It is perfectly simple. Moving on through the amendment, 9.29(i) refers to the public interest. I am always fascinated by this phrase "the public interest". I would like a very clear cut established written definition of what is not in the public interest. If I am aware decisions have not been made, indeed by Law Officers in some cases, about certain courses of action in their opinion not being in the public interest then I would most profoundly disagree with. I think it is very, very dangerous to base our decision on that kind of catchall, ill-defined blanket definition which can be cited without consequence at any moment. Moving on, the amendment says that it is to ensure there is no inhibition on the part of Law Officers or lawyers in giving full and frank advice. This is really, when you think about it, a truly quite extraordinary statement. Why on earth should any competent lawyer, should our Law Officers have any problem with telling their clients, the Ministers, the truth; their professional objective legal opinion? The notion that they be inhibited from giving full and accurate advice is, I think, something that is profoundly worrying. It illustrates, does it not, a clear cut political consideration on the part of the Law Officers. If they were simply being absolutely objective lawyers dealing with the law, and that is the advice they would give and whether it is good or bad for the Minister in question, or the States as a whole, that is just tough. It is just tough. The law is the law. What could inhibit the Law Officers in giving proper legal advice, objective legal advice? Why should they be inhibited? It is not their job to politically defend the States of Jersey. It goes on to say in paragraph 4 where

they want to withhold the legal advice or released under certain circumstances where there would be no adverse impact on actual or possible legal proceedings in court. Again, this is quite an extraordinary statement. We are not a private client employing a private lawyer. We are the Island's parliament, its public authority. If what we, or any of our executive members have done is wrong, illegal, *ultra vires*, whatever phrase you want to use, then that is just tough. That should be made known. If that is not the case then we, as an edifice of public administration, are running the profound risk of denying justice maybe to ordinary people out there, individual plaintiffs, people who have been wronged in some way. You might take the view that, well, if you are a legal adviser advising a private client that is the kind of advice you would give, but I do not think the situation is analogous, here we are dealing with Crown Officers advising the Government and I think a rather different set of standards must apply. Again, it gets more curious working through the amendment in that private legal advice given to the Panels, sourced by the Scrutiny Panels, should be shared so as: "Where Scrutiny Panel takes legal advice from the private sector it is desirable that it should consider disclosing that advice to the Law Officers in order that any potential disagreement about what the law is going to be identified," *et cetera*, and it goes on to say, quite extraordinarily again, this is quite mind boggling: "the Law Officers so as to minimise any difficulties for States Members as a result." Sorry? Why on earth should we be rigging our decision-making process, obscuring key factors from it, merely to avoid difficulties for States Members? It is utterly astonishing. If the truth, if what is legal, if what is the fact, causes us difficulties that is just tough. I do not see how anyone who believes in the rule of law could remotely contemplate considering supporting this amendment. To conclude, the States is a legitimate forum for sometimes dealing with legal arguments. It is because there is no clear easily distinguishable boundary between the legal realm and the executive or the legislative realm. There is a substantial degree of overlap. Were that not the case the Attorney General and the Solicitor General would not now be sat in this Chamber offering comment and advice. There is clearly a serious overlap. So occasionally arguments about the law will and should be debated in this Assembly because ultimately it is the law that is, in large measure, responsible for how our society is and how people are able to enjoy or not living in our society. As I said earlier, what if any potential plaintiffs are right? We are worrying terribly about facing some kind of claim that legal professional privilege has been breached by the sharing of the Scrutiny Panels therefore it might have to be disclosed to third parties conceivably. Well, if those third parties happen to be right, if their cause happens to be just, so be it. Another important factor concerning why this amendment should be rejected is the fact that the Law Officers, like all other senior players in the realm of public administration, be they Ministers, Assistant Ministers, Chief Officers, senior civil servants, any of us, all of us need to be held to account in our performance. It is entirely right that our work, our opinions, our views should be subject to effectively a kind of peer review. Second opinions to see whether we have got things right. I cannot remotely see, given how often important public policy decisions hinge upon legal advice. I cannot remotely see why the people giving that advice - Law Officers - should somehow uniquely among the entire panoply of public administration be protected from and armour plated against peer review, professional scrutiny. To conclude, as I said at the beginning of this speech, we have to have accountability in all aspects of our public administration. If the Scrutiny Panels cannot access the legal advice given to Ministers then they cannot hold those Ministers properly to account. It is as simple as that. If you believe in accountability and transparency you have no choice other than to reject to this amendment.

7.3.12 Senator P.F.C. Ozouf:

I do not have a legal qualification. I do not have a monopoly of the truth or what is right. But I do think I know when to take advice. We have heard a lot of arguments this afternoon. We have heard contributions from Ministers, from other members of the Executive, from some Assistant Ministers, we have heard from Scrutiny Panel chairmen, we have heard from our legal advisers and we have heard from some Members who think they are legal advisers who certainly would like to indicate, I think, that they may have considerable legal experience and legal qualification. I think it

is only our legal advisers that have contributed with the proper professional qualifications. There is I think one single central issue. This Assembly approved a move to Ministerial government. What followed, as we have heard, was for the first time a separation of powers from this legislature to a form of separation of an executive form of government. Members of the Scrutiny Panels and members of the Economic Affairs Scrutiny Panels are very important people, but they are not members of the Economic Development Committee. They are separate. The Minister is the Executive and Scrutiny is the Scrutiny. The Minister, he or she, has in the new States of Jersey Law been invested with very considerable powers. The counterweight to that was the setting-up of a system of scrutiny, of well-resourced Scrutiny, and I do not think there is anybody in this Assembly that would argue, certainly looking at the budget allocations at Scrutiny, is not well-resourced. For my part I think this separation is better. I think it is more sensible, it is more accountable. It is more effective, and it is more efficient. It seems to me that in the remarks that Deputy Duhamel made he was arguing against the Council of Ministers' proposal. He really was, I think, wanting to turn the clock back. I think what Deputy Duhamel wants…

Deputy R.C. Duhamel:
On a point of order, I did read out 2 alternative courses of action and I am quite happy to send the Minister the copy of the letter so he can read it again for himself.

Senator P.F.C. Ozouf:
Certainly I took from Deputy Duhamel's speech, Sir, that I thought that he was arguing in favour of arguing against the amendment of the Council of Ministers because he wanted to turn the clock back. I think he does want to turn the clock back. That is certainly what I take from his remarks. Like, I think, all Ministers and all Members who have in them vested executive responsibility, I take my responsibilities extremely seriously. We have heard, and I have heard many times the arguments of the Law Officers, and I think the central theme, the dominant theme and the most important theme and the only thing that I am going to dwell on is the issue that I think there is a legitimate expectation for Ministers to be able to get legal advice, without compromise, without hesitation to get full legal advice. In my political career I have been acquainted with a number of difficult and controversial political areas. Some I found challenging, some I found difficult, some I have needed considerable advice, both advice from within the Civil Service and advice from Law Officers. Some issues I have inherited, some issues I have made mistakes on and some issues I would, having my time again, probably redo. I have dealt with, I think, some of the more difficult issues where legal issues are particularly challenging, both in terms of Planning and Regulation of Undertakings. I think that Ministers and this Assembly, and the public, expect Ministers to take proper decisions. Decisions based upon full and complete advice. We have heard that in not accepting the Council of Ministers' amendment we will be compromised in getting that advice. I can think of numerous difficult political administrative issues where I have had to take advice from within the Civil Service, and I hope I am not breaching some confidential issues about getting legal advice, but I am sure that Members will well understand that in discharging some of the Economic Development responsibilities, whether they be Harbours, whether by Regulation of Undertakings, we need and I need to take legal advice. I am afraid, Sir, I cannot be put into a position where as a Minister I am compromised in the discharging of my responsibilities. We have had a lot of sand put in our faces in some arguments during the course of this debate this afternoon. But the central issue is an issue that should be the issue that clears away the fog from some Members who are concerned: whether or not they are happy that Ministers can take proper advice in discharging their responsibility. We have heard that if this Assembly does not support the amendment from the Council of Ministers we will not be able to do so. I am sorry to dwell on this but it is the central overwhelming most important issue. We have heard some very interesting speeches from some people who I think have at least attempted to put considerable sand in our faces. But one thing that Members should remember from the remarks that we have heard, and that is that nowhere - nowhere - anywhere in the world does what the Chairmen's Panel is asking us to do. Even if one

may doubt the views of the Attorney General and the learned Solicitor General on this issue, even if they may have no confidence in the advice - because to my mind that is effectively tantamount to what Members would be doing - they may rest certain that they are making the right decision because in my view the whole worldwide arrangements of parliaments could not have got it wrong, with respect. Because Scrutiny cannot cite one single example of another democratic assembly - legislative assembly - doing what the Chairmen's Panel is asking us to do.

Deputy G.P. Southern:
Can the Minister cite a single authority that does not have its own separate legal advice for Scrutiny or its equivalent?

Senator P.F.C. Ozouf:
My final remarks were going to be that nothing takes away from the equal right and the equal need for Scrutiny to have proper informed legal advice. Nothing takes away from that. With the vesting of considerable powers and considerable responsibility in Ministers, the counterweight to that was properly organised, properly resourced Scrutiny - which includes getting legal advice. In Members accepting the amendment for the Council of Ministers they are not in any way saying that Scrutiny is second place and Scrutiny is not entitled to have legal advice. On the contrary. We have heard from the remarks of the Attorney General that he shares that view, and I think there is a deep understanding among all Members that it is vital that Scrutiny gets legal advice. But the way that can be achieved is not by sharing the advice of the Executive. That is the central issue. That is the sole issue. If Members are expecting a Member such as myself to discharge my important responsibilities appropriately I must be able to get legal advice and properly. We have heard that this amendment or not accepting this amendment would compromise that. I just remind Members that no other place, no other place in the world does it. Scrutiny matters; that Scrutiny needs legal advice matters, but not accepting this amendment does not solve that problem, and I urge Members to support the Council of Ministers' amendment.

7.3.13 Deputy R.G. Le Hérissier:
There was a fundamental misunderstanding in the highly esteemed Senator's last point. I think the point that the Deputy here was making, Sir, was that all the comparisons involved jurisdictions where there was already in place a mechanism for that legal advice to be provided to the other part of the separation of powers. That was the point. Not that we should have access to the best advice. In other words, Sir, these other jurisdictions were operating so that there were indeed 2 sets of advice available; one to the executive and one to the non-executive. That is a slightly different angle than the Senator was putting forward. What we have heard unfortunately… and, again, if you look at the assumption upon which the Senator builds his whole argument, he built it essentially on the Armageddon prophecies which perhaps quite rightly the Attorney General had put forward. But what he did not do, Sir, of course was analyse the arguments of the Attorney General. He just simply accepted them, accepted the prophecy of Armageddon and therefore expected us to accept the notion that decision making in Jersey was going to be much depleted, much destroyed or whatever. This is, as Deputy Duhamel said, in that rather lengthy letter which he so kindly read out to us, this is a debate about the idiosyncratic nature of Jersey Government. We clearly did not go as far as getting a party system, as we all know, and we ended up with a hybrid system where we were, as the Chairman said, we are all in a small G situation where things are shared, where there is still not a clear division in the system between government and opposition. But if you hear the Attorney General's argument, of course, there is this assumption that there is this clear division in the system. But, of course, even if we accept the blurred version which we believe or the hybrid version which some people of Scrutiny are arguing exists, that does not mean we are accepting a system where all sorts of anarchy is occurring, where all sorts of leakage is occurring, and so forth. I think, Sir, as I have just said, the argument has been over-egged and the notion of a client/lawyer relationship has been stretched to embrace the Attorney General's relationship with all the

institutions of the States, and I do not think that particular relationship was ever meant to do that. It was not meant to trespass into what are fairly political areas. One other myth which has been, I think, promulgated is this notion that everything is going to get highly politicised, and we quite understand, Sir, why the Attorney General is worried about this. There is this continuing issue, you can take the Senator Syvret view that everything is ultimately political or Charlie Marx's view that ultimately everything is political. Or you can take the view, Sir, that we can separate or we can try to separate the 2 out. I think again, Sir, when you examine the Attorney General's views the impression is given that the advice is going to be politicised, people are going to draw all sorts of interpretations but I think, Sir, what he fails to see is - as Deputy Duhamel said - the advice is a given. It will be part of the examination of what has led to a particular policy, and I do not think Scrutiny Panels - and if they did hopefully some of their members would stop them in their tracks - there is no way, Sir, they are going to say: "Well, this does not seem the right kind of advice, could we kindly rework it?" No, they will accept it, Sir, as a given. It is one of the crucial pieces, if not the crucial in some respects, pieces of advice which forms the way in which a policy has been formulated, and that is how precisely it will be treated. But this notion that the Attorney General says it is going to be dragged into all sorts of political arguments and his advice is going to be cheapened and distorted and so forth as a result, sadly - and I hope obviously for his sake if indeed he does have to work with a revised system - I do not think that is the case at all. Again, underlying that is this notion that he may encounter hostile scrutiny. Now Senator Syvret has quite rightly said, and of course we have had our little tussles over Overdale to take one example, that Scrutiny is meant to be a robust process. But there is all the difference in the world, Sir, between robustness and hostility, because at the same time the Attorney General kept saying how in this system we have to operate with trust. Of course we have to operate with trust. If we still believe, which some of us are doubting, but let us say for the sake of argument, we still believe we are running an essentially consensus system as opposed to an opposition government system, if we still believe that then we have to operate on trust. Part of the trust, Sir, has to come from the Attorney General's side. It has to be a trust in the members of Scrutiny and a belief in the fact that they will not, for example, which I know is this sort of unstated but nevertheless present fear, that they will not, for example, casually leak information. They will not misuse information. He may rest assured, Sir, that this trust is buttressed by the fact that there are procedures in place to deal with people who do maliciously, for example, reveal information, and in any case he can rest comfortable in the fact, Sir, that thus far, even from the sources that were seen as the most likely sources of the leaks by popular myth, there have not been leaks from the Scrutiny side. There has been a respect for that information and certainly there are mechanisms in place to deal with it. So, I am afraid, Sir, sadly a lot of what is animating several of the arguments put forward by the Attorney General is fear. Fear that somehow Scrutiny is going to run away with itself, it is going to start second guessing legal opinions, the trust that people place in it is indeed misplaced, and so forth. I think that is very sad. I would like to reassure him, Sir, that that is misplaced. Yes, there are some people in Scrutiny who have a very strong and robust view, and that is their entitlement. It is the role of other members to provide a balance in that regard, and to ensure that the protocols are observed. We are looking at legal advice as it applies to policy. We are not seeking to second guess it. We are not seeking to leak it. We are not seeking to become lawyers in our own right. I think once those points are taken on board, Sir, I think the Attorney General and Members of the House who may be unsure will realise that this is, in fact, a fairly modest move. It does not represent Armageddon as, for example, Senator Ozouf was trying to imply.

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

I wonder if I could speak, and it will be indeed very brief. The debate today on many occasions has referred to the comments of the Attorney General and the points made by the Attorney General. The comments are the comments of the Law Officers. The document which is before the States finishes up with the words "H.M. Solicitor General"; that is not a matter of form. It was the production of both of us and it is there because we both believe in it, and I am here because I

believe in it. So, these are not simply the comments of the Attorney General. I have a few very minor points to make about some of what has been said in the debate. The Chairman said there would be no level playing field because the Scrutiny Panels would not see the advice given to Ministers but Ministers should be able to see the advice given to Scrutiny. There are 2 responses to that. The first is that as is set out in our comments, the Ministers are corporations sole and may find themselves embroiled in litigation in which case they will need to rely on legal privilege. The Scrutiny Panels are not in the same position, they are not going to find themselves embroiled in litigation and they have no need to rely on privilege, therefore they do not need to worry about whether they have waived it. Secondly, there is no requirement in the amendment for Scrutiny to make the advice given to it available. It is simply said that it is desirable that they should consider it. If they consider it and say: "Well, we have considered it and we are certainly not going to do anything of the kind" that will be the end of it. It is not an uneven level playing field. That moves me on to litigation generally. It was suggested that it is right that all the advice given which may impact on litigation should be in the public domain because if the States are in the wrong, as the speakers seem to think they probably usually are, and the plaintiff is in the right, it is right that the wrongdoers should be exposed. Not all litigation is the citizen who has suffered wrong moving against the mighty weight of the States. Now, I have conducted a certain amount of litigation on behalf of Committees and latterly Ministers. To take particular reference to Planning: I have fought planning appeals and fought them long and hard to defend Jerseys' built heritage and its open fields against developers, commercial developers, who want to develop. They have been, some of them, very hard fought because there is a lot of money at stake for the developer. They have gone to the Court of Appeal. The chances of the person on the other side making their legal advice available to me so that I can see what that says are absolutely zilch. There is no chance of it. They know that that is not what any lawyer would do and not what any person who wishes to litigate effectively would do. The suggestion was also made that the Law Officers are possibly concerned that their doubtful and maybe defective advice may be subjected to the keen gaze of Scrutiny. There is no such concern. When Scrutiny ask for our advice they get it, save in exceptional circumstances. I have been asked for advice by Scrutiny, I have made it available and it is there for Scrutiny to look at and to make of it what they will. I said I would be brief and there is one minor practical point and that is that there have been references to the advice, the advice, the opinion, the advice, as if there was one document. Now, that is not necessarily the case, if a matter has been going on for years and years the advice may be scattered about through several files and it may take the form of formal opinions letters, memorandums, emails, somebody's note of a telephone conversation. You cannot assume that the advice can simply be rounded-up. That was a purely practical point. The last one is a personal point. This is the last week in which I shall stand in the States as Solicitor General. Whatever decision the House takes on this, it will have no affect on me personally. If it makes the job of the Law Officers more difficult, it will not be making my job more difficult; I shall not be Solicitor General. I have spent my entire professional life serving the public. I have turned down offers in the private sector that gave me a better immediate return and better long-term prospects to continue to serve the public. The advice I have given, it may not be brilliant, it has always been the advice that I believe is in the best interest of the public. That is why I have accompanied the Attorney General here today, to give my advice and to add what I have to say to the comments which have already been made. **[Approbation]**

7.3.15 Senator F.H. Walker:

Sorry, Sir, you can be forgiven for overlooking me because I do apologise for not being here for much of the day. I am sure Members can imagine the subject that I have been addressing these last few hours. Because I have not heard much of a debate, I will not make a detailed speech. I will merely explain to Members my position. I think it is important that I do so, because I was originally in favour of the proposition put forward by the Chairmen's Committee. There were some very animated discussions around the Council of Ministers' table because of the position I was taking. I think Members are entitled to know why I have changed my mind, because change

my mind I have. I have changed my mind because having listened on numerous occasions to the Attorney General, the Solicitor General, my fellow Ministers, and others, I have now become absolutely convinced that I was wrong and that it would be a mistake not to accept what I think is a very important amendment. It would conflict with good government and not be in the best interest of the people of Jersey. It is essential, absolutely essential, that the Council of Ministers, the Executive, gets the best possible legal advice. We have heard today from the Attorney General and the Solicitor General that unless this amendment is accepted, if the proposition were to go through unamended, that simply would not happen. That cannot be in the best interest of good government. It cannot be in the best interest of the people of Jersey. There is no doubt that if the Council of Ministers does not get the best possible legal advice that policies will not be as well thought through or as effective, as well balanced, as they should be and mistakes (potentially costly mistakes) for Jersey will be made. I absolutely agree with the principle that Scrutiny must be robust, but that is not really the issue here because Scrutiny, under the amendment, would still get legal advice, if they wished, from the Law Officers. There is no doubt about that. There is no question of depriving Scrutiny of legal advice whatsoever. The argument that to accept the amendment would make Scrutiny less robust simply does not hold water. The facts are clearly there to be seen. Legal advice is very different to advice received from officers, advice received from the public, advice received from other politicians. It is very different. Surely we, in this House, have to listen to our legal advisers when it comes to such a fundamental issue relating to the advice they are charged to give to the Executive. I really do believe that we should - we must - listen to their views, acknowledge the importance of them, acknowledge the problems if this amendment does not go through; not problems to the Council of Ministers, but problems to the people we represent. I think we should - must - listen to our legal advisers, acknowledge that no other government in the world does proceed - does its business - in the way in which is being proposed by Scrutiny, and accept this very important amendment. It is very much in the interest of good government and, therefore, the people, that it is put forward, and very much, in that respect, I urge Members to accept it.

7.3.16 The Deputy of St. Martin:

At the beginning of the debate when Senator Vibert started his speech, he said about Members not being entrenched. I have not been entrenched at all. I have been out, in the open, and I hope all those who will be opposing this amendment will also have been out in the open. Because what really Scrutiny are saying: "Give us the tools to do the job." That is what this is all about. I feel rather disappointed and saddened to hear some of the things I have heard this afternoon. We have heard about the Ministers, who have no inhibitions, place in front of the Ministers or the Law Officers… because if they cannot give the information, which they believe will be confidential then they cannot do their job properly. What we are being told is that they may well give the wrong advice almost deliberately. I find it very hard to accept, and I feel rather with a heavy heart to have to look across at the Attorney General and the Solicitor General, to think they would be that unprofessional. Presumably, I do not believe they are saying what they are saying, that they would not give advice, or they would give the wrong advice, just because if it went to Scrutiny, Scrutiny could not be trusted. I feel rather sad about that. Particularly this week, because I can assure Members of the House that I do not think it is anyone from Scrutiny that leaked the confidential letter or the email from Senator Shenton. The other thing I would query was that this particular amendment stretches beyond just whether we give the legal… we are entitled to legal advice from the Attorney General. Also, I would ask Members to look at the piece that says on page 5(8), that when Scrutiny gets information or gets legal advice from outside the Legal Officers, that that legal advice should then go to the Attorney General, to the Law Officers. It says something about: "It would be appropriate, or desirable." What I would ask, maybe when Senator Vibert responds, he could give us what he intends, or what he interprets, the word "desirable"; is it "may", "will", "can" or "should", or is it down to the individual Scrutiny Panels to decide for themselves whether they give that to the Law Officers before they publish their report? Because I speak from

experience, and we have all had that part of that experience, of recent times where the former Panel, for which I was a Chairman of, we gave the advice to the Law Officers and I think, in many ways, it stopped the process of good Scrutiny. We run the risk if we agree to this amendment; (e) goes beyond just saying whether we are entitled, or if Scrutiny is entitled, to the advice from the Attorney General. It is much more than that. I think too little has been said about the whole of (e); (e) is a lot more than that. It is not just about whether we should have, or we should not have, the advice from the Law Officers. Maybe I could ask Senator Vibert to sum up on that little piece, whether "desirable" really means they should or should not - should the Law Officers have the advice that Scrutiny Officers or Panels have received outside the Law Officers? I would ask Members not to support the amendment.

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

To me, as a States Member, I think the big question that is raised by all of this is that what are the Executive considered to be, and are they a separate client from Scrutiny and, therefore, by implication, from the States of Jersey as a whole? If this is the case, how does the Sovereignty of this Assembly fit with that picture? I accept that Ministers have a responsibility; however, the responsibility of this Government is that those Ministers were elected to the post by this Assembly, expected to fulfil an Executive role, which includes development of policy for this Assembly to consider, and then the delivery of those policies on behalf of the Assembly. It is clear that although the Executive equally needs to make decisions, there are confines that they are bound to. It is also clear that during today, and in various reports being provided, that the Attorney General and the Solicitor General have raised some important questions. My question to this Assembly is do those questions relate to this particular proposition, which is basically, and based around, the access of legal advice to Scrutiny Panels and equally by implication of the States as a whole? I would suggest that they are not. Most of the points and the concerns raised - and I appreciate they are real concerns - are about whether departments could be inhibited from asking for legal advice, whether they would provide all the sufficient evidence and information necessary to gain the best legal advice, and how would that legal advice be phrased. That is not about access to legal advice or the ability for Scrutiny and this Government as a whole to understand the way decisions are made. That is about how the legal advice is provided and given. I would suggest that that is totally separate - a separate issue - which I believe must be dealt with, but is not part of the access that we are speaking about today. With those 2 things, I thank you.

7.3.18 Deputy D.W. Mezbourian:

Recent events, Sir, have placed this Assembly and this Island in the position unenvied by others. Rightly or wrongly, we have been judged and we have found to be wanting in the way in which we have governed. That should not be so. We have been accused in the past of not being open, of not being transparent, and of not being accountable. Yet we are now being held accountable for what indeed may be past failings. Our new system of government is, by its very nature, a system of accountability. Scrutiny must hold the Executive to account. It must be in a position to judge all aspects of a Minister's decision and to see the audit trail behind that decision. As the Deputy of St. Martin has just said, he has been disheartened to hear the arguments today in favour of the continued barrier to what this Island needs. What this Island needs is effective Scrutiny. I, Sir, am as disheartened as the Deputy. We have, today, the opportunity to prove that as elected democratic Members we understand the need for open and accountable government. If we vote in favour of this amendment from the Council of Ministers, I believe, Sir, we will be denying this Island its basic fundamental right to a system of government that allows no cover-ups, but adheres to the ethical principles of openness, of transparency and, ultimately, of accountability. Never again, Sir, must we be in a position whereby we are judged and we are found to be wanting. Thank you, Sir.

7.3.19 Senator L. Norman:

Very briefly, I think earlier this afternoon it was Deputy Martin who said that she would be astounded if she discovered that a Minister had acted contrary or against the advice of the Crown Officers. I think therefore, Sir, it is reasonable for me to assume that the same astonishment would also apply if the States acted against the advice of the Crown Officers. When I came here this morning I was minded to vote against this amendment, as indeed I voted against it at the first amendment, but on the basis of what the Law Officers have told us, and the advice from Deputy Martin as to how I should deal with that advice, it seems to me that I, and the States, have no choice but to vote with the amendment. **[Approbation]**

The Bailiff:
I call upon the rapporteur to reply.

7.3.20 Senator M.E. Vibert:
Though it is about 5.17 p.m. by that clock, can I first of all apologise for any disappointment of States Members. I feel this is a serious and very important proposition and I have no intention overly rushing the summing-up, but I will keep it as short as possible. Sir, if I may, I will repeat something I returned to before. We have had this feeling of in the trenches and entrenchment. I appeal to all Members, and I particularly appeal to Scrutiny Members, because under our current system of government, Scrutiny has a built-in majority. I hope they will not be trying to use that built-in majority against the public interest. I appeal to Scrutiny Members not to support Scrutiny just because they are part of Scrutiny. This issue is much more important than that. I urge them to consider the best interests of the Island when they make the very important decision on this issue. Sir, the Chairman of the Chairmen's Panel asked: "What is the problem?" I think anyone who listened to the debate, and particularly to the contributions of the Attorney General and the Solicitor General - the States legal advisers - can be in no doubt of what the problem is. The clear, unequivocal advice to all States Members is in the best interest of the Island, support the amendment of the Council of Ministers and do not support what is proposed by the Chairmen's Committee. Sir, in the past, on occasions, the… sorry, if Senator Syvret wishes to intervene, I will sit down, Sir.

Senator S. Syvret:
Yes, Sir, by all means. I was merely remarking that talking about the best interests of the States and the public, we have gone back to this assertion about what is in the public interest. I know for a fact these Law Officers have made decisions on the basis of what they assert in the public interest, which are manifestly wrong.

Senator M.E. Vibert:
The Senator, as usual, abuses his position. Unfortunately, I asked the Senator if he wished to intervene because I understood the Standing Orders said that Members will listen to other Members speaking and not speak themselves at the time, and that is why. If the Senator has a point to make, of course I will always listen to it, though I will not always agree with it. Sir, Members in the past have said: "One of the problems with the legal advice is sometimes it says on the one hand this, on the other hand that, and there is a judgment call to be made." Can I say that we have not got any of this here today. We have not got - if you excuse me - a typical Deputy Le Hérissier scenario, where on the one hand this, on the other hand that. There is no - as far as I can see and as far as what I have heard - equivocation at all about the legal advice being given to States Members by the legal advisers. It is absolutely clear, and I think all States Members need to think very carefully about what they are doing before they go against such clear legal advice. The Chairman of the Chairmen's Panel asked: "What is the problem?" It has been clearly enunciated and the problem is we go against our legal advice at our own risk. Sir, Deputy de Faye gave an example of some of the issues that could arise. I am very pleased with Deputy Scott Warren, who is now part of Scrutiny, and had really thought about this and changed her opinion. Her job is to really think

when making a decision. Do not be hidebound, do not go perhaps on what you believed before, Scrutiny should have access to everything and so on, but listen to the advice that you have been given. The Attorney General's advice was very clear. I think that one of the issues is that in the Chairmen's Committee, in paragraph 9.28 on the Chairmen's Code, that predicates the whole basis on what the Chairmen's Committee believes is the reason why they should be allowed legal advice. This is the Chairmen's Committee proposition: "The Law Officers will provide legal advice to both the Executive and Scrutiny." No problem with that at all. It is the next line that is the problem: "As they are both branches of government, they are not to be considered as separate clients in respect of the provision of legal advice from the Law Officers." If that was the case, there would be no problem with legal privilege if they were the same client. That was the Chairmen's Committee who, as far as I know, has not got a great legal background and I did not hear that they had taken any legal advice on that opinion they had expressed. What does our combined Law Officers say about that opinion of the Chairmen's Committee? It is on paragraph 21 of the Law Officers' advice. I think it should read as paragraph 9.28: "The Code of Practice asserts that because both Executive and Scrutiny belong to the same elected Assembly they are not to be considered as separate clients. As a matter of law, this is not correct." Are we really being asked to support a code in this area that our Legal Officers tell us as a matter of law is not correct? I certainly cannot, and I hope other States Members cannot as well. Sir, I listened - well, I tried to listen - with interest to Deputy Duhamel's long letter. I found it somewhat confusing because what it appeared to be from the previous Chairmen's Committee's letter, as I understood that is what it was, was not what the current Chairmen's Committee is proposing at all. Something quite different. I did not quite get why the previous Chairman was supporting what the current Chairman is doing when the letter was proposing something different.

Deputy R.C. Duhamel:
On a point of order, it was exactly the same and if the Minister will care to read the previous Code of Practice, or the existing Code of Practice, he can tell me afterwards where the differences are. He obviously has not bothered to do that.

Senator M.E. Vibert:
As the Deputy did not think to provide all States Members with a very long letter he had read out, which we could have read beforehand and understood it…

Deputy R.C. Duhamel:
On a similar point of order, he did have the opportunity to have that letter last November.

Senator M.E. Vibert:
It referred to other jurisdictions, very important. As we heard, no other jurisdictions are proposing this and I do not think we are that different to everybody else that we should break the mould in this way and put the public interest at risk.

Deputy R.G. Le Hérissier:
Would the rapporteur sit down and accept the fact that these other jurisdictions have 2 sets of legal advice costing enormous amounts of money. Thank you.

Senator M.E. Vibert:
If I could be… we might get away tonight, if I am allowed to finish. Deputy Le Hérissier ...

The Bailiff:
If you want to make it clear to Members that you are not going to give away in future, then Members will know what the position is and I am sure they will not interrupt you.

Senator M.E. Vibert:

I thought I had made it clear, Sir. **[Laughter]** Perhaps Deputy Le Hérissier could not hear me? Deputy Le Hérissier, I was going to refer to your point, if you would please note. If Deputy Le Hérissier was proposing - which he is not, Sir, and the Chairmen's Committee is not - 2 sets of legal advice, perhaps we could have a debate about it. That is not what is being proposed, Sir, so why is he bringing it up? Because it is not what is proposed; it is proposed to share the same legal advice, which I am sure we will accept if we do not know of any other place in the world that does it. Sir, the Solicitor General, I think, made a telling contribution. I am sure we will all miss the Solicitor General and the support she has given the States in her time in office. **[Approbation]** The Solicitor General said: "When Scrutiny asked advice they got it." I would like to ask Members to consider very carefully the Solicitor General's advice. I would ask Members to very carefully consider before they cast their votes what it means to vote against the clear, combined advice of our Law Officers against arguments put forward by Members with no legal contribution. Are Members prepared to take that risk with the public interest, or are they going to listen to the legal advice? Sir, I make the amendments and ask for the appel.

The Bailiff:
I ask all Members in the precinct to return to their seats if they wish to vote. I ask the Greffier to open the voting which is for or against paragraph (e) of the amendment.

POUR: 32		**CONTRE: 14**		**ABSTAIN: 0**
Senator L. Norman		Senator S. Syvret		
Senator F.H. Walker		Connétable of St. Mary		
Senator W. Kinnard		Connétable of St. Clement		
Senator T.A. Le Sueur		Deputy R.C. Duhamel (S)		
Senator P.F. Routier		Deputy of St. Martin		
Senator M.E. Vibert		Deputy G.C.L. Baudains (C)		
Senator P.F.C. Ozouf		Deputy R.G. Le Hérissier (S)		
Senator T.J. Le Main		Deputy J.A. Martin (H)		
Senator B.E. Shenton		Deputy G.P. Southern (H)		
Senator F.E. Cohen		Deputy S.C. Ferguson (B)		
Senator J.L. Perchard		Deputy of St. Ouen		
Connétable of St. Ouen		Deputy P.J.D. Ryan (H)		
Connétable of St. Helier		Deputy P.V.F. Le Claire (H)		
Connétable of Trinity		Deputy D.W. Mezbourian (L)		
Connétable of St. Lawrence				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Deputy C.J. Scott Warren (S)				
Deputy J.B. Fox (H)				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy G.W.J. de Faye (H)				
Deputy J.A.N. Le Fondré (L)				
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				

Senator M.E. Vibert:
Can I, with pleasure, propose the adjournment?

Senator P.F.C. Ozouf:
No, Sir. **[Laughter]** Just one second, Sir. There are a couple of items before Members. The Draft Harbours (Amendment No. 41): Sir, may I seek leave to withdraw the original Draft Harbours (Amendment No. 41) and Members to note the new, revised lodge with a different P. number?

The Bailiff:
I was going to announce that there have been 3 lodgings: Projet 38/2008, Projet 39/2008 and Projet 40/2008 (which I believe are on Members desks), Pandemic Flu Funding, Draft Harbours Amendments, and Senator Ozouf has indeed instructed the Greffier to withdraw the earlier version of the Draft Harbours Amendment.

Senator M.E. Vibert:
Perhaps I was a bit premature; could I now propose the adjournment, please?

The Bailiff:
If Members agree; we adjourn until 9.30 a.m. tomorrow morning.

ADJOURNMENT