

STATES OF JERSEY

OFFICIAL REPORT

TUESDAY, 29th APRIL 2014

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[9:33]

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

COMMUNICATIONS BY THE PRESIDING OFFICER

1.1 Welcome to H.E. The Lieutenant Governor

The Bailiff:

May I, on behalf of all Members, welcome His Excellency to our sitting today. **[Approbation]**

1.2 Liberation Day – recording of the ceremonial meeting

The Bailiff:

Also, as Members will know, the next sitting will be on Liberation Day and it is traditional that the media should be allowed in to record the ceremonial sitting, so do Members agree that we should give permission for the local media to attend? Thank you very much. I have no other matters under A.

QUESTIONS

2. Written Questions

2.1 THE CONNÉTABLE OF ST. MARY OF THE CHIEF MINISTER REGARDING THE INTRODUCTION OF A LIVING WAGE IN JERSEY:

Question

Further to the Council of Ministers' comments published in relation to the proposition of Deputy Southern P.37/2013 'Living Wage for Jersey: investigation', will the Chief Minister advise the Assembly on the outcome of the "refreshing the existing Social Policy Strategic Framework" referred to in those comments and advise when he expects the Assembly to be in a position to consider knowledgeably the implementation of a living wage?

Answer

The implementation of the Living Wage was dealt with in response to a question on 18th February, 2014:

"The 2014 business plans for both the Chief Minister's Department and the Social Security Department include commitments to work on researching a living wage for Jersey.

As explained in response to P.37/2013 and during the debate itself, scoping a meaningful living wage will require significant input from officers in both Departments. It therefore could not be achieved by the end of January 2014 as proposed in P.37/2013. During the debate it was confirmed that a report by the end of 2014 would be acceptable.

There are a number of different elements to the Living Wage calculation, one of which is income distribution. Work on the 2014/2015 Household Income Distribution Survey will start in Spring 2014 and will be completed by the end of 2015. Alongside that, work will be undertaken to establish other elements of the Living Wage calculation, such as basic cost of living."

An interim report will be brought forward at the end of 2014 pending completion of the Household Distribution Survey."

Since February, the Household Income Distribution Survey has been launched by the Statistics Unit and the 2014 Jersey Annual Social Survey will also include questions about household spending.

Both these initiatives will produce detailed information on income and spending in local households. This will provide vital information for the States before any decision is taken on the introduction of a living wage.

Work on the Social Policy Framework forms part of the “Preparing for Our Future” exercise, which was launched in January 2014. This is a comprehensive framework for the development of long term policy, incorporating the needs of our community, environment and economy, and will include refreshing the principles of the social policy framework.

2.2 DEPUTY J.H. YOUNG OF ST. BRELADE OF THE MINISTER FOR PLANNING AND ENVIRONMENT REGARDING BUILDING WORKS WHICH WERE PART OF THE ENERGY EFFICIENT SERVICE HOME ENERGY SCHEME:

Question

Will the Minister provide a detailed list of the building works which were completed by or on behalf of the Energy Efficiency Service Home Energy Scheme and were funded or supported by financial grants provided from the Department’s budget during each year of the scheme’s operation, indicating –

- (i) the nature of the works,
- (ii) the cost,
- (ii) the amount of grant assistance
- (iv) the premises on which these works were carried out and whether the premises were owner occupied or tenanted?

Answer

A full pdf version of the table containing the information requested can be viewed on the statesassembly.gov.je website in the ‘questions’ section. A printed version is also available at the States Assembly Information Centre.

The table represents a breakdown of all works carried out by the Energy Efficiency Service (EES) Home Energy Scheme from the scheme’s inception in 2009 and includes open orders as of 22-04-14.

The table is as follows:

- Please note that in accordance with the Data Protection (Jersey) Law 2005, Part 1 Article 1, the Department of the Environment as the data controller must take all steps to ensure that the personal data (i.e. The HES applicant name and address) cannot be identified from the data we hold. For this reason we have not provided the specific applicant reference number which is assigned upon the receipt of an eligible application to the scheme. Instead, we have ‘batched’ the work carried out on each property and shaded it separately. Each ‘block’ represents the measures and expenditure on one property. If the Deputy would like

particular information about a specific property then the Department would be happy to answer these;

- Column 1 - The nature of the works - 'Work item/ Energy Efficiency measure';
- Column 2 - The cost of the work item i.e. the grant spend - 'Amount Spent' and the number of items - 'Actual Quantity of items';
- Column 3 - Whether the property is privately owned or tenanted - 'Ownership Declaration (HES) Joint or sole ownership vs. tenanted (coded as 'not the property owner');
- Column 4 - The full date when all works were signed off as complete - 'Date of Completion' and which year this occurred in - 'Sign off Year'.

Under the 'work item / energy efficiency measure' column a code is given that relates to the category of work as referred to in the department's internal system as well as a descriptor of the work carried out. Most descriptors are self-explanatory but there are two categories of miscellaneous charges which include the following measures:

EES Misc charges – Measures not individually classified prior to 2012 tender round includes: extra measures associated with boiler replacement (E.g. Circulating pump for boiler, 2 port zone valves, motorized valves), electrical materials, extra labour (for revisits etc), making good, new immersion for hot water cylinder. NB The 'EES' code is used on work carried out prior to 2012.

HES Misc charges include extras not separately itemised as part of the 2012 tender round, that are job specific such as: High level plume diversion kit, system inhibitor, extra cost for wireless thermostat/wall hung boiler/HWC, moving new boiler to new location & associated buildings works/repairs in order to ensure new boilers are compliant, making good. NB The 'HES' code is used on work carried out after 2012.

The exact expenditure relating to a 'misc charge' coding is known to the department and could be provided on request.

The Deputy (or any other member who would like further details or explanations) is invited to the Department where the EES team could explain how the whole scheme is managed, work flows are assigned and processed, and quality assurance tests are carried out.

2.3 THE CONNETABLE OF ST. MARTIN OF THE MINISTER FOR HOME AFFAIRS REGARDING THE DISMISSAL OF POLICE OFFICERS FROM THE STATES OF JERSEY POLICE SINCE 2011:

Question

Will the Minister set out for members, for the period 1st January 2011 to 31st March 2014, details of:-

- (a) How many States of Jersey Police Officers have been dismissed from the Force;
- (b) How many Civilian Support Officers working with the Police have been dismissed;
- (c) How many of each group have formally appealed their dismissal;
- (d) To whom those appeals were made (for example the Royal Court, Jurats Appeal, the Jersey Complaints Board or any other relevant agency);

- (e) How many have had their dismissal overturned at appeal level;
- (f) How many remain dismissed but are awaiting their appeal to be heard;
- (g) How many of those Police Officers or Civilian members of staff whose appeals have been successful have subsequently returned to work with the Police;
- (h) How many remain in active negotiation with the Minister or Chief Officer regarding their re-instatement after successfully appealing their dismissal and
- (i) The total cost to date to the Home Affairs Department/States of Jersey Police budget in defending the appeals identified above?

Answer

- a) Three.
- b) One.
- c) All four.
- d) 1 appeal to the Jurats previously heard. 1 appeal to the Jurats is still pending. 1 Civil Service appeal which then went to the Employment Tribunal. 1 reference to the Jersey Complaints Board.
- e) One. Also, the reference to the Jersey Complaints Board was upheld but that does not have the same effect as where a dismissal is overturned on appeal.
- f) One. This is not the case referred to the Jersey Complaints Board.
- g) One.
- h) None. However, the officer who referred his dismissal to the Jersey Complaints Board is currently in active negotiation as to his legal position.
- i) £142,764.11

2.4 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING BENEFIT FRAUD:

Question

Further to his response to a written question (8234) on 1st April 2014, will the Minister state –

- (a) what proportion of the totals incorrectly claimed under the new regime in the years 2011 to 2013 were the result of actual fraud cases referred for prosecution?
- (b) what proportion required action through the Petty Debts Court for recovery?
- (c) the departmental estimate of the amount due to genuine error on the part of claimants?
- (d) what estimate he has for the sums incorrectly paid as a result of departmental error?

Will the Minister provide the figures for 2013 for under and overpayments of Income Support which result from claimants' changes of circumstance when payments are made a month in advance?

Will he agree to carry out a benchmarking comparison between the 2013 figures for payments in error as a percentage of total benefit payments with the figures released by the UK Department for Work and Pensions in January 2014 for –

- (i) official error, due to inaction, delay or a mistaken assessment
- (ii) claimant error, when claimants make inadvertent mistakes with no fraudulent intent
- (iii) fraud, in which claimants deliberately seek to mislead?

Answer

Further to the detail provided in written question 8234, I can confirm for the period 2011 – 2013 the value of cases referred for prosecution was £282,874 and to the Petty Debts Court was £247,100.

In respect of the Department's treatment of overpayments resulting from customer error or fraud, the majority of claimants agree to voluntary repayment schedules. The Department is flexible and offers a variety of options including lump sum payments, instalment agreements and offsets against future entitlement. In the minority of cases referral to Petty Debts Courts is necessary.

The value of Departmental error resulting in write offs against tax funded benefits is published in the States Annual Report and Accounts.

The Department does not maintain a separate record of under and overpayments of Income Support which arise as a consequence of payments being made a month in advance specifically. However information is available in respect of the total number of under and overpayments which have been recorded against claims where payments are made four weekly in advance. In 2013, for Income Support claims where benefit is paid four weekly in advance, 639 lump sum payments following an underpayment were recorded and 253 overpayments were recorded. As has been explained in previous written questions, the Income Support system is designed to make payments in advance to ensure that low income families can meet their day-to-day living costs as they arise. As circumstances can change on a daily basis, there will always be situations in which an adjustment (up or down) needs to be made in respect of a payment that has already been paid.

I am pleased with the Department's continued improvements in customer service which help to reduce error by both customers and staff, and support the fraud management activity described in response to Question 8234. Ongoing application of the LEAN continuous improvement process, a key plank of the Reform Programme, has delivered significant improvements in a number of relevant areas including changes to application forms to reduce customer error, and developments to managing changes of circumstances to reduce the time from notification of the change to the change being made. These and other improvements, including a Customer Services training programme for the Income Support team, have reduced processing times and increased customer satisfaction. Alongside these changes a series of well-established controls and processes are in place to maintain the quality of the benefit processes in other areas. Examples include life certificate and death register reviews to ensure lifetime benefits, such as pensions, are paid appropriately.

The Department has already initiated a review of the UK Department for Work and Pensions Fraud report and strategy¹. This review will consider the appropriate tools to be used for estimating fraud and error in a robust manner, identify any current gaps in our current provision, consider the benefits and costs of undertaking a formal benchmarking comparison, identify options for the

classification of data for reporting purposes (for example, identifying the uses of maintaining an estimate of the value of overpayments due to genuine error on the part of claimants) and identify the required resources and systems changes. I have asked that the Department completes this work by the end of 2014.

- ¹ DWP - Fraud and Error in the Benefit System: 2012/13 Estimates
- NAO - Tackling External Fraud – Good Practice Guide
- DWP - Tackling fraud and error in the benefits and credits systems (Oct 2010)

2.5 DEPUTY J.H. YOUNG OF ST. BRELADE OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING THE MONITORING OF EMISSIONS FROM THE CREMATORIUM:

Question

Would the Minister advise the Assembly whether the crematorium has mercury abatement equipment installed?

In operating the crematorium, does the Health and Social Services Department comply with the requirements of the Process Guidance Note 5/2 (12) “Statutory Guidance for Crematoria” (September 2012) issued in the UK by the Department for Environment Food and Rural Affairs under European Union Directives?

Are air borne emissions monitored for potential pollutants, including mercury compounds, dioxins and furans?

What plans, if any, are there for the future modification or replacement of the crematorium equipment to meet current environmental standards, what is the likely cost of this and has a funding stream been identified?

Answer

The Health and Social Services Department complies with the requirements of the Process guidance Note 5/2 (12) “Statutory Guidance for Crematoria” (September 2012) issued in the UK by the department for Environment Food and Rural Affairs under European Union Directives, in all aspects save one - the Crematorium does not take part in a burden sharing scheme, as there is no other crematorium with which to sensibly burden share.

Like many other crematoria around the UK, Jersey Crematorium has no abatement system and, as such, airborne emissions are not routinely monitored in this way. The Crematorium does, however, meet current environmental standards for its type, it is serviced regularly, and monitored as required by the Process Guidance note.

New Crematoria are now built with abatement systems, a requirement in the UK for Crematoria built from 2006 onwards. Nevertheless, monitoring for mercury compounds, dioxins or furans is not requirement under the Process Guidance note, in respect of unabated crematoria.

It is important to recognise that, compared to most crematoria, the Jersey Crematorium handles a significantly lower number of cremations every year – an average of around 700 per year, compared, for example, with Leeds, which averages around 6000 cremations per year.

It is important to acknowledge that there is no credible or recognised evidence of mercury emissions being linked to increased rates of cancers or other illnesses.

The current crematorium equipment is nowhere near the end of its natural life and there have been no concerns raised by European Union Directives regulators about its safety. As such,

In view of the outstanding lifespan of the crematorium and confidence that it remains safe and fit for purpose for the next two decades, there are no plans at present for the future modification or replacement of the crematorium equipment, no costings for doing so have been sought, nor has an associated funding stream been identified.

2.6 DEPUTY J.M. MAÇON OF ST. SAVIOUR OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING THE PUBLICATION OF THE REPORTS OF THE TOURISM SHADOW BOARD:

Question

Would the Minister explain why the preliminary Tourism Shadow Board report was not presented to the Assembly as a Report and whether he will request that the Board's processes are amended so that any further reports are formally presented by the Minister on behalf of the Board and, if not, why not?

Answer

The States Assembly approved P.113/2012 establishing a Tourism Shadow Board (TSB). The remit of the TSB, which is an advisory body with no executive power, is to make recommendations to me as the Minister for Economic Development, consistent with the terms of reference set out in P.113/2012.

In early March 2014, the TSB submitted its preliminary report addressing the first matter to be considered under the Terms of Reference, namely:

'..To define the optimum operational and governance structure and make a recommendation to the Minister to implement changes as necessary'

On 17th March 2014 I wrote to the Chair of the TSB, thanking the Board for its report and requesting that, whilst I accepted the broad principles outlined in the document, any final decision would be based on a detailed business case and implementation plan. On Friday 21st March 2014, with my approval, the Chairman of the Tourism Shadow Board presented the Board's Preliminary Report on the optimal structure of tourism in Jersey to the industry at Jersey Hospitality Association's AGM. The Preliminary Report is publicly available and has been widely reported upon.

With regard to any amendment to the Terms of Reference of the TSB; the TSB, established by the States Assembly following approval of P113/2012, is an advisory Board to the Minister for Economic Development I see no need to change this arrangement as I am fully accountable to the States Assembly for any decisions taken. Seeking to amend P.113/2012 will unnecessarily divert the attentions of my Department and the TSB from the important work being undertaken to return Jersey's tourism sector to sustained growth.

2.7 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING THE GRANT TO CANBEDONE PRODUCTIONS:

Question

Could the Minister confirm whether the prime reason for granting £200,000 to Canbedone productions was for adjustments to the film so that at least part of it could be filmed in Jersey?

Would the Minister advise how many proposed filming dates have now passed and, in light of the recent admission by the film's director, would the Minister agree that it now seems unlikely the film will ever be made?

Furthermore, in light of the foregoing and also the changes of company and film title, will the Minister state whether, and at which point, he will activate the contract's claw-back clause?

Would the Minister advise how much officer time and resources have been dedicated to this matter and whether his department intends spending any more time and resources on the project in the future?

Answer

The grant of £200,000 was advanced to Canbedone Productions to support pre-production activity in Jersey. This is distinct from funding film production, or to use the common vernacular "filming" in the island. The grant was awarded and utilised to cover expenditure incurred in connection with the costs arising from the logistical planning, re-writing and general re-organising of the location schedule in order that the film could be undertaken significantly in Jersey.

The grant funding and pre-production process led to the development of a new original screenplay, The Crystal Island, a children's adventure set in ancient times. Furthermore, The Crystal Island was designed specifically to be shot entirely in Jersey, fully utilising all Jersey has to offer. The objective of the grant was to maximise the potential for filming to be undertaken in Jersey as other competitor jurisdictions offer significant incentives to film both pre-production and production activity. EDD has been provided with both a finished script and full production schedule and will continue to work with the producers to allow production to commence. In light of this, there is no basis for exercising the 'claw back' clause in the grant agreement. Whilst the script and associated documents comprise intellectual property owned by the production company, we have obtained approval to review the complete documents with any States Member in the Economic Development Department offices.

Independent film production is a complex undertaking and it is not unusual for significant delays to be incurred between pre-production and production phases. I would hope that, along with EDD, all parties with an interest in seeing the development of a creative industry sector in Jersey will support the producers in their efforts to commence film production.

2.8 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE MINISTER FOR HOUSING REGARDING THE REDEVELOPMENT OF LE SQUEZ:

Question

With regard to the redevelopment of Le Squez, could the Minister advise of the density (persons per acre) and area of amenity space before development began, together with figures that will apply once the latest plans have been completed?

Answer

I have previously detailed the proposed levels of density at Le Squez in my response to question 7552 on 16th April 2013. The information set out in that answer remains valid at this time and for ease of reference a copy is attached hereto.

However, the Deputy's has now asked for additional information in relation to the density on a persons per acre basis.

Based on assumed maximum occupancy of every home the current plans for Le Squez will see density increase from 74 persons per acre to 83 persons per acre.

Amenity space includes gardens within the curtilage of individual houses, balconies on flats as well as the general surrounding undeveloped areas. Plans for the final phase of the development are at outline stage only and it is not therefore possible to accurately measure all of the amenity space provision and to draw an accurate comparison between the estate prior to redevelopment and with redevelopment complete. However, this information will be available prior to a planning application for Phase 4 being submitted and I would be happy to make it available to the Deputy and any other member who would like it, at that time.

The provision of good amenity spaces is an important aspect of the redevelopment. It is proposed that when complete there will be a far greater emphasis on amenity spaces which can be private to communities within blocks of apartments as well as achieving the required private garden sizes for houses. This approach will be evident to those who have visited the recently completed homes at Le Squez. Phase 4 of the redevelopment will, subject to planning approval; see the introduction of a dedicated Children's play area.

An important aspect of the redevelopment has been the establishment of a dedicated and permanent link between Samares School and the FB Playing Fields opening up that amenity space for wider use.

“Appendix 1

1240/5(7552)

WRITTEN QUESTION TO THE MINISTER FOR HOUSING

BY DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT

ANSWER TO BE TABLED ON TUESDAY 16th APRIL 2013

Question

Would the Minister advise, with regard to the redevelopment at Le Squez -

(a) how many times the plans have been changed in the last five years;

- (b) *how many times in the last year architects have made major revisions to the scheme, when and at what cost; and,*
- (c) *the latest proposed density compared with the original density.*

Answer

The regeneration of Le Squez and Le Marais was approved by the States in 2004. Since that time the area has seen a number of new phases of development which have provided both new social rented homes and opportunities for low cost homeownership. These have transformed the area.

- a) *During the 5 year period to April 2013 Phase 2 of the Le Squez development was commenced and 60 new homes completed.*

The remaining element of Phase 2 was identified as having potential for redesign to improve the economic viability of the project by increasing the number of homes to respond to changing needs. This redesigned element has become Phase 2c & has resulted in a 50% increase in unit numbers on that part of the site to now provide 24 homes a number of which have been purpose designed for the disabled.

- b) *The Master Plan proposals for the Le Squez development have only recently been revised and for a number of reasons, which include:-*

accelerating completion of the scheme into 2 phases rather than the proposed 8; and

adjusting the proposed types and mix of homes to reflect current and projected housing need; and

increasing the number of homes to be developed to 137 from 124; and

providing an opportunity for at least 1 group home and 1 additional large purpose built disabled unit; and

responding to the changing requirements of the School which is to become double form entry and requires larger amenity spaces; and

providing for the Number 15 Bus to enter Le Squez on School Road and exist via Rue de Maupertuis ensuring that residents continue to benefit from this important transport link.

but without impacting on key objectives of the Regeneration Master Plan such as:-

Improving pedestrian links through the estate; and

Removing the flow of through traffic; and

Providing the School with a safe direct access into the FB Fields; and

Providing homes with high levels of sustainability; and

Providing enhanced play provision for young people.

The cost of completing these Master Plan alterations is £14,574.43 which when compared to the overall Gross Development Cost of c. £30m represents less than half of one per cent.

- c) *Prior to redevelopment the estate had 176 homes representing a density of at 42 dwellings per hectare (dph). As the Master Plan has evolved the site density has intensified. The first development proposals were for 185 mixed units of accommodation at 45 dph, with the alterations to phase 2 came an increase in density to 48 dph. The most recent Master Plan iteration aims to deliver 53dph.*

Phase 2c is currently underway, this is will see the delivery of 24 new rental homes in June 2014

The procurement of a design team to lead the development of the regeneration project to completion (phases 3 & 4) is presently underway.

The Le Squez regeneration scheme and other projects underway or planned will provide much needed social housing, while also giving a welcome boost to the construction industry.”

2.9 DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR OF H.M. ATTORNEY GENERAL REGARDING ACCESS TO CONFIDENTIAL MEDICAL RECORDS DURING COURT CASES:

Question

Could H.M. Attorney General outline the circumstances in which confidential medical records are made available to defence lawyers in criminal trials and the circumstances in which they can be revealed in Court and is he satisfied that appropriate safeguards are in place to protect victims in these instances?

Answer

The Deputy asked very similar questions in November 2012. For ease of reference, the Attorney General encloses the relevant passage from Hansard for the sittings on 6th November 2012 and 20th November 2012. The previous answers set out the circumstances in which medical records might need to be disclosed to the defence and the reasons why that is necessary. The written question answers on 20th November, 2012 specifically dealt with the safeguards or protections provided to witnesses. The present situation remains as it was in 29012.

“2.2 Deputy R.G. Le Hérissier of St. Saviour of the Attorney General regarding confidential counselling and medical information used in open court:

Under what conditions can confidential counselling and medical information be used in open court and are current procedures consistent with the European Convention on Human Rights and Data Protection legislation?

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

In any criminal case and other than in exceptional circumstances, the prosecution has an obligation to disclose to the accused any material that might undermine the prosecution’s case or support the defence case. In some cases, the confidential medical and other records of a victim or a witness will be relevant to the issues before the court. The prosecution will then seek to obtain and disclose relevant parts of those records to the defence. Normally the person will be asked to consent to their records being obtained for this purpose. In the subsequent court proceedings, the

defence can choose to use any relevant material that might reasonably undermine the credibility of a witness. There is a strong presumption in favour of criminal proceedings being heard in public unless, in wholly exceptional circumstances, a court directs otherwise. In any proceedings, the prosecution and the judge will be alert to ensuring that only relevant material is put to a witness. It is open to the media to report accurately what takes place during proceedings. It is left to the media to exercise judgment as to whether it is necessary or appropriate to publicise personal and confidential material about persons in court. As to the E.C.H.R. (European Convention on Human Rights), there will usually be a stronger public interest in safeguarding the rights to a fair trial in public and freedom of expression within the rights of a witness to respect their private and family life. Confidential material will normally only be made available to the defence if the subject has consented or a court has ordered disclosure. The Data Protection Law provides that it is lawful to process data for the purposes of the administration of justice.

2.2.1 Deputy R.G. Le Hérisier:

Could the Attorney General clarify: if somebody enters into a counselling relationship in the belief that it is totally confidential and will not at a later stage of life be revealed, it is permissible that the files, the record of this counselling, can be accessed by the court without the consent of the individual? Can that happen?

The Attorney General:

In the vast majority of cases, a counselling relationship or a medical relationship is one that is afforded the highest measure of confidentiality and it is for that reason that I said that generally only such information will be sought and provided with the consent of the individual concerned. However, there remain circumstances in which it would, in my view, be entirely proper to seek the leave of the court to obtain confidential information. An example might be where the individual is no longer able to give consent, in the case of a child, for example. There will always be very anxious consideration given by the prosecution as to whether it is appropriate to force such information but it is theoretically possible.

2.2.2 Senator S.C. Ferguson:

If the disclosure includes disclosure regarding other parties, thereby undermining the position of the other parties, what redress is there legally?

The Attorney General:

It is important to remember the purpose for which information is obtained and disclosed. It is obtained and disclosed in accordance with the prosecution's obligation to the defence to provide information that may undermine the prosecution case or support the defence case. It is unlikely, I would have thought, that information relating to third parties would normally be the case and it is only relevant information that needs to be disclosed but if the information relating to a third party is relevant then it will be disclosed in the way that I have set out. As to whatever the redress may be, the disclosure is based upon the requirements of the interests of justice and, in my view, the question of redress does not arise.

2.2.3 Senator S.C. Ferguson:

Right, suppose I am the counsellor and I have been required to disclose information legally through one means or another. Do I then have to say I do not want my name mentioned in connection with this in order to keep... because obviously I do not want to be mentioned in connection with it because of the disclosure requirement? What exactly is the position? Where is the fairness in this?

The Attorney General:

I am sorry, I do not wish to be obtuse, but I do not really understand the question.

Senator S.C. Ferguson:

As a counsellor - you know, Joe Bloggs - I have given counselling to somebody. The record of that is required to be given to the court by the counselee but can I not just knock my name off it because I do not want to be connected with it. I do not want to be connected with the fact that the records are being exposed in court because my reputation as a counsellor will have gone kaput.

The Attorney General:

It is only relevant matters that should be disclosed in court. I do not think it would be permissible to edit whatever information is provided to the prosecution but the prosecution would only disclose relevant information to the defence and the defence should only deploy relevant information in a trial. Accordingly, the names of third parties which are unnecessary should not be deployed in a trial.

2.2.4 Senator S.C. Ferguson:

What redress is there for the third party if their identity has been disclosed?

The Attorney General:

If their identity has been disclosed in a lawful way, there is no redress as such. The court has, of course, power to order restrictions on reporting specific items of information and if a representation is made to the court through the course of the trial, it will obviously take that under consideration but it is impossible to give a hard and fast rule.

2.2.5 Deputy T.M. Pitman of St. Helier:

I fully appreciate, having sat in court, that information has to be disclosed to the defence. However, could the Attorney General advise whether there is not some kind of advice and instruction always given by the court so that the media will not report things that are quite unnecessary? I think it is quite relevant that only one of our organisations reported this type of thing very recently and perhaps that is a comment on the professionalism of that organisation.

The Attorney General:

As far as I am aware, but I cannot be definitive, there is no standard direction given by the court to the media. The court will be alive to the deployment of sensitive and confidential information and might, in the exercise of a discretion, ask the media itself to exercise a discretion but there would not normally be, in my view, any direction to the media other than in particular types of cases.

2.2.6 Deputy R.G. Le Hérisier:

Clearly, this is an enormously difficult balance to achieve and a very, very worrying issue. Could the Attorney General tell the Assembly what steps are being taken to ensure that the right balance is struck so that people do not go into court and that issues from very, very difficult periods, for example, in their early life where, for example, massive intimate information has been given to a counsellor, that these issues, be they a victim, be they a complainant or be they an alleged guilty party, are not going to be brought out to haunt them, I am afraid, in the context of a small community where, as the previous questioner said, news is very easily available?

The Attorney General:

There is, of course, a difficult balance to strike in any of these matters but it is in the interests of justice that information can be deployed that may undermine the credibility of a witness or may be relevant to what goes on in the case itself. The court and counsel are alive to the questions of relevance and, indeed, the question of sensitivity but ultimately if the information is available to the

defence, it is open to the defence to deploy it and that is one of the facets of dealing with justice in the open in this jurisdiction.

The Bailiff:

Does the Assembly agree to raise the défaut on the Deputy of Grouville? The défaut is raised.”

“1240/5(7242)

WRITTEN QUESTION TO H.M. ATTORNEY GENERAL

BY DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR

ANSWER TO BE TABLED ON TUESDAY 20th NOVEMBER 2012

Question

What protections, if any, are afforded a complainant who consents to the use of confidential medical or counselling information in a criminal trial?

How are they made fully aware of the implications of agreeing to the use of such information?

Answer

The Attorney General has already answered oral questions relating to this matter on 6th November 2012.

The prosecution has a duty to disclose material that might undermine its case or assist the defence. This duty of disclosure is key to providing a defendant with a fair trial pursuant to Article 6 of Human Rights Law. A failure to discharge this duty can result in an acquittal.

In order to discharge this duty, the prosecution will typically need to review any medical records that may relate to a complainant in order to determine what, if any, of that material undermines its case or assists the defence. The complainant will be informed, when consent is sought, that the material may be disclosed to the defence and used at trial.

The prosecution lawyers will consider the medical records having regard to the disclosure test. If (and only if) the test for disclosure is satisfied, then the prosecution must either provide the documents to the defence or offer no evidence and thereby stop the case.

There are limits to the discussions that can be had with a complainant on this issue. A complainant can be properly informed that the material might be used by the defence during the trial. What the prosecution must not do is highlight particular parts of the medical records to the complainant and warn them as to what questions might be put in cross examination. “

2.10 DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR OF THE MINISTER FOR TREASURY AND RESOURCES THE RUNNING COSTS OF THE CORPORATE PROCUREMENT SECTION:

Question

Could the Minister identify the running costs of the Corporate Procurement section in each of the last three years and identify the promised savings and actual savings made in each of those years?

Answer

The Minister is pleased to have this opportunity to address recent publicity following the publication of the Comptroller and Auditor General's report on Corporate Procurement, including the perception apparently (and mistakenly) held in some quarters that the Unit is costing more than it delivers in savings.

Savings are only one measurement. The benefits of a professional procurement unit extend far wider and include:- Probity, good governance, legal framework, risk management and an open, fair and transparent framework in which goods and services are competitively tendered and organisational goals achieved. The C&AG recognises the progress made in all of these areas.

The table below sets out the running costs for 2011 to 2014 and the savings achieved.

	2011	2012	2013	2014	Total Cumulative Savings and Cost 2011-2014
Savings Achieved by Financial Year	£60,801	£60,801	£60,801	£60,801	
		£752,908	£752,908	£752,908	
			£2,240,649	£2,240,649	
				£3,451,300	
Total Cumulative Annual Saving by end of year	£60,801	£813,709	£3,054,358	£6,505,658	£10,434,526
Less Cost	-£473,000	-£676,740	-£903,180	-£915,682	-£2,968,602
Net Benefit	-£412,199	£136,969	£2,151,178	£5,589,976	£7,465,924

At the start of the Comprehensive Spending Review (CSR) period in 2011 a number of procurement projects were initiated and by the end of 2012 a proportion of these projects were in progress and savings were being identified. £3.05million was removed from Departmental base budgets in 2013.

Further procurement projects were delivered in 2013 resulting in savings of £2.1m. An estimated £570,000 of these savings will come from projects to be delivered during 2014.

In late 2013, it was evident that by 2014 total budget reductions of around £5.1 million could be made.

Further procurement savings had been recorded by Corporate Procurement but these savings could not be fairly attributed to Departments because the savings were either non-recurring or because the base budgets for the goods and services do not exist.

In order to address this issue and make up the savings target of £6.5million, £1.4million has been taken out of Departmental inflation budgets. This was possible due to lower inflation than budgeted for in 2013. A total of £3.45 million will be removed from Departmental budgets during April 2014.

The annual cost of the Corporate Procurement section in 2013 was £903,180 and annual savings in excess of £6.5million (cumulative savings of £10,434,526) have enabled permanent budget reductions.

2.11 DEPUTY S.S.P.A. POWER OF ST. BRELADE THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING THE RENTAL AGREEMENT FOR THE ELIZABETH HARBOUR CAFÉ:

Question

Would the Minister confirm that the proposed rent for the Elizabeth Harbour Cafe is approximately £50,000 per annum and that this is combined with a full repairing and maintaining lease and all the fit-out costs and, if so, does he consider that this could preclude many interested parties from expressing interest?

Would he agree that a high rental for the cafe concession at the harbour will simply ensure a longer void period and the risk of letting to a restaurant operator who will have to seek high prices to cover costs?

What market research, if any, has been undertaken to establish the price range and menu options which would be appropriate for customers waiting for a ferry from Jersey?

Answer

As part of the Expression of Interest (EOI) process for potential tenants, a list of proposed lease terms, including an annual rental guideline as well as likely insurance and repair costs were listed in the document. However, the EOI also made it clear that “variations to these lease terms will be considered on their merits” and that potential tenants have been advised that we would consider all reasonable variations to suggested terms such as incremental rent increases. Ports of Jersey are aware of the current poor state of repair in the café facility, which over and above being as a result of general wear and tear can also be attributed to essential maintenance not being carried out by the previous tenant.

Interest from potential tenants has been high and as such the process has taken slightly longer than was at first expected. However, further discussions with those short-listed potential operators will take place over the coming weeks and as a result we are hopeful of an announcement shortly afterwards.

Ports of Jersey do not intend to operate this facility and therefore a decision as to the style of service, menu and pricing is appropriately a decision of the appointed tenant as they are responsible for its commercial success. The suitability of their offering to ferry passengers is part of the appointment process. All of the shortlisted tenants are well established businesses, with proven experience in the catering trade. Therefore, Ports of Jersey are confident that whoever is appointed will make this a successful business, best serving both local residents and passengers using the ferry terminal.

2.12 DEPUTY S.S.P.A. POWER OF ST. BRELADE OF THE MINISTER FOR PLANNING AND ENVIRONMENT REGARDING SUPPORT FOR THE AQUACULTURE INDUSTRY:

Question

Given the success of the aquaculture industry locally is the result of hard work and big investment by local Jersey entrepreneurs in developing the oyster and mussel beds in the Royal Bay of Grouville, would the Minister advise whether he considers it acceptable for his department and the

Economic Development Department to demand financial accounts to be submitted from these aquaculture companies or to consider threatening enforcement action against these operators if they refuse to submit financial information?

Can the Minister explain why financial accounts are being demanded when the States have no financial interest or involvement by grant aid or subsidy to this successful local industry that is largely export based?

Can the Minister confirm if any enforcement action could risk closing the companies?

Answer

Since the inception of the oyster industry in Jersey the use of the beach by those wishing to grow oysters and mussels has been under States authorisations. This was originally by an Act of Committee, and more recently by licence under the Ministerial system. The licensing authority is the Minister for Economic Development, and works pertaining to licencing and enforcement are carried out by officers from the Marine Resources team of the Department of the Environment on his behalf.

Licence conditions were and are attached to all authorisations. These conditions include making sure the site is tidy and not a hazard to the public, that measures are taken in respect of disease prevention and control, and include the provision to the licencing authority of business statistics.

Another licence condition requires the provision of financial information and this has been the case since the inception of the licensing process. Although historically this information has been agglomerated before being put into the public domain, it is recognised that publication is not popular with operators. The reason for the States requiring the information is to satisfy due diligence in respect of Financial Directions and helps give assurance that the applicant can cover liabilities in the event of that applicant ceasing trading, but it is currently under discussion as to whether the information should continue to be made available in the public domain.

All current operators have signed licences whereby they agree to abide with all conditions attached to the licence. It is therefore rightly required that all operators fulfil the conditions that they have agreed to in order to ensure that the controls mentioned above are met and also to ensure that no one party is disadvantaged by inconsistent compliance with legal requirements.

Officers from the Department of the Environment issue many hundreds of licences on behalf of the Minister for Economic Development with conditions which are required under the legislation passed by the States and I'm sure members expect these to be administered and enforced as set out in the Law. The Department will and does take the appropriate enforcement action in dealing with all offences under the Laws it is responsible for administering on behalf of the States, including breach of licence condition.

The Department of the Environment has significant interest in ensuring aquaculture is a successful industry and is committed to supporting it, as am I. The Department also has an obligation to ensure that public land is used appropriately. The aquaculture industry uses large tracts of the beach in the Royal Bay of Grouville and elsewhere, and it is right that individuals who financially benefit from the almost exclusive use of public property provide the necessary information to ensure proper, appropriate and beneficial use to the Island. It is right for Ministers to ensure due diligence in respect of companies that are prospering using some of our Island's most important natural resources.

Ministerial oversight for enforcement action rests with the Minister for Economic Development. It is however my understanding that breach of licence conditions, as with all enforcement action taken are dealt with in accordance with established protocols and adhere to any penalties as set out in the legislation or the licence conditions. In this case the licence clearly states that failure to comply with any of the above terms and conditions may result in withdrawal of the concession.

I am not in a position to advise whether companies could be closed by enforcement action as such action does not necessarily end in financial penalty.

2.13 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE CHIEF MINISTER REGARDING THE SUSTAINABILITY OF THE EXPANSION OF THE FINANCE SECTOR WORKFORCE:

Question

Does the Chief Minister consider that the potential expansion of the finance sector workforce by at least 900 additional posts over the next five years announced by the CEO of Jersey Finance is sustainable, given that growth at this level in a single sector of the economy would already exceed the modest targets set by the Council of Ministers in its interim population policy for the whole of the economy and, if so, why?

Can the Chief Minister cite any evidence which would support the assertion made by the CEO that 80 per cent of these additional posts would be filled by those with 5-year entitlement to work?

Answer

An expansion of employment in financial services employment is welcome and should be firmly supported, in particular the emphasis on the employment of “entitled” and “entitled to work” people.

It is entirely consistent with our strategies, including the Interim Population Policy - which has a clear focus on high social and economic value activities and supporting the employment of established Islanders.

As to the size of the expansion, the survey suggests migration of 180 workers over 5 years (20% of 900) which fits within the net migration planning assumption of +325 people per year.

2.14 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING AGGRESSIVE TAX AVOIDANCE:

Question

Notwithstanding his previous answers on the use of structured loans by Jersey registered companies to subsidiaries in order to avoid legitimate UK corporation tax, exemplified by Henderson Infrastructure and Alder Hey PLC, what part of the new Financial Services Framework does he consider addresses the question of what constitutes ‘aggressive or abusive’ tax avoidance and, if none, why not?

Despite the absence of a comprehensive action plan on base erosion and profit shifting, does he not accept that he could and should take responsibility for regulating the activities of Jersey registered companies in this area of financial activity and, if not, why not?

Will he explain to members how his statement that "we are part of the growth solution of the UK government" matches the reduction in UK tax revenue produced by our activity and does he accept that his statement that "clearly our innovative company law is providing useful arrangements for UK companies" simply means we are involved in assisting companies to abusively avoid legitimate tax?

Answer

This question has been directed to the Minister for Treasury and Resources but would more correctly have been asked of the Assistant Chief Minister with responsibility for Financial Services. However, an answer has been provided below.

The Financial Services Industry Policy Framework includes among its key objectives "Uphold the reputation of the Island and ensure that Jersey is considered a centre of excellence for sound business practice by the international community". As the Chief Minister and the Assistant Chief Minister – Financial Services have made clear in public statements, sound business practice includes ensuring that Jersey is not used by those engaged in abusive tax planning schemes. In this context what constitutes abusive tax planning is identified from the international standards set by relevant international organisations such as the OECD and from Court or Tribunal decisions obtained by the HMRC in the UK.

The OECD Action Plan includes action to limit base erosion via interest deductions and other financial payments and this forms part of a general review of transfer pricing guidelines. In advance of knowing the outcome of this Action regard can be had on a case by case basis for the view taken by the tax authority directly affected. In this respect it is to be noted that the arrangements made in the case to which the Deputy has referred have been considered and accepted by the UK authorities.

The Capital Economics study showed conclusively that while there was some reduction in UK tax revenue arising from Jersey's international finance centre activities this was very substantially exceeded by the benefit the UK economy derived from those activities. In particular the contribution Jersey has made to the liquidity of banks in the UK has meant that the banks have been in a better position to lend to British businesses and thereby foster the growth of the UK economy.

Through Jersey's innovative company law the States have been able to attract more business to Jersey that the UK has then derived a benefit from. At the same time Jersey has sought to limit the loss of tax revenue through joining in the fight against tax evasion through enhancing transparency and the exchange of information. This is being achieved by the signing of an intergovernmental agreement that provides for the automatic exchange of information. A request has also been made of the HMRC to identify abusive tax planning schemes through the DOTAS (Disclosure of Tax Avoidance Schemes) reporting schemes so that appropriate action can be taken in accordance with the Sound Business Practice objective in the Policy Framework document. That assistance will hopefully be forthcoming shortly.

2.15 DEPUTY J.H. YOUNG OF ST. BRELADE OF THE CHIEF MINISTER REGARDING THE WORK OF THE REGENERATION STEERING GROUP:

Question

Will the Chief Minister provide a detailed report of the work of the Regeneration Steering group since his election, to include -

- (a) the number of meetings of the group and attendances by Ministers
- (b) the subjects discussed
- (c) the significant policy decisions made by the group, if any, detailing their outcomes and achievements
- (d) the directions given to the States of Jersey Development Company, if any, to carry out development of public property.

Has the group been monitoring the location and quantity of vacant office units in town?

Has the group identified any particular areas of town which require priority for regeneration?

Has it set a policy, including providing either financial incentives to owners or regulatory incentives via relaxation of building bye- laws, to encourage long standing vacant secondary and tertiary offices to be converted or redeveloped to residential uses securing additional dwelling units, and, if not, why not?

Answer

Yes. A report on the work of the Regeneration Steering Group, including the areas requested, will be published and presented to the States Members by the end of May 2014.

3. Oral Questions

3.1 Deputy G.C.L. Baudains of St. Clement to the Minister for Housing regarding tenancy arrangements and the new deposit protection scheme:

My word, we are moving along at pace this morning. Further to his written answer of 4th February 2014 regarding tenancy agreements, would the Minister outline the scale of the problem he is attempting to address with the new deposit protection scheme, and is he yet in a position to divulge the expected cost of that scheme?

Deputy A.K.F. Green (The Minister for Housing):

In 2008 the Annual Social Survey indicated 20 per cent of respondents in rental accommodation experienced issues over the return of their deposit in the previous 5 years. We have no reason to believe that this has materially changed and based on the continuing level of complaints at the Citizens Advice Bureau, about 200 per year, and indeed I have to say this is the one thing I get the most phone calls about as Minister for Housing. I believe that it is right to continue to proceed with the deposit scheme. The costs will be fully outlined alongside the draft regulations when they are lodged, including how the scheme will be funded, probably by interest earned on deposits, with a small fee if necessary.

3.1.1 Deputy G.C.L. Baudains:

What concerns me are the fees to support the scheme. First of all, is the Minister sure that taking the interest from the deposit is legal and how can he assure us that tenants will not be financially worse off after these fees have been taken than previously because where the fees are taken from, if it is taken from the landlord it will end up being put on to the rental the tenant will be paying either way.

Deputy A.K.F. Green:

This will be entirely a matter for the Assembly but when it was envisaged in 2007 that such a scheme would come in, it was envisaged that it would be at absolutely no cost and that the interest rate, which was then much higher, would pay for the scheme. We are in a different economic situation at the present time but I am hoping that that will change in time to come. But to answer the Deputy's particular point about is it legal. I will take advice on that but currently the tenants when they leave their deposit with their landlords get no return in terms of interest. They get nothing at all. They very often have to fight to get their deposit back.

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

I keep asking this question but I keep getting delay after delay. When will the Minister bring these regulations to this House because it has been too long now?

Deputy A.K.F. Green:

I said to the Deputy last time he asked me this question, that the next time he asked me I would be able to hopefully give him a date. I am not quite there yet but I can say ... I apologise for how long it has taken but it has been more complex than we realised but I can say that instructions were issued recently to the Law Draftsman to prepare the regulations.

Deputy G.P. Southern:

I live in hope.

3.1.3 Deputy S.Y. Mézec of St. Helier:

When the deposit protection scheme is brought in, what sanctions will there be against landlords who do not protect the deposit and will they be able to avoid the sanctions by simply protecting the deposit before the court date, as is the case in the U.K. (United Kingdom) where many landlords get away with it scot free when they do not protect the deposit?

Deputy A.K.F. Green:

The sanctions basically will include fines if landlords do not deposit within, I think it is 7 days - I cannot remember that, I will come back to the Assembly if they want to know - if the deposit is not deposited with the third party within 7 days of the landlord receiving it then there is a fine levied for that.

3.1.4 Deputy S.Y. Mézec:

Will that fine be in all cases where the landlord does not protect it within 7 days because at the moment in the U.K. I believe it is 14 days that the landlord has to protect the deposit but if a tenant then takes their landlord to court over it, if the landlord has protected the deposit by the court date the court will not impose any sanction at all? So there is no incentive for landlords to follow the law then in that case, and many can just get away with it.

Deputy A.K.F. Green:

I do not have that level of detail with me but I will get back to the Assembly with that answer.

3.1.5 Deputy G.C.L. Baudains:

Does the Minister agree that this is a 2-sided problem because landlords can end up with a situation where the deposit is used as the last month's rent and that sort of thing? How can the Minister assure us that the administration of this is not going to be overly heavy and, as I said a few moments ago, potentially more expensive for the tenant than previously?

Deputy A.K.F. Green:

There are good landlords and bad landlords, and there are good tenants and bad tenants. The scheme is there to assist both. It will be entirely a matter for this Assembly. I am not going to hide behind that.

[9:45]

This Assembly decided that there would be a deposit scheme. I agreed with it and I will bring a deposit scheme that is fair to all, and that is all I can say at this stage.

3.2 Deputy M. Tadier of St. Brelade of the Minister for Health and Social Services regarding banning smoking in cars carrying children:

Following the recent announcement that the Minister is planning to bring forward proposals to ban smoking in cars where children are present, will the Minister explain what action, if any, will be taken to include other enclosed spaces, such as the home, where the risk of harm may be even more acute?

Deputy A.E. Pryke of Trinity (The Minister for Health and Social Services):

Ideally no one should smoke anywhere that children can be harmed. The results of the 2013 public consultation on protecting children from second-hand smoke showed an overwhelming majority of people in Jersey would support a ban on smoking in cars carrying children. That proposed legislation is responding to that. What the results did not show was that the same level of support for extending that legislation to other enclosed spaces, such as in the home. The legal ban of people's own homes would also be extremely difficult to enforce. It will not however stop our efforts to encourage people to create smoke-free homes and we will continue working to educate people about smoking and the need to protect our children from serious harm that second-hand smoke can cause.

3.2.1 Deputy M. Tadier:

Is the reason that the Social Survey did not show support for extending it, for example, to the home is because that question was never asked and what the Social Survey did was ask, in this case, a fairly obvious question to which any right-minded person would have to reply: "Yes of course, smoking should not take place in cars with children, and we would support a ban"?

The Deputy of Trinity:

As I understand it, that question was asked and the public consultation with both non-smokers and smokers so that families with children should be encouraged to create smoke-free homes. But the feedback was saying that they did not want legislation for that.

3.2.2 Senator S.C. Ferguson:

By what authority does the Minister consider that she should take over the role of the parent?

The Deputy of Trinity:

I would like to think that I am a parent, a mother and a grandmother. At the end of the day, I am there charged to protect our children from second-hand smoke. We know the effects that smoking does, and especially on children on very young lungs, and if we can prevent some children from developing problems as they grow up, such as asthma and respiratory diseases, then that is a very good thing.

3.2.3 Senator S.C. Ferguson:

Supplementary. By what authority does the Minister consider that she has the right to take over the duties of a parent?

The Deputy of Trinity:

As I said before, the legislation will be coming back to amendment on the Restriction of Smoking 1973 Law and it will be up to this Assembly to make that final decision.

Senator S.C. Ferguson:

Whom private property ...

The Bailiff:

You have asked 2 questions, Senator.

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

Could the Minister advise then why she has not gone down the route of making tobacco illegal?

The Deputy of Trinity:

That is a very good question. Personally-wise, I think it is something that I would like to see but I know in reality it is very difficult to do that. But I think education again is important. There have been calls from some of our clinicians, because they see the effects of smoking in all age groups, to make Jersey Island smoke-free. For me that is perhaps a step too far.

3.2.5 Deputy S.Y. Mézec:

Is the Minister aware of the situation in Tokyo where smoking is banned on some of the high streets and would she consider something like that appropriate for a place like King Street or Queen Street where despite it being technically outside it is in many ways like an enclosed area and people can inhale second-hand smoke walking behind smokers in the high street.

The Deputy of Trinity:

I was not particularly aware of that one in Tokyo but I will certainly look at it. I think that question about pedestrians on the street was asked during the survey but it did not get much support at this stage.

3.2.6 Deputy M. Tadier:

There are many questions obviously which could be asked, and no doubt will be brought out in the debate, and one issue is that of proportionality. Will the Minister say simply for the record, does she think it is more harmful to smoke in a car with a 10 year-old child with all the windows open or to smoke in a front room with all the windows shut and chain smoke for 3 hours in a row? Which is more likely to do most harm to the children? A 20-minute journey in a car with windows open or a week's potentially smoking with a child locked up in a front room where nobody can do anything about that?

The Deputy of Trinity:

All smoking is harmful. I think that is the most important thing to get across. We have to do one step at a time. When you are smoking in a confined place like a car, with or without the windows open, the children have no choice to get out of the car or perhaps they can with a transport strategy, to get out of the car. So it will have an effect on their young lungs. I would like to think that education; that people take the responsibility of having smoke-free rooms in a house or even smoking outside.

Deputy M. Tadier:

Why is she not offering it?

3.3 Deputy J.H. Young of St. Brelade of the Minister for Planning and Environment regarding the fulfilment of the 2011 Island Plan policy commitments for St. Aubin and St. Brelade's Bay:

Will the Minister inform the Assembly whether he has yet fulfilled the 2011 Island Plan policy commitments for St. Aubin and St. Brelade's Bay and implemented the plan's proposals to ensure that all development is sympathetic to its context and does not detract from the visual amenity and public enjoyment of those localities, and if not, will he explain why not and state when he proposes to implement the policies?

Deputy R.C. Duhamel of St. Saviour (The Minister for Planning and Environment):

The Deputy is well aware that I have not yet adopted any Supplementary Planning Guidance either for St. Aubin or St. Brelade's Bay as enabled by proposal 14 of the 2011 Island Plan. The proposal to undertake this work came from an amendment to the plan proposed by the then Deputy for St. Brelade with the support of other local Members. However, I have been only too willing to work with the St. Brelade planning group to help scope and prepare this work. I personally met with the group on a number of occasions and my department has provided it with advice and assistance to take this work forward in partnership, as a response to this locally identified need for further planning guidance within specific areas of the Parish. However, despite the apparent desire for this work to be undertaken, the local commitment to take this forward in the Parish has not been sustained and it has thus yet to progress further. I am happy and willing to sit down and work with any St. Brelade members or community groups to look at how such projects might be resourced and progressed over the remainder of the planned period.

3.3.1 Deputy J.H. Young:

I am grateful for the Minister's commitment at the end of his answer. Can he confirm that his willingness to provide resource includes a willingness to provide funding in order to provide professional support to that local group in order to ensure that the job is done to the standard that his own department and he requires?

Deputy R.C. Duhamel:

I am happy to commit my officers as far as I am able to commit them. But in terms of providing sums of monies to be spent by individual groups on their own account, I think that would be something that needed further discussion.

3.3.2 Senator S.C. Ferguson:

I will confess a slight conflict here. I understand that the planning group were ignored by the Minister's officers. Will he confirm that his officers will take notice of any representations made by the group to his department?

Deputy R.C. Duhamel:

I am sorry to hear that perhaps this misconception exists. As far as I am concerned, I think my officers have always shown themselves to be extremely willing to assist the creation of these groups but I must stress the point, the Planning Department as set up at the moment does not have extensive funds in order to provide seed corn monies or whatever, for the sponsoring of individual groups. That said, we do remain ready and willing to assist the work to be undertaken in a partnership approach using ordinary office time.

3.3.3 Deputy J.H. Young:

On a question of resource: has the Minister looked at the last plan that was produced in 1989 and looked at the quality of it and formed a view whether or not this sort of thing can be done by a local group without professional support to ensure that what comes forward finally in the plan is robust and does the job properly? Will he confirm that he is aware of that and recognises that need to have that professional resource?

Deputy R.C. Duhamel:

I do recognise that but I must stress it is a 3-way partnership. It is the Planning Department and its officers and the Minister. It is the individual planning groups and community groups from a local perspective and indeed it is, to an extent, professional outside help in order to write the reports and to bring everything together in the way that the Deputy has described.

3.4 Deputy R.G. Le Hérisier of St. Saviour of the Minister for Economic Development regarding progress of the Public Sector Reform project:

Given his responsibility for overseeing public sector reform, would the Minister outline how progress is measured in the implementation of the reform project and whether the anticipated progress has materialised?

Deputy A.J.H. Maclean (The Minister for Economic Development):

I can assure Members that significant progress has been made across all aspects of public sector reform. This progress is measured in both qualitative and quantitative terms. When the Council of Ministers approved the way forward for public sector reform in March 2013 a number of deliverables were identified across all workstreams. These were e-Government and proof of concept projects, workforce modernisation, culture and the Lean Academy. These cover what was acknowledged to be an enabling period for reforms spanning 2013 and 2014. The project put in place represent the building blocks in which departments will develop long-term sustainable transformation. Twelve months after the reform programme was first agreed the Council of Ministers recently received a progress report, which showed nearly 80 per cent of the 48 individual deliverables were either completed or on track for completion. The progress in all aspects of reform is reported to the Political Oversight Group and Council of Ministers. It is encouraging that in addition to direct and tangible improvements we are also seeing positive changes in both culture and behaviour across the organisation, for example, the partnership working achieved with our trade unions, which is true progress and was recognised at the Teachers National Conference over the Easter weekend.

3.4.1 Deputy R.G. Le Hérisier:

Notwithstanding that glowing report by the manager of the project [**Laughter**] I wonder if the manager of the project could comment on the fact that in order to make public sector reform palatable to people lower down the system and indeed to the public, there is a feeling that we have to ask some very hard questions about the growth, the cost, and the extent of management within

the public service. Could he in a specific sense outline whether he has been able to deal with that issue and what reductions in senior management is he able to report to the House?

Deputy A.J.H. Maclean:

I would point out to the Deputy that I am not the manager of the programme. I have political oversight together with my Political Oversight Group colleagues, and of course the Council of Ministers, and ultimately this Assembly, so I think he was a little overstating that point. Nevertheless, with regard to his question, of course he raises what is a very pertinent question in terms of costs, size of organisation and such like. But what we have to remember is that any reform programme first of all takes time; secondly, it is essential that in any organisation, staff, in particular, are taken with us on the journey. I think we have seen in the past that was not the case, in particular where we have sought to do comprehensive spending reviews and such like, which was short-term measures whereas this reform programme is a long-term measure designed for sustainable change in the public sector providing an organisation that is more agile, more cost effective, delivering efficient services at the right price, bearing in mind cost is a key driver. But that very much will be flowing in phase 2. What I have described to the Deputy, and to Members is phase one, which is the building blocks of a reform programme, which needs to be sustainable. I can give him a lot more detail, this is a very difficult one with an oral question and I am happy to give more detail in writing or in person.

3.4.2 Senator S.C. Ferguson:

Given the problems with the e-returns in January has the Minister got evidence that these have been solved; not just speech but hard evidence?

Deputy A.J.H. Maclean:

Again, the Senator here raises a very important point and that is around one of the workstreams, which is e-Government. Currently in the States of Jersey, we have digital means of interacting with the public, which is only 7.5 per cent of all digital transactions, which is very low.

[10:00]

The plan seeks to move to 75 per cent, which is at the heart of public sector reform. Yes, there have been problems. I am told that these problems are resolved but e-payments at all elements of using digital means to interact with Islanders and customers is key and central to the programme. Funding has been agreed. A programme has been agreed. I am confident that we are now moving in the right direction.

3.4.3 Senator S.C. Ferguson:

Given the fact that the Chief Statistician does not feel that he can rely on the results of the manpower returns in January, does the Minister really believe at this stage that the e-returns, the problems have really been solved? Has he got hard evidence, not just speech?

Deputy A.J.H. Maclean:

I think the Senator is conflating 2 issues. We are talking about an e-Government project which is just starting. The funding and the plan has only just been approved. The funding has just been put in place. She is a little bit ahead of the game in this respect. I understand the problems with regard to this information. I believe that 96 per cent or so of the information is now collated but this is far wider and broader than the small item that the Senator is referring to.

3.4.4 Deputy G.C.L. Baudains:

The Minister will be aware of my frustration with this reform, something I thought should take months we were told would take 6 years, and now looks like a lot longer. Could the Minister give

us tangible evidence of progress and would he also advise us who is now driving it, given that the 2 individuals doing most of the driving work left a little while ago?

Deputy A.J.H. Maclean:

Again, there was a States Members briefing to bring Members up to date with progress. A number of Members attended, which I thank them. There will be a further update for States Members on the progress of public sector reform. Make no mistake, this is, in my view, the most important agenda item in terms of reform. Public sector reform is and should be at the very forefront of what we are seeking to achieve. It is not short term, as I have already pointed out. We have a programme which is setting the building blocks in place. There have been various pilot schemes running at Health and Social Security very successfully. Some of those pilot schemes have delivered tangible results, which is what the Deputy is referring to. I can give an example, the canteen at the hospital which was costing £100,000 in taxpayers' money in terms of losses, that has been turned around as a result of the Lean Academy project where staff have been at the forefront of designing the improvement in that particular canteen. It has eliminated waste and it has returned a profit to that particular area. I think that is a fantastic result. Another quick example, and I know I am short on time, is the Five Oaks store, which was taking 7 days to turn round orders, following Lean it is now 48 hours. These are small but they are important and they are spreading out across the organisation. Again, I am happy to talk to the Deputy, who has engaged with me quite a bit on this project, some more.

3.4.5 Deputy G.P. Southern:

Quite simply: can the Minister show the Members of this Assembly and not just Ministers, his interim progress report with his 80 changes on track so we can identify what these changes are? Does he admit that as far as workforce modernisation is concerned he is yet to tackle the difficult things and negotiate with the unions? There have been no negotiations so far with the unions over workforce modernisation.

Deputy A.J.H. Maclean:

The second point I do not agree with the Deputy on in regard to the unions. In fact there has been great progress made with the unions in terms of negotiation across a whole raft of different areas. I would also say to the Deputy that, as I have already stated, there has been a presentation for States Members on the progress of the reform programme. The Deputy sadly was unable to attend that. There will be, of course, another presentation to States Members. I am very keen that not only the Political Oversight Group and the Council of Ministers but Members are all party to the reform programme. As I have said, it is the most important issue ... or one of the most important issues with regard to reform this Assembly will face and it is important that all Members are part of the solution, as we move forward.

3.4.6 Deputy G.P. Southern:

Will he produce the interim report he referred to for Members?

Deputy A.J.H. Maclean:

Yes, I am very happy to supply to the Deputy and to Members an update in electronic form on the basis that some Members were unable to attend the briefing that we held.

3.4.7 Deputy J.H. Young:

The Minister in his answers I think promised us, as was sometimes described as jam tomorrow. Could he tell us please how much has been spent on the programme to date on sufficient I.T. (information technology) consultancy and temporary support so we know what our investment is which we are looking to save in the future?

Deputy A.J.H. Maclean:

The Deputy has given a specific line item of cost. I have not got that to my fingertips. What I can tell him, and Members will be aware, that through the Medium-Term Financial Plan £7 million per year was agreed from a restructuring perspective. I am very happy to give a breakdown to the Deputy if he would like details on the individual workstreams, of which there are a number, in terms of the cost expended and that in budgets over the coming period, 13 and 14.

3.4.8 Deputy J.H. Young:

Can I clarify that? Is it £7 million or is it £7 million for each year, in which case how many years?

Deputy A.J.H. Maclean:

Yes, per year and it is through the Medium-Term Financial Plan. That was agreed restructuring funds. Of course the actual costs and budget for individual work items I am happy to supply individually to the Deputy if he would be interested, both what has been spent and what is in budget.

3.4.9 Deputy R.G. Le Hérissier:

I think when the Minister inherited or took on the mantle of this programme he said it was very unfortunate he was taking it on at a time when there was a contemporaneous announcement about, I think, 150 person growth in the public sector. Has he managed to get to the roots of that issue or will we have to accept growth as just a normal part of how we operate in Jersey?

Deputy A.J.H. Maclean:

The Deputy asks a very poignant question. He is absolutely right. This is a matter of great concern. We are going to see short-term growth without doubt. Some of that is driven by requests and requirements of this Assembly, for example, the freedom of information is requiring more staff in the short term to be brought on board. As such, we will see an increase in the headcount. This is an issue we have to tackle. This is not about cutting, at this stage, jobs or anything else of that type. What it is about is properly controlling the headcount, vacancy management, so that we can deal with people who leave the organisation through retirement or for whatever reason, and we do not automatically replace roles without going through a proper process to ensure that that role is required, that function is required, and that perhaps we can carry out that particular function in a different way more cost effectively. Ultimately short term we have to address the issue of vacancy management.

3.4.10 Deputy R.G. Le Hérissier:

Just to clarify: can the Minister assure us that that process he has outlined is indeed in place?

Deputy A.J.H. Maclean:

It is a point that has been raised in the strongest possible terms with the Executive to ensure that plans are put afoot to make sure that vacancy management is an issue that is controlled. As I have said, in the very short term, we are going to see headcount numbers continue to rise. That is not a good position but in many respects it is as a result of the items that I have already identified around decisions taken by this Assembly with regard to issues like freedom of information which, in the short term, will see an increase in headcount.

3.5 Deputy S.Y. Mézec of St. Helier of the Chief Minister regarding the recognition of the status of same-sex couples who have married in other jurisdictions:

Following the first same sex marriages in the United Kingdom that took place on 29th March 2014, will the Chief Minister indicate whether he intends to bring forward proposals to ensure that U.K. married couples who move to Jersey are not left unrecognised?

Senator I.J. Gorst (The Chief Minister):

Jersey's Civil Partnership Law makes provision for same sex couples married in other jurisdictions to be automatically recognised as civil partners in Jersey. This does not however currently extend to same sex couples married in England because the English legislation came into effect after our Civil Partnership Law. I have therefore instructed officers to review the relevant part of the law to enable any necessary change.

3.5.1 Deputy S.Y. Mézec:

Would the Chief Minister accept that welcoming new married couples to Jersey by effectively downgrading their relationship status from a marriage to a civil partnership is an insult and that they should have the right in Jersey to be recognised as a proper marriage?

Senator I.J. Gorst:

As I have said, I have asked for the law to be reviewed to enable their marriage to be recognised. That, in the first place, obviously would be as a civil partnership and I will ask for consideration with regard to the question that the Deputy raises. At this stage, that is the best I can do.

3.5.2 Deputy M. Tadier:

Of course the underpinning question here is when can we expect to see same sex marriage in Jersey? Does the Minister have a plan for rolling out that inevitability?

Senator I.J. Gorst:

I have to say that it is not currently on the Council of Ministers work programme. But the piece of work that I have instructed officers to do will need to come to the Council of Ministers and no doubt it will be discussed at that point.

3.5.3 Deputy M. Tadier:

Does the Chief Minister accept that if we are bringing forward a gender discrimination part of the law then same sex marriage must go hand in hand with that because otherwise it is discriminatory about those with other sexualities?

Senator I.J. Gorst:

I have not given that any consideration so I cannot respond on the hoof. I would need to take advice about whether it was discriminatory or not. As I have said, I have asked officers to do the piece of work that will come to the Council of Ministers. I am not aware of all Ministers' views in this regard but will need to consider it. There is not currently time in the work table because the Social Policy Unit is working on other equally important social agendas and one of those is ensuring that we bring forward the other facets of discrimination legislation.

3.5.4 Deputy S.Y. Mézec:

If the Chief Minister is asking his officers to come up with the relevant changes to the law to update it, considering the change in the U.K., does he not agree that it would be a better use of time and money by the law draftsman to straightaway go towards producing a piece of law to allow same sex couples to get married in Jersey? The final part of the question: does he personally accept that Jersey should introduce same sex marriage?

Senator I.J. Gorst:

That could be a way forward, however I think the one that I have outlined and requested officers to undertake is the best way forward in the first instance and then it will come to Council of Ministers and rightly then, in due course, any change come to this Assembly. I did support the introduction of civil partnerships in our community and Members will be aware of the comments that I made at that time because I felt that we did not want to have unintended inequalities in those relationships. I have not personally, which is what the question asked me, given consideration to whether there is a need for gay marriage or not.

3.6 Deputy R.J. Rondel of St. Helier of the Minister for Education, Sport and Culture regarding the amount of public money budgeted to fund the Jersey Sports Foundation for the years 2015, 2016 and 2017:

Would the Minister inform the Assembly how much public money has been budgeted to fund the Jersey Sports Foundation for the years 2015, 2016 and 2017?

Deputy P.J.D. Ryan of St. John (The Minister for Education, Sport and Culture):

Under section 4 of the new sports strategy *Fit for the Future*, funding has been identified to support high performance sport with £50,000 in 2014 and £50,000 in 2015. Just to repeat, under section 4 of the *Fit for the Future* new sports strategy.

The Bailiff:

I am not sure you need to repeat it, Minister.

3.6.1 Deputy R.J. Rondel:

Could he advise Members whether that includes some salaries for the set up and salaries involved in the Sports Foundation?

The Deputy of St. John:

The new Jersey Sports Foundation is an independent foundation in order to support high performance athletes. As part of their structure they will need a specialist sports development/high performance coach, so part of the money that we are putting into this new Jersey Sports Foundation will be used but there will also be many other peripheral costs included in the overall package.

3.6.2 Senator S.C. Ferguson:

How much is going to come out of the Medium-Term Financial Plan for 2016 and 2017 because the foundation is not going to do much with only £50,000 a year?

The Deputy of St. John:

I cannot answer that. That will be up to the States when they debate the next Medium-Term Financial Plan.

3.6.3 Senator S.C. Ferguson:

How much is his department putting in the budget to ask for in the Medium-Term Financial Plan?

The Deputy of St. John:

I think the department is intending to put in bids in the next Medium-Term Financial Plan in line with the sports strategy and, as I have already said, this particular item is carried in the sports strategy.

[10:15]

Senator S.C. Ferguson:

The Minister has not answered the question.

Deputy G.P. Southern:

He does not know.

Senator S.C. Ferguson:

I just asked for a simple number.

The Deputy of St. John:

I cannot give you that answer yet because we have not finalised our growth bids.

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

Of the £50,000 what percentage is going towards the funding of the coach, please?

The Deputy of St. John:

This is an independent sports foundation being set up, as is in the sports strategy by the One Foundation. But what I can say is this: I think we should be very grateful as an Island for foundations such as the One Foundation and I know that there will be a considerable amount of extra funds coming from the private sector in order to support sport in this particular ...

The Connétable of St. John:

Please answer the question.

The Deputy of St. John:

I am not in a position to answer the question. This is an independent foundation set up by the Sports Foundation. We are providing seed grant funding of £50,000 per annum in this current Medium-Term Financial Plan, and that has come from the extra monies that were identified for sport development, which I am very grateful for, and the next Medium-Term Financial Plan we will have to see exactly what that is.

3.6.5 The Connétable of St. John:

Given that the Minister cannot identify money that is being spent, it is taxpayers' money, how it is going to be spent, would the Minister consider withdrawing this grant until he can come back with the correct figures for us?

The Deputy of St. John:

No, I will not.

3.6.6 Senator L.J. Farnham:

While recognising the excellent work that the One Foundation and the support that the Minister's department is giving them, I just point out there are a number of talented sportsmen and women who are trying to break into the professional ranks. Why is it for many of them they are finding it very difficult to get funding?

The Deputy of St. John:

I know that that is a concern and it is also a concern of ours, and that is why we have come forward with a new sports strategy and we are trying to address those very concerns.

3.6.7 Deputy R.J. Rondel:

I am still not clear as to what exactly the £50,000 in 2014 and 2015 is to be used from. Could he elaborate on that please?

The Deputy of St. John:

The £50,000 in the 2 years is a grant to a sports foundation, the new Sports Foundation, specifically to support high performance athletes of all natures. It could be right across the whole range of sporting activity in the Island, from swimming right through to athletics, through to anything that you might think of. As I say, I can only really congratulate and thank the One Foundation for the kind of work that they are doing. I think we should all be exactly the same. **[Approbation]**

The Bailiff:

Just before we come to the next question. I have had reaction from 2 Members expressing surprise that I have not been able to allow them to ask questions. The Chair has to strike a balance between the number of questions which are there, and Members need to try and get through as many as possible in the need to explore matters fully. So I am sorry if Members get disappointed but the Chair has to do what he can to strike a balance.

The Connétable of St. John:

It would help if the people answering the questions gave an answer, Sir. **[Laughter]**

The Bailiff:

I am sure that would be very helpful.

3.7 Deputy G.P. Southern of the Minister for Social Security regarding ensuring that those entitled to benefits are aware of their entitlement:

It would also be very new, Sir. What efforts has the Minister made to ensure that those entitled to benefits, especially those that are means-tested such as income support, are aware of their entitlement and do claim, and what research has his department undertaken since the 2008 reforms to assess the degree to which benefits are effectively delivered to those in need and to compare the figures with those produced by the U.K. Department of Work and Pensions?

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

Succinctly, I can reassure Members that my department places great importance on communicating the availability of benefits to people who need them. Alongside booklets, leaflets, and targeted mail shots, we have expanded our pages on the States of Jersey website and released a detailed policy document explaining income support. We redesigned the income support award letter and application form following customer feedback and we will shortly offer an online tool to estimate benefit entitlement. Officers work with voluntary groups, agencies and associations to raise awareness of benefit entitlement. They offer presentations to States Members and participate in a variety of multiagency groups. We also have a rolling programme of training to ensure that all staff can offer advice about eligibility. I am aware of the results of the Annual Family Resources Survey carried out by the U.K. Department of Work and Pensions. Although our 2 jurisdictions operate benefit systems with a similar purpose, they differ considerably in terms of how they are administered. The U.K. offers a number of overlapping benefits administered by multiple agencies on local and national levels. Under-claiming is more likely under an overlapping system, which Income Support addressed with a single means tested benefit with one application form. Jersey does not have the resources to carry out the equivalent of the Annual Family Resources Survey although my officers continue to utilise the valuable data provided by the Household Income and Expenditure Survey.

3.7.1 Deputy G.P. Southern:

The Minister points out that it is relatively easier to control the effective delivery of benefits in Jersey, which is a small society, and with a single authority delivering that. Does he have a figure for the degree, the amount of under-claiming, or non-claiming, in our society? For example, say, pensioners or the disabled?

Senator F. du H. Le Gresley:

The issue of under-claiming is not one that has been particularly drawn to the attention of the department. We are not aware of the issue and if the Deputy has evidence to the contrary perhaps he will let me have it.

3.7.2 Deputy M. Tadier:

In the interests of balance, would the Minister be willing to put up very large and alarming posters in Social Security warning people that they may not be claiming benefits that they are entitled to, and that if they know anyone in the community who is under-claiming or not claiming when they are entitled to it, to make sure that they phone a special help line, with big red letters, so that they may be reimbursed potentially retrospectively for monies which they are entitled to?

Senator F. du H. Le Gresley:

I am sure that was a very tongue in cheek question from the Deputy ...

Deputy M. Tadier:

It was not, for the record. It is genuine. We do that for benefit cheats. We create alarm for benefit cheats when the scale of the problem ...

The Bailiff:

There is no need to re-put it, Deputy.

Senator F. du H. Le Gresley:

The fact is that we all have responsibility in this Chamber to alert constituents to the benefit system and I have to say that sometimes I am amazed how unaware some Members are when they ask me questions about the benefit system, which is all, as I have already said, explained on the States of Jersey website. We do need to make sure that people who are entitled to benefits claim them but there is absolutely no question if somebody has not claimed a benefit they are not entitled to a refund.

3.7.3 Deputy G.P. Southern:

Does the fact that certain Members in this House continue to surprise the Minister on a lack of knowledge about the benefit system, does that not point to the lack of effective communication from the Minister to describe and make sure that people are aware of what they can and cannot claim?

Senator F. du H. Le Gresley:

Quite the reverse. As I said in my opening response, we have offered States Members in particular tuition sessions on the income support, which is a complicated benefit. The attendance at those meetings has been poor and I am pleased to say that our 2 new Deputies were very willing and came immediately to receive the appropriate tuition.

3.8 Senator S.C. Ferguson of the Minister for Treasury and Resources regarding provision for local investors to invest in the Housing bond issue:

What provision, if any, will be made for local investors to invest in the Housing bond issue?

Senator P.F.C. Ozouf (The Minister for Treasury and Resources):

A Ministerial Decision on 24th September regarding the process and outcome of appointing 3 joint managers known as bookrunners was made. The bookrunners' principal task is to market the bond to investors who will hold the bond and receive the interest payments due, known as the coupon. On 10th March another Ministerial Decision was approved with a planned timetable for the bond issuance. The timetable was proposed after careful consideration of certain factors that will ensure the most up-to-date information to potential investors receive during a roadshow. The roadshow will happen on 26th May in Edinburgh and London. That is after the accounts for the States of Jersey in 2013 has been reported and also Standard and Poor's latest finance assessment of Jersey has been made. Sovereign bonds are typically bought and traded through institutions like central banks, sovereign wealth funds, pension funds, insurance companies and hedge funds. These are known as wholesale investors. The maturity date for the States of Jersey bond is unlikely to be anything less than 20 or 30 years, which I am advised makes it an unlikely prospect to be attractive for retail investors.

3.8.1 Senator S.C. Ferguson:

Given that it will be an attractive rate of interest for anyone who has got money in a bank deposit, why not?

Senator P.F.C. Ozouf:

I understand why the Senator asks the question. The reality is it is my job, as required by the proposition, for setting up the housing entity and getting funding for the housing is to get that at the lowest possible cost. That lowest possible cost is issuing a bond at a wholesale market. I accept the bank interest rate is very low but there are many other products that are available through normal retail distribution channels for investors to increase their return on ordinary bank accounts. Issuing a States bond, which is designed to get the lowest interest rate over a long period of time, I fear is not the solution to those particular investors' current issues for low interest rates.

3.8.2 Deputy G.P. Southern:

Would the Minister for Treasury and Resources like to point out where the extra costs come from such an offer to your local market?

Senator P.F.C. Ozouf:

We have had a lot of advice. This has been one of the key issues that we have asked the advisers that are advising us to the bond issue have made. Indeed, we asked, when we asked for the tenders for the bookrunners, for them to set out proposals if they judged it appropriate for retail bond offering. For example, there have been a number of retail bonds that are issued. The reality is that those are more complicated, they are more administratively cumbersome to operate, and they have ... I have got one example before me of a bond that has been issued which is over 200 basis points over the equivalent of the gilt rate. Jersey, with our credit rating, hopes to get a much lower basis point over gilt rate. We are trying to reduce that in order to cost. I would hope that we would be a very slender amount over the current 30-year gilt rate, and that is the difficulty. We are issuing a bond effectively for corporate world not for the retail market in order to reduce the cost.

3.8.3 Deputy G.P. Southern:

Does the Minister not think that there is a balance to be struck between economic considerations and political considerations?

Senator P.F.C. Ozouf:

This is one of the challenges that I face. My job, I think, is to reduce the cost of the bond for, effectively, Andium and the other social providers that will be able to access this cost. We want to reduce the cost of operating and running social housing, not increasing it. I do accept what the Deputy says about the retail offer. Malta, for example, does issue public debt - lots of it - on their stock market but of course that is an entirely different economy. This is not the solution for the retail market but it is something that we would look at in future.

3.8.4 Senator S.C. Ferguson:

I have organised for clients investments in such things as the Eurobond market and so on. Will the Minister go back and reconsider ways in which locals can invest in these bonds because I have had an interest expressed by people in buying these, as there were in the Housing bonds, in the J.E.C. (Jersey Electricity Company) bonds in days gone by. Will he go back and reconsider means of enabling locals to buy these?

Senator P.F.C. Ozouf:

I have looked at this and discussed this extensively with my Assistant Minister. Currently at the moment the 30-year gilt rate is 3.46 per cent. I would hope that we would be able to issue our bond at obviously basis points above that, but certainly not 200 basis points. Some I am afraid there is a conflict here, which I cannot reconcile. I cannot reconcile what is a retail requirement that the Senator wants with effectively my job, which is I think the right public interest job, of reducing the cost of funding for the housing entity. We have taken this as a sovereign issue to reduce the cost of housing and passing it on to ensure that Andium principally has a lower borrowing cost than others.

[10:30]

If we start offering a retail offering the costs of borrowing will be higher and we will not get that 30-year cash. I have looked at it, I have nothing further to add. I am not prepared to look at it again. I had considerable advice on the matter.

3.8.5 Senator S.C. Ferguson:

The Minister has not answered it. It is to discuss with the wholesalers means of going through their outlets to retail outlets and he is presupposing that the investor ... because they would be informed investors, expert investors, going into this. He has presupposed that they do not know what they are talking about. Would he please go back and reconsider it?

Senator P.F.C. Ozouf:

I will not reconsider it because I have already considered it on a number of occasions with the advisory team. If the Senator is talking about expert investors with, for example, a minimum denomination of £100,000 then they will be operating in that particular market and they will be free to operate just as they are buying gilts or other things, these are high net worth expert investors. We have looked at this, we have rehearsed it, we have been back to the bookrunners and it is the judgment - and I have accepted the advice from the Treasurer and her team - that it is not appropriate that we suggest that this is a retail offering, and that is against effectively my obligations in order to reduce the cost of borrowing, moreover to get borrowing which is fixed for a long period of time. I am happy to share with the Senator the documentation and the work that has been done but I have to say, we have come to the end of the road, and we need to get on with this process.

3.9 Deputy S. Power of St. Brelade of the Minister for Social Security regarding local employment figures for 2013:

In light of the significant time spent arranging interviews for unemployed Islanders and liaising with potential employers, can the Minister confirm what statistics for 2013 his department has that record the performance of locally born people seeking employment, the number of successes with job seekers placed but also those who do not turn up for interviews arranged or, once offered a position, only last a matter of days in a new position?

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

The Back to Work programme provides significant support to local qualified, not necessarily locally born, job seekers to both help them find and then stay in work. In 2013 the Back to Work team supported job seekers to secure 1,818 paid jobs. In October 2013 we introduced changes to income support legislation strengthening the department's ability to sanction people who fail to look for work and also introducing a sanction to deter people from giving up work. Since the new sanctions were introduced in October 2013, 506 warnings have been issued to job seekers. While some of these would have been as a result of not turning up for an interview, it could also include actions such as failing to apply for enough jobs, not attending training courses, or failing to attend appointments with their employment adviser. Furthermore, 71 sanctions have been applied to those giving up work without good reason and this would include those who have walked out of a job after a few days. In January I announced an increase in the earnings disregard for income support, claims to 23 per cent which means that the financial incentive to find and stay in work is at its strongest since the introduction of income support.

3.9.1 Deputy S. Power:

I am very grateful to the Minister for that information and I will probably follow it up with a written question. So 3 weeks ago, a significantly locally-owned employer in Jersey sent a request to the Social Security Department to take on 12 extra line operators in the area with the business. The first 12 that were either locally born or locally qualified seemed to show, according to this employer, a disregard for the jobs, the work, the shift hours and the interviewer. Does the Minister regard this as a recurring problem?

Senator F. du H. Le Gresley:

I am very disappointed to hear what the Deputy has said and if he would be willing to speak to me or one of my officers who deal with employment liaison we would happily talk to this employer and see where the process broke down.

3.9.2 Deputy G.P. Southern:

Is the Minister prepared to publish the figures attached to the 71 cases of leaving a job without good cause so that we can find out what those causes are?

Senator F. du H. Le Gresley:

What I can tell the Deputy at this stage is that, of the 71 sanctions, 10 were reversed as a result of the addition of additional information which proved good cause. I would have to check with officers if the detail of these cases would be ... could be publicised because it could be easy to identify the individuals and therefore it might not make it possible.

3.9.3 Deputy G.P. Southern:

Surely, the Minister can find a way of anonymising 71 actual incidences to make sure that they are not identifiable, and will he attempt to do so and publish those figures?

Senator F. du H. Le Gresley:

As I said in my earlier answer, it depends on whether we can do this without revealing the identities of the people involved.

3.9.4 Deputy J.A. Hilton of St. Helier:

I know after October 2013 this Assembly agreed new sanctions whereby any individual who left employment without good cause was penalised. Can the Minister confirm that those new employees, those individuals who were recently placed, maybe only say for a week or 10 days, placed in a new employment and then leave, does the sanction of 6 weeks income support being withdrawn still apply?

Senator F. du H. Le Gresley:

Every case is treated individually. When a long-term unemployed person is placed through Back to Work with an employer, we have a system of mentoring that person through the first 6 months of employment and we would hopefully deal with any issues or disputes by speaking directly with the employer. Where we have monitored the situation and we are satisfied the employee made every effort to remain in employment the sanction would not apply. The sanction is to lose the ... if they walk out of a job without just cause, is to lose the adult component of income support for 13 weeks.

Deputy S. Power:

I thank the Minister for the information he has supplied. Could the Minister ... I will submit a more detailed written question just to confirm the data he has outlined this morning and I would ask him that he would ... I would ask the Minister, would he be prepared to answer a substantive reply to a written question. Thank you.

3.10 Connétable A.S. Crowcroft of St. Helier of the Minister for Transport and Technical Services regarding the inclusion of skateboarding facilities in the Millennium Town Park:

Will the Minister indicate what he proposes to do in respect of recent calls for the inclusion of skateboarding facilities in the Millennium Town Park?

Deputy K.C. Lewis of St. Saviour (The Minister for Transport and Technical Services):

I am sure Members will agree there have been a lack of facilities for young people and it has been highlighted that the Millennium Town Park has become a place for skateboarders to congregate. Unfortunately, this has led to complaints about antisocial behaviour. Officers from T.T.S. (Transport and Technical Services) have been actively working with the police, Youth Service, Freedom Church and park users to try and find a solution to these issues. A dedicated skateboarding facility within the park has been discussed which would enable skateboarders to have a place to be out of the way of other park users. They could enjoy their sport using dedicated equipment fit for purpose.

3.10.1 The Connétable of St. Helier:

Is the Minister aware that there is considerable opposition to the replacement of the current ball court from surrounding businesses, residents and also the results of a survey carried out by the Millennium Town Park group, and would he agree, instead of looking at the removal of that very well used facility, investigate again the possibility of facilities at the far end of the park where there is space that could be converted to skateboarding use?

Deputy K.C. Lewis:

Other suggestions have been put forward, however they are not practical. One of these being to change an area of the park that has been paved and planted with an array of beautiful shrubs and plants that borders the Gas Place site. This area is currently well established and a beautiful part of the park. It is up against the boundary park or the wall and is suitable for housing in future, I believe. The existing plants and structural features, irrigation pipes, pathways, and I believe there

is also the shaft there which feeds down to the Phillips Street shaft, so that area would not be suitable.

3.10.2 Deputy M. Tadier:

Does the Minister think we have to be careful when using terms as “antisocial” when all the skateboarders I have seen down there are being the opposite of antisocial, they are being social; that sitting at home with a PlayStation or an adult sitting in a pub could be considered antisocial, and that with this we need to find a way, considering that we made the Town Park in such a way that it was perfect for skateboarders, it would attract skateboarders and any reasonable town planner would have known that from the outset, we need to find a way to accommodate skateboarders but not at the expense of other facilities. Does the Minister agree with that last point?

Deputy K.C. Lewis:

Providing facilities is exactly the thing that I am trying to do, but we do not have the funds, which would cost many tens of thousands, to put in a new facility. However, using a ball park which is little used at present, plus it would be lockable in the evening, thus reducing any noise to nearby residents. So unless we hear anything to the contrary, that would be the plan.

3.10.3 Deputy M. Tadier:

Supplementary. The ball park is very well used. Every time you walk past there you cannot get on there, if you wanted to play basketball, because there is only one basketball hoop and people are playing football. Does the Minister accept that this short-sighted approach may lead to footballers and basketballers now playing football on the street where the skateboarders are skateboarding, kicking footballs into the street, across the road. We will be back in exactly the same place because the Ministers involved have not taken a proactive approach and a long-term approach to solve both of the issues?

Deputy K.C. Lewis:

We are trying to solve all of the issues. There is organised football in the park with inflatable equipment, I think it is on a Friday evening, that comes down, and that is the very thing that we are trying to provide. Nothing is set in stone yet so we are open to suggestions, but we do not have an unlimited budget.

3.10.4 Deputy J.A. Hilton:

I believe that the St. Helier Youth Committee in conjunction with the Youth Service have come up with a solution to this problem. It was agreed to fund a temporary put-up/put-down skateboarding facility last week, and I understand there has been extensive consultation by the Youth Service with the young people who need this facility. What I want to hear from the Minister is that he will do everything in his power to facilitate this going ahead sooner rather than later. Thank you.

Deputy K.C. Lewis:

Yes, I would like to expedite this as soon as possible but we need all the plans in place to do it. As I said we do not have unlimited funding. We are open to suggestions but they must be practical suggestions. The Millennium Town Park is our central park in town and we will do our best to facilitate all users.

3.10.5 Deputy J.A. Hilton:

My understanding is that the St. Helier Youth Committee is going to fund this project in its entirety. It is a facility that can be dismantled and put up in any position, and this has been done in conjunction with the skateboarders at the Millennium Town Park, so it would seem to me that the

overriding objection of not having enough funds available falls away. So I would really like to see this project happening within the next few weeks.

Deputy K.C. Lewis:

The equipment can be put in place very quickly but it would ... if it is in a caged area this could be locked at night to prevent nearby residents being disturbed late in the evening. But if it was out in the open then it would be used at all hours.

3.10.6 Deputy J.H. Young:

Would the Minister not accept that young people really need the facilities of both dedicated? Would he not accept that, and if he does he has pleaded no funding and he invites suggestions? Is he not talking to our Minister for Education, Sports and Culture? They have got Springfield, they have got spaces in public land and places. Is this not something that he should give priority to?

Deputy K. C. Lewis:

We are giving a lot of priority to all the reports that have already been commissioned as well as the park users groups. The police report states there have been lots of calls regarding antisocial behaviour; we have to react to that. We try to keep everybody happy; we are trying to keep the residents happy and all the park users.

3.10.7 The Connétable of St. Helier:

The Minister says he is open to suggestions but he has already ruled out the possibility of putting a facility at the end of the park because he is concerned about losing some of the shrubbery. I do not think there was ever any intention to affect the paving or the fountains. I would urge him to look again at that possibility because it would, as Deputy Young suggests, mean that the States would not, once again, be digging up something they have already done or taking away a use from one group of people to give it to another. Would the Minister further agree with me that all this would have been avoided if T.T.S had worked with the skateboarders when the park was being designed who were fully on board and expected facilities to be included in the park from the off?

[10:45]

Deputy K. C. Lewis:

As I say, we are open to all suggestions but I was not Minister at the time. So we will work with the Parish, with the community to get the best facilities possible for the Town Park.

3.11 Deputy N.B. Le Cornu of St. Helier of the Minister for Housing regarding the testing of housing stock for radon gas:

Has the States housing stock been tested for radon gas, and if so, how many units are affected; what budget is allowed to treat radon in social housing, has Andium been allocated funds to treat radon in future, how might tenants be assured that their homes are safe and can ask for tests to be carried out and, if necessary, alterations made to satisfy decent homes and safety standards?

Deputy A.K.F. Green of St. Helier (The Minister for Housing):

A whole host of questions there and I will try and be as brief as I can. A representative survey of all homes in Jersey, including Housing Department homes, has been carried out to identify the presence of radon. This was carried out by the Health Protection Unit in association with the U.K. Health Protection Agency in 2012. They found that 36 per cent of the homes tested across the Island had levels of radon above the action level. All owners of these properties were notified of the high test results and given advice on how to put that right. None of the Housing Department's

homes tested were identified as having radon readings above the actioned limit. Notwithstanding this, the department has taken extensive advice on the potential risks posed by radon and have been making arrangements for the introduction of a regime of radon testing on those properties which could potentially be affected. It is worth noting that most modern properties which have radon barriers or sumps fitted during construction, as a part of building control requirements, and this leaves about 2,000 homes of the department's homes - about 44 per cent of the overall stock - which it is proposed to test again. The radon testing must be carried out continuously over 3 months. It is anticipated that the testing programme will commence at the end of this year and be completed by the end of 2016. Tenants will be consulted individually on the proposed testing regime for their individual homes. The costs associated with the testing is not significant, it is about £50 per test and this level of expenditure is catered for in Andium Homes' long-term business plan. Until the testing is complete it is not possible to confirm what level of funding may be required for redeemable measures but it is anticipated that most of this can be catered for in the funding provided for the achievement of the decent homes standard. I must stress that this is something that does worry people from time to time, and should any tenant be concerned in the interim they should contact my department for advice.

Deputy N.B. Le Cornu:

I have no further questions, just to thank the Minister for that information. Thank you.

3.11.1 Deputy J.H. Young:

The Minister has given us a thorough comprehensive answer in relation, particularly to housing, that may have raised issues in other people's minds. Is he aware that the Environment Scrutiny Panel is shortly to publish a report on this subject which, I do expect, will produce some recommendations for a wider basis? But is he aware that is the case, and that is a review that has been ongoing for some time?

Deputy A.K.F. Green:

Yes, I was aware that the Scrutiny Panel was looking at this and I look forward to reading their report. Radon gas is something that has particularly interested me personally so I have followed it very carefully, and I must stress to people that are worried that they can go to the Health Department and get testing done now at the cost of about £50. It is very easy to do, and I also must stress to people that exposure to radon gas; it is the lifelong exposure that is the point, not short-term.

3.12 Deputy M. Tadier of the Minister for Education, Sport and Culture regarding the total cost of the play park at Les Quennevais playing fields:

Will the Minister state the total cost of the play park at Les Quennevais playing fields and has the Minister received any feedback from its users since its opening earlier this year?

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

The total cost of the new play area at Les Quennevais, including labour, soft fall flooring and play equipment, was £37,760. This was in line with the quotes received last year and the funding came from an underspend in another part of E.S.C.'s (Education, Sport and Culture) budget and special effort was made, as the Deputy knows, to bring the project forward as quickly as possible. I have not personally received any feedback but officers have had positive feedback, I am told, and the facility is being used by parents with younger children.

3.12.1 Deputy M. Tadier:

I thank the Minister for the answer. The officers have had positive feedback. Have they had any negative or neutral feedback?

The Deputy of St. John:

I am not informed of any, no.

3.12.2 Deputy M. Tadier:

Is that because that information does not exist or that you simply have not been informed? You will have presumably been ... you would have asked the question whether any negative feedback had been received before coming to this Assembly.

The Deputy of St. John:

Yes, I have asked that question in the short time available because I have been on holiday for the last 2 weeks. But, nevertheless, yesterday I did ask that question. I was not made aware of any particular negative feedback. That is not to say it does not exist, it just means to say the particular officers I spoke to were not aware of anything.

3.12.3 Deputy J.H. Young:

I wonder if the Minister could advise us on his policy in terms of selection of play park equipment. The old park was shut down, I think, for safety reasons. Do health and safety mean that such activities have to be rather unexciting?

The Deputy of St. John:

Well, I think health and safety is always an issue nowadays increasingly, and I think it is probably true to say that in the "old days" health and safety was not so much of an issue and maybe some of the equipment was a little bit more exciting in the old days. I think that is just common sense and being honest. But there we are, we are in the 21st century; health and safety is an issue. This particular play park is specifically aimed at parents with younger children. There are other facilities in the local area for older children, of one variety or another.

3.12.4 Deputy M. Tadier:

The reason I raise the question is that there has been lots of negative feedback that I have received which I will pass on to the Minister, if that has not already been passed on. The point about younger children seems incongruous insofar as one of the complaints I have got says: "My daughter who is 2 cannot use the play area on her own because she is too small." So, if it seems that the play area has been designed for younger children it does not seem to be the case, certainly from what I can see, because there is an issue there, and also there seems to be a very sparse offering compared to what the former playground was, and that seems to be where a lot of the negative criticism is coming from. So I will certainly direct that to the Minister, but would the Minister also take steps to perhaps seek information from users, perhaps by visiting the playground, talking to the Rainbow Tots, which are one of the main users very nearby, and seeing if anything can be done easily to improve the facilities?

The Deputy of St. John:

Yes, I would be delighted to ask my officers to do that. As I say, you know, I am a little bit surprised that a parent with a child of 2 years old would want that child to use the facilities independently of parental supervision. **[Approbation]** Nevertheless, it is also true to say that all children's play areas are by nature a compromise because they have to try to cater for different age groups, and you tend to find that play areas are aimed ... they are either one of 2 kinds, they are either aimed more at younger children and that includes making it comfortable for parents to be there on site watching their children, whereas the slightly older children tend to want less

supervision and so the nature of the play park is slightly different, perhaps aimed at a slightly older age group. So it is a compromise but we do our best.

3.13 Deputy G.C.L. Baudains of the Minister for Treasury and Resources regarding J.T.'s consultation on its new billing system:

Would the Minister, as shareholder representative, explain why J.T. (Jersey Telecom) are, after months of billing issues, only now going out to consultation, and then only on one day for invited guests, and would he state further whether he considers that an appropriate way to introduce a new billing system?

Senator P.F.C. Ozouf (The Minister for Treasury and Resources):

J.T. already has a wealth of information from its customers generated variously from customer meetings, written comments and complaints and circular responses, so it is entirely, if I may say, wrong to describe what J.T. is now doing as only now going out to consultation. As I have answered on a number of occasions, I believe that consultation has been ongoing in relation to the building system and will continue. Regarding the customer feedback sessions, it is fair to say that J.T. has done everything it can, I believe, to ensure that everyone on the Island was invited. I can provide details of what J.T. have done if the Deputy would like me to do. J.T. and, if I may say, I, would also like to compliment Deputy Maçon for his help in obtaining, for example, constructive comments from a number of his constituencies which I believe have been resolved. So there has not been a single concern raised by anybody that they would like to have attended one of the meetings that have been organised from J.T. but are unable to do so. Had J.T. received such a response, separate and specific arrangements would have been made to meet customers. As for the second part of the question, this has been an extremely difficult and challenging time for J.T., as I have said on a number of occasions, and I am sure that lessons should and can be learnt. But the strategy of replacing an inflexible, not fit for purpose, inefficient and unsupported system continues to be the right thing that J.T. have done, and doing nothing was simply not an option.

3.13.1 Deputy G.C.L. Baudains:

I wonder if the Minister would advise me how wide the consultation invitation was because I only learnt about it because it was forwarded to me by my Constable, and it is only for one day, and if you cannot make that day, well, you cannot go. Would the Minister not agree that this whole billing issue has been badly handled and that it is basically for Jersey Telecom's convenience rather than the customers? Why, for example, if this consultation has been ongoing do they continue to ignore the customers' requests for accounts that are understandable?

Senator P.F.C. Ozouf:

There is a whole directory almost of comments there. Let us be clear. This billing system, or rather the accounting system and the whole financial system, which I have used question time on a number of occasions to explain, was complex and the data transmission issues were problematic and these issues are difficult sometimes to deal with. J.T. has listened, and the fact that they are going out and doing a fairly high profile campaign now to say to their customers: "What do you think of the bills? What can we do to further improve? What further information can we provide them?" should be welcome. I know that sometimes the Deputy ... I am not sure whether he is on the States' email system or not, but I understand that all States Members have been invited to this briefing. Yes, it is on a day but in the answer that I gave, nobody has indicated that they cannot attend if they wish to, and I have said in my answer that if people cannot attend on that day then further opportunities will be made to listen to customers. J.T. has done a difficult job in resolving these difficulties and is listening, and I would encourage the Deputy, rather than using States

question time, to engage with J.T., tell them what he thinks about what should be in the bills and they may get it, if a number of other customers want this information.

3.13.2 Deputy G.C.L. Baudains:

In relation to the last statement by the Minister, I have already engaged with Deputy Le Hérissier, I attended the J.T. and we did not make any progress at all. Does the Minister not agree it is unacceptable to have a billing system where customers have little idea of what they are paying for and would he also agree that charging broadband by volume when the customer has no means of knowing how much he or she has used, is likewise unacceptable?

Senator P.F.C. Ozouf:

I am very happy to be the shareholder representative in dealing with the substantive issues that shareholders need to deal with but I am afraid granular detail of what is on a billing system, which is not the issue of the Minister, I have clearly explained there were issues. I have asked J.T. to resolve them. They are resolving them, they are inviting customers to come along. If he does not believe the broadband allocation or the detailed billing information, which previously might not have been created from this old system now can, if he goes and addresses these issues, frankly, this Assembly is not the time or the appropriate place to deal with J.T. billing issues. Talk to J.T., I say to the Deputy, and they will listen. They are listening to their customers.

Deputy G.C.L. Baudains:

The trouble is we set up too many quangos.

[11:00]

3.14 Senator S.C. Ferguson of the Minister for Education, Sport and Culture regarding proposed fee increases in percentage terms for Jersey College for Girls and Victoria College:

What are the proposed fee increases in percentage terms for Jersey College for Girls and for Victoria College?

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

The percentage fee increases during the term from September 2014 to September 2015 for Jersey College for Girls is 4.9 per cent, and for the Jersey College for Girls Preparatory School, 5.01 per cent. For the Victoria College it is 5.5 per cent and for Victoria College Prep, 5.47 per cent. I should explain to the Senator that in the previous 3 years the increases have either been at or below inflation, and that the colleges, after considerable and very detailed investigation by my finance officers, made an extremely good case for these increases and that is why I approved them. And I can assure the Senator, because I feel sure that her question will follow on if I do not, that it was a very robust investigation by my finance officers.

3.14.1 Senator S.C. Ferguson:

Yes, because given that the current low inflation rates of around about 1.9 per cent and so on, you know, what is the actual justification for these because inflation has been very low over the last few years?

The Deputy of St. John:

Yes, indeed, and those were our very questions. I think there are a number of them and some of them are quite detailed but I will try to just give a couple of the bigger ones. This year the colleges will have to cope with a 4 per cent staff increase, and that means 80 per cent of their costs will be subject to a 4 per cent increase. Perhaps the other large one, the Senator may recall, is that as part of the comprehensive spending review there were extra costs placed on the colleges by way of

notional rents, and these have been going on now for 2 or 3 years, I cannot tell you exactly how long they have been going on - at least, I think 3 years - and therefore those costs each year are responsible for about 1 per cent of the fee increase. Thank you.

3.14.2 Senator S.C. Ferguson:

Will the Minister make sure that a full explanation is given to parents, given the furore of a couple of years ago?

The Deputy of St. John:

Yes, I understand that concern and I share it. I believe that the schools will be doing that. I have not seen, and do not necessarily have to approve the letter from the schools explaining to their parents about fee increases, but I would think that it would be absolutely right that the school would explain them very carefully. So, the answer is yes.

3.15 Deputy R.J. Rondel of the Minister for Education, Sport and Culture regarding recruitment of a Performance Director of the Jersey Sports Foundation:

A busy morning for our Minister. Would the Minister advise the Assembly whether the position of performance director of the Jersey Sports Foundation is a new post and, if so, what the process for advertising and selection of this position has been?

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

This is a somewhat difficult question for me to ask and I apologise if the Assembly thinks that I am trying to avoid the question in advance. I have already explained that the money that we have given to the new Jersey Sports Foundation is by way of a grant. They are responsible, as an independent grant aided body, for running their own recruitment systems and what have you. However, the States will enter into a service level agreement with the Jersey Sports Foundation to deliver performance services to support emerging and established athletes on the Island. Performance services are primarily defined in this agreement as strength and conditioning coaching. Full accounts will be required as part of this S.L.A. (service level agreement) to make sure that the funds are spent in the way that they are intended by this Assembly and approved by this Assembly, and there will be substantial additional funding required, not from the States, to further support our emerging and established athletes, and funding has been secured from the private sector to cover the anticipated broader costs of the programme. So once again this is an excellent example of a States and private sector partnership which will benefit many in our community, and I think that needs to be emphasised.

3.15.1 Deputy R.J. Rondel:

Thank you and I totally endorse the private-public partnership and the One Foundation, but my question was really, being we are using public money, surely we should have a ... there should be a process where we are recruiting which should be similar to what we do within the public sector.

The Deputy of St. John:

Yes, I think that is a fair point and I agree with the Deputy, and I feel sure we do have a person, an officer, who is one of the trustees of this new foundation, and I feel sure that those kind of recruitment, you know, very, very extensive and robust recruiting methods will be used as one would expect. So, we are covered every which way around. I do believe that there is a new post involved, yes, the Deputy is right, and I think that that new post, there has been a lot, I know that ... I am told that there has been a lot of interest in that new post, not only locally but in the U.K. It is a fairly limited range of people who would be eligible to apply for that post - this is very, very

specialist - and I know that there has been a lot of interest and I am very confident that the right person will be found by the new foundation.

3.15.2 Senator S.C. Ferguson:

Given that there would be public money involved and so on, will the Minister recommend to the foundation that they perhaps utilise the advice of the Appointments Commission when advertising this post?

The Deputy of St. John:

I am not sure that that would be appropriate. This is a privately funded, and although it is grant aided it is privately funded. We will have, as I have already said, a full service level agreement and it will cover such areas as obviously one would expect to see. I would be very happy to share that S.L.A. with States Members and the Senator if she so wishes.

3.15.3 The Connétable of St. John:

As the Education Department have a trustee on the board, could the Minister tell the Assembly when the position was advertised, in which publications and on how many occasions did the ad run, and how many applicants have there been for the position?

The Deputy of St. John:

No, I cannot because I am not privy to that information. I think that if the Constable is worried about that he could ask the One Foundation directly.

3.15.4 The Connétable of St. John:

Given that I believe the ad was run for one evening or one night in one local publication, that might help the Minister. Can the Minister, because this is becoming a bit of a fiasco, hold an inquiry and report back to the House before any person is appointed to this position or using public money to appoint anybody to this position because the information I am getting back, that the job has already been promised to somebody and we need to get to the bottom of this. Thank you.

The Deputy of St. John:

I am not aware of any of the points the Constable makes. I do not think it is a fiasco and no, I will not be having an inquiry or coming back to the States Assembly. Thank you.

3.15.5 Deputy R.J. Rondel:

Would the Minister advise the Assembly, please, when a service level agreement will be in place, if it not already is, and would the Minister undertake to find out if employment references have been sought from immediate past employers of those that have been shortlisted, if that has happened?

The Deputy of St. John:

I am not sure, I think the service level agreement is certainly agreed, the draft of it, and I am not sure as we stand here whether it has been currently signed or not. If it has not I know that it is imminent. I do not think the appointment has been made yet. I know that several people have been interviewed and all I can say is that I will ask our officer to just make the One Foundation aware of the concerns of various Members with regard to it. But I cannot ... that was the whole point of having a separately funded foundation to manage these things on behalf of the States. I am not going to go and proscribe things to that particular foundation.

3.16 Deputy S. Power of the Minister for Transport and Technical Services regarding remedial work at St. Brelade's Bay following the recent storms:

My question relates not just to the damage but to the loss of sand. Following the damage caused to St. Brelade's Bay by the January storms, bad weather and high tides, will the Minister consider clearing 2 or 3 sections of the beach now to provide a smoother path to a launching area so that damaged trailers, boats, tyres, rims and suspension can be minimised for fishermen, boat owners and indeed all operators on the beach? Thank you.

Deputy K.C. Lewis (The Minister for Transport and Technical Services):

Firstly, we need to remember that only 2 months ago we had some of the worst storms in living memory and the effects of those storms take time to recover. The positive news is that the beach is recovering and sand levels are coming up, but unfortunately not as quick as people would like. The management of beach levels is a difficult issue but the golden rule is not to interfere unless absolutely necessary. In all but extreme cases beaches will naturally recover with ensuing tidal cycles. While I sympathise with the Deputy's concerns for boat owners, fishermen and beach operators, the clearing of rocks from the beach may cause the natural sand build-up to be delayed. Those rocks form the foundation for the beach and collect sand from the tide and wind and prevent the tide and waves from taking the sand back into the sea. My staff have recently carried out a clearance of the beach and picked up all stones and debris, which is not naturally occurring beach stone, which should assist with the problem the Deputy describes.

3.16.1 Deputy S. Power:

I thank the Minister for that information so far. I am sure his officers are aware that there is no sand between the slipway at the Parish church end and an area extending to right over towards the first restaurant to the east of that. The problem that operators have is that the loss of sand is between 12 and 18 inches, so would the Minister and his department not consider a temporary feature to at least clear one pathway down to minimise damage to these trailers because some of these rocks are at least 12 inches high?

Deputy K.C. Lewis:

Yes, I am more than happy to speak to the department again about possibly making one area clear. But sadly the ... it was a terrific storm we had and I am very reluctant to interfere with nature but if we can assist then we will be more than happy to do so.

3.16.2 Deputy S. Power:

My final question: would the Minister and his officers be willing to meet with some operators on the beach in the next week or so to discuss what compromise might be achieved?

Deputy K. C. Lewis:

More than happy to do so.

3.17 Deputy R.G. Le Hérissier of the Minister for Social Security regarding the introduction of an auto-enrolment type pension scheme:

Does available data allow the Minister to estimate the number of employed persons who will not receive occupational pensions or receive limited pensions and, if so, is he contemplating the introduction of an auto-enrolment type scheme?

The Bailiff:

I am glad you understand that question, Minister. [Laughter]

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

Well, I am going to endeavour to provide an answer, Sir, so hopefully I will have understood it. The Jersey Annual Social Survey has looked at the issue of pension provision on several occasions in recent years. In these surveys the proportion of people who said that they had an occupational pension has varied between a third to just under a half. The survey asked about occupational pensions most recently in 2009 where 48 per cent of respondents had an occupational pension and 27 per cent a private pension. The survey also offers some context around these percentages, and in 2008 over half said they were worried about their standard of living in retirement, and in 2005, 12 per cent of respondents - that is one in 8 people - said they were relying solely on a social security pension either from Jersey or another country. So there does seem to be a fairly significant minority who do not have sufficient savings for their retirement. Faced with the same issue the U.K. introduced an auto-enrolment scheme where employees are automatically joined up to a work-based pension. The U.K. hopes this scheme will foster the habit of saving for retirement. Under auto-enrolment contributions are made by employees and employers into a pension pot. In the U.K. all employees will be legally obliged to join the scheme, even businesses with just one employee. At the moment my department is not actively researching an auto-enrolment scheme for Jersey but we are watching the U.K. scheme with interest. As Jersey's population ages the issue of pension provision will have growing importance to all Islanders and we should be prepared to give consideration to a wide range of options.

[11:15]

3.17.1 Deputy R.G. Le Hérisier:

I thank the Minister for leaving all options open. Could he tell me at what point he believes he may have to take decisive action and promote such a scheme?

Senator F. du H. Le Gresley:

I think we would need to do a survey which is in more depth than the Jersey Annual Social Survey which only touches a very small number of households. We would have to almost do an Island survey and I think this is something that we would do in conjunction with the Minister for Treasury and Resources because the issue of pensions and saving for retirement is not just a matter for Social Security, it is across 2 ministries, if not the whole of the States of Jersey.

3.17.2 Deputy J.H. Young:

Do the systems advise people throughout their working lives where they can anticipate pension shortfalls or do the systems of his department leave that until effectively people are very close to retirement and it is then too late to do anything about it?

Senator F. du H. Le Gresley:

Members of the public who have contributed through social security contributions to an old-age pension, can request a forecast of their likely pension. The Deputy is correct that most people do not really think about pensions until perhaps they are 5 or 10 years away from pension age. But we do provide forecasts and there is an ability to pay additional contributions but because these are paid at the maximum contribution level it is not an attractive option for many people.

3.17.3 Deputy J.H. Young:

Supplementary. Could the Minister just clarify that? Does that mean, for example, that if somebody requests a pension forecast halfway through their working life, say, they are not going to be told: "Wait until you are close to retirement", and when they do find they have a shortfall can they make lump sum retrospective contributions under the scheme to make that up?

Senator F. du H. Le Gresley:

Dealing with the second part of that question, I thought I had answered that in the Deputy's earlier question. People can catch up with contributions, so to speak, but the calculations are done at the maximum contribution level and that means that for some people the amounts required to be paid in to catch up year by year is significant and there may well be better options to invest that sort of money rather than put it into the States Pension Scheme. As far as requesting a forecast halfway through your career, I am not aware the department are willing to do this but something we could give consideration. But most people halfway through their career are focused on family and mortgages, and unfortunately pension entitlement is very low down the bottom of the list.

3.17.4 Deputy G.P. Southern:

The Minister clearly stated that he did not have auto-enrolment on his agenda, but surely in the light of the Government Actuary's report on the state of the pension fund and the prospect of up to 12,000 people solely reliant on that pension fund with the consequent demand on income support, is it not time that his department did get options to deal with this issue under consideration?

Senator F. du H. Le Gresley:

I would not dispute what the Deputy is saying there, it is something that we will be considering. It is not in this year's business plan, and I am sure that the next Minister will possibly give this a top priority. But the issue is that the Deputy refers to the Government Actuary report that came out very recently and the fund is in a very healthy position, and there are people, as we are aware, who have not paid sufficient contributions to receive a full pension. If they wish the State to get involved rather than make their own provision, that is something we can consider.

3.17.5 Deputy G.P. Southern:

The Minister has just said that the fund is in a very healthy condition. I understood that it was about to peak in terms of contributions and that it would start to go down from 2016 onwards.

Senator F. du H. Le Gresley:

It does not detract from the fact that it is in a very healthy position at the moment.

3.17.6 Deputy R.G. Le Hérissier:

Would the Minister not accept with the casualisation of labour, zero hours contracts, we have got the emergence of a group of people who will not benefit from proper pension schemes, and as an interim measure, given he is not going to move to auto-enrolment immediately, would he not negotiate with the Minister for Treasury and Resources with I.S.A. (Individual Savings Accounts) type schemes, schemes where people can put money into tax advantageous ring-fenced funds until auto-enrolment or its equivalent arrives?

Senator F. du H. Le Gresley:

The Deputy has thrown loads of information there into the ether, some of which unfortunately is not correct. The issue around people who are on reduced hours or zero hour contracts, provided they work more than 8 hours a week, the employer has to make a social security contribution and we have a thing called supplementation which would top up their contribution by means of taxes so that they receive a full pension. So people on part-time work or zero hours, as long as they work more than 8 hours a week and the employer does a social security return, they will receive a full pension during that period. As to the future, yes, there is more work to be done but we have a very full agenda for the next 6 months, much to the concern of my Scrutiny Panel, but we will press on and get the work done.

3.17.7 Deputy R.G. Le Hérissier:

Just a point of clarification. Would the Minister not accept my point was about the decline of occupational pensions not interference with the existing States pension?

Senator F. du H. Le Gresley:

I am not sure it is the role of Government to be interfering in occupational pensions. My understanding of an occupational pension, it is a decision between management and employees as to whether a pension scheme exists. The answer for those people who are not in those schemes, of course, is to take out a personal pension plan which provides them with a vehicle that they can take around with them and continue to pay in no matter what job they occupy.

3.18 Deputy G.P. Southern of the Chief Minister regarding the impact of the Interim Population Policy of finance sector projections over the next 5 years:

Will the Chief Minister state how the proposed interim population policy will operate alongside the projections of the Chief Executive of Jersey Finance for at least 900 new posts in the finance sector over the next 5 years?

Senator I.J. Gorst (The Chief Minister):

Could I ask Senator Routier to answer this?

Senator P.F. Routier (Assistant Chief Minister - rapporteur):

The interim population policy has a clear focus on high social and economic value activities and supports the employment of established Islanders. The policy assumes net migration of plus 325 people per year. This accommodates the projected 900 new posts in the finance sector over the 5 years as 80 per cent of which are expected to be filled by existing residents. This is consistent with our migration, employment and economic strategies. We should welcome an expansion of employment in financial services.

3.18.1 Deputy G.P. Southern:

Has the Minister got any idea how 80 per cent of these jobs, these high skilled, highly technical jobs are going to be filled from those who are already qualified and not those imported into the Island?

Senator P.F. Routier:

The financial services industry have made it very clear to us in their announcement about the new jobs which are going to be created that the new posts have been identified as mostly finance administrator level, so it is quite possible for the skills to be available within the Island. In particular, we must recognise that we have a number of students coming through our education system who will be looking for jobs in the future and we should welcome that the opportunities will be made available to them.

3.18.2 Senator S.C. Ferguson:

I am confused by the arithmetic; 900 new jobs represents 180 heads of household, but in actual fact we are meant to be working on 325 net immigration which is 150 heads of household. So how are we going to square the circle?

Senator P.F. Routier:

The calculation that we have made is that out of the 900 jobs that are going to be made available in the finance industry, 750 of them will be available to existing Jersey residents and the remainder, probably about 180 over 5 years, making an average of about 36 new people coming to the Island. That is the calculation that we have made.

3.18.3 Senator S.C. Ferguson:

Supplementary. But if 750 of them are going to be made ... filled by existing residents in the Island, what happens to the businesses that those people are moving out of?

Senator P.F. Routier:

I think the Senator is forgetting the number of people who are coming out of our education system who will be looking for jobs in this sort of industry. The interim population policy does identify that we are ensuring that any new jobs that are being made available in our economy are within the higher value sector so the licences that will be approved will be to encourage that.

3.18.4 Senator S.C. Ferguson:

The people that are coming out of our education sector, we are being told have not got the right skills and need to be up-skilled, so how are they going to replace these 750 highly skilled people who are going into these new jobs?

Senator P.F. Routier:

I believe I mentioned earlier that the finance industry themselves have identified that it is at administrator level which they feel it is quite possible for the skills to be trained. What I think a lot of people are sort of not taking cognisance of is the ability of people to be trained and their skills to be improved. The Back to Work schemes which are currently having great success are increasing people's skills, the Skills Executive are putting in programmes which are uplifting people's abilities and we must not sort of consign people to not being able to be trained, we must encourage them to be taking up these jobs.

3.18.5 Deputy R.J. Rondel:

Would the Minister advise the Assembly how many school children will be leaving per annum and is he using those calculations to go into the finance industry?

Senator P.F. Routier:

My understanding is that about 1,000 children leave education every year, some obviously go off to university but obviously some do return as graduates. So there is a flow of people coming through the education system on a regular basis.

3.18.6 Deputy R.J. Rondel:

I just wanted to be clear what figure he is working on on that flow.

Senator P.F. Routier:

Sorry, I do not follow that question.

Deputy R.J. Rondel:

What figure is he counting on that children will be going straight into education from next year? From local education, rather than going off to university for 3, 4, 5 years and then coming back.

Senator P.F. Routier:

I have not, sorry, that detail to answer that question today.

3.18.7 Deputy G.P. Southern:

This is the man in charge of population and he has not that detail of how many people are going to be going into work from school in the next few years. Nonetheless, I note he uses 2 words there. One, to ensure an outcome that it fits to his model and the other to encourage. It seems to me that what he is proposing is a 10 year-old policy that we will ensure that these positions become trainee

positions and that they are recruited from school leavers, whereas he has not got the power to do that surely, even under the new Control of Work law. How does he propose to ensure that these jobs are 5-year trainee and trainee positions recruited from school and not imports into the Island?

Senator P.F. Routier:

It is very possible under the new Control of Housing and Work (Jersey) Law 2012 to ensure that the licences which are given to businesses are only ... have the ability of employing people who have been in the Island for 5 years; that is what we do on a regular basis. I gave the example of the students leaving the education system as another opportunity for the businesses to find the required staff. It will obviously be from students and a lot will obviously be from existing residents who are already in the Island at whatever age.

[11:30]

3.18.8 Deputy G.P. Southern:

So the 750 he mentioned over the next 5 years for finance sector jobs are going to be only school leaver trainee positions; is that the case that he is making?

Senator P.F. Routier:

That is not what I said, no. It is for the possibility for people coming through the education system and for anybody of any age, which I have just said just now, who has been in the Island for 5 years.

3.19 Deputy N.B. Le Cornu of the Minister for Health and Social Services regarding charges for treatment or advice at the Accident and Emergency Department:

Can the Minister clarify under what statutory provisions charges for treatment or advice are currently levied on patients using accident and emergency facilities in the General Hospital and state which patients are charged at what rates, and how and when such charges are collected from patients?

The Deputy of Trinity (The Minister for Health and Social Services):

The Health and Social Services Department does not charge anyone for advice, assessment and/or treatment when they present with an acute episode in the Emergency Department.

The Bailiff:

Deputy, do you wish a supplementary?

Deputy N.B. Le Cornu:

No, thank you.

3.19.1 Deputy G.P. Southern:

Are there circumstances in which the department does charge, and, if so, what are those circumstances?

The Deputy of Trinity:

As I said, none within the Emergency Department but if they fall in the policy and they need to go on to have emergency surgery or admission to a ward, then they are charged, if they fit the policy.

3.19.2 Deputy G.P. Southern:

Fitting the policy provides no answer whatsoever. What is the policy under which members of the public who turn up at A. and E. (Accident and Emergency) will be charged?

The Deputy of Trinity:

It is those who are either not residential qualified or fall ... those who fall within reciprocal health agreements are not charged. Those without residential qualifications.

3.19.3 Deputy G.P. Southern:

Does residential qualification include under 5 years residence.

The Deputy of Trinity:

No, it does not. I am very happy to forward the link to the policy to all States Members so they can understand it fully.

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

The Minister, I think, in her first answer mentioned there were no charges for acute services. That is fully accepted that if there is an emergency, people should not charge. Does the department charge anyone other than people who are not covered by the health scheme that she is just referring to? Do they make any other charges and, if so, going back to the original question, on what basis are they doing it? What law and what provisions?

The Deputy of Trinity:

There are a couple of questions there. Is there any way that we charge for those who are entitled to care? So there are some incidents that are not included in the free health care and treatment that would incur some cost, such as syringes and bandages. Just to remind Members, this is not a legal or strategy document. States Members will recall that health charges for non-qualified people were introduced in 2004 in response to this Assembly tasking my department to produce a robust policy to tackle health tourism. Like all Ministers in power to check policy and making orders for levying of charges, I feel it is appropriate. The Assembly determined that it was necessary to do so to protect public health services in Jersey that are funded by Jersey taxpayers.

3.19.5 Deputy M.R. Higgins:

The Minister again failed to answer the question. On what legal basis are any charges made? What laws, what orders ... please tell us what the legal basis is for any charges.

The Deputy of Trinity:

I thought I answered the question very clearly. The patient charging policy is not a legal or strategy document. It was the response to this Assembly, tasking my department to produce a robust policy to tackle health tourism.

3.19.6 Deputy R.G. Le Hérissier:

Would the Minister not acknowledge that the pressure for charging she has felt because of the increased use of A. and E. is ultimately down to the charges made in G.P. (General Practitioner) practices, particularly, for example, to families who have sick children who are now bearing an extraordinary burden?

The Deputy of Trinity:

Yes, I understand where the Deputy is coming from with that question and that is why it is important that the primary care review is undertaken and it is in the process of being undertaken, because it is an issue, the cost of going to G.P.s. If it is appropriate to come to A. and E., they should always come to A. and E.

3.19.7 Deputy R.G. Le Hérissier:

Is the Minister aware that a large part of the increased usage at A. and E. is because of the doctors' charges?

The Deputy of Trinity:

I thought I clarified that. Yes, it is just under a half of patients that do go to A. and E. could be seen by G.P.s but it is very difficult to turn anyone away that presents in A. and E.

The Bailiff:

Do you wish a final question, Deputy Le Cornu?

Deputy N.B. Le Cornu:

No, Sir. Thank you.

3.20 The Connétable of St. Helier of the Minister for Treasury and Resources regarding the refurbishment of the Le Seilleur building at Oxford Road:

Does the Minister accept that it would be in the best interests of the community if the Le Seilleur building in Oxford Road could be refurbished in early course and put to a use which complements the Millennium Town Park such as a community centre and, if so, what action is he taking to achieve this?

Senator P.F.C. Ozouf (The Minister for Treasury and Resources):

Deputy Noel will answer this question.

Deputy E.J. Noel of St. Lawrence (Assistant Minister for Treasury and Resources - rapporteur):

I am advised that the Minister for Health and Social Services is effectively the sole trustee of the H.E. Le Seilleur Fund and must act in the best interest of the fund in her capacity as trustee. In doing so, the Minister is required to have obtained best value for the building, should it be disposed of. Subject to formal confirmation from the Minister for Health and Social Services that the property is to be sold, Property Holdings will market it in the usual manner, through a local agent, to seek the best price for the fund. I would welcome bids from the Parish of St. Helier, or indeed any community groups, which will need to be considered alongside any other bids received. Let me be clear here; the trustees' hands are tied. They have no choice but to obtain a market value of any trust property disposed.

3.20.1 The Connétable of St. Helier:

Would the Assistant Minister like to comment on the wide gap of time since this property was made available to the States, the dereliction of the building in the past several years? Does he believe this represents good stewardship of States' property and is it an encouragement to members of the public to leave property to the States of Jersey?

Deputy E.J. Noel:

I agree with much of what the Connétable has just said. This property has been left in a poor state for far too long. It is unfortunate that the States did not agree to its sale a number of years ago and hopefully, with the formal request from the Minister for Health and Social Services, that property will be put on the market in May.

3.20.2 Deputy R.J. Rondel:

He just finished up there with the answer I was seeking; when would it be forthcoming. But this has been going on for a long, long time now. Is there a way that an option could be given to the Parish of St. Helier into possibly having the chance of purchasing the property?

Deputy E.J. Noel:

Indeed. I thought we had an agreement with the Connétable of St. Helier. The Connétable met with myself and the director of Property Holdings on 24th January this year at a meeting in his office and we agreed at that time that, subject to an independent valuation, we would effectively give the Parish first refusal on the Oxford Road property. That offer is still there but it must be done at an arm's length market transaction.

3.20.3 The Connétable of St. Helier:

24th January is indeed quite a while ago. The Assistant Minister talked about best value and it is possibly a question more for the Minister for Health and Social Services but I think he will know that best value was not in fact the key point about the covenant governing these buildings, the Le Seilleur Trust, but it is about the uses to which those properties are put. Does he not agree with me that a community centre serving this extremely important public park that we have already been discussing this morning would be highly desirable if it can be achieved.

Deputy E.J. Noel:

As with any trustee, a trustee has to act within the confines of our trust legislation and best practice. Therefore, the trustees' hands are tied. Any disposal of a property within that fund has to be done at arm's length, market value.

4. Questions to Ministers without notice - The Minister for External Relations

The Bailiff:

Very well. I am afraid Deputy Young's question has just run out of time but that brings questions on notice to an end. So we now come to Questions to Ministers Without Notice. The first period is to the Minister for External Relations. Yes, Deputy Le Hérissier.

4.1 Deputy R.G. Le Hérissier:

The Minister visited, with a highly esteemed colleague, Malta recently, where there is a 97 per cent turn out for elections. Could the Minister tell us whether he believes this experience could be positively translated to Jersey?

Senator P.M. Bailhache (The Minister for External Relations):

It is true that the voter turnout in Malta is extraordinarily high and Deputy Bryans and I did make some inquiries as to why that was so because it compares rather favourably with turnouts in our own Island. It seems clear that the reason why turnout is so high in Malta is that there are 2 political parties, long established, which have been in the Island for a long time and that the community is very much committed to supporting one or other of those political parties. That drives a very high voter turnout.

4.2 Deputy M. Tadier:

The Minister is in the unique position among Members and Ministers of being the only Minister who has also held a position in this Assembly as the Chair and Bailiff. When the Minister travels abroad, does he attract interest from other dignitaries and officials about this other role and if so, what do those questions tend to be and how does he explain that role?

Senator P.M. Bailhache:

I do not know that any diplomat or person whom I have met in the course of travels as Minister for External Relations has ever asked me about my former life as a Crown Officer and so I am afraid I am not able to shed any light on the matter for the benefit of the Deputy.

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

When meeting with countries recognised to be in breach of international human rights, how does the Minister broach the subject?

Senator P.M. Bailhache:

Jersey is aligned with the United Kingdom and the United States of America and many other countries in believing that progress on human rights in those countries where they are not accorded the respect that we think they ought to be accorded, are best dealt with through a process of constructive engagement. That is why we are not deterred from seeking to do business with China and countries in the Gulf area because we believe that constructive engagement in matters of trade and in matters of political engagement are beneficial, indirectly, by helping to ensure that other places and the people of other places understand the importance of the observance of human rights.

4.3.1 The Connétable of St. Lawrence:

Does the Minister have any knowledge of how our constructive engagement has affected such countries towards their breaches of human rights?

Senator P.M. Bailhache:

I think that is a very difficult question to answer. It is rather speculative and I do not think I can help the Constable on that question.

4.4 Deputy S.Y. Mézec:

Following on from that excellent question from the Connétable of St. Lawrence, is the Minister aware of the statement made by the American Secretary of State yesterday that Israel's attitude towards the peace process there risks it becoming an apartheid state? Some of us would say that it already is. Is he satisfied that the Council of Ministers and, in particular, his role as Minister, do enough to dissuade Jersey businesses when forging links with Israeli businesses to avoid businesses that are based in the illegal West Bank and East Jerusalem settlements. Does he feel that it is important for the Council of Ministers to make it known to Jersey businesses that it is unacceptable to indirectly assist in making that occupation profitable by giving it business?

[11:45]

Senator P.M. Bailhache:

There are a lot of questions in that question, if I may say so. The statement made in the United States yesterday is not a matter that Ministers have yet had a chance to consider. But answering the question very broadly, I am sure that Ministers would not wish to encourage Jersey businesses from engaging in any commercial activity that was illegal or contrary to any international agreement or contrary to the best interests of the Island. Subject to that, the policy of the Government is, as I have said in answer to the Connétable's questions, constructive engagement with these countries.

4.5 Deputy G.P. Southern:

Continuing in the same theme, what provision does the Minister have to ensure that when Ministers visit a country, such as Israel, that they do engage in constructive criticism of that country over the issue of human rights and in particular, did he ensure that such issues were addressed by the recent visit of the Minister for Economic Development to Israel?

Senator P.M. Bailhache:

I am afraid the Deputy must ask the Minister for Economic Development what he said or did while he was in Israel but I think I would repeat that the policy of the Island's Government is not to treat states whose human rights records may not be quite as we would wish as pariahs, but to engage with them to explain our own approach to human rights and to hope that by that process of constructive engagement, there will gradually be a difference of approach in the country concerned.

4.5.1 Deputy G.P. Southern:

Did the Minister then not attempt to ensure that the Minister for Economic Development did address constructively those particular issues? Did he take any action to prepare the Minister to address those issues?

Senator P.M. Bailhache:

I do not think it is for the Minister for External Relations to dictate to the Minister for Economic Development how he approaches trade missions when he goes abroad. There is a policy that has been lodged before this Assembly that sets out what the Government's policy is and constructive engagement is part of it.

4.6 Deputy S. Power:

The Minister in his previous role as Crown Officer had indeed an excellent track record in establishing strong relationships with the Conseil Général de la Manche and the Conseil Général des Yvelines. His work in establishing Maison de Jersey at the time, the establishment and work on the Commission Amicale and so on. Does he feel that the States as a collective body does not continue to carry on this work and that we do not reciprocate enough with the Conseil Général de la Manche and the Conseil Général des Yvelines and that there are those of us in the Assembly who would wish to be used at times to strengthen our relationships with our closest neighbours in France?

Senator P.M. Bailhache:

I hope that the Members of the Assembly do feel able to participate in discussions with the Conseil Général de la Manche and the Conseil Général des Yvelines and indeed the regional governments of Brittany and Lower Normandy. There are working groups that are established under the aegis of the friendly relations, which we have particularly with the Conseil Général de la Manche and those meetings to enable not just Ministers but others to participate in such discussions. If the Deputy has further ideas that he thinks could be shared with my ministry as to how these relationships could be developed, I would be very happy to receive them.

4.6.1 Deputy S. Power:

My supplementary question, as a suggestion, would be that there are those of us who are on the Assemblée Parlementaire de la Francophonie who can be used at times to represent the Island in Brittany and Normandy and at times in the past 3 or 4 years, there have been opportunities missed when, for whatever reason, an invitation has come from one of the 2 Conseils Généraux or one of the 2 Conseils Régionaux and Jersey has not responded to the invitation. I find that, in those particular cases, I feel that we do not reciprocate. Do you think the Minister would agree that Members of A.P.F. could be used if the Minister or the Chief Minister cannot attend these functions?

Senator P.M. Bailhache:

I am sure that the A.P.F. is a very useful resource that could be used in many different ways in our relationships with our French neighbours. I suppose that in some circumstances, where discussions are taking place on different ways in which the Government itself could be engaging in trade or commercial relationships, that it is necessary for those discussions to take place through the

responsible department in that particular area. Certainly in a social sense and in a broader political sense, I entirely agree with the Deputy that any Member who is Francophone, and particularly if he is Francophile, could be of very great assistance to developing our relationship with our closest neighbour.

4.7 Deputy J.H. Young:

One of the most key questions, I think, that came out in the recent debate between the leader of the United Kingdom Independence Party and the Deputy Prime Minister was about the proportion of our legislation, which is generated through the E.U. (European Union.) I think figures of around 7 per cent of primary legislation were quoted. Has he been able in his new role to formally review the extent that our legislation is now generated from the E.U.?

Senator P.M. Bailhache:

I am not familiar with the details, so I hope the Deputy will forgive me, but I know that a very comprehensive answer was given to a question put by Senator Ferguson in connection with the amount of legislation that had a European connection. Our relationship with Europe, as Members will know, is governed by Protocol 3. We are not part of the European Union, except for the purpose of trade in goods and I am not sure that a significant proportion of our legislation does in fact have a European connection.

4.8 Deputy M.R. Higgins:

Just following up on some of the earlier questions about human rights. Can the Minister tell us whether the Council of Ministers has discussed human rights at all and the objectives that they wish the Minister for External Relations to pursue. Equally, has the Council of Ministers set out a series of objectives that they wish you to pursue because, unlike other ministries, which have operational functions in the Island, the Minister's covers the whole of the Island's external relations. So what I would like to know is, what discussions were taken on in the Council of Ministers on human rights or other objectives for the Minister for External Relations that he is to pursue for the Island, or is he making it up on the hoof?

Senator P.M. Bailhache:

As the Deputy and Members will know, we are party to the European Convention on Human Rights and we have enacted a law that requires the Island to comply with that human rights convention. As a matter of practice, every time a Minister presents a law or a piece of legislation to the States for debate, the Minister will sign a certificate saying that the law in question complies with our requirements under the European Convention on Human Rights. I am not clear whether the Deputy is considering that the Government should, as it were, proselytise in relation to the observance of human rights and should engage a more active role with other countries, because if he is, I think that is quite a difficult proposition. We are a small nation of 100,000 people and the notion that Jersey is going to have any significant impact upon China, for example, with more than a billion people, by banging on the table and lecturing the Chinese about human rights seems to me to be unrealistic. I am sure that the Deputy is right, that the Council of Ministers should keep the question of human rights under review and it is certainly a matter that will be considered the next time the matter comes before the Council of Ministers.

Deputy M.R. Higgins:

Supplementary, Sir?

The Bailiff:

I am sorry, Deputy. We have run out of time.

5. Questions to Ministers without notice - The Chief Minister

5.1 Deputy G.P. Southern:

I note that despite an answer to written question 14 today, we still have no sign of any definition of aggressive tax avoidance, and therefore we are reliant on court or tribunal decisions obtained by H.M.R.C. (Her Majesty's Revenue and Customs) in the U.K., i.e. we wait for something like 3 years for a case to go through the U.K. courts and for people to be found guilty of aggressive tax avoidance, and yet we sit and wait and we have no definition of aggressive tax avoidance at all yet from our own Sound Business Practice Committee. When will that definition appear?

Senator I.J. Gorst (The Chief Minister):

I have answered many questions on this subject and as the Deputy rightly points out in the basis of his question that these are U.K. schemes and it is largely for the U.K. in their legislation to deal with them and we need to make sure that we are supporting that. The Deputy knows that the Sound Business Practice Committee is considering it and I am hopeful that in due course, they will come forward with a comprehensive policy and proposal to be able to clarify the situations that the Deputy is concerned about and that we, as Government, are concerned about.

5.1.1 Deputy G.P. Southern:

Would the Minister like to state what he considers, "in due course" because this is a series of questions now over months and we still do not have a definition of the abusive tax practices that the Chief Minister is committed to observe?

Senator I.J. Gorst:

I did not give a date on purpose. The work is being undertaken and it will be completed as soon as is possible. In the meantime, the Assistant Minister with responsibility for financial services and myself continue to engage, encourage and ensure that Jersey is not used for tax evasion or for abusive schemes.

5.2 Connétable J. Gallichan of St. Mary:

Referring to the answer to my written question number one today, whereas previously I had hoped that we would be getting a report by the end of 2014, which would enable scoping of a meaningful living wage, unless I have misread the answer, that has now shifted to the end of 2015. There would be no hope of any work starting on this proposal until at least 2016. Firstly, is my understanding correct and does the Chief Minister think that slip of a year is acceptable?

Senator I.J. Gorst:

I am just trying to look at the question. It is a complicated timetable and some pieces of work that will need to feed into that will be completed earlier than others. I think the thing that will take a length of time, which is going to take longer than we thought, is the household income distribution survey and that starts this year, but it takes a long time to complete. These are complex pieces of work requiring detailed and thorough research, but they are needed in order to develop what might be required to deliver what would be considered a living wage.

5.2.1 The Connétable of St. Mary:

Supplementary, Sir? I completely understand what the Chief Minister is saying but surely what we are looking at there are updates and a bringing up to date of the figures from those surveys. Surely the principles outlined are already known and could we not already be doing the groundwork?

Senator I.J. Gorst:

That is why we will have an interim report brought forward by the end of this year.

5.3 The Connétable of St. Lawrence:

I asked the Minister for External Relations a question a moment ago regarding our policy towards countries that breach international human rights. The reason I asked that was I was unable to tell a constituent recently what the policy of the Council of Ministers is towards such countries. Will the Chief Minister now confirm to me what his Council's policy is?

[12:00]

Senator I.J. Gorst:

The Minister for External Relations, I think, articulated the policy eloquently and I am not sure that I can add to it. As he correctly said, it follows the U.K. policy ... as the Connétable will know, largely, the U.K. is responsible for our foreign affairs, although that has changed over the last number of years. Perhaps it might be helpful if I were to try and write it down for the Connétable as an addendum to the Common Foreign Policy of the Council of Ministers, which of course has been discussed and agreed by the Council of Ministers. The only other thing I could say perhaps in light of that question is that the policy that we are aligned to, which is the British policy; if we look at their 2012 report from the Commonwealth Office of the Annual Human Rights and Democracy Report, it shows that their policy is working.

5.4 Deputy C.F. Labey of Grouville:

If the Interim Population Policy is not agreed by the States Assembly in this session, could the Chief Minister explain which policy the H.A.W.A.G. (Housing and Work Advisory Group) operate under to control the population?

Senator I.J. Gorst:

That is a very good question. I believe that a policy needs to be issued in order to enable a thorough understanding of how the law is being administered by the H.A.W.A.G., the former Migration Advisory Group, of which the Assistant Minister's Minister sits on and makes decisions week in, week out and therefore a policy statement is extremely important. That is why the Interim Population Policy is extremely important. I gave a commitment at the start of this government that I would bring that policy to this Assembly for debate and that is what we are doing today, I hope, having an Interim Population Policy debate. Should that not be debated, which is being suggested by the Scrutiny Panel, I believe the Minister, which is me in this case, will have to issue a policy.

5.4.1 The Deputy of Grouville:

Is the Chief Minister therefore suggesting that there is currently no policy in place or even guidelines to control the population?

Senator I.J. Gorst:

No, there is the Strategic Plan in 2012 but it is right that this more detailed policy directs the way that the law is being operated and I would have thought that Members of this Assembly want to be involved in what is, I believe, a fundamentally important issue to the community at large.

5.5 Deputy S.Y. Mézec:

This question follows a meeting I had with the Jersey Human Rights Group last evening, where we heard something quite interesting. Does the Chief Minister think it is acceptable for taxis, restaurants and pubs to deny someone entry or service because they are accompanied by a guide dog? Would he support a law outlawing such a practice and does he think that more needs to be done to make the Island more accommodating for people with visual impairments?

Senator I.J. Gorst:

I have to say first of all that I am surprised that any proprietor of any of those services would be refusing that service [**Approbation**] to anyone who had the need for animal support, be they visually or hearing impaired individuals. I would have thought that common sense should be able to deal with that issue. I am surprised to hear that it is a concern and I would be pleased to receive correspondence from the Human Rights Group to see whether it is necessary that legislation should be enacted. I would have thought that every Member of this Assembly would expect that all those proprietors would welcome those individuals into their premises or being delivered by a taxi service and I am not aware of any legal impediment to them doing so.

5.6 The Connétable of St. John:

For a considerable time, the Chief Minister and the Minister for Treasury and Resources have claimed that action by Harcourt and other parties against the States would not impede on the development of the Esplanade Quarter. Yet the Royal Court judgment came out on 9th April, the day that R.B.C. (Royal Bank of Canada) walked away from the contract and gave it to Dandara. Does the Minister still believe that any court action by the 5 plaintiffs will not impede on the Esplanade Quarter in the future?

Senator I.J. Gorst:

I do not have any information that would make me aware of anything other than that the previous position is still the position.

5.6.1 The Connétable of St. John:

Given that the Chief Minister and the Minister for Treasury and Resources, along with J.D.C. (Jersey Development Company) now sit around the table ... or should they not be sitting around the table with the plaintiffs to try and resolve the issue instead of going all the way through a long, lengthy court action ...

The Bailiff:

This is an ongoing piece of litigation, so I am not sure that it is appropriate to discuss this in the Assembly.

The Connétable of St. John:

Am I being denied the opportunity to continue, Sir?

The Bailiff:

Yes, because this is ...

The Connétable of St. John:

You are cutting me off at the knees, Sir? Thank you.

The Bailiff:

Sorry, Connétable. You are going to get shorter. [**Laughter**]

5.7 Deputy M. Tadier:

Will the Chief Minister state whether or not it is normal practice in other jurisdictions when a delegation is sent for business purposes for their finance marketing body or equivalent to be accompanied by the regulatory body at the same time?

Senator I.J. Gorst:

I cannot say whether it is normal practice or not. I was recently accompanied on a Chief Ministerial visit with a representative of both the marketing body and the regulatory body and an agreement was signed between the regulatory body of the country that we were visiting. I see that if it is not normal practice, I think it is good practice because when we are doing business in other jurisdictions, those jurisdictions and those companies want to know that we are meeting the highest regulatory standards and the only way that that can be done can be through conversation rightly regulator to regulator.

5.8 Deputy T.A. Vallois:

Following the publication last year of the Comptroller and Auditor General's report on the Audit Office for Jersey, could the Chief Minister provide an absolute certainty on the date for lodging of the Audit legislation for the Jersey Audit Office due before this Assembly and confirm whether he is in fact satisfied with the way that the Chief Executive and Treasury have handled this matter so far?

Senator I.J. Gorst:

This is a matter that has taken too long and I am grateful for the ... I will use the word, "encouragement" of the Deputy to help move it forward. Perhaps encouragement is a gentle word. The Deputy, as I understand it, has been given an assurance that the legislation will be lodged by 2nd June. I am not satisfied with that date and I have asked that it could be brought forward 2 weeks to ensure that it is not being debated at the last States sitting. There have been some difficult issues. There is one clarification needed from the Comptroller and Auditor General about the appointment of the oversight panel and then we should be in a position to lodge, but I am aiming to improve on the undertaking that has been given to the Deputy.

5.8.1 Deputy T.A. Vallois:

A supplementary? I thank the Chief Minister for answering. My Public Accounts Committee does as well. In terms of the assurance that I have been given today, the Chief Minister and I were both assured back in October in minutes by his own Chief Executive that this would be lodged by March this year. How can I even take an assurance today by the Chief Minister that June will be the case and that this will not carry over until next year?

Senator I.J. Gorst:

I accept the difficulty that the questioner is in. I know and I have communicated with the Minister for Treasury and Resources and I apologise for the delay that this piece of work has taken. It is absolutely imperative that it is completed in this session of the Assembly and I will ensure that that happens.

5.9 Senator L.J. Farnham:

Not so long ago, the States agreed to a transfer of functions, responsibility for the finance industry from Economic Development to the Chief Minister's Department. Can I ask how that is working out and what new work is being undertaken and what benefits are being delivered as a result?

Senator I.J. Gorst:

It is working very well indeed. This morning I am pleased to see that the other side of that equation, the Minister for Economic Development was asked about the reform programme, for which he is now political lead, of course, as he said, with political oversight with other colleagues as well. The new Assistant Chief Minister with responsibility for financial services is, as we might say, pounding the streets, working to engage businesses to bring businesses to Jersey, is also ensuring that the work arising out of the Strategic Review is delivered and making sure that deadlines are met, is supporting the Sound Business Practice Committee and we, I believe, are

making good progress. We can be optimistic about the future of financial services in Jersey because we are not taking it for granted, which has happened in some cases in the past.

The Bailiff:

I am afraid that brings Questions Without Notice to the Chief Minister to an end. I am sorry for those who have not had time to ask their questions. There are no matters under J. or K. so we come to Public Business. Senator Ferguson, do you wish to raise a matter first?

PUBLIC BUSINESS

6. Interim Population Policy 2014-2015 (P. 10/2014) - proposition of Senator S.C. Ferguson to defer debate until 17th June 2014

6.1 Senator S.C. Ferguson:

I would like to test the mood of the Assembly, please, and I would like to propose that we at least defer the debate of P.10, the Interim Population Policy and I would just like to quickly explain why, Sir.

The Bailiff:

Defer until ...?

Senator S.C. Ferguson:

Technically, we should defer until 17th June. Basically, this is the last date it can be debated based on the lodging in January. Technically, I would like the Chief Minister to reconsider his position and perhaps discuss it with the Council of Ministers and perhaps my panel. We do not have the information. During our review, which we have just done, we were told that what is in the Interim Population Policy currently is the way we are operating the new law. We want to have some sort of appreciation from other States Members of whether they support the way that we are currently operating it. The law is a tap that we can turn on and off and what we are asking from the States is just to give us the nod to say: "Continue to aim for that number and we will do that." We have looked at the policy that was being proposed and it says: "Maintain the planning assumption of plus 325 migrants a year that has underpinned the long term policies approved by the Assembly and enable migration, which adds the greatest economic and social value and only where local talent is not available." I am sorry; we are doing this already. It is not really very detailed and the Chief Minister will say that we must debate this because we must provide the Housing and Work Advisory Group with clear direction as to how it should apply the new law. How are we going to do this when the report that says how it is working is not due until next month? The Chief Statistician has said that he is not yet confident that the recent manpower survey data is sufficiently complete, reliable or accurate and he has delayed the publication of Jersey's Resident Population 2013 Report. There was an article in last night's *Jersey Evening Post* saying much the same thing. I would like to make the proposition that we defer the debate until 17th June and I would really like to recommend that we cancel the debate entirely. The delay, as I say, would give time for the Chief Minister to reconsider the matter and he might even get his promised report in to us so we have the information on which to make a debate. **[Approbation]**

[12:15]

The Council of Ministers believes it should give clear direction on migration and population policy. Yes, I totally agree but that presupposes we have information on which to base the direction, the various programmes and mechanisms are working correctly, which I understand is very suspect, and the proposition states a definite policy and is not just "steady as we go." As we have neither

information nor confirmation that the programmes and mechanisms are working and there is effectively no new policy in the proposition, we would be letting the electorate down to be spending time discussing this projet and I recommend that we at least delay it to see if we can make the Minister see sense?

The Bailiff:

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

Senator P.F.C. Ozouf:

Sir, can I just ask a point of order? The Senator has basically said 2 things in her remarks. She said she was deferring it, but effectively she wanted to not take the issue at all. It is either one thing or the other. Is she able to simply make a proposition to request the Chief Minister not to take it at all or could you please explain to me what the ...

The Bailiff:

Yes. The only proposition she can properly bring without notice is a proposition that a matter listed for debate at the present meeting is deferred to another meeting day, which is why she has proposed that it be deferred to 17th June. Now, what Members choose to do with it on that day is up to them but the proposition currently before the Assembly is a deferral to 17th June.

Senator P.F.C. Ozouf:

Can I just clarify; is it possible, as Back-Benchers have, to force an issue? I understand that the Standing Orders also give the opportunity for 3 requests and then you can have your proposition. Does the Council ...

The Bailiff:

No, that only applies to Back-Benchers. **[Laughter] [Approbation]**

Senator P.F.C. Ozouf:

So, effectively, the Chief Minister could simply be in a position where the proposition could not be debated at all?

The Bailiff:

Yes, if the Assembly voted again on 17th June to defer it then for the 6-month period and he would have to presumably re-lodge a new one.

Senator P.F.C. Ozouf:

Thank you for your clarification, Sir.

The Bailiff:

So the proposition has been proposed and seconded. Does any Member wish to speak?

6.1.1 Senator P.F. Routier:

As Chairman of the Housing and Work Advisory Group, I experience every week the challenges of population and migration. I hear from members of the public who are concerned about the number of people who live in our small Island, about the price of housing, their ability to get a job, the ability to find school places, and the time it takes to get to work. I also hear from businesses who are struggling to recruit and are concerned for their livelihoods, or who are considering whether Jersey is the best place to do business, and who are worrying about Jersey being closed for business. Perhaps most difficult of all I hear of hardship requests from people in all sorts of distress who need housing or cannot find work and face a range of difficulties. Many Members here today

have visited the Housing Advisory Work Group to support these applications. They will understand the challenges and I hope bring that to bear when they vote on whether to have this debate or not. Indeed, to some extent or other, we are all affected by this issue. However, as Chairman, and on behalf of the Housing Advisory Working Group, we need your direction. If we do not have it we will make recommendations to the Chief Minister as to what our policy should be, but we really would prefer to have everybody within this Assembly to have some consensus about the way we are going forward. There must be more clarity, not less, for the applicants and for the good of the Island. I believe it is preferable that the Assembly provide that direction. If I may, I would like to briefly share some more of my experiences on the Housing and Work Advisory Group. In doing so I want to thank my colleagues from Social Security, the Minister for Social Security and the Assistant Minister for Social Security, the Minister for Economic Development, and the Minister for Housing together with our officers who support the decision making so it is as rounded and as balanced as possible. We do not have an easy job. But we do know that we need to limit migration. We also know that we must support economic growth. The challenge is to have a credible and balanced policy to secure this and effective mechanisms to implement that policy. This is what the interim population policy and Control of Housing and Work Law are. The interim population policy focuses on higher economic and social value activities and provides a good explanation of what that means.

The Bailiff:

Senator, I do not think you should stray too far into the merits. **[Approbation]** Thank you, the Chair will deal with this, I do not need the assistance of the Members. I think we need to confine ourselves, Senator, to why you would say it is necessary to debate this today.

Senator P.F. Routier:

Yes, Sir. The reason that we really need to debate this as soon as we possibly can, and today or during this sitting, is that the Housing and Advisory Work Group are working, and we need to strengthen the policy that already exists under the strategic plan that has been there. The question about whether there is lack of information, which the Senator has brought forward, the information is gradually coming forward. There will never be a time when there is all the information available. We will never get to that state of play because you could say it is out of date at one stage. I am amazed that this Assembly could even consider not wanting to debate this because we know that it is such a high priority for our community, 77 per cent of our Island population within the last Social Survey said it was their highest priority. We must debate this. If Members do not want to debate it, well, I am amazed and I would encourage people to support the proposition going ahead.

6.1.2 Deputy G.P. Southern:

I stand to support Senator Ferguson, who is absolutely right when she says we do not have the information. I understand that she asked for advice as to whether this should be a reference back, because it fundamentally fits into reference back, and it was suggested to her that it might be an idea before we get on to the debate to test the waters and see if we can throw this one back. I have to emphasise, never mind what is happening out there, this is directly as a consequence of the Council of Ministers inaction. They did indeed promise a population policy at the beginning of their Strategic Plan. The previous policy had some numbers in it of between 150 and 200 heads of household. The current policy has no numbers in it, we will just do our best and we will control the number of work permits. So there are no numbers currently here. The fact is the Council of Ministers has singularly failed to produce a population policy, the single most important thing that it tasked itself to do, and now it is coming with this lame excuse of an interim population policy without the required figures. If we cannot, as the Stats Office cannot, complete and trust its population figures, its workforce figures, then we cannot go ahead and debate it now. That is

absolutely crystal clear to me. If I just refer to the first paragraph of a proposal for reference back, because it crystallises exactly what we are talking about: “A Member of the States may propose, without notice during the debate on a proposition, that the proposition is referred back in order that, (a) further information relating to the proposition can be provided to the States.” That is exactly what this does. We need some more information. We cannot debate it without information because we are debating then in the dark. Yes, please encourage all Members to accept this motion that we will debate it, but not now.

The Bailiff:

I have 4 other Members who wish to speak, and of course every Member may speak, but can I just remind Members this is a short debate about whether to debate it.

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

As Vice-Chairman of the Corporate Services Panel I stand up in total support of the Chairman when she brings forward this particular proposition. In fact, Members only need to be guided and look to the recommendations contained in what I believe to be a thorough review that we have undertaken, there are only 2, and the second recommendation is that it should not be brought to the Assembly for debate until all relevant statistics are available from Jersey’s Labour Market and Jersey’s Resident Population 2013 report, the post-implementation review of the new laws being undertaken, and a public consultation on the long-term plan and vision for the Island has taken place. Why do we say that? The whole purpose is we reflect exactly the promises made and the priorities given in the 2012 Strategic Plan that the Council of Ministers produced and we all signed up to. One of the key actions is: update the population model using the new Census information and bring realistic targets for population and immigration limits to the Assembly by July 2013. That has not happened: why? Because the work has not been done. We are told that the policy is not there; well, it is. In the Strategic Plan 2009 to 2014, along with a whole load of other policies, we agreed a population policy which set out the way forward, after significant consultation. That still exists and we are told that in the wording that is included on page 19 of the 2012 Strategic Plan, but that is what the Chief Minister and his department are following. So to suggest that suddenly this new Housing and Work Advisory Group need a steer is a nonsense. They have been given a steer and the reality that they have not delivered, that year on year on year the 325 numbers are being exceeded by significantly much larger ones. Even in the last years it has been around about the 600 mark rather than 325. **[Laughter]** Those are the statistics that they do not tell you, which is why we need proper information to ...

The Bailiff:

That is the sentence I was waiting for you to come to, Deputy. **[Laughter]**

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

It was a very nice preamble to the Senator’s speech from Senator Routier that he is not going to hopefully be able to make. That is not the point. Do we have enough information? We have an amendment into this policy, do I have enough information to support the 250? No, I do not, and nor do the Council of Ministers, 2 pages of condemning: “Not that number, this number.” It is the number we had, and a page of A4 today saying why, again we will have to carry on with the policy we already have. Is it going to be the end of the world? At the end of June, or 5 months after the election, a new House will have all the information. I urge that we do support Senator Ferguson in this reference to 17th June, and hope that the Council of Ministers can really stop thinking they can pull the wool over our eyes to say this is something new. It is a continuation, it is exactly the same number, it is administered under a separate law without any enforcement, only under the entitlement to work. So please do not try to tell us that the end of the world is nigh if this is not debated within the next 5 months. I absolutely urge us to support Senator Ferguson and her good

report that has been done and has not got the answers because the information is not there. Thank you.

6.1.5 Deputy M. Tadier:

One does have some sympathy for the Assistant Minister because he is like that loyal foot soldier who has been sent over the top with a little handgun to face the heavy artillery of the opposition, which is seeming to not be in short supply. It seems to me that the argument about the population being important is already won. Everyone in this Assembly and everyone in our community knows that population is not just important, it is critical for the future of the Island. On the one hand we have Senator Ferguson saying this is so important, a subject that we cannot rush, we have had that review which has been lodged on 23rd April, only this week, we know that we have very heavy items on the agenda which are perhaps more urgent but not more important, if that makes sense, in terms of the timing of them. It seems to me that we are not debating the importance of this, we are saying that quite rightly there are various reasons why this debate needs to be well thought out with information and possibly even a bit more - it is a terrible word to say - but consultation, because we know that there are amendments out there which are going to affect workers and people who live in the Island.

[12:30]

I am absolutely convinced if Scrutiny on this occasion say that it is the right thing to do, they want a measured and meaningful debate, then it is only the right thing to do that. [**Approbation**]

6.1.6 Connétable L. Norman of St. Clement:

It is very tempting to support this deferment, simply because of the length of the agenda we have in front of us today. But when we look at the agenda we can see we are talking about car parking for States Members, Speaker of the States, Chief Minister's election, and the States of Jersey Law. All about us. All about us again. Where even Senator Ferguson I think admitted, the most important thing that people worry about, are concerned about out there, is population and immigration. But she does not just want to defer it, she says she does not want it debated, and I think Deputy Tadier said this matter is really important, so important that we cannot debate it. I think it is a lot more important than the other things that are on the agenda, and we owe it to the public to have this debate and have this debate now, because if we do not can you imagine the headlines tomorrow, what people are going to think about us? The most important issue facing the Island and we cannot be bothered to debate it. Not a good idea.

Deputy G.P. Southern:

I think Hansard will reveal that Deputy Tadier said that we cannot rush it, it is so important.

6.1.7 Senator P.F.C. Ozouf:

I am pleased to follow the Connétable of St. Clement and I have 2 significant, I think, things to say. I have read the Corporate Services report and I realise, in respect, that there is a wide tableau of opinion, there are those people who want a tougher immigration control, and those who want a more liberal immigration control, and there is almost sort of an alignment of people on both sides of that debate not wanting that because they are not satisfied with what is before the Assembly. The information that is required, there is an issue - and I understand this - about the reconciliation of the manpower number. But the reality is if we did know what that number would be now, if it would be higher or would be lower, would we be making any other decisions in sending a guidance to H.A.W.A.G. that we would require any other number apart from 325? Well, we might want to adjust our figures in the longer term but I have to say to Members the reality is that we need to give business certainty about what they are going to get in terms of their licences. I know some Members of this Assembly believe that there should be a much greater number. I will go on, if we

go on to the debate, to explain how the 325 can meet business requirements in terms of the number, and we have Deputy Southern's lower number, we can have that debate. Does knowing the population number, reconciled with Social Security, make any difference to the guidance that is required in the next 2 years? I would argue that it does not. That is the first thing. The information, if we knew it, would not change it. We have an urgent issue to deal with business applications which are here and now. Secondly, if I may also call on the Solicitor General to confirm, the reality is that we have a law that requires ... I can hear Members, there is an important point that I need to make sure that Members understand, if I may say. That is that a law is set out that gives Ministers power. Now, a ministerial power needs to be set out in terms of how that power is going to be dealt with. In other words, a policy is required. You simply cannot have a law and then simply rely upon a vague statement which says how you are going to, or a complete absence of it. As I understand it, the Chief Minister has said he is willing to take this policy in which the law is going to be administered for endorsement by this Assembly. I believe that a policy is required to operate the law effectively, otherwise one is open to challenge, and H.A.W.A.G. is open to a challenge, and so the Chief Minister is asking for the States' endorsement of that policy. The alternative is if the States does not give a policy then effectively the Chief Minister must make that policy himself. I would just invite, if I may, I know the Attorney General has been asked to give Ministers advice on this and I have had the benefit of previous advice from previous Solicitor Generals, could he please advise - perhaps now or once he has had time to reflect - of the fact that a policy guidance under this law is required, but that could either be done by the Chief Minister or by the States Assembly.

The Bailiff:

Solicitor General, are you in a position to answer that?

The Solicitor General:

Yes, Sir. There is not a legal obligation to introduce a policy, however - and this is a big however - speaking as a lawyer who sometimes has to defend Ministers' decisions in a judicial review setting, it would be much, much, much better if there was a policy in place so as to enable the public to understand the process and to enable there to be consistency of decision from one case to another, applying the same criteria. So I would advise in the most strongest terms that the introduction of a policy as soon as is practicable is the way forward. It matters not whether the policy comes from the Chief Minister or the States Assembly, but a policy please.

Senator P.F.C. Ozouf:

Having that clear advice from the Solicitor General, the Chief Minister has said Senator Ferguson is saying that this Assembly should not make this decision at all. That is effectively what she is saying. She is saying 17th ... well, she cannot undo what she has already said, I think Members were very clear with what she said, she wants Ministers not to do it. She cannot unsay what she said - Hansard will record it - she does not want the debate to be held at all. Hansard will record it. The Chief Minister is saying, and Ministers are told they should be sharing power, they should be asking Members for power. On this occasion the Chief Minister is standing by a promise that he made that he will invite the States Members to endorse the policy. Now, Members cannot have it either way. A policy is required, it is urgent, it is important, no data will change that. The debate should go ahead. We have a full set of information and we can have that debate, but a policy is required because it is dangerous not to have so and if the States says no to this debate the Chief Minister will have to publish his own policy which will inevitably be the policy that is published. Where will that leave Members and democratic accountability? No way, we need to debate it.

Deputy J.A. Martin:

Can I ask for some clarification from the Solicitor General? It has been puzzling me for some time why we are having this interim policy brought forward and I think the penny has just dropped, because did we not introduce a Control of House and Work Law without a policy? Is this not why we are rushed to ...

The Bailiff:

Deputy, are you have a second speech or are you asking ...

Deputy J.A. Martin:

No, I am asking, should it not have been done first, and now we are in desperate need today to have a policy, whoever will introduce it, the States or the Chief Minister?

The Bailiff:

I do not think that is a legal matter for the Solicitor General. He has said there ought to be a policy.

Deputy J.H. Young:

Sir, can I have another go at seeking clarification which I think is important?

The Bailiff:

From whom?

Deputy J.H. Young:

From the Minister for Treasury and Resources in his last speech. He said that we have to have the debate because we have not got a policy. Could he clarify whether or not the policy that was previously approved is still current or not? Because that seem to be crucial, can he ...

Senator P.F.C. Ozouf:

I understand that the new law requires a policy and that is what the process has been. There is currently just simply the most high level of policy in the Strategic Plan which if I look at it I do not think that is a good enough, clear communication to business people who require applications to be determined. That is not a clear enough policy. Just a Strategic Plan, vague number of points, is not clear enough and is not the guidance that businesses should be given for certainty of their decision making. I think the Solicitor General can clearly comment himself, but I have done this job of Regulation of Undertakings and housing and I know what a policy is, and the Strategic Plan is not a policy that is defensible in the longer term. We need a policy. It should be decided here.

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

I would just like to add my own weight to those people who say that population is absolutely the most important issue that we can debate. Given that, I would also like to say that I am hugely disappointed by the quality of this interim population policy, because something that in one breath says here is a target, and in the next breath says we have no intention of sticking to it, is no policy at all. I am going to support Senator Ferguson. I would like the Assistant Minister to come back to the Assembly with a proposition that reflects the seriousness and importance of this subject.

The Bailiff:

Can I just remind Members, that was on point but it is not necessary for every Member to speak on this matter.

6.1.9 Senator L.J. Farnham:

I just have a feeling there is going to be an awful lot of procrastination if we move forward without any sort of policy in place. I can see it now, we will be discussing this next year and the year after.

This sort of policy is going to be a moving policy over the years as we learn and understand more about how population has an impact on our Island and our economy, which we do not understand now, and I think many Members have not really given that due consideration. I think it is important we have to have something. I do not particularly like this but that is no reason not to have something in place while we carry out these important debates.

The Deputy of St. Ouen:

Please, just as a point of clarification, and it is important for the Solicitor General answers this, the question seems to be whether we have a policy or not. In the Strategic Plan it was agreed one of the actions would be to set a population policy and it outlined what that policy should contain. I believe that was debated and in fact consulted upon previous to that and an agreement reached, which has then been followed by various migration advisory groups and the like. Would the Solicitor General please confirm whether or not that policy that was debated and agreed, whether it was part of the Strategic Plan or not, is in place and has been followed to date - because that seems to be the indication given by the new Council of Ministers in the 2012 Strategic Plan - or indeed whether there is no policy at all?

The Solicitor General:

I am sorry, I am not sure that is a question for me. It is a matter for the Minister and his officials to inform the States as to what, if any, document they have or have not been following. It is clear if the officials have been following the Strategic Plan then a court may well consider that was the de facto policy in place. But whether that is of sufficient detail and quality is a different issue.

Deputy M. Tadier:

I have a question for the Solicitor General that follows on from that. Is there a sense in which, if there is an overarching policy in the strategic policy, on a day-to-day basis presumably the department is making decisions, they are making judgment calls, and, therefore, they will have built up precedents which can act as policy, so if there are challenges in the court, simply decisions that have been made can be used as precedence and patterns as to what is reasonable and fair under the strategic plan?

The Solicitor General:

Certainly a court would look at or can look at different decisions to see whether there has been a consistency of approach and will maybe take a dim view if there are inconsistencies or an arbitrary variation in decision making. But I return to my original point, when you are dealing with public law matters such as this and you get into a court room and there is no policy, the Minister has difficulties.

6.1.10 Deputy A.K.F. Green:

I speak as a member of H.A.W.A.G. that certainly on a weekly basis gets requests for employment and licences, and on a fortnightly basis we spend the best part of half a day going through different applications. I have to say that since the change in the law we do not have an absolutely clear policy. We are doing the best we can and it is very difficult. I find it quite ironic, something I was going to say in my speech, those who speak most loudly about wanting to lower the number of people coming in are the very same people that appear in front of H.A.W.A.G. supporting constituents who want to increase the number of people coming forward in the population. We need to have this debate. We are working without a clear policy and if you were to sit there and come and observe the work that H.A.W.A.G. does, more and more of the applicants are coming in legally represented and we must have a very clear policy so that we can consistently apply that policy and we can ensure that if it is challenged that it is both fair and legally supportable. It makes

our job almost impossible. We are trying to strip out at the moment unqualified licences that we believe are in excess of the needs of the business.

[12:45]

But we are doing that almost without a policy to sit alongside it, and we must have the support of this Assembly in tackling the biggest issue that the public talk about. I quite agree with the Constable of St. Clement in his excellent speech. Forget the car parking, that is not that important, take it away, I do not care. But let us get on with the population debate.

Deputy J.M. Maçon of St. Saviour:

This is a question for the S.G. (Solicitor General) and my question is: it has been suggested that effectively it seems that currently H.A.W.A.G. are working in a policy vacuum that some reference has made to the Strategic Plan, but my question is what about other population policies that have already been agreed by this Assembly. Do they not apply or do they stand? Because my understanding was until another policy is agreed by this Assembly, previous policies adopted by this Assembly should apply and that is how H.A.W.A.G. should be working the law.

The Solicitor General:

With respect, I am not sure that is right. There has been an introduction of a new law, the Strategic Plan sets out in outline what the population policy might look like, but at the moment there is no population policy which fleshes that out into detail. So that is where you are.

Deputy J.M. Maçon:

Can I thank the S.G. for his response.

6.1.11 Deputy M.R. Higgins:

Like others I happen to think that population is one of the key debates. However, unlike the Constable of St. Clement and others who feel that we should debate an issue without having information or without having proper information, I fundamentally disagree. One of the problems that this House has, we have certainly alienated a lot of the public, and they see many Members of this House simply as being poodles of the Council of Ministers and mere button pushers. Too many issues are debated in this House without having information or States Members understanding what they are talking about or the policies they are going to be bringing in. I for one have been fed up with this for a long time. So what I would say is it is about time that States Members put their foot down and said to Ministers: "Bring the information here, then we will make the decision." Then we can look the public in the face and say: "We have done our job" which is more than we have been doing to date. So let us defer this debate until the information is there.

6.1.12 Deputy G.C.L. Baudains:

I will be very brief. I have always believed a decision is only as good as the information it is based upon and if we do not have sufficient information then surely the decision we will be making will be unsound. I really do not see any point in replacing what we are told as one unclear policy with another unclear policy, so I will be supporting Senator Ferguson.

6.1.13 Senator F. du H. Le Gresley:

I am pleased that the Solicitor General said what I was going to say. Basically we have a new law now, the Control of Housing and Work Law, and we have to have a clear policy that coincides with that piece of legislation. I recall in my old job that I was frequently referring people to the policy on the Regulations of Undertakings and Development Law, which is a written policy which was clearly set out and had to be followed. We do need a policy but I would remind Members that we talk about the 2011 States Strategic Plan, but what was the number one priority? Get people into

work. Now, we still have - and the figures came out today - 1,730 unemployed. The whole point of the work that the Housing and Work Advisory Group do is to try and get locally unemployed people into jobs, and job substitution, and reducing the number of registered people who have to come into the Island to do jobs. We are making great steps, but if we do not have a policy for that group we are going to be in a very difficult position and we are not going to get the unemployed down, and we must do. So Members have a simple decision really, defer all this, it is an election topic so let us leave it all for the election, or give the Chief Minister the authority to make the policy and we can all get on with the job.

Deputy M. Tadier:

Could I propose the adjournment?

The Bailiff:

At the moment I have one other Member wishing to speak. I would have thought myself that everything that could possibly be said about this topic has been said. I see another wanting to indicate. Do Members really feel they have something that has not been said already?

6.1.14 Deputy S.Y. Mézec:

Just a brief point, thank you, and following from what Deputy Higgins said. The one point that has not been brought up is that there is a general election this October. Senator Ozouf referred to democratic accountability, and Senator Routier rightly pointed out that this population issue is probably the most important thing to ordinary voters out there. This affects people's job prospects, it affects the economy, it affects the environment, it is possibly the most important thing that a small Island community can be worrying about. I think that it is absolutely wrong to propose an interim population policy, then have a general election where 49 people will be elected, all no doubt pulling in different directions population and promising all sorts of undeliverable things, and then eventually have it kicked into long grass to have the full population policy. What should happen is we should support Senator Ferguson and the Chief Minister should stand for election in October on a full population policy, alongside - if P.33 is passed - with his other prospective ministerial colleagues perhaps they could even do so as a party. The voters should have the say on population, there should be a clear, comprehensive policy at election and the public will be able to give a mandate to someone to follow it through. Otherwise, whatever the policy is, it will have no democratic mandate whatsoever.

6.1.15 The Deputy of St. John:

This little flurry of a debate about whether to talk in the Assembly about a population policy I believe is symptomatic of a major and enduring problem that we have in the Assembly. It is symptomatic for the Assembly not working constructively and as a team in the interests of the economic success of this Island. I am a local businessman, I have been in business for 40 years, and I can tell you that one of the most important things - and many Members in this Assembly are not necessarily directly connected to business, and that is fine, they are politicians, I do not expect them to be, but the voice of the businessman needs to be heard. If there is one thing that a business does not need in these times when there is some light at the end of the tunnel, finally, from 5 years of the worst recession we have ever had, it is uncertainty. It is uncertainty about who you can employ and how many of them and whether they have to be local people or not. So the population office must have a policy, so I would just make an appeal on behalf of businesses and the economic success of the Island - which everybody has an interest in, quite rightly, as Deputy Mézec has said - and we must get on and make this. If not then the Chief Minister will have no alternative other than to prescribe a better policy because the old one is deficient. Are the Assembly going to be happy with that, or would they rather at least be prepared to have the courage to talk about it in this Assembly today?

6.1.16 Deputy J.H. Young:

I will try and be brief. I am deeply worried about what is being said here today that we do not have a policy. I really am worried about that. I read the Scrutiny Report yesterday, I thought it was an excellent report, and I was really strongly in line that we should go with what is being safe and put the debate. But what we have been told today is absolutely right, if there is doubt about this policy we have to be clear. Also, what the Constable of St. Clement said, I would strongly chime. If we come out of this and say: "We are not even prepared to talk about it, kick it along" I think that is a real worry. I am not a button pusher for the Council of Ministers but frankly I am very, very concerned about the effects of postponing a debate. **[Approbation]**

6.1.17 Senator I.J. Gorst:

I will try to be short. I think that if Members think about Deputy Mézec's speech, that is exactly the reason why we should have the policy debate today, so we can put the interim policy in place, the work is already started on the long-term plan. I understand that Scrutiny want that more detailed work to be undertaken. That is why the Council of Ministers lodged both proposals at the same time and said that would take work. Members rightly want much more detail in order to think about what Jersey is going to look like in 20 or 30 years' time. But while that work is being undertaken over 2 years we must have an interim population policy. Perhaps if I have learnt some things it is giving a hasty commitment that a policy that a Minister could rightly make themselves, they are going to try and build consensus and bring it to the Assembly because they think it is such an important community issue. It is. I believe we should debate it today. If we do not I will have to go away and deliver a policy. I just want to say a little thing about the derogatory use of the term "foot soldier" with regard to Senator Routier. You could say the same with Senator Maclean and Deputy Green and Deputy Pinel. The reason I say that is because week in, week out, they are having to make decisions under the Control of Housing and Work Law and some Members who come into this Assembly and say: "We want to close the door, we want to control population" are leaving the door of this Assembly, re-entering at Cyril Le Marquand House, and saying to the Housing and Work, whatever the group is called, and say: "I have just got an exception here, Minister, we would like a non-locally qualified, we would like an imported person to come in to do this job" and the members of that group are challenging them and saying: "Surely you can find somebody who is already here, or they can be up-skilled, or they can work with Social Security to fill that job." They are not being loyal foot soldiers. They are at the coal face of having to make decisions which are difficult, which require balance. Business needs people in it that have the right skills. We need inward investment into our community if we want to see economic growth. There are one or 2 Members here, I read it, I see it on the tweets, and the Deputy of St. Martin made the comment, this is such an important debate and the reality is, it is all about balance. It is about giving business the licences that they need to grow and stimulate the economy, but it is also about making sure that where there are local people that can do that job with a bit of support and training and encouragement, then they are given the ability to do that job. It is not a straightforward number, so when we say that it is going to continue with that balance and there is going to be a planning assumption, of course, it would be irresponsible if we stood up in this Assembly and said: "When we have got to 325 we are going to close the door and we are not going to let anybody else come in who has a great proposition for Jersey that is going to create jobs and deliver business and deliver economic growth." It is about balance, it is about trying to have a grown up, serious debate about things that affect every single one of our lives and is equally a top priority for our community. I do not believe that we should say we do not want to have that grown up debate. It is critically important. Businesses need to know where they are, they need to know that we are supporting them, that we want to encourage them, and at the same time those people who are unemployed need to know that we are trying to create opportunities for them and we are doing all that we can to get them into work. Let us not put the debate off. We need the debate, H.A.W.A.G.

need the policy, and I believe that this is something that we should and can do today. It is extremely important, it is all about balance and having a proper grown up debate. [Approbation]

The Bailiff:

Very well, I invite Senator Ferguson to reply.

6.1.18 Senator S.C. Ferguson:

First if all I would like to thank my Deputy Chairman, the Deputy of St. Ouen, who is a genuine grievant and feels very strongly for the good of the Island. I think there was some unkind laughter at him during his speech which I think was quite unnecessary. The Assistant Minister told us, during our review, that the interim population policy will have no substantial impact on how States manage population. That is the policy they are bringing. I like the Constable of St. Clement, he is a nice bloke, but he has missed the point. Where is the Chief Minister's report on the working of the law? Senator Ozouf, well, he talks about numbers. Between 2009 and 2012 the average immigration number is apparently 575, so we are not controlling anything at the moment. Anyone who produces a policy, frankly, on the basis of no information, I am sorry, it is rubbish. There is a policy in the Strategic Plan and the Solicitor General, as we bounce him around like a political football - and I am sorry about that - there is no legal obligation but it is better to have one. But if you are going to have a policy it has to be based on good information. There are also promises of public consultation on the long-term policy, but that is in the long grass after the elections. Cutting licences is not a policy matter because according to our review, and we were told, the 325 is a planning assumption and if we go over it a bit this year, well, that is all right, we will have a few less next year, it just has to be the average. Again for Senator Le Gresley, we have 575 people on average, 2009 to 2012, coming into the Island, so is the Council of Ministers looking after the unemployed?

[13:00]

The Deputy of St. John talks about business, well, the Chamber of Commerce does not think we are going to be able to hold the line at 325, and the Institute of Directors says we are rather foolish to be debating without the information. The one thing that the Chief Minister did not talk about was productivity. Forget population, we want productivity, or it should be viewed as part of the population debate. The Assistant Minister during the review told us quite clearly that the interim policy would have no substantial impact on how the States controlled population. So I ask Members to support my deferral.

The Bailiff:

Do you ask for the appel?

Senator S.C. Ferguson:

Yes, please, Sir.

The Bailiff:

The appel is called for then in relation to the proposition of Senator Ferguson that debate on P.10 be deferred until 17th June. If you wish to defer it you vote pour, if you do not contre, and the Greffier will open the voting.

POUR: 23

Senator A. Breckon
Senator S.C. Ferguson

CONTRE: 26

Senator P.F. Routier
Senator P.F.C. Ozouf

ABSTAIN: 0

Connétable of St. Lawrence	Senator A.J.H. Maclean
Connétable of St. John	Senator B.I. Le Marquand
Connétable of Grouville	Senator F. du H. Le Gresley
Deputy R.C. Duhamel (S)	Senator I.J. Gorst
Deputy J.A. Martin (H)	Senator L.J. Farnham
Deputy G.P. Southern (H)	Senator P.M. Bailhache
Deputy of St. Ouen	Connétable of St. Helier
Deputy J.A. Hilton (H)	Connétable of Trinity
Deputy J.A.N. Le Fondré (L)	Connétable of St. Clement
Deputy S.S.P.A. Power (B)	Connétable of St. Peter
Deputy M. Tadier (B)	Connétable of St. Mary
Deputy T.A. Vallois (S)	Connétable of St. Ouen
Deputy M.R. Higgins (H)	Connétable of St. Martin
Deputy J.M. Maçon (S)	Connétable of St. Saviour
Deputy G.C.L. Baudains (C)	Deputy R.G. Le Hérissier (S)
Deputy J.P.G. Baker (H)	Deputy of Grouville
Deputy of St. Mary	Deputy of Trinity
Deputy of St. Martin	Deputy K.C. Lewis (S)
Deputy R.J. Rondel (H)	Deputy E.J. Noel (L)
Deputy N.B. Le Cornu (H)	Deputy A.K.F. Green (H)
Deputy S.Y. Mézec (H)	Deputy of St. John
	Deputy J.H. Young (B)
	Deputy S.J. Pinel (C)
	Deputy R.G. Bryans (H)

Just before the adjournment, Senator Bailhache, you wanted to defer a matter?

Senator P.M. Bailhache:

I would like to defer the debate on P.164 the Draft European Union Legislation (Implementation) (Jersey) Law, which was referred to Scrutiny on 4th February. I have just 2 or 3 days ago received a report from the Scrutiny Panel. I would like to have the opportunity of studying it, and I ask that this matter be left over for 2 weeks.

The Bailiff:

Very well, then 2 matters have been presented, there is the Corporate Services Scrutiny Panel Implementation of Union Legislation, which the Minister has just referred, and the Customs and Immigration Service Annual Report. When we reconvene the Assembly will then move to Public Business and to P.160. I shall naturally ask the Greffier to preside during that debate. Very well, we stand adjourned.

[13:02]

LUNCHEON ADJOURNMENT

[14:17]

The Greffier of the States (in the Chair):

Very well, we now come to the ...

The Deputy of Grouville:

I am sorry, I did not feel that the Assembly was minded to discuss any further before lunch. I wanted to ask leave for the Assembly to have my proposition P.44, currently at the end, debated after P.45 and before P.33. When I lodged the proposition you and I had a discussion as to where it would best sit and we felt that that was probably the place it would run best.

The Greffier of the States (in the Chair):

You are proposing, Deputy, that your proposition Chief Minister and Ministers for External Relations and Treasury and Resources: Island-wide mandate (P.44/2014) be debated immediately after the proposition of Deputy Mézec and before the debate on the States of Jersey Law?

The Deputy of Grouville:

Yes.

The Greffier of the States (in the Chair):

That is seconded? **[Seconded]** Are Members content to proceed in that way? Does anybody wish to speak against? Very well, there appears to be a consensus so we will proceed in that manner and move that item to the position on the Order Paper.

7. Elected Speaker of the States (P.160/2013)

The Greffier of the States (in the Chair):

We come now to the proposition of the Connétable of St. Helier, Elected Speaker of the States (P.160/2013) and I will ask the Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion - to agree that from the date of retirement of Sir Michael Birt as Bailiff of Jersey, Recommendation 2 of the Review of the Roles of the Crown Officers (the “Carswell Review”), namely that: ‘2. The Bailiff should cease to act as President of the States and the States should elect their own President, either from within or from without the ranks of their Members’ should be implemented.”

7.1 The Connétable of St. Helier:

P.160 of 2013 asks the States of Jersey to agree to the implementation of the most important of the recommendations made in the report by the review group led by Lord Carswell in 2010. When I stood successfully for the chairmanship of the Privileges and Procedures Committee nearly 3 years ago, I indicated that this matter would be on the committee’s agenda, and so it was, with a great deal of hard work undertaken by the Committee’s officers for the Sub Committee set up by P.P.C. (Privileges and Procedures Committee) to examine the Carswell Report. The fact that I only narrowly managed to persuade P.P.C., as formerly constituted, to fulfil what was effectively a manifesto pledge, indicates just how divided the States Assembly is on this issue and that divergence of views is reflected in the public’s view of the matter. Indeed, I was taken to task by a member of the public on my way to the States building only this morning and we have all just received a letter urging us not to tinker with 500 years of tradition in respect of how our parliament is managed. It goes without saying that this is not a debate about personalities; past, present and future holders of the post of Bailiff have all presided over the States proceedings with the combination of wisdom, authority, gravitas, wit, experience, knowledge and, let us not forget the vital quality, patience. Those with longer memories will say that the same is true of past Bailiffs; therefore, any one of these will be a hard act to follow if the States decides to accept this proposition. For the avoidance of doubt, and given that the current Bailiff’s successor has already been appointed by the Crown, I would personally have no difficulty, were I to find myself in this seat next year, with the status quo. Nevertheless, the retirement of the present Bailiff does present us with the opportunity to implement the recommendation that we reform this aspect of how our parliament functions and that we do it in a natural break that has been presented to us. I make no apologies for the brevity of the report accompanying the proposition. If Members hark back to my

last substantive proposition seeking the States to pay rates and the one before that and the one before that, they will know that I am quite capable of writing a lengthy and, I hope, cogent report. But this proposition is simply asking the States to implement the main proposal of the Carswell Review, that we elect a Speaker, as the vast majority of other parliaments do, either from within or without the ranks of this Assembly. In other words, that the Bailiff ceases to preside over our Parliament but remains the civic head of Jersey. Council makes the arguments in support of this and, for the benefit of Members who are disappointed that I did not crib from Carswell, I will refer to them in a moment. At the same time, I am immensely grateful to the Privileges and Procedures Committee and their officers for 2 sets of comments on the propositions and, indeed, to the Chief Minister and his staff for the comments contained in his comments, particularly the proposal the States should give, in principle, approval to P.160 about the detail of how an elected Speaker would be selected could be put to the next States for ratification. I want first, before I refer to Carswell, to answer those critics who claim that this matter lacks public consultation, public engagement, Parish meetings and so on. This Parliament set up the Carswell Review; Carswell consulted, held the public meetings, took expert advice, listened to the public and duly published its findings. The last States Assembly held an in-committee debate on the subject and while it is true that the present States has spent much of its energy on what proved to be a vain, wasteful and ultimately damaging pursuit of electoral reform, that has not meant that the 2 P.P.C. Committees and their officers were content to see Carswell go the way of Clothier which, of course, made the same recommendation in respect of the role of the presiding officer. The public have had their say and insofar as the public is really concerned about who presides over States meetings, their views have been taken into account by the review panel that we set up. "Let there be more consultation" is no more than a siren call by those who are committed to retaining the status quo. I would, however, agree with those who argue that the system is not broken, which is why I am not going to lose any sleep, personally, over the outcome of this debate. To carry on as we are, as the Attorney General makes clear in his comments, will not prejudice the States of Jersey, nor its ability to function as the Island's Legislature. It will, on the other hand, leave us exposed to criticism and to legal challenges. The Attorney General advises that these are baseless but I would submit that all legal challenges are expensive and, indeed, what Carswell called, when he visited us recently, strident attacks on Jersey's institutions. If we do not do anything I do not believe there are many in this Assembly who doubt the matter will have to be looked at again in due course. What would be lost, of course, if we do nothing is one aspect of reform that has perhaps not been sufficiently emphasised during recent discussions of the role of the elected Speaker, that of outreach and advocacy. Our Government's reputation is at an all-time low. I know we keep on saying that and it keeps getting worse but I know, and I have already alluded to this, we must be under no illusion that since we decided to ignore the recent referendum on electoral reform we have damaged our reputation severely. One of the roles of an elected Speaker, and particularly one taking office in 2015, will be to restore public confidence in the States Assembly by carrying out the kind of work that is widely practiced in other parliamentary jurisdictions. Let us now remind ourselves what Carswell said when it finished its work. I am going to take Members very quickly through some of the key paragraphs in the Carswell Report and if they have that in front of them, so much the better. In the introduction to the report, and this is on page 6: "There has been a definite current of opinion that the present situation [and that is, of course, in respect of the Bailiff presiding over the States] is in some respects inconsistent with modern ideas of democracy and that the roles of the Crown officers should be amended. Jersey is a maturing and developing society which has seen substantial change in recent years, matching the development of its significant international personality. With that, however, come greater international scrutiny and challenge and it is, therefore, important that the Island's core institutions are able to withstand such scrutiny to show themselves to be in keeping with established principles of democracy and good governance." Further down in 1.5, Carswell reminds us that Clothier reached the same conclusion and I quote:

“A number of the recommendations which we shall make have already been mooted, some of them as part of the package recommended in the Clothier Report. We are of the view that those which we have espoused should be made and are capable of being brought into effect without adverse consequences.” Later in the report, and particularly in section 5, the panel go through some of the key practical and constitutional considerations that led them to find in the way that they did, and these are listed on page 26. First of all: “The current practice is inconsistent with modern ideas of democracy. It offends against the Latimer House principles ...” I will not go into those in detail but they are in the report. “It projects an inappropriate image of Jersey to the wider world.” The next one, 5.9.3: “The practice is unique to Jersey and Guernsey, as in every other democratic jurisdiction there is a separation of the judiciary from the legislature (the multiple roles of the Lord Chancellor were formerly cited as an exception but since the changes made in 2005 in England, that no longer applies).” Since this was written, we also have events in Sark where the dual role of the Seneschal has also been ended.

[14:30]

Then on to the practical considerations, 5.9.4, and this must perhaps get a nod from any Bailiff or Deputy Bailiff who is listening: “Spending large amounts of time presiding in the States is wasteful of the time of a skilled lawyer with judicial ability and experience.” It is true, of course, that this Assembly has met far less often than it used to a few years ago but there is still no doubt, and the figures have been produced by P.P.C., that a vast amount of time is spent, effectively, by our top judges in this Assembly. The next one, 5.9.5: “Presiding does not need an officer at the Bailiff’s level and other people could carry out the function adequately.” I have already indicated that I do not entirely agree with that, I think that it will be, as I said, a hard act to follow, but I do agree that you do not need one of the best legal minds in the Island to preside over us. We have seen this in many cases where other competent people, without mentioning any in particular, have been placed in the Chair and they have managed our business very effectively. At 5.9.6, another again practical consideration: “If the States decided to limit debate, for example, by fixing time limits in speeches or to increase the power of the President to intervene in debates to rule Members out of order or to discipline them, the President could be brought into areas of greater political controversy.” That is a point that I fully endorse, indeed, in the last few difficult years of this Assembly there have been times when I have felt most uncomfortable about the particular relationship of the Chair of the Assembly with particular Members trying to ask questions, not so much in debates, but that has also been a problem. There are definitely moments when we find it difficult being chaired by one of the Island’s top judges. I do not want to say any more about it than that but obviously if people ask me in their comments to elucidate further, I am happy to do so. At 5.9.7: “There is a risk of a successful challenge under Article 6 of the European Convention on Human Rights to decisions of the Bailiff or Deputy Bailiff when sitting in the Royal Court. It is not a satisfactory solution for them to recuse themselves from time to time.” This point has been challenged by the Attorney General in his comments, it remains a matter of legal opinion whether we could be challenged under E.C.H.R. (European Convention on Human Rights) or not but there is clearly no question that there is potential for a challenge and, as I said in my opening remarks, whether or not we are right, there is an expensive piece of litigation that will have to be gone through to prove that we are right. The report goes on to list the arguments on the other side of the coin and I can leave Members to do that because Members who do not agree with me will be ceasing upon those in a few moments’ time. But I take Members to the end of that section where Carswell argues, on page 27 at the bottom, and I quote: “We have considered all these arguments with great care and devoted much time and thought to the issue. We have reached the conclusion that the Bailiff should not continue to act as President of the States.” Then they summarise those reasons and 5.11.1: “The first is that the Bailiff exercises political power or influence and only elected politicians should do that.” They then amplify that point. The second one: “The Speaker should be the servant of the

Legislature which can remove him from office if Members see fit.” These are important considerations, according to Carswell, according to the panel. I did not mention it but perhaps I should have at the start, but that panel included 4 local people who were put by this Assembly on that panel and so obviously I commend that to the Assembly. Further on in section 5, which is devoted to looking at other aspects of this, 5.11.13 on page 33, alludes to the point: “An elected President would be able to undertake public engagements and other duties appropriate to his office which the Bailiff is not always in a position at present to carry out.” My view, and I have already mentioned this, is that this is a very important consideration, that the elected Speaker of most parliaments has a role which extends far beyond sitting in the meetings of the Assemblies. These Members do go out and they talk to schools, they talk to organisations about what the role of the Government is and I think that is something we need to do at the present time. Further on in section 5, the practical and constitutional arguments are developed and on page 26, perhaps worth highlighting their summation of their arguments: “The current practice is inconsistent with modern ideas of democracy.” This seems to me to be a key point that we need to look at. Clearly Members will be concerned that the removal of the chairing of the Assembly will affect the role of the Bailiff as the Island’s civic head and that is something which I know that critics of this proposition will want to develop. I have always felt that the role of the Bailiff in Jersey and, indeed, in Guernsey, is so strong as the civic head of both Islands that they have nothing to fear from not being in charge of what happened here. A good example is coming up. Perhaps the most important day in Jersey’s history is Liberation Day and I cannot see any difference in the way the Bailiff presides over Liberation Day were he or she not to be presiding over the States. In the last section of Carswell - and this is in section 9 - the panel, as I did at the beginning, credit and pay tribute to the hard work and service given by successive generations of Crown officers, including Bailiffs, and they say the following: “This has led many respondents to urge upon us that the institutions should not be changed. It is necessary, nevertheless, to take account of the developments in the democratic world of the 21st century. Jersey occupies an increasingly important part in that world and its institutions are the subject of scrutiny from outside as they never were before. It has committed itself to best practice in areas of regulation and good governance, a factor which we have borne in mind in considering our recommendations.” At 9.3, in fact the final paragraph of this section: “Our examination has brought us to the conclusion that some further change in the institutions is required if Jersey is to occupy and maintain that position. We have not made any of our recommendations without long and careful consideration of the issues with the assistance of many written and oral submissions from the people of Jersey.” Before I conclude, there are, I know, some Members who feel that they are very impatient to be moving on from this. They feel that we have spent enough time in the last 3 years discussing and debating ourselves, electoral reforms, in particular I have already mentioned, and I suppose they feel that this justifies pressing the contre button when it comes to the close of this debate. I would submit that that is a mistake. Members may wish to oppose the proposition because they genuinely feel that the current system, the status quo, is better in terms of running the business of the Assembly than an elected Speaker but I would urge them to read, in particular, not just Carswell but the comments that we have had from P.P.C. and from the Chief Minister. These seem to me to tackle a lot of the questions that Members may have who may accept the principle but they do not like the idea of the detail. They are thinking: “How could this work? How could we elect a Speaker from within our number without depriving their constituents of their voice? How could we elect a Speaker from outside the Chamber without that leading to all kinds of problems?” I would refer Members who have those questions to the excellent work that has been done by the officers supporting P.P.C. which show that while Members may be nervous of this, this is simply the norm elsewhere. Practically every other government does something like this. For us to continue to be exceptional may please some Members who want Jersey to be different, to say: “*Vive la différence*” and that certainly applies in many respects of our Island life but, according to Carswell, that is not a wise course of action. Carswell came back to Jersey

recently to meet States Members and I think a number of Members were as surprised as I was to learn that Lord Carswell has been coming to Jersey for his holidays for 40 years. He said when he addressed us he was speaking as a friend of Jersey and I thought that was a reassuring thing to hear for people who wondered whether he was not another external expert coming in from outside. Among the arguments that Lord Carswell gave us when he attended the meeting recently, and I thank P.P.C. for organising it, were that if we were to act now, and I quote: “We would maintain control of the process rather than having it imposed from above.” I think that is a very telling point. We have a natural break between the appointment of one Bailiff and the appointment of the next and Carswell feels that now is the time to start that process of moving towards what is generally accepted as best practice in the running of a parliament. Carswell admitted that there are problems and it will not be easy but he did highlight, I think, in his speech, some of the risks we face if we simply do nothing and hope it will go away. Lord Carswell disagreed with me at one point in his presentation and I suppose I should apologise to Members that my report does not calculate the financial implications very accurately. Carswell said that it was not fiscally neutral to move to an elected Speaker. I suppose when I said there would not be any financial consequences, I was imagining this being done by a Member of the Assembly but, clearly, if it is done from outside there may be some. I think the point I would make there is that this proposition is a proposition in principle, based on Carswell’s recommendations, and it has already become very clear, from P.P.C. and from the Chief Minister’s comments, that if the Assembly adopts the proposition then there is a lot of work to be done on the detail before it comes back to the Assembly as to exactly what kind of an elected Speaker we are going to have and how much that would cost. In closing, I would refer Members to the origins of this. We, as a States Assembly, set up the Carswell Review; we appointed the panel at the end of 2009; 4 Jersey residents were on it. They conducted 26 interviews, received 67 written submissions and held a public meeting before they published their recommendations in December 2010, on time and below budget, as Lord Carswell reminded us, and they were unanimous in their conclusions, which I think is significant. This process has been ongoing from some time ago and I would urge Members not to treat Lord Carswell’s report in the same way that we did Lord Clothier’s, in respect of this particular matter, and I would ask Members to support the proposition.

The Greffier of the States (in the Chair):

Is the proposition seconded? [**Seconded**]

7.2 Elected Speaker of the States (P.160/2013): amendment (P.160/2013 Amd.)

The Greffier of the States (in the Chair):

There is an amendment to the proposition in the name of Senator Bailhache. I will ask the Greffier to read the amendment.

The Deputy Greffier of the States:

Page 2 - After the words “should be implemented” insert the words “subject to the approval of the public voting in a referendum to be held on 15th October 2014 on the question should the Bailiff cease to be the President of the States”.

7.2.1 Senator P.M. Bailhache:

I open my remarks by stating for the record that I have, as all Members will know, personal connections with this debate. First, I held the office of Bailiff between 1995 and 2009. That does not amount to a conflict of interest; indeed, it seems to me that it would be very surprising if a former Bailiff, now an elected Senator, were to keep silent during a debate of this constitutional importance. Secondly, my brother has very recently been appointed by the Queen as the successor

to the current Bailiff. The outcome of this debate will obviously affect the duties of Bailiff during his term of office.

[14:45]

What his personal aspirations are I do not know because I have not asked him. But his personal aspirations are, however, irrelevant because the only important issue in this debate is what is in the best interests of the Island. Members may accept this or not, as they see fit, but my concern, indeed, my only concern, is what is right for the public of Jersey. As is clear from my report, that is why I have lodged this amendment. Until then I do not believe that much consideration had been given to the interests of the public. The Constable in his opening remarks said that the public had been consulted by the Carswell Panel and that was all that needed to be done, the public had had their say. I do not think that the public have had their say on the question whether or not the recommendations of the Carswell Committee should be implemented. As I said in my report, there have been no public meetings, no public debate, no attempt to explain or to engage the public on any of the underlying issues. The key underlying issue, indeed, which the Constable has identified, is whether it is possible for the Bailiff to remain as the Island's chief citizen if he or she is no longer the President of the States. Some Members may feel that this does not matter. I hope that I am not being unfair to the P.P.C. but it seemed to me, from reading their first report, that they felt that it did not really matter. They thought that the Bailiff's role would evolve naturally over time if he was no longer President of the States. How it would evolve, they did not seem to know. They thought that the elected President would have, and I quote: "Some civic role." In essence, however, the P.P.C. were right, I think, that the Bailiff's role would change, the office of Bailiff would diminish in importance and either the Chief Minister or the elected Speaker or the Lieutenant Governor or all 3 would find their roles enhanced. Quite who might eventually come to be regarded as the civic head of the Island, no one seems to know. The Chief Minister's report, to the detail of which I will return during the debate on the proposition, agrees with Carswell that the role of the civic head is of great value to the people of Jersey and that the Bailiff could readily continue to carry out these duties if he ceased to be the President of the States. That is the same rather bland statement, if I may say so, that was made by Carswell. It is not supported by any reasoning; it does not address the reasoned explanation given by the Bailiff as to why it was wrong. The Bailiff explained in 2011 that if the office holder were no longer to be the President of the States then he would become a remote figure unknown to most Members of the States. He would become as remote as a Commissioner of the Royal Court, for example, is to Members now. In those circumstances, Members, and indeed people in general, would very soon come to ask: "Why is it that the Chief Justice is the civic head of Jersey?" Why should the Chief Justice continue as civic head of the Island when exactly the same arguments could be used against him as are used now in relation to the presidency of the States? What other place in the world has a Chief Justice who is the head of State or civic head of the community? For what it is worth, I agree with the Bailiff. From my 15 years of experience in the office, I can categorically state that if the Bailiff ceased to be the President of the States he would cease to be the civic head of the Island in any meaningful sense within a very few years. There is a chemistry involved which is quite difficult to explain. What justifies the Bailiff in receiving Members of the Royal Family when they pay a visit to the Island? What justifies the Bailiff speaking on Liberation Day? What justifies him is the fact that he has one foot in both camps, as President of the Royal Court and as President of the States and that is what gives him his unique authority. That is what makes him the civic head of the Island. Remove one of those legs and the Bailiff will teeter and will eventually fall.

The Greffier of the States (in the Chair):

You are getting to the referendum soon? The amendment is about the referendum.

Senator P.M. Bailhache:

Indeed, yes.

The Greffier of the States (in the Chair):

You are leading up to it.

Senator P.M. Bailhache:

Indeed. No, I am explaining why it is a matter that affects the people of Jersey. To those who say that it does not really matter, things will sort themselves out eventually, I say it matters very much. Every State needs a hierarchy. The constitutional head of the Grand Duchy of Luxembourg is the Grand Duke. The constitutional head of the Principality of Lichtenstein is the Prince. The constitutional civic head of our Bailiwick is the Bailiff. Diminish the authority of the Bailiff and remove the head of the Bailiwick without putting something definite in its place and in short order Jersey will be less stable. I was in Malta 2 weeks ago with Deputy Bryans, although he missed the opportunity that I had to visit St. John's Cathedral and to see the stunning depiction by Caravaggio of the beheading of John the Baptist. The executioner unfortunately made a mess of it and the blow with the executioner's sword did not complete the task. The artist captures the gruesome moment after the first blow when the executioner is reaching for his knife to complete the job. It seems to me that we risk making a mess of things too. We have no idea what or who we are going to put in the place of the Bailiff as civic head of the Island. We are letting it run if we pass this proposition to see what is going to happen and, in my view, we will destabilise our constitutional arrangements unless we have clarity. That is one of the reasons why I am going to vote against the Constable's proposition. But if it does pass, and I am sorry if you think I have taken a long time to come to this point, then it seems to me that the public has a right to a voice in determining who should be the civic head of the Island. As the Chief Minister has rightly stated, and as a Democrat I hope that he is going to support my amendment, the role of the civic head is very important to the people of Jersey. This is not just a matter for the Assembly. The people of Jersey, in my view, are entitled to be heard and, for my part, I would respect their decision. I accordingly move my amendment.

The Greffier of the States (in the Chair):

The amendment is seconded? [Seconded]

7.3 Elected Speaker of the States (P.160/2013): amendment (P.160/2013 Amd.) - amendment (P.160/2103 Amd.Amd.)

The Greffier of the States (in the Chair):

There is an amendment to the amendment in the name of Deputy Le Hérissier. I will ask the Greffier to read that amendment.

The Deputy Greffier of the States:

Page 2 - After the words "President of the States" insert the words "provided that the referendum shall not be held unless the States have already adopted legislation to give effect to the change which contains a commencement provision which specifies that the legislation shall automatically come into force if the change is supported by a majority of those voting in the referendum (subject to a minimum turnout threshold to be specified in the legislation) and shall not come into force if it is not".

7.3.1 Deputy R.G. Le Hérissier:

First of all, I would like to thank Senator Bailhache for posing that "malteaser". Very briefly, dependent on the outcome of the major debate, and again we are seeing the phenomena whereby the major debate is carried out through the amendments, irrespective of that, and as I am sure Senator Bailhache and his team know only too well, I think it is absolutely imperative that the

terms of engagement of the referendum be made absolutely clear to the public so that we do not go through the awful situation that the Constable of St. Helier referred to earlier, and that is all I ask. Assuming, if we move to putting this to a referendum, that the terms of engagement are clear, it is binding when it is put to the public. That is what I am proposing.

The Greffier of the States (in the Chair):

Is the amendment to the amendment seconded? **[Seconded]** Does anyone wish to speak on the amendment of Deputy Le Hérissier?

7.3.2 Deputy M. Tadier:

We have only had 2 referendums in the course of this Assembly that I can remember in recent times, probably ever, I think: one of which was not on a particularly major issue, the other one was on a major issue but was not handled correctly, I think it is fair to say. We need to learn, I believe, when it is appropriate to have referendums and when it is not. The reason I think that Deputy Le Hérissier's amendment is correct is that we do not just have referendums to very important public decisions, or to ask the public to make decisions for us that we think are too difficult. What parliaments normally do is they decide a course of action, usually on constitutional matters or other matters of public importance and say: "This is what we want to do. Now give it to the public to endorse or to say 'No, that is not correct. That is not what we want'." We are not doing that here. It is absolutely imperative. The talk about thresholds, et cetera, is really secondary because what we need to do is have a clear direction as an Assembly, based on the extensive consultation that has already taken place in the Carswell and the Clothier Reviews as they are colloquially known. If the States wants to have a referendum on this, it should be on the basis that we agree it is the right way forward. We will implement it. We will set everything up to do that as soon as possible, and then the public if necessary can have their say on that. That is the reason I support this. Obviously I will reserve my position on whether or not a referendum is a good idea for this if we want to pursue it, but that is very much the position that I come from. I think that we have to learn that lesson about referendums when we hold them and giving clear instructions. Otherwise it just brings us into disrepute and alienates the public because they think they have some kind of say when in fact they do not. There need to be clear ways that the sovereignty of a parliament is maintained but the right of the public to endorse or have their say is done in the correct fashion.

7.3.3 Deputy J.M. Maçon:

I do struggle with this amendment from Deputy Le Hérissier because in principle I agree in what he is trying to achieve. I really like the idea of having a referendum that is binding provided that there are proper referendum questions put forward. We appreciate the fact that this question put forward appears to be a yes/no type question and including minimum thresholds. But the problem is my committee simply will not have the time to bring forward the legislation needed in order to put this into place in order to have this done for the general election. I will address other practical problems to address the amendment of Senator Bailhache. But for this particular amendment, while appreciating what it is trying to achieve, and I think it is in that regards the right road to go down, the practicalities around it, P.P.C. simply will not be able to deliver it in time.

[15:00]

That is the view of the committee. So we would ask States Members not to support this amendment because we would not want the States to ask us to do something which we do not feel we will be able to deliver.

7.3.4 Senator P.F.C. Ozouf:

You allowed Senator Bailhache quite a wide ambit in his introductory remarks and I am going to try not to go wide at this stage because I have, I hope, some summary and brief remarks to be made.

I think the issue about the referendum - I cannot help but look back to the proposal on the previous referendum where I looked at the 2 previous speakers who voted in favour of this, and both of them voted against the referendum result being before this Assembly. I simply find that a very interesting situation to be in. I know I am going to vote against this amendment to the amendment. I do not know whether or not I should abstain. I know I cannot vote in favour of it. We have heard from the Chairman of P.P.C. that they cannot do the legislation. I do not quite know why that is. But what I do know is that we are going to have a right Horlicks of referenda. We are going to have a situation where we are going to have apparently a referendum question. I will get my plurals right in a minute, Sir; I apologise. Referenda.

The Greffier of the States (in the Chair):

Both are acceptable.

Senator P.F.C. Ozouf:

Thank you, Sir. We are going to have a referendum on Clothier. That is the make-up of this Assembly, but there is no detail about Clothier. Then we are going to have a referendum on the position of Bailiff. But Senator Bailhache is talking about civic head; most of his remarks are talking about the issue of civic head, not the issue about Speaker. Senator Bailhache is a very good and close ... and I apologise if on this occasion I am not going to be with Senator Bailhache in his remarks. I think he knows that. I have the utmost respect for him in his position as Bailiff. I need to say this publicly; and I work with him very closely as a Minister and I agree with the majority of what he says most of the time. But in this issue about, are we having a referendum on the question of civic head or Speaker of this Assembly or the effect of maintenance of the dual role. We are going to have a referendum on Clothier of membership of this Assembly and of the Bailiff. I have heard other Members, I think including Senator Bailhache, say that Members are elected to make decisions, and Members are elected to make decisions on behalf of the issue. If it is not a clear decision, then you should not have a referendum on the question. I think binding ourselves to an inevitably highly confused, not a simple issue about this and other matters it is going to be hugely problematic. So I do not favour a referendum. But I am going to give Members a way out as to why I think they should reject both the amendment to the amendment, and the amendment, and I will get this out of the way now, is that yes, there should be public debate about this issue. Ultimately what is being proposed is going to be - certainly the Chief Minister and Council have discussed this - that the decision about whether or not to have an elected Speaker would not be finally made until after the election. Should it be an elected issue? Should it be an electoral issue where there are public debates about the massive and important issues of spending and taxation and constitution and all the rest of it? Absolutely; and I am going to be voting in favour of the Connétable of St. Helier's proposition, partly so that the legislation is here so that after this election and after the new House has been convened, a decision can be made. That is the right way to proceed. Doing nothing I think is absolutely the wrong way to proceed. Not to give the new Assembly that opportunity of deciding after an election what they should do, I think would be the wrong thing to do. That would be the right decision to do. So I say unless somebody can tell me the reasons why; unless Deputy Le Hérissier can tell me why the clarity of the election of the referendum question will be so clear in the spirit ... because we have been debating issues about referendums before and about clarity of question, et cetera; if he can convince me that there is going to be a clear crisp question that can be put to the people, got a clear answer, then this Assembly will respect it, then I will change my mind. I am listening and I will also listen to what Senator Bailhache has to say. But I will come back to the amendment a bit later.

7.3.5 Deputy J.H. Young:

We are already in the situation where we are still to have another major debate on machinery of government. We have not resolved the structure of our elected Assembly. The one decision we have made with clarity is that there will be a referendum at election time this year and it will have a yes/no on the question of the make-up of our Assembly. I have major concerns about the principle anyway of having a referendum on the subject of the President of the States at the same time. I think it would serve to confuse. Now I absolutely go with Deputy Le Hérissier's points that if we end up with the Assembly voting to have a referendum of some kind of toning down, softening measure to the substantive proposal here, if we end up doing that, it is absolutely essential that it is crystal clear. That it is a yes/no and we know exactly, and the public will know exactly, what they are getting. Of course at the moment here we do not know what we are getting. We do not know what we will end up as an alternative method of electing a President of the States. The Chairman of P.P.C. tells us that it is impossible to come up with that work by the time. It may be so, but I do not think that is the reason for going against the principle of Deputy Le Hérissier's amendment because if we are to have a referendum it is critical that the terms of it are absolutely crystal clear to the public. It is often said to me that the previous speaker spoke of Members who say these things, they voted against the last referendum. We all make mistakes in life, but I think from my point of view, only a fool makes the same mistakes twice. I sat here and approved the original ... pressed my button to go along with the original referendum wording when we spoke about the one we approved, despite reservations. I was a fairly new Member. I was not really sure how to take this forward. I had real worries about it, and my worries were all brought to light. If we have a referendum on this issue, I do not want to see that repeated. So I am saying it now: "I do not want to have any more referendums." If we have referendums with messy, confused options where the people are really asked to make impossible choices without knowing what they are going for. So I am going to say, I think, let us pass Deputy Le Hérissier's amendment and let us deal with the substantive issues.

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

I really was not going to speak on this particular relatively minor part of the debate, but it was the comments of the Minister for Treasury and Resources that prompted me to indicate that I wanted to speak. But firstly, I think where I probably might agree with him is that I may well abstain on Deputy Le Hérissier's point because I agree exactly what everybody has said - we want clarity. However what Deputy Maçon as Chairman of P.P.C. has indicated about the timing does raise the issue. I think the other principle, just to put it down on paper, is that for me the issue around a referendum is that at the very least it provides some commitment to the Assembly in future that this issue does require significant consultation in the electorate. It is not somebody ... you do not get rid of the Bailiff of this Island by just doing a vote among ourselves, I am afraid. Now, that said, I was disappointed that firstly the Minister for Treasury and Resources did not seem to have read Senator Bailhache's proposition, because that does say: "The question is should the Bailiff cease to be the President of the States?" It did not do anything about the civic heads and anything else. I rather felt that Senator Ozouf kind of more that muddied the waters there. I think the other point is, and it is a little bit about this ... not wishing to stretch into the wider debate, but a comment made during this particular discussion was that the proposition we will end up debating is very clear that to agree that from the date of retirement of Sir Michael Birt as Bailiff, the Bailiff should cease to act as President of the States. There is nothing in there that says subject to the outcome of the elections. There is nothing in there that: "Oh, the Chief Minister will bring an amendment along those lines." One rather assumes that this is a matter I presume for the P.P.C. to bring. So I am sorry, but anybody who sort of couches their voting for the main proposition on the fact that: "Oh, it will be something that goes to the electorate and then it will be decided", in fact, if you have pressed the button in favour of this proposition ultimately, you have voted to remove the Bailiff as Speaker of the States. None of the other nice, warm, fluffy comments about: "Oh, we will bring another

amendment” and all that type of thing, that is all jam tomorrow, as that expression goes. Probably where I am is I probably will abstain on this amendment for the reasons expressed by Deputy Maçon. I agree entirely with the sentiments of it. I will be supporting Senator Bailhache and I am unlikely to be supporting the main proposition.

7.3.7 The Deputy of St. Ouen:

Very briefly. First of all I commend Deputy Le Hérissier in bringing this amendment because I do believe we must learn from our past mistakes. To have and to continue with referenda that are simply advisory and cannot be translated into real action, I think is pointless. The public are just going to walk away and lose total confidence and interest in this States, and especially on the important subject as we are discussing today with regards to removing the Bailiff as Speaker of the States. I do think it is in the best interest of the Island for the Island to be involved in that decision. But equally, and I think Senator Bailhache quite clearly pointed out, where is the evidence? Where is the information to make an informed decision? It is not there. How on earth are we going to try and educate the public about what the implications may or may not be and what the outcome is going to be and what is going to take its place when we are not clear, is another question that is still left unanswered. But coming back to Deputy Le Hérissier’s amendment, I absolutely agree that in future the referenda must be binding. It needs to set the bar high. The questions need to be clear. As Senator Ozouf quite rightly says, we need clear questions. But he then goes and conflicts his argument by saying: “Ah, well, but those who are supporting this proposal did not support the outcome of the last referendum” which was so confusing and had lacked any clear questions and it was very difficult. We have got ... and this is an important constitutional change. I do not believe that October, regardless of the fact that it happens to coincide with the Bailiff retiring and a new Bailiff taking place, to have some form of referenda in October. That is my sticking point. I think it is far too early. It does not allow time not only to work out, as I say, how in practical terms we replace the Bailiff, the issues of civic head to be dealt with rather than just hoped for. I am sure the Chief Minister reading his comments, he has his own view in mind that as Chief Minister he probably wants to be the civic head. I do not know; I can only guess. The suggestion that: “Oh, well, it will somehow work its way out” and he might support the Bailiff not being President but still being civic head, that might be his view. But who knows what happens in October. We could have a totally different Chief Minister with totally different views; in fact, a totally different Council of Ministers. There is a thought. **[Laughter]** But I am not trying to make this topic humorous because it is not. These are important matters and we have to deal with them appropriately.

[15:15]

I do not believe this is the right time to look at deciding on whether the Bailiff remains as President of the States. So unfortunately I will not be supporting, although I absolutely agree with Deputy Le Hérissier that we should ensure any referendum should be binding, that I cannot support his amendment or indeed, Senator Bailhache’s or indeed the main proposition.

7.3.8 The Deputy of St. Martin:

I would very much like to support Senator Ozouf and also Deputy Maçon, but then all 3 of us would be wrong. This is an important amendment that has been brought by Deputy Le Hérissier and it is in my view, just one of principle. Senator Ozouf was very clever in accusing people of not wanting to enact the last referendum, and then he himself has decided that he is going to vote against this amendment which seeks to force us to take on board the views of the public. Deputy Maçon says that he does not have time to enact the decision which is in my view completely irrelevant because the principle here is, if we ask the public to vote in a referendum we must listen to what they have to say. Whether we have time or not to enact that is irrelevant. It is the principle

of listening to your public and doing what they tell you if you decide you want to ask them the question. I will be supporting Deputy Le Hérissier.

7.3.9 Deputy S.Y. Mézec:

I genuinely do not have a clue how to vote on this. I really do not, because I believe in binding referendums. I think that if you are going to use them as a tool to get across something, they should be binding. But then I suddenly had this thought: just what if the last referendum we had had been binding, what a mess we would be in, about to enter an election with a completely gerrymandered electoral system. I am very, very grateful for the fact that referendum was not binding. If you are going to have a referendum, the Parliament that proposes that referendum has to have the decency to put forward a decent and proper question. I am going to be voting against Senator Bailhache's amendment for reasons I will explain during that debate. But because I cannot accept that it is a proper question, not so much given what the question is, more given the context in which the question is being asked, I really do not know if I can vote for this because I would like to support binding referendums in principle, but only on the condition that a Parliament is asking a valid and legitimate question which I do not think this is in this case. So I hope in his closing remarks he might be able to swing me one way or the other, because I am leaning towards just abstaining on this at the moment.

The Connétable of St. Martin:

It is just a query for the Chairman of P.P.C. Could he explain to the Assembly why it cannot be done in time? He did say he could not do it, but there was no explanation of this time limit set preventing him from doing so.

The Greffier of the States (in the Chair):

Given his speech I do not think he can speak any further.

7.3.10 The Connétable of St. Helier:

As a former Chairman of P.P.C., perhaps I can help answer the Constable of St. Martin's question. I imagine that there are problems involved in the law under which referendums are held if that kind of change to make them binding is to be introduced. I can see the Chairman is nodding. So that it would be a far more complicated task than Senator Bailhache's amendment, if unamended, for P.P.C. to introduce that, although of course their comments say that that would also effectively be out of time. But clearly to have a binding referendum is a whole new departure for the States, because so far the law we have adopted does not make them binding. I thought I might be able to help Deputy Mézec out of his quandary because he supports the principle of binding referendums, but has noted that we have just had one that he would not have wanted to be binding. I suppose there are 2 things to say about that. One is that in a democracy we do have to go with what the people want and if we put a question to the public in the way that we did and they come up with a response, then we have to live with that. He and others have argued - he argued before he became a States Member - that the question in the referendum was badly put. But I would remind him and the critics of that whole process, that that process was adopted by the States and at every step of the process Members had a chance to change the way it was done, and they could not do it. Maybe that was because the composition of the States was gerrymander to start with. That might be their response. But I must say that to bring it back to what the Deputy of St. Martin was saying, I do believe in binding referendums. You have to get the question right. I do not believe in a referendum on this matter. But if we were to have one I would want it to be binding. So I am going to be supporting Deputy Le Hérissier.

7.3.11 Deputy G.P. Southern:

I just want to follow on from my Constable with his series of hypotheticals there that he supports. He wants a binding referendum, but not on this particular case. In principle, yes. In principle referendums should be binding. But in principle they should have a simple, single question, yes/no answer. Whether this will happen this time I do not know, but it is certainly far from happened last time. We ended up with a mess which I agree with certain Members who said: "And that mess, if it had been binding, would have left us in a right pickle." I will be supporting this particular amendment. I think the amendment it is amending is there to sabotage the main proposition and this simply assists it with that act of sabotage. So I will not be voting for either of these 2 on referenda. I will be voting against them clearly because I want to see my Constable's proposition go through.

The Greffier of the States (in the Chair):

If no one wishes to speak I will call on Deputy Le Hérissier to reply.

7.3.12 Deputy R.G. Le Hérissier:

Some very good contributions, and some contradictory ones. I should add I put this forward if we reached that stage, and I think several Members have said that. That is where I think for example, Deputies Southern and Mézec have got it perhaps wrong. The whole point is: if we reach that stage. In no way does it imply approval or disapproval of what Senator Bailhache is promoting, but if the House were to approve a referendum as he wishes, then my view is it should proceed under the terms I have laid out. The other issue that has been raised by several people, and the Deputy of St. Martin and his Constable for example raised it, is this issue of P.P.C. not having time. But as I understand it, I similarly had cold water poured over me when I proposed a similar move for the October referendum on Clothier, that P.P.C. did not have time; we could not change the Referendum Law. But as I spoke to the Greffe about this and they came up with what I thought was a very elegant solution which does not, as I understand it, and the Solicitor General may wish to comment, require a change to the Referendum Law as such, but what it brings in is a commencement provision to a law which would say, for example: "The Bailiff will no longer be Speaker of the House" and that would be the simple terms of the law, and the commencement provision would be that in order for that to be implemented it must go to referendum at a certain threshold. That is what is being proposed. I think the Chairman of P.P.C. is still locked into the changes to the old Referendum Law; that was the answer he gave me when I tried to bring in a similar change with Clothier that they did not have time. This was a way of trying to avoid that issue. In any case, there is no assumption built in here that it necessarily will take place in October when the other referendums are taking place. If it is there I did not make my point as clear as it should be. What I am saying is: all it says is if a referendum were to go ahead on the proposition of Senator Bailhache it would go ahead on these terms. I would say again to Deputies Mézec and Southern, for example, you are not colluding with Senator Bailhache's proposition as you seem to think you are. What you are colluding with is, as the Constable of St. Helier said, as Deputy Luce of St. Martin said, you are colluding with rectifying the kind of mistakes which led us into that unfortunate position, as Deputy Young said, that we now find ourselves in. We have to retrieve our credibility with the public; we have to go ahead with very clear questions - that point has been made by several Members - and we have to go ahead with a promise that if the public vote to a certain threshold - and I would accept the Deputy of St. Ouen's suggestion it must be a fairly high one because it is a constitutional matter - if they vote with that, therefore its findings will be implemented. That is all I am suggesting. I would similarly say a similar thing to Deputy Le Fondré. He said we cannot vote among ourselves. What I am saying is: "Let us strengthen the way we respect the public's vote on this matter." I thank everybody for their comments. I think they have been very good and would ask for the appel.

Deputy J.A.N. Le Fondré:

I am not sure if this is a point of clarification from the proposer, or the proposer made reference to the Solicitor General. Is what is being said correct that this means the timing is not an issue?

The Greffier of the States (in the Chair):

I am not sure that this is a matter for the Solicitor General.

Deputy J.A.N. Le Fondré:

Sorry, Sir. In other words, the question is that if this amendment is approved and then Senator Bailhache's amendment is approved, then it all goes through and we agree we are going to have a referendum, that there is time to do what Deputy Le Hérissier was saying, in other words that this is a commencement provision?

The Greffier of the States (in the Chair):

Is it a legal question, Solicitor General? Do you wish to add ...?

The Solicitor General:

Could I just say this, what Deputy Le Hérissier is proposing in terms is to potentially amend the States of Jersey Law. So amend primary legislation; presumably the Law Draftsman will have to draft an amendment to that law. Then presumably one would have to get Royal Assent for that law and that would have to happen before the referendum. Whether or not that is practically possible, having regard to the summer break the Privy Council usually takes every year, I simply do not know. That sounds very tight, if I may say so.

Deputy R.G. Le Hérissier:

The only positive thing is that the Council of Ministers has a much speeded-up process with the Privy Council.

The Greffier of the States (in the Chair):

The amendment to the amendment has been proposed. The appel has been called for. If Members are in their seats, the vote is for or against the amendment to the amendment by Deputy Le Hérissier and the Greffier will open the voting.

POUR: 28		CONTRE: 18	ABSTAIN: 3
Senator P.F. Routier		Senator A.J.H. Maclean	Senator P.F.C. Ozouf
Senator A. Breckon		Senator B.I. Le Marquand	Deputy J.A.N. Le Fondré (L)
Senator S.C. Ferguson		Senator F.du H. Le Gresley	Deputy S.Y. Mézec (H)
Connétable of St. Helier		Senator I.J. Gorst	
Connétable of Trinity		Senator L.J. Farnham	
Connétable of St. Clement		Senator P.M. Bailhache	
Connétable of St. Peter		Connétable of St. Mary	
Connétable of St. Lawrence		Connétable of St. Ouen	
Connétable of St. John		Deputy R.C. Duhamel (S)	
Connétable of St. Martin		Deputy J.A. Martin (H)	
Connétable of St. Saviour		Deputy G.P. Southern (H)	
Connétable of Grouville		Deputy of St. Ouen	
Deputy R.G. Le Hérissier (S)		Deputy E.J. Noel (L)	
Deputy of Grouville		Deputy A.K.F. Green (H)	
Deputy J.A. Hilton (H)		Deputy J.M. Maçon (S)	
Deputy of Trinity		Deputy of St. John	
Deputy S.S.P.A. Power (B)		Deputy J.P.G. Baker (H)	
Deputy K.C. Lewis (S)		Deputy N.B. Le Cornu (H)	

Deputy M. Tadier (B)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy G.C.L. Baudains (C)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy R.J. Rondel (H)				

7.4 Elected Speaker of the States (P.160/2013): amendment (P.160/2013 Amd.) - as amended

The Greffier of the States (in the Chair):

Very well. Debate therefore resumes on the amendment of Senator Bailhache as amended. Does anyone wish to speak on the amendment as amended?

7.4.1 The Connétable of St. Helier:

I must say I have some difficulty in responding to this amendment because I do not think that Senator Bailhache believes in it.

The Greffier of the States (in the Chair):

I do not think you can accuse the Senator whether he believes in it or not.

The Connétable of St. Helier:

If I could just amplify on that? The Senator has said that he will vote against the main proposition even if he is successful in amending it. What I am struggling with is ...

The Greffier of the States (in the Chair):

It does not mean he does not believe in his amendments, Constable. **[Laughter]** You cannot accuse other Members of improper motives.

The Connétable of St. Helier:

Sorry, Sir. I did not mean to do that, clearly. What I am struggling with is the fact that due to the latitude that you allowed the Senator, he did spend most of his speech in talking about the main proposition and why he is opposed to that, because of the effects on the role of civic head. He said very little about why he believes a referendum is important in this issue, and whether he believes that a referendum in general is the appropriate device to use. Other Members have said that they regard this as a wrecking or sabotaging amendment to the main project.

[15:30]

I suppose in one sense it is not, because if Senator Bailhache is successful in amending the proposition and if it is carried then there will be a referendum on it and a lot of work will go in to convince the public that it is important that we regularise our procedure, in the way that I have outlined and the way that Carswell recommended. It is not a die in the ditch matter. I think the clear practical effect ... well there are 2, are there not? The first practical effect is that it will not be possible to move to an elected Speaker in the natural break that is being provided to us, which I think will be a shame. The second practical difficulty, and it has already been mentioned by a previous speaker, I think Deputy Young, is that we have already agreed to have a referendum in the autumn. The idea of having 2 fills me with horror, because we have a deal of work to do to convince the public that we will listen to them when it comes to referendums. I think to constantly

be producing calls for referendums at this time in the States life I think is not going to be successful and I do not believe that the public would be with us. Particularly given the amendment, the fact that we would be putting levels of participancy and so on into the frame. I think it is regrettable, but I cannot support Senator Bailhache's amendment. As I said in my opening speech, the public has been involved in the Carswell work. I do not personally, I have not been ... I was taken to task, as I said this morning, but I have not had lots of people phoning me up and saying what a terrible thing it is that I am suggesting. I believe the matter of having an elected Speaker is a matter for the States. I do not think that members of the public are that interested in which person sits in the Chair and tells us to sit down when we make mistakes as I just did. I will not be supporting the amendment. I look forward to responding to some of the intriguing things that you allowed the Senator to get away with, when I come back at the end of the debate.

7.4.2 Deputy J.M. Le Bailly of St. Mary:

Sixty-nine years ago the swastika flag was lowered from the Town Hall and other prominent Island buildings after 4 very long years of Island occupation. During those years of war the Island was fortunate to have a Bailiff. The then Bailiff, Sir Alexander Coutanche who presided over our Government during that time was accepted by the occupying forces because, as a Crown appointed official, on behalf of the King, he was considered a vital link between the people of the Island and those occupying forces, in order to maintain calm and relative order during those very difficult years. An immense job, which could only have been undertaken by the Bailiff because of his position. It was also vital that he presided over our States Members in order for that to happen. The U.K. system of a Speaker in parliament would have done very little to keep this Island safe in that time of conflict. Do we really want a similar system? At present the U.K. Government have a Speaker from a political party presiding, who commands very little respect and is also very biased. Do we really want that for the people of our Island ...

Deputy S.Y. Mézec:

I think the Member said something that is incorrect. The Speaker of the House of Commons has to resign his membership of a party so he can take on that position. He is not a member of a political party.

The Deputy of St. Mary:

I stand corrected. Thank you. [Laughter]

The Greffier of the States (in the Chair):

I was just about to check, Deputy, you are getting to the amendments and the referendum? You appear to be talking largely on the main proposition from what I can hear.

The Deputy of St. Mary:

Yes, Sir.

The Greffier of the States (in the Chair):

We are talking about the referendum at the moment.

The Deputy of St. Mary:

This, again, would be a massive change to our constitution. The system which has worked well, and proven to have worked well by our history; surely such a drastic change, a change which impacts on the lives and views of the whole of the population should be rightfully presented to them for consideration, rather than be debated on by a select few within this Assembly. Once again, the electorate cannot comprehend the need for this. Removing the Bailiff from the Chamber does not enter on their list of priorities. In fact, the Bailiff is the one person in this Chamber who

has the constant respect of the public. Just because we do not appear to be politically correct in the eyes of other jurisdictions does not mean that we should change the system. Jersey's system is unique and is the envy of many governments throughout the world. Complying to other jurisdiction's wishes or directives should not always be considered as the right thing to do. If this were so then the swastika would still be flying over the Town Hall.

7.4.3 Deputy J.M. Maçon:

I am just sticking to the matter of the referendum question. I hope when Members consider whether or not there should be a referendum on this subject to remember that to go along with that has to be an education campaign, all the cost and expense that goes along with it. We do not even know out in the public how well the role of the Bailiff presiding over the States Assembly is. If I was to hazard a guess, it is not going to be particularly well known, which means that to get the public up to a level where they can make an informed decision about whether it is the right thing to do or not would require a huge public education campaign, which in and of itself is not necessarily a bad thing. The complication comes when the referendum is asking for it to be held at the time when we are going to have general election, and if States approve, another referendum question, again, which will require an education campaign and everything else that goes with it. Even then the public still struggle to understand what their elected representatives do and the remits, the mandates and all of that which goes along with it. Even then, when we are talking about who should be President of the States Assembly currently with our draft referendum questions going out to focus groups and we are testing whether the public understand certain phrases or the terminology that we use when talking about the States Assembly, no work has been done yet. I am not saying it could not be done if States Members were to vote to this, but no work has been done to test this particular question. It can be changed, but one particular question is: should the Bailiff cease to be President of the States. What it should say is: should the President cease to be the President of the States Assembly? Because the word "States" means different things to different people. When we are looking at what we are bringing forward we have had to change the wording on that particular matter. The subject is certainly not clear-cut. It is certainly not something which you can just put out to the public. In Senator Bailhache's defence, he is not suggesting that we were to do that, but I just want to highlight for Members that there is a huge body of work that has to go along with this if States Members were to vote for this. You then have to look at the practicalities of the timetabling issues. For example, if we are going to have contested Senatorial elections, contested Constables elections, contested Deputies elections, hustings to explain what the other referendum is going to be, along with more hustings to have this explained to people. We are already in the situation where we will struggle to have the 12 Parish issue for the Clothier referendum. To then put in another one where you have got to go through that whole process, over a period where this is to be brought in, arguably if the States were to approve this question earlier we could start earlier in the information campaign and getting that out there. At the same it is all going to come to the crunch about how exactly we are going to manage to get all that information out there. Another issue is also when you do referendums it should be clear, it should be on one issue at a time. That way people can concentrate on the one issue. Again, asking one about the Bailiff as being President of the Assembly and another one asking about the composition of the States, I do not think practically that is a good way to go forward when trying to use a referendum to ask the public to make a decision about the Assembly. I am not saying this matter does not merit referendum, but what I am saying is it is just not practical to put that all together at the same time when we have already agreed that one referendum question should be asked at the same time when we have a general election. Members will take a view on that whether they agree with me or disagree with me, but I do ask them to think about, not necessarily the politically elite, which we may come across, but perhaps more ordinary members of the public who take a casual interest in politics and what we are already asking them to do and what we would be further asking them to do in

approving this referendum question when we know that the understanding of what the Bailiff does when he presides over the Assembly, adjudicating propositions or questions, all those types of things. It could be explained but it is a huge body of work in order to get the level of understanding that we would hope it would get up to so that members of the public could make an informed decision about this matter. At the moment P.P.C. (Privileges and Procedures Committee) and my committee are of the opinion that this is too much to put all at once, and therefore we do not support approving the referendum for this election. There is also the other matter of, again, the successor knowing what role he will be asked to perform. Again, it would not really be fair to knock this particular referendum question to the next round of elections, because again that incumbent will be in mid-office. Again, as the Constable of St. Helier alluded to, because we have had this natural break with the current President of the Assembly announcing his resignation that is an opportunity to make a decision on this matter without getting into the situation whereby Members might feel inhibited because they have been asking to turf a current sitting Bailiff out of office. Taking that into the round, I hope Members will understand why the committee is not in favour of proceeding in this manner at this time. Thank you.

7.4.4 Deputy M. Tadier:

I have had to refresh my memory, because I was thinking when Senator Bailhache was speaking, is this an example of a straw man argument, but I could not remember what the definition was so I looked it quickly. It says: "A straw man, also known in the U.K. as an 'Aunt Sally'" I have not heard of that one before "is a common type of argument and is an informal fallacy based on the misrepresentation of the original topic of argument. To be successful a straw man argument requires the audience to be ignorant or uninformed to the original argument." Luckily enough that does not apply to any of us in this room. It might to the ...

Male Speaker:

Speak for yourself. [Laughter]

Deputy M. Tadier:

It does not apply to us because we are not ignorant or uninformed, that is what I am saying. Hopefully we can all agree to that. "The so called typical attacking a straw man applies an adversarial, polemic or combative debate and creates the illusion of having completely refuted or defeated an opponent's proposition by covertly replacing it with a different proposition." That is the key bit I want people to focus on. While I am absolutely speaking to the merits of a referendum or not, in order to do that I have to respond to one of the key pillars of Senator Bailhache's argument, is that what we are talking about is the civic headship of the Bailiff, and that is not what we are talking about at all. Interestingly enough I have been to the Valletta and I have seen the same piece of work by Caravaggio, the difference is with St. John, of course, he only had one head. If we are cutting a head off of the Bailiff he has still got 2 other heads which he can use to survive. I do not accept that analogy anyway. What we are simply talking about here is should the Bailiff continue to chair our meetings. That is what we are talking about. It is an internal matter, as far as I see it and the former Bailiff, Senator Bailhache may see that the 2 are so integrally joined that they are one in the same thing, or they have an impact. That is fine, but I think we have to recognise that is not what I believe. I would take it one step further, without wanting to encroach into the next debate, is that if it is really the case that the esteem in which the office of Bailiff is held is so precarious that it needs him or possibly her in the future to be in this Assembly to chair what are essentially quite boring meetings often for the public, and which a very small and narrow amount of what the Bailiff does with his other 2 hats, that of civic and ceremonial head of the Island and obviously of the judicial roles.

[15:45]

Of course there are stronger arguments, but if it is so precarious and so important to be of public concern then I think it does not bode well for the future of the Bailiff anyway. I do not believe that is the case, I believe that there is a strength in the other 2 longstanding institutions of the Bailiff. On that basis I do not think it is the right subject to put for a referendum. Nonetheless part of me thinks: "Bring it on" bring on this referendum because I think it would be great if the public debate. Not only are we going to be debating Clothier and the issue of reform, in terms of constitutional reform of this Assembly, the way we elect people, where the balance of power lies, how you construct the Government, we are also going to be adding to that an extra layer of is it right to have a feudal legacy in this Assembly and we are going to be debating that and people will be able to vote on that. Members of this Assembly will have to form campaign groups around that, like the A, B and C groups, but this time it will be a yes and a no in terms of separation of one of the roles of the Bailiff. I am absolutely happy to add that to my manifesto and say one of mine is that I am a reformer, what do you get for being a reform candidate, whether you are an official in the reform party or in the coalition for change is that, yes, I do believe in the separation of powers, yes, I do believe in one type of States Member for the Island. I am absolutely ready and we would be rearing to go for that referendum. I am ambivalent. This part of me wants to say: "Yes, give us the chance to do this. Add an extra layer to the already busy election campaign, because I can handle it, our campaign group can handle it." It does of course mean that P.P.C. and the Greffier would have to be running an additional election, if you like. A referendum, an election and another referendum. Who knows, it could be just what the Island needs to inspire a bigger turnout at the next election. Maybe we should not throw this out, maybe we should be voting for this referendum. I believe, not least because I think the Progressives could win this. I think we could win it and it would be good to be supporting the referendum where the arguments are all on our side, where the Centralists and the Moderates and the business community all see the writing is on the wall. I would be quite happy to have that recorded officially as an election victory for the Progressives in the Island.

7.4.5 The Connétable of St. Lawrence:

I will try and be a little bit briefer than the previous speaker. However, he has told us that his party would be able to cope with this as a referendum question. I think the public would be able to as well. I rather got the impression when Deputy Maçon was speaking that it would be too difficult for them to understand what they were being asked at the time if we go ahead with this amendment. I was not going to speak to this, but I just wanted to say very briefly, there was a Parish event on Saturday which I faced a barrage of questions regarding today's debate. I must admit I was somewhat surprised, because until then no one had raised the matter with me at all. However, as I walked into the Parish Hall people were saying to me: "Constable, why is the Constable of St. Helier trying to get rid of our Bailiff as President of the States?" I think it was pertinent because clearly I do not think there has been a lot of media coverage about this potentially fundamental change to the constitution of the States. Yet, that was one of the questions that I was being asked. As I say, it was a barrage, because they were coming thick and fast: "Who would replace him? If we get rid of the Bailiff from the States who would replace him? Would we or would you, or would the States Assembly need to elect a Speaker or would you look to appoint someone from outside of the States?" Pertinently they asked me: "What affect will it have on our Island?" Well we have had lots of paperwork, we have heard the presentations, we have heard what the Constable of St. Helier has to say, what their comments did for me was decided me to vote with this amendment, because I think that the questions that I was being asked, grass roots, Parish Hall, Saturday morning, are the questions that other members of the public will be asking. Maybe among themselves, maybe not to us as their elected members, but among themselves, and I think that the decision should rest with them. That is one of the reasons that I supported the amendment

to the amendment by Deputy Le Hérisser and I will be supporting the amendment of Senator Bailhache. Let the people speak.

7.4.6 The Connétable of St. Mary:

I am glad to follow the Constable of St. Lawrence because it is for very much the same reasons that I had come round to this amendment myself. Even though the counterpoint to that is in St. Mary where of course an option was quite clearly chosen in the last referendum, I have faced nothing but questions since then about why that did not go through. However, there are a couple of things that I am concerned about and I think I need some assistance with this, because the Constable of St. Helier says he brought this amendment because the timing is right in the natural break, I believe is the term he used. Timing is an issue in lots of ways, and I am confused as to whether it can all work out. The timing for the natural break, though a substantive proposition is going to make an agreement to move from the date of retirement of the current Bailiff. The amendment has been amended to say that will only happen if the States already approves the law and that the turnout is a certain amount. In the amendment itself, the one we are discussing now, there is an actual physical date. I am not sure what happens if we miss that target on the law. Because if we miss the target on the law we will miss the date and if we miss the date we will miss the interregnum between the Bailiffs. I really do not know whether we have not scuppered the chance of the amendment by adopting the amendment to the amendment. Before I conclude, I wonder if you yourself could help me with that? **[Laughter]** Or perhaps the Solicitor General, because I am not sure where we stand. If we do not get Privy Council consent to the law changes which we will initially have to draft and pass will we achieve anything by adopting any of this? Surely the fact is the proposition which we are going to go on to discuss, agrees from the date of retirement of Sir Michael Birt as Bailiff. It has got a concrete moment in time. If we miss any of these deadlines we cannot achieve any of it, can we? I really am at a loss as to how this proceeds, and surely everything that we have always brought before, I have said, in reform of any kind, we must have certainty going in. I really do not understand how we have certainty now, because we have adopted the amendment to the amendment. I was hoping you were going to say something.

The Greffier of the States (in the Chair):

I do not think there is huge amount I can add, Constable. I think it is a matter for Members whether they think the timescale is realistic. The propositions as now put to the Assembly make it clear. Senator Bailhache himself makes it clear the change does not take place on the retirement of the Bailiff unless it is approved in the referendum. The States have just agreed an amendment that says the referendum will not take place unless the States pass legislation with a binding commencement provision. It is really a matter for P.P.C. and others whether that timescale can be achieved.

The Connétable of St. Mary:

Yes, it is, I agree. But as the Solicitor General ably pointed out before, at the end of the day we are down ... even if we as an Assembly get all of this moving and get it done, get it drafted, get it passed, agree the debates, then it is still down to Privy Council as to whether they do it. I really feel by the last decision we have made we have really wrecked the whole thing. Well, I fear we have. Because if we have not got the certainty going in I do not understand how we are going to approve all the work that the Chairman of P.P.C. says needs to be done in advance. It is not a question of the public not understanding the situation; it is a question of us getting the information out. Because although Deputy Tadier has said that the point is very clear, we are only talking about the elected Speaker, but, no, we are not. Because the question has been raised, and it has been raised by somebody who has fulfilled the office, who understands what it means. That there is a teetering and a tottering and perhaps even a falling of the Bailiff's role in general over time if we take this element out. Whether that happens or not, whether Members consider that is a step too

far, the certainty is that the role will change and we do not know. Carswell did not know definitively how and to what extent. Really the public, if they are going to be asked to make a decision need to be given the facts. That work has to be explored. I think it is naive to think that all of that work will be done when it was not done by all the other reviews that have happened definitively. We have heard, and I have to go back to saying this, from somebody who has done the job and had understood the impacts on their time, has understood how one section interrelates with another, but we have heard that there will be a change. I am not saying at the end of the day we will not agree to do it anyway, but the fact is we really ought to be mature about this and say we do not know. The fact is, when you go back to Carswell, and if you look at what Rabinder Singh said in the advice, we might like to consider this, it might be moving towards reform, but at this time, this point in law, there is no reason in law why this has to be done now. None at all. I am afraid some of the other arguments have gone around about other judgments that have been put out were all dealt with by Rabinder Singh in his judgment, if it is read properly and read completely right the way through. The Constable of St. Helier, I am not accusing him of anything when I say this, but he has brought it in now because it is the opportune moment because of the retirement of the Bailiff. Not for any electioneering. I am not accusing him of that, some people have. It is because if we are going to do it ... **[Laughter]** It has been bandied around. The fact is, if we were going to do it this would have been a natural break to do it. The fact is I think we have scuppered the way of doing it effectively now because of the decision we have just made. I really do not think we can go into this with the certainty knowing that we will progress. If we do this, if we adopt the amendment as amended and then adopt the proposition and we do not meet the timescale I am not absolutely sure constitutionally where that leaves us, because we have only resolved to make the change if a certain amount of circumstances fall into place, and they may not do that. I really feel we are in a very difficult position here. One thing I will say, and it is quite clear to me, something that Deputy Le Fondré said, we are not looking at a fallback. We are not looking at it saying subject to what happens in the election and how this is mooted in campaigns and things like that. If we make the decision today and if things do fall into place we are today changing the way we do things. It will not be reviewed again. All I am saying is we need to be right and we need to be sure we are right. From what I have heard so far I really do not think we are and I really am stuck as to where we go from here. I am certainly stuck as to whether P.P.C. ... I understand where the Chairman is coming from and physically they can do the work, they can divide and conquer, they can do a working party, they can do all sorts of things, they can do it, but ...

Deputy J.M. Maçon:

Will the speaker give way?

The Connétable of St. Mary:

Briefly.

Deputy J.M. Maçon:

If this were to be approved we would certainly be looking to accept a lot of help from other States Members who support this.

The Connétable of St. Mary:

Well, absolutely. But the fundamental fact is they are already tasked. A couple of months ago, we had a decision to hold 2 questions in a referendum that were mutually exclusive. P.P.C. are working to overcome that, we are working to hold a referendum on Clothier. But we do not know the detail of what Clothier was proposing, because Clothier did not put it out, he left it to be decided later. So P.P.C. already have quite a lot of work to do in that respect. What I want to do, if we are going to go with referendums, which I think the appetite among the public has gone completely, but if we are going to pursue that we have got to make sure that we get the education

campaign and the information campaign right. We have got one major task on to explain what Clothier will be and to decide what it will be. I really am at a loss as to how we have got ourselves yet again into a pickle here by not understanding what we have adopted.

Deputy M. Tadier:

May I seek clarification? I understand their frustration, but we have not decided to have a referendum. Is her conclusion therefore we should not vote for this amendment.

The Greffier of the States (in the Chair):

Do you wish to clarify the position?

The Connétable of St. Mary:

I can clarify that. The fact is that if we do not vote for this amendment there is no fallback position, there is no consultation, there is no taking this to the poles or anything. If we then vote for the substantive proposition we have effectively today, without that engagement, changed the constitution. **[Interruption]** No, but we are in the process of debating. We are in the process of debating, and any Member who does not give this their full consideration does not do themselves or the Island any justice.

7.4.7 Deputy S. Power:

Before the Constable of St. Mary spoke I had written a note to myself and it said: “This is the sort of debate where we are given the choice of picking up a great big shovel and digging an even bigger hole for ourselves.” The Constable of St. Mary has effectively confirmed that in any one of a number of ways because of her previous role on P.P.C. as Vice Chairman and Chairman.

[16:00]

Before that Deputy Le Hérissier came up with this nugget: “In order to adopt or to embrace the concept of his amendment to the amendment we have some chance of retrieving our credibility with the public.” I said to myself: “Well, miracles do happen, but not in this term of this Assembly.” In my opinion it is almost like we are on a road to mission impossible and we are digging an even bigger hole for ourselves and losing even more credibility. Last year we went out on the most extensive public consultation that this Assembly has ever done and the Electoral Commission came back to the Assembly and we rejected it. Now in the space of a week we are debating further aspects of the composition of the Assembly, the power of the Chief Minister and effectively debating deposing the Bailiff as President of the States. That is my interpretation of it. I say to Members how do we collectively as a group, as States Members, support and embrace the mantle of responsibility that we have here this week in taking up upon ourselves to effectively change 800 years of constitutional history on this Island. I am not prepared to be of that position today and I think it is beholden on us to at least do some of what Senator Bailhache is suggesting and the Constable of St. Mary is suggesting and others have suggested in taking on and consulting with the public. This is a huge constitutional position we find ourselves in this week. It is not done on a whim or on a prayer or on a notion that the current Bailiff has decided to end his tenure as Bailiff and that this is a golden opportunity to revisit our constitution. I do not think we have the mandate to do that. We are in a model at the moment, another model, and I think the Constable of St. Mary has been very eloquent in the way she had expressed it. In terms of this particular debate on what Senator Bailhache is trying to achieve is that we must consult with the public, either in this case with a referendum, but in my case we need to discuss this with the public. I do not believe that we have a mandate to take it upon ourselves and discuss this without further consultation with the public. Finally I will say, that in my time, and I do not know whether Deputy Tadier or Deputy Young or the Constable of St. Brelade has a different experience, but in my time representing part of the west of the Island, Quennevais and La Moye, it has never come up. It has never come up. I

do not know whether it has in St. Lawrence or St. Ouen or St. Helier, I do not know. I honestly do not know. It has not come up. It has never come up at a Parish social event, at a Parish meeting, at a Parish Assembly. Nobody has ever said to me: “You must do something about the role of the Bailiff.” Nobody has ever said it to me. I read all of the reports, I have got the Carswell Report, I have got all the other recommendations here, but I do not believe that we have a mandate to do this. So I am going to strongly support Senator Bailhache’s amendment.

7.4.8 The Deputy of St. Martin:

I would like to concur with Deputy Power, I certainly will also be supporting Senator Bailhache’s amendment. I would like to say that I am disappointed that the Constable of St. Helier and others feel that this hugely important issue is one that we as a few mere States Members could decide on. This is an immense issue that has gravitas and it deserves public approval. Before I sit down, I was not going to say this, but I have to say that I am disappointed with the Chairman of P.P.C. I do not think we can accuse him of being a member of the “can-do” society. He sees problems and not opportunities, and seems to have admitted defeat before starting. The Constable of St. Mary agrees with him that there is lots to do, but if there is lots to do we must try and get on and do the work. This is a really important issue, the public must be consulted if we are going to do this. If we are going to have to consult them we have got to do it, we have got to get on and do this work.

7.4.9 Senator F. du H. Le Gresley:

Oh dear. I thought I had a good speech, but a few people have used part of my speech although they have used it in a different way to which I would have used the information. The Constable of St. Mary is absolutely right that the amendment as proposed by Senator Bailhache nullifies the original proposition. I wrote that down the day I received the amendment. In other words, how do we end up with an approved amendment that nullifies the original proposition? Because I have always understood as a States Member if there is a proposition you cannot amend it to the extent that you nullify the point of the original proposition. The original proposition says quite clearly: “To agree that from the date of retirement of Sir Michael Birt as Bailiff that the Bailiff should cease to act as President of the States.” Now we know that date; that date is fixed. We are working to a timetable. What does the amendment do? The amendment says: “Okay, well if Members approve the main proposition we will have a referendum on this subject to be held on 15th October.” Fine. We have our referendum, which has to be binding, according to the amendment that numbers of you have approved, and then, even if it was not binding, the next States Assembly then has to deal with this issue. So the public, say, vote in favour in the referendum for the removal of the Bailiff as President of the States, we then have to amend Standing Orders and the States of Jersey Law. We are told that that is primary legislation that requires the law to go to the Privy Council for approval. The first States sitting able to deal with this matter will probably be in late November, early December, and the Bailiff, as I understand it is retiring in February. If Members think you can get through an amendment to primary legislation in that time span with a brand new States, you have to be kidding. Therefore I maintain that this amendment should never have been approved. I have to say, and I know this is going to grate for some people, but who approves amendments? When you want an amendment who do you go to? You go to the Greffier and if the Greffier is not sure who does it go to? It goes to the Deputy Bailiff or it goes to the Bailiff. What are we talking about here? The role of the Bailiff. I am not comfortable at all as to why this amendment was accepted. Let us go back ...

The Greffier of the States (in the Chair):

I think it is only right from the Chair, Senator. The amendment was accepted, it is clearly an order under Standing Orders. I do not share your view. It does not negate the proposition. The States

have just approved an amendment to say that the legislation will not be done after the elections, it must be done before the referendum.

Senator F. du H. Le Gresley:

Well, Sir, I do not agree with your view, but that is democracy. **[Laughter]**

The Greffier of the States (in the Chair):

You have the right to disagree.

Senator F. du H. Le Gresley:

I am sorry, I do not agree with that view. However, we keep hearing stories, I call them “stories” because there is no fact behind them, that the States Members have suddenly realised that we have got to do something with the Carswell Report. In preparation for this debate today I read the Hansard of the debate in February, P.5 of 2009, from the former Deputy of St. Martin to review the role of unelected Members of the States. I suggest Members will probably have time tonight to read it because we will still be going tomorrow. Read it. Read the Hansard because it is very illuminating. It is very interesting because the original request was for all 5 unelected Members to be reviewed by an internal panel. But there was machinations, there were movements, we could not possibly debate the role of certain Members of this Assembly, notably the Lieutenant Governor and the Dean. So the Deputy of St. Martin was defeated, but the 3 remaining roles, as we know, were to be reviewed and hence we set up the Carswell Panel. When you read Hansard what you will find is that the whole reason the Deputy of St. Martin brought this proposition, because the then Bailiff I think had probably announced his retirement - I was not taking part in politics at the time - but certainly the then Bailiff, now Senator Bailhache, who has brought this amendment was indicating he was going to leave office. The view of States Member was, which by the way this proposition was voted on considerably in favour of the proposition, was that we needed to do something before the next Bailiff went. We had probably 5, 6 years to get on with it. Five or 6 years. Look what has happened, reality has happened. We are now months away from the departure of our current Bailiff and we have not sorted it out. So what do we do: “Oh well, let us put it off, we will go for a referendum.” It will never happen in our current 10-year period and we will muddle along as we always do because we are fighting to make big decisions. It is not acceptable. I do not believe this amendment should have been accepted. I am sorry, people will disagree with me, but I do not believe it should have been accepted. I am coming to the point of the original speech of the proposer, all we have heard is about the role of the Bailiff as the Island’s chief citizen. I have made these notes as we went along. Can the Bailiff remain the Island’s chief citizen, the role of the civic head? Why should the Chief Justice be the civic head of the States of Jersey? A very good point. It just goes on. The Bailiff has to have one foot in both camps. Presumably that is the judiciary and the legislator. Has to have a foot in both camps. I am absolutely lost. We are talking here about somebody we want to elect as a Speaker of our Assembly. Freely elect who we wish to place in charge of our Assembly, and to get rid of if they are no good. What is wrong with that? Every other country does it, bar Guernsey. **[Laughter]** I really am at a loss to understand why Members think that we have to go out to a referendum. That is all I am going to say.

7.4.10 Senator L.J. Farnham:

I think it is a shame that Senator Le Gresley intimated that there was almost some sort of funny business perpetrated by the Bailiff in bringing this proposition. I would invite him to clarify that he did not mean that. I think it is important. Because it is that sort of popular misconception which is leading to the kneejerk operation that we are all suddenly rushing to remove the Bailiff from this Assembly without the proper method. I will come back to that in a second. I wonder if Senator Le Gresley would just like to clarify that he was not doing that.

The Greffier of the States (in the Chair):

Senator, do you wish to answer?

Senator F. du H. Le Gresley:

Is this an official point of clarification or is it the view of the Senator on my left?

The Greffier of the States (in the Chair):

Yes. The Senator is asking you to clarify.

Senator F. du H. Le Gresley:

What I am trying to clarify is when Members bring amendments to original propositions, and I have done that myself, I have occasionally been told that I cannot bring my amendment because it nullifies the effect of the original proposition.

The Greffier of the States (in the Chair):

Well, the Standing Order says: "Wholly negates."

Senator F. du H. Le Gresley:

Sorry, I do beg your pardon, Sir.

The Greffier of the States (in the Chair):

Wholly negates, not just ...

Senator F. du H. Le Gresley:

Yes, wholly negates. In my opinion this amendment wholly negates the original proposition.

The Greffier of the States (in the Chair):

I think what Senator Farnham is asking you to clarify is you were not suggesting the Bailiff somehow did something improper in approving it for the wrong reasons, or personally ...

Senator F. du H. Le Gresley:

No, Sir, I am not implying that at all.

The Greffier of the States (in the Chair):

No. That is all ...

Senator F. du H. Le Gresley:

What I am implying is ...

The Greffier of the States (in the Chair):

That is all you were asked to clarify.

Senator F. du H. Le Gresley:

My interpretation is it wholly negates. I would have hoped the Bailiff or the Deputy Bailiff would have come to the same conclusion.

The Greffier of the States (in the Chair):

Yes. There was nothing improper.

Senator L.J. Farnham:

Thank you for clarifying that; if I can thank the Senator. I just want to ask Members just to be mindful of the fact that the method in which we deal with this issue now is, in my opinion, as

important if not more important than the principle of what we are trying to do. I will come back to that in a second. The referenda can absolve politicians from making decisions and there are very few circumstances in which I would support them. But constitutional change falls firmly into that category. In fact I would go as far as to say that if ever there was a good reason to ask the people of Jersey a question it would be about whether their Bailiff should preside over their Legislature. We have already agreed to hold a referendum in October, and I do have to disagree with the Chairman of P.P.C. here and I was disappointed that he does not appear to be adopting a can-do attitude with this because everything that there is a strong political will to do, which is lacking quite often in a lot of areas, can be done. This can be done. I feel that the question that Senator Bailhache proposes to ask fits very well with the whole issue. If we are discussing electoral reform and the re-composition of our Assembly what better time is there to ask who should preside over it.

[16:15]

A perfectly straightforward question, and I cannot see the problem with it. Furthermore, is this Assembly really so arrogant as to remove the Bailiff without the knowledge or the consent of the people of Jersey? I hope it is not. We made that mistake. Well, I say “we”, the Assembly made that mistake in 2010 and 2011 with the office of Senator. While I accept that the office of Senator may well go, it was gone about in completely the wrong way. The States almost sourced the issue, almost gave the Electoral Commission no option but to propose the removal of Senator, because they have started the process. I accept the office of the Bailiff or Deputy Bailiff may come to pass at some stage in the future, near or a little further away, that the Bailiff will not preside over this Assembly, some other arrangement may occur. We will be making a very serious mistake if we do not deal with this properly, if we do not adopt the proper methodology. I would say that the correct way to go about this is to first get the endorsement or the permission of the people of Jersey. Rather than this to come on a Back-Bench proposition, from the Constable of St. Helier - and I do not take any credit away from the Constable - but it should come as a properly structured, properly considered, properly adopted proposition from the Government in partnership with the Crown officers, with the support of the people of Jersey and done in the appropriate time. I therefore think that it is wholly appropriate to ask the people this question whether to remove the Bailiff from our States Assembly and let us hope we do not make the same mistakes that we have made in the past. I would hope Members would support this rather simple and straightforward amendment.

7.4.11 Deputy G.P. Southern:

The longer this debate has gone on the more I am drifting off into worlds of fantasy. What is brought to mind is this picture of Gulliver on his travels and he is just sailing into St. Helier harbour listening to what he calls “a wondrous machine” which is transmitting Radio Jersey. And the captain of the ship says: “What is that you are listening to, Gulliver?” He says: “Well, you have heard of the Big-Endians and the Little-Endians, well this beats that into a cocked hat. As I understand it this unicameral parliament is debating having an election at the end of the year, which is an amazing thing, apparently. They are going to have an election. To start with they have 3 types of Member in their unicameral chamber, which is already an amazing thing and fairly unique in the world. Now they are talking about having a 5-way election at the end of the year. As I understand it there is an Island-wide, all the population, 100,000 vote on Senators. The top 8 places, first past the post, they will get elected. That is Island-wide. They are also having 2 different things called a referendum that are indeed Island-wide, but we will talk about those later. They are also having elections which are not Island-wide for a thing called a Constable and things called Deputies. They are elected on either a Parish basis, and it is a single first past the post system, or it is 2 or 3 in a subdivisions of the Parish. That is one, 2, 3. Three different colours of election paper, 3 different issues. Now they are debating having 2 referendums. One of those referenda contains something about the advice of a person called Clothier some time ago, 16 years

ago, and may or may not include a clause which says we accept Clothier, including the removal of the Bailiff from his role in the Chamber. That would be non-binding. Whatever the results the Chamber may do it or not do it. It has also got another referendum going on at the same time which is binding if it achieves a certain threshold, which effectively do the same as the Clothier advice was, which is to remove the Bailiff from the Chamber. You might get a position where the one referendum says do not remove him, or remove him, and the second one does not achieve the 70 per cent or whatever it requires.” Let us assume it is a high turnout, let us assume it is 50 per cent that it requires and therefore does not get put into place. We have got one statement saying get rid of the Bailiff and the other one saying you cannot because it does not achieve the threshold. Can you imagine spending hours and hours on that? Can you imagine going to the electorate, your own electorate and explaining why they have got 5 pieces of paper in front of them and what each one does and under what conditions. Little-Endians or Big-Endians. This is positively crazy. I certainly will not be voting for this amendment.

7.4.12 Senator S.C. Ferguson:

I really was not going to say very much on this one, apart from the fact that the only comments I have heard about this particular episode or proposition is from the public who have said: “(a) Do not dare do it, and; (b) if you do think about doing it we want our say.” Frankly, I do not quite know where all the siren voices come from, but the public I see, which is a pretty good cross-section of the public, are very much against the whole change in the constitution without at least being consulted.

7.4.13 Deputy J.H. Young:

Coming into this debate I have certainly struggled with it, as have other Members. Not being Jersey born, but 35 years in the Island I have certainly come to love the uniqueness of the Island and its institutions. Nonetheless, I have read all the reports throughout that lead us into this main debate, and what we have got today is a 13-line report and a 5-line proposition saying replace the Bailiff as head of the Assembly with somebody else. We do not know whether it is in the States or some other person. Obviously as we have come here today, the logic is very strong, the rationale and all these arguments about external perception and so on are strong. But of course heart and local culture has to be balanced against heart and local culture. Then in this debate we have got the further issue about whether we make that decision ourselves and commit ourselves to the 5-line proposition, 13-line report, as a kind of a final act; that is it. No going back. That is the choice we have to make. Or whether we embrace the proposal for a referendum. The arguments that have been put forward against having a referendum; I can understand the practicalities, and I have been thrashing these through my mind as Members have spoken and I think it has caused me to rethink. Yes, it is not practical, says the Chairman of P.P.C. Yes, there are massive practical difficulties, I can see that. I can see the real difficulties that members of the public, our public, our electors would have with the extra step of a referendum in October. Of course we have agreed now not to run the risk of making that referendum messy, confusing, we are going to have a very clear referendum on that, as a result of the amendment we passed earlier. A yes, no, and there has got to be a binding nature. That is going to be very clear. I ask myself on what basis would I say to my electors: “We are going to ask you to have a referendum about the make-up of the elected Members of the Assembly, but we are not going to ask you about whether or not the long history of our non-elected, but judicially appointed Crown appointment, the Bailiff’s removal from States. We are not going to ask you about that because we do not think it is important.” I can understand the logic that says: “Well, do not worry. Deputy Tadier says they have got ... the reality is there are 3 heads.” But do the public see the Bailiff as 3 heads? I do not think they do. Those heads are joined up. I find this an extraordinary difficult debate. There are all these issues of timescale, the practicalities of it, which I think, frankly, I just cannot resolve that against the issue of principle. The issue of

principle says to me the overriding thing, this is a very important constitutional change, I personally have not heard clambering in the street to make the change. I can see the arguments for it, I can see why in the long length of future time, if the time is right it would be a good thing to do. I may be straying, but I do ask myself the question when we are not sure with the make-up of elected Members whether it is right that we can make that decision about the head of our Assembly ourselves. Consulting the public in this I think is a very, very strong principle. I have rethought. My thought processes have evolved during the run up today, and today's debate, and I think have led me to the conclusion that having passed the amendment from Deputy Le Hérisier earlier that there is a very strong case for amending the substantive proposition and not taking the risk of just going ahead with no consultation, no public process, with no safe guards.

7.4.14 Deputy R.G. Le Hérisier:

When the speaker mentioned the Bailiff had 3 heads, or 3 roles I suppose he mentioned, I thought Deputy Tadier was referring to 3 people: the Chief Minister, the Lieutenant Governor and the Bailiff.

The Greffier of the States (in the Chair):

No, no. The 3 roles of the Bailiff.

7.4.15 The Connétable of St. John:

I have been through some debates in this Chamber but this one takes the cake. **[Laughter]** Nearly 20 years in this House I do not think I have heard so many confusing arguments of why we should adopt the main proposition in particular on a 5-liner. We have a Bailiff. We are very fortunate to have somebody who has been skipper of this ship since 2005/2006 when we went into ministerial Government because in all the time I have been in the House this has probably been the worst period. I am not saying this year in particular but over the ministerial time because the Members have not got their act together, whether it be the Ministers or Assistant Ministers and even some of the panels. They have not got that lot right yet and I do not think they ever will. When we look under P.33 later on or in the next week, whenever we get around to debating it, there is a lot more undecided action that is going to be taken with Ministers who wish to go down the road of having more power. Who will the next Chief Minister be? Will it be somebody that just wants 2 or 3 Ministers and the remainder all Assistant Ministers if we adopt certain ways of going forward? We finish up therefore with somebody who is a dictator, for want of a better word. It worries me no end. What are we doing to our Island? We went from 1948 to 2005, the most prosperous years this Island has ever had. Since then we have gone downhill and we could not get much lower than we are today in a debate.

The Greffier of the States (in the Chair):

You are getting to the referendum?

The Connétable of St. John:

Yes, I am getting there, I am getting there. Chaos is ruling.

[16:30]

I look up there to Sir Walter Raleigh, 1600 to 1603. **[Laughter]** Was it not about that time that there were problems with the Governor and the Bailiff and they were arguing as to who was going to be running the Island and the Crown had to step in. In fact you are sitting in the Bailiff's chair and it came down that the Bailiff was in charge of this Chamber and not the Governor, and hence the Governor sits in a lower chair.

The Greffier of the States (in the Chair):

It was a bit later.

The Connétable of St. John:

It was probably a bit later about 300 years ago, I think. Yes, before my time as somebody has said. **[Laughter]** That said we have stability currently in our Bailiff's office; stability that I believe should stay within this Chamber for a considerable period of time until the Council of Ministers, if that is the way the Island eventually accept over the last 3 terms - it has not acted very well. They are not looking after the affairs of the Island as they should, and I do hanker back for a committee system where everybody was in office and everybody could contribute in the same way. We are where we are. We have not got it right under ministerial. Let us not kick the heels out from underneath the Bailiff who is the only stable bit of this Government that we have who can lead us into the right directions by going down the road of adopting the Connétable's proposition, I think is a disaster for this Island.

The Greffier of the States (in the Chair):

We are talking about the amendment.

The Connétable of St. John:

I am talking about the amendment.

The Greffier of the States (in the Chair):

Not at the moment. I must bring you back because you can give this speech on the main debate.

The Connétable of St. John:

Yes, I have another one for that. **[Laughter]** I am standing here to support the amendment because this is one way of securing ... at least it gets back to the public at the end of the day and we do have this referendum, and I am supporting Senator Bailhache on this, but I thought I would say a few words about the chaos that you boys and girls have created today, in particular the Connétable for having brought this proposition. Thank you.

7.4.16 Senator P.F.C. Ozouf:

I am a monarchist British Jerseyman. I would like to say that I have a respect for the past but as I advance in years and get more grey hairs one does realise that life evolves and changes. The Connétable of St. John can look up and speak about Walter Raleigh. Walter Raleigh was Governor of this Island in 1600 to 1603. He was appointed. He was not elected in terms of his responsibilities in Jersey. Indeed much of the remarks, and we really do, if I may say, need to raise the level of this debate, I mean no disrespect to some of the Members speaking, but this is not a doffing the cap kind of reverence to individuals. It is very difficult for this debate. Many people have said this debate is not personal but of course it is somewhat personal. It is personal because of the position of Bailiff. In some ways the position of Bailiff is, we accept, and some of us may worry about having a referendum, because in fact the reality is that the Bailiff probably is more popular than some Members of this Assembly or this collective of Assemblies. That may well be because the Bailiff does not have to make any difficult decisions. He is the one that has to represent the Island. He is the one that puts on his fine red gown and he meets the monarch. He makes the speeches. We in this Assembly are the people that have to make the hard decisions about representing the people and about democracy. As well as being a monarchist and a British Jerseyman, I am a democrat, and I am a democrat principally and that is why I am here. Let us get this debate back to realism rather than simply looking at the past with some degree of, if I may say, rose-tinted spectacles. This is the dilemma of having the referendum because effectively what Senator Bailhache - and I respect Senator Bailhache and he knows parliamentary manoeuvres, parliamentary procedures better than anybody, he has been here for 35 years - has said, and as I am

uncomfortable with this amendment and, forgive me, and please correct me if I am improper in what I am saying, is he is putting this amendment forward but he is not going to vote with the underlying proposition. One construction of that is that effectively the proposition as amended is more unpalatable than the proposition unamended. I think that is a wrecking amendment, now if that is an improper motive ... I think this is a wrecking amendment. I just want to go back to what Clothier said. The principles should be that no one should hold or exercise political power or influence unless elected by the people to do so. It is impossible for the Bailiff to be entirely non-political so long as he remains also Speaker of the States. A Speaker is the servant of this Assembly not its master and can be removed if unsatisfactory. The Bailiff, appointed by the Queen's letters patent is to a high and ancient office, should not hold a post subservient to the States. I am having this debate and I am going to be supporting the unamended proposition, but I will come on to the problem of the referendum in a minute, because of the importance of democracy, of the importance of parliamentary democracy and it is the role of the elected Speaker of the States. Senator Bailhache has confused this issue. He is almost, I think, wrecking the amendment in my view by confusing the emotional role of civic head, which he is claiming that comes from the presidency, and the Speakers of this Assembly, and saying that the people of Jersey want to have their civic head as their Bailiff. I have some degree of sympathy for that. I struggle with the issue of civic head because ideally a civic head should be in most places when one looks around, and I am not in any way undermining the issue of the sovereign, but the civic head is elected. The civic head ought to be probably elected, and we are somehow trying to reconcile the fact that we have this ancient high office, highly respected, becoming increasingly highly respected because they do not have to make any difficult decisions.

Senator P.M. Bailhache:

Would the Senator give way for a moment? He opened his speech by saying that he was a monarchist. I wonder if he would reconcile that by saying that the Head of State should be elected. **[Approval]**

Senator P.F.C. Ozouf:

Absolutely. The Head of State of Jersey is the successor in title to the Duke of Normandy, the Queen. That is our Head of State. If I may say so, and I was going to come up to Senator Bailhache in this issue, because I think it would just be unbelievably confusing, and in a referendum, having a debate about civic head presidency of the States and the Clothier, we are going to have a Horlicks of a lot of referendums. I am afraid to say to Senator Bailhache, he spoke in his proposal trying to make this proposition of a picture of Caravaggio. He spoke about the beheading of John the Baptist which happened over 2,000 years ago, although Caravaggio's picture was probably painted around the time that Walter Raleigh was busy reconstructing Jersey roads and building Elizabeth Castle about 1600. He spoke about the issue, and I will answer his question, the Head of State is the Queen. The representative of the Head of State, the personal representative, is the Lieutenant Governor. I am afraid he started confusing the debate by saying: "We are going to have some confusing situations with the Bailiff." He spoke about the Prince of Luxembourg. He is the monarch in Luxembourg. I am afraid that the Bailiff, no matter how important the Bailiff, is not the monarch. I am afraid the Bailiff does not have some sort of divine divinity as much as we would like to say. I am afraid the Bailiff is not the equivalent of the Prince of Luxembourg. It is not the Head of State. It is supposed to be I am speaking in this debate about the elected Speaker of our Parliament. We are in of course potential difficulties because we have got a situation whereby the public hold our Assembly - and we have seen that by a recent question - they hold our democracy, they hold the Parliament of the Island in pretty low esteem. I am afraid the solution to that is not having simply a continuation of, if I may, an unelected Speaker. The role of Speaker should be to uphold democracy, to improve democracy, to improve democratic debate, to hold

Ministers, Back-Benchers to account for their behaviour, for the way in which they conduct themselves in this Assembly and the debates which we have. You, Sir, are trying to hold some sort of order today and doing as you always do as good a job as you possibly could be. **[Interruption]** **[Laughter]** You are trying and we appreciate it. We also appreciate the fact that the Bailiff tries but the reality is that the Bailiff, unelected and not as one of us, and having to have this tightrope of not ... because he is the Chief Justice and cannot enter into the political fray. He cannot do the job that really this Assembly needs, which is being a proper Speaker of this Assembly. That is the reality and we are in this all lose situation at the moment. We are in a situation where the democracy and the standards of democracy and this Assembly are held in very low esteem. We need to improve it but the improvement is not going to happen by more of the same of the past. We have to change. I am afraid that Senator Bailhache when he was in Malta last week was not looking at a Caravaggio that was written in a monarchistic ... I am not going to say the monarchist was a dictator but effectively a non-democratic island. He was at an island on which there was proper democracy, where there was high voter turnout, where there was proper parliamentary debate - I have seen it - where there is an elected Speaker. I will just ignore what I just heard from Senator Ferguson because I think that that is exactly the kind of comment that should be unsaid. I am afraid to say, I will come back to the main debate, but it is impossible in my view to hold a referendum on the issue of presidency of the States without entangling it with the debate about civic head. Senator Bailhache has proven exactly what he wants to do. He wants to have a debate and a referendum which is about the civic head issue, and I have no doubt that the people of Jersey probably want to continue with the Bailiff as the civic head, and I am kind of happy with that for the foreseeable future. I think it is inevitable that as the role of Chief Minister evolves that is going to become more important, and I am afraid you cannot hold back the change of tide of democracy. You cannot hold back that situation, with the greatest of respect to the representative of St. Mary, you cannot hold back the changing times. This is not 1946. It is not 1600. It is 2014 and we are a parliamentary democracy and I am afraid it is not possible to have a debate and realistic referendum on a question which mixes the issue of presidency of the States and civic head.

[16:45]

It will be together with the other apparent referendums which we have had an absolute mess of a discussion. It is not going to be a referendum. It is going to be a pick and mix multiple choice which people are not going to understand and it is wrong. On top of the question that I stood in this Assembly previously and said of an electoral system which is going to be for 3 elected offices at once, are we really saying we are going in this election this year to have 3 different types of people elected at once: 8 Senators with the legitimacy of the 7 and 8 that I have spoken about in the past, an election for Constable, an election for Deputies, some of which are going to have some Islanders with one and some with 4. Islanders barely understand the electoral system let alone the referendum questions that we are going to be putting to them. They are not going to understand the subtleties of the issue of the position of presidency of the States. They are not going to understand, I doubt ... I do not even know what the question is about the reform proposals. I do not even know. We do not even know what the reform question is. It is going to be a mess and I am not prepared to vote in favour of a referendum question which I know will be, I suspect I know the result, I suspect that Senator Bailhache knows the result, and call me undemocratic, to keep the presidency of the States. I suspect it will be to keep the Bailiff but for the wrong reasons because there will be no debate, there will be no proper debate about how to improve democracy, how to raise the standards of debate and engagement and the standards of conduct, debate, democracy and engagement and penetration of real people's representation. It will be a fiction. For that reason I vote against the amendment to have a referendum. It will be a farce. There will be no proper debate and I will come back to the substantive issue later.

7.4.17 The Connétable of St. Clement:

I would just like to spend a few seconds attempting to add to the confusion and the muddle. **[Laughter]** We have already agreed to have a referendum on whether or not to implement the Clothier proposals and that referendum will be held on 15th October later this year. As Deputy Southern reminded us, and I think Senator Ozouf did too, the Clothier proposals include having an elected President of the States. The real question to me is why we are discussing having another referendum on the same subject and on the same day. It seems to me it does not really matter whether we approve this amendment or not except that by rejecting this amendment we will have one referendum with one question and that must be good. The down side, of course, it will not be binding, which is not good, but having said that surely we will not make the same mistake again.

7.4.18 Deputy S.Y. Mézec:

Before I go on to what I have prepared to say, we saw earlier a brief hint of disagreement between yourself and Senator Le Gresley. I think it was important to witness that because it shows that it is not impossible that Members of an Assembly can disagree with the Chair from time to time, and we find ourselves in a situation where we can theoretically be in a position where the majority of the Members of this Assembly disagree with the Chair more often than we agree and we would like to get a different Chair for this Assembly, but the only way that we could do that would be to get rid of the Bailiff who for all we know could be a fantastic judge at the same time. The fact the 2 roles are married together like that means we are unable to make that sort of decision over whether we have the best Chair or whether that is put aside so we can have a decent Chief Judge and I think that is one of most important points for saying that we should have a proper separation of powers. On the question of a referendum, those who do not learn the lessons of history are doomed to repeat them. We have already had one botched referendum that has left public confidence in this Assembly at rock bottom at the moment, and I think if we accept this amendment we are going to sleepwalk into another botched referendum. The referendum would be doomed to failure for the same 2 reasons that the last one was. When you have a referendum the referendum is best if it is simply a yes or no question, but the question also has to be on a legitimate topic in line with objective democratic principles. On the first of those we are already going to have a referendum on 15th October. That has already been agreed and there is more discussion to have on that, but it is also going to be at the same time as elections for our 3 types of States Member. There will be some people who will be walking into a polling station who will be given 5 ballot papers that they are going to have to have considered and have to vote on. We already have an unnecessarily overcomplicated electoral system, and 2 referendums on the same day will make it an absolute utter shambles. It will be impossible. I took part in the option A campaign group in the referendum last year and it was an absolutely fantastic experience for me as a campaigner from beginning to end but when there are 2 campaigns going on for referendum questions it is going to be impossible to distinguish between the 2 of them. There is going to be a yes and a no campaign for the Clothier question, and there is going to be a yes and a no campaign for this Bailiff question. There will be 2 yes campaigns, 2 no campaigns. Imagine driving down Victoria Avenue and seeing all these posters saying yes/no. You would have to slow down to see what question it is that it is referring to and we are going to have a situation where because lots of people will also be fighting their own elections, I will be standing for Deputy again, but how can I contribute to some of these other campaigns? Some people who are not standing for election may want to contribute to both campaigns but might not be able to divide their time. It just makes it overly complicated and means that it will be impossible to have that proper debate if this is going to be put to a referendum. I think that the issue of a separation of powers is so black and white that it does not need to be put to a referendum but if we were going to have one, and I believe if it were held in isolation that we would win the yes vote for it, but because it is not being held in isolation, as Senator Ozouf said before, there will be a whole other bunch of issues being put forward. We have already had this straw man argument about the civic role when that is not what the referendum would be about. It

would be just impossible to have a proper referendum. I think if you are going to have a referendum for the people of Jersey you should treat them with respect by giving them one that is fit for purpose. What we have here is absolutely one that is not fit for purpose. As I said, the referendum question has to be on something that is a legitimate point. A referendum to accept something that is bad and the answer being yes does not turn that bad thing to being good. Jersey currently does not have a separation of powers. Just because the Bailiff was voted in in a referendum would not mean we would suddenly be with a separation perhaps we would still have the separation of powers, and that is an objective democratic principle that is fundamental to a 21st century democracy, no matter how many referendums may go against that. The purpose of this amendment is meant to be about achieving a mandate for the change. I was stopped several times during my by-election campaign to talk about the role of the Bailiff, and I never mentioned it to these people before they mentioned it to me first. So there are some people in this Island who I think have views on this, and I did not come across anyone who thought it was right that a judge should also be President of Parliament in the 21st century. But if we are talking about mandate, we are talking about giving a mandate to a system in which the individuals in that system themselves have no mandate. The people of Jersey do not get to vote on who the Bailiff is, and I think it would be very irresponsible if we did have public elections for the Bailiff because we could end up electing someone who is a terrible judge when really that prosecution needs to go to the best legal mind on the Island. We have also recently had the change to the historic relationship between the Jersey Church of England and the Diocese of Winchester, but there was never any talk about a referendum of that, despite that being a tradition [**Approbation**] that has gone back hundreds and hundreds of years and it being something that is important to Jersey. I think this is just picking and choosing, and I am glad that Senator Ozouf referred to it as a wrecking amendment. I have that written on my speech, and I decided to cross out the word “wrecking” because I thought it might be too strong. But I think Senator Ozouf made an incredibly good case and it is worth listening to every point he made there. I will be voting against this and I hope that other Members will show respect to the people of Jersey by not putting forward such a farce for them to vote on. We have already had one botched referendum, and we should not be giving the public of Jersey another one, because that will not fix confidence in this Assembly one bit.

7.4.19 The Deputy of St. John:

It was a considerable time ago that I pressed my red button, so all of the points that I was going to be making in fact have been made, probably about half a dozen times now, sometimes even by different speakers. I am not going to continue with this speech, other than to make a plea that we could vote on this fairly soon.

7.4.20 Deputy N.B. Le Cornu:

I have not forgotten what I am about to say, and I have quite a lot to add here. This is not a wrecking amendment. It is an anti-reform measure, because that is what the intention here, is to delay once again, to kick down the road the can of reform and amendment of modernisation of this Island. Lord Carswell was brought over here for a purpose. He did not just appear suddenly, he was brought here or invited to deliver a message, and the message he was there to deliver was that reform is acceptable. Who was he delivering it to? It was to be delivered to the backwoodsmen, the political backwoodsmen who cannot realise, who do not realise, how much reform is necessary in Jersey. That reform is necessary because Jersey is so out of step. In fact, the whole of the Channel Islands, bar Sark, are out of step with the rest of the democratic world, in terms of the structure. There has been a discussion about monarchism, but in fact, Britain is a republic in all but name and there is an expectation that Jersey, as an international finance centre, should have a respectable government and that the structures of government should look respectable, because in governance that is very important, that appearance is as important as the actual structures. Why are

the backwoodsmen reluctant now to step forward to change their mind? In a sense, I am very privileged to be able to be down here in this Chamber, to see once again the political class here very much divided, and totally paralysed, unable to modernise, unable to reform. I made a reference to Sark. Sark is clearly the Channel Island model that the British Government is suggesting for reform in the islands. Their way of doing things is very much in the corridors of power, and I am sure that those in authority in this Island who go to the United Kingdom must have whispered in their ears that things must change. Unfortunately, we do not see very much of that or understand the process, because it is not explained. There is reference to it in the decisions and the court judgments in the Barclays cases relating to Sark, which are very interesting, because there you see the British Government putting pressure. There are letters from the then Home Secretary writing to the Sark Government saying: "What you proposed is not acceptable. It is not sufficiently democratic. Please go back and start again." One wonders whether such letters ever come to the Chief Minister here, because they ought to and it is one of the problems that Jersey is almost - and the Channel Islands generally - are almost forgotten and abandoned, in terms of democratic standards. We would like to appeal to the British Government to be concerned about what happens in this small British Island. I am going to conclude by saying it is a wrecking measure. Oh no, it is not. It is an anti-reform measure, this referendum. So it should be rejected, because what we should be getting on with is this simple matter of the separation of powers. We can elect our own President. It is not difficult. It happens everywhere else, and I am sure there are those who look upon us with complete bemusement, that we are so paralysed, so incapable of reform. If this is not passed on this particular occasion, then I look forward to campaigning in the forthcoming general election on this issue, and it will be a disgrace for the political establishment that they have not implemented the reform that is long overdue.

7.4.21 Deputy J.A. Martin:

I will be brief. It is mainly on the timing issue. We have, unfortunately, passed the amendment from Deputy Le Hérissier, on his very weak report saying that he has already asked P.P.C. to make clear terms on the referendum that we were going to hold in October. Months ago, we brought that proposition, and we have been looking at it ever since. We pointed out in this Assembly that we would not have time to make a referendum binding and other legislation changes, which brings me on to the few comments made in this House that we on the committee are a "cannot do" committee, which I find quite offensive, because all we are trying to do is more and more and more that is put on our plate.

[17:00]

Today are people in this House trying to say to the public: "We did not listen to you last time, so anything now that we think that you might want to have a say on, we are going to put to you." Then we will have 2 questions. If one referendum is not enough, is 100 too many? We are only in April. Bring it on. We are stirring up something that I am not saying the public cannot handle, but as everybody has pointed out, there is already going to be X amount of ballot papers there for different positions and for one referendum. I cannot support this, and I do find myself agreeing with the sentiments of Senator Ozouf because of the speech of Senator Bailhache. The people out there love the Bailiff as the civic head and I am not sure who these people were, wandering in the Parish Hall of St. Martin's who know that they are the Speaker of the House. How many are listening on the radio today and saying: "Oh, we have the Greffe in the Chair and not the Bailiff." That is not what they are worried about, but if you think we are not in a position to make that, I am quite confident we are in a position. Just remember, be careful what you wish for, because you have now asked us to make referenda binding, so we could end up with no Bailiff, no Constables and all one elected Member of this House, and it will be binding. So on the amendment to this amendment, it just does not carry for me, but I would not support putting this amendment out there

with the confusion on election day, because it needs a campaign on its own to absolutely strip out what the powers of the Bailiff are and what a new Speaker, an elected Speaker of the House does mean. I will leave it there. I think enough has been said, but we can go on and on and on, and the public are totally fed up with us and referenda. We are putting one question out there in October. I think we should stick to that one question, see where it goes. If we can get legislation in that it is binding, so be it, but we are telling you, the Solicitor General has told the Assembly today that it is going to be very hard. So we are where we are. I cannot support this amendment, and I urge other people not to either.

7.4.22 Senator I.J. Gorst:

I do not want to say too much. Perhaps I should start my first intervention in this debate with reiterating the words that the Connétable of St. Helier made when he opened the debate some hours ago. That is that for me this debate is not a personal debate and I am happy to serve as a Member of this Assembly under the presidency that this Assembly ultimately see fit to have from time to time. I suppose the first thing to say in that respect is that this Assembly has never made any decision to have the Bailiff sitting as President of the Assembly. It is by historical event. I say that because it is quite important and it relates to the opening speech of Senator Bailhache. The other thing that Members are seeing today is senior Ministers standing up - and we might have had another senior Minister supporting Senator Bailhache, sitting towards the front - with senior Ministers taking differing views on this particular point. I think that that is a good thing for democracy, and I think that it is right that this Assembly considers these important democratic principles and helps to make sure that we are thinking and considering them appropriately. One of the issues that I have with the amendment is just this: the amendment wishes to put before the public the question does the public wish to have the Bailiff as President, or should the Bailiff cease to be President of the States, which is a way of framing the question that we are debating? Of course, I would suggest that perhaps another way of framing that question is: does the public wish to remove the conflict that we currently have between Judiciary and Legislature at the very pinnacle of all Jersey institutions? If we ask that question, we may get a slightly different answer from asking the question around the President of the States. But I think the important question that the Senator seemed to be indicating he wished to be asked in a referendum is not the one drafted in front of us, and that is: should the Bailiff continue to be civic head of Jersey? If the question being proposed was: should the Bailiff continue to be civic head of Jersey, as Members will know from reading my comments, I would support a referendum on that and I would vote every day to retain the Bailiff as civic head of Jersey. Now, the mover of the amendment indicated in his experience, and of course we cannot other than accept that, that the civic head and the role of the Speaker of the Assembly were intricately entwined. I have to say that I am not in agreement with that view. The Bailiff was civic head of Jersey long before there were any democratic institutions in our community, and therefore I do not believe that we can say that the civic head role falls out of the Bailiff being Speaker of the Assembly. Rather, the civic head role is the ancient role and the Speaker of the Assembly is more recent in that regard. I struggle to look around other jurisdictions and think that Speakers of Assemblies have the similar role to a civic head role. I do not accept that they are connected in the way that the mover of this proposition suggest that they are connected. In fact, many times, the Bailiff is invited to attend a function as civic head and I am also invited to attend the function as Chief Minister. The Bailiff is not invited to attend the function because he presides over this Assembly, but because of his pre-eminent position as civic head of Jersey. Of course, other speakers have said that the Bailiff has other important roles as well, and that is of Chief Judge. One other issue that we have not spoken about today, which in my particular office of Chief Minister is equally as important role that the Bailiff has which would be unchanged, and that is guardian of the constitution. The way that I would contest that the Bailiff guards the constitution is not through the role as Speaker of the Assembly, because the Speaker of the Assembly presides

over the proceedings of the Assembly but also ensures that Standing Orders are adhered to, and that it is this Assembly that decides what Standing Orders are, and should be, and therefore being guardian of the constitution, again, is separate from presiding over this Assembly. I cannot see a day when Ministers would not consult with the Bailiff on those issues, as we do now. It is not related to sitting in the Assembly and overseeing the work of this Assembly, it is another separate function, which is rightly important that the Bailiff needs to undertake. Of course, we all know that that function of the Bailiff is enshrined in the oath and therefore I cannot see that changing either. So I struggle with the question being proposed, because I am not sure that it is a question that the Senator wishes to ask. He rather wishes to ask whether members of the public wish to see the Bailiff remaining as civic head. I am only making that suggestion from his opening remarks. Perhaps he is going to put me straight in his closing remarks. In light of that, I am not able to accept the amendment.

Deputy N.B. Le Cornu:

May I speak as a point of clarification, or even make a point of correction, on what the last speaker said? If I heard him state it correctly, he said the Assembly has never voted or approved, or something, the Bailiff as Speaker of the Assembly. Yet the States of Jersey Law 2005, which the Chief Minister is bringing some major, significant amendments to, Article 2 states the constitution of the States as including the Bailiff, and Article 3 confirms the Bailiff as the President of the States. Would that be correct? I therefore ask, if the States of Jersey Law 2005 was voted on by the Assembly, therefore would the Chief Minister like to correct his remarks?

Senator I.J. Gorst:

The Deputy is quite right, and in that regard, I stand absolutely and completely corrected and withdraw that comment. My point, however, remains that, from one Speaker to the next Speaker, this Assembly does not elect them and does not choose them.

The Greffier of the States (in the Chair):

Does any Member wish to speak on the amendment? Very well, I will call on Senator Bailhache to reply on the amendment as amended by the amendment of Deputy Le Hérissier.

7.4.23 Senator P.M. Bailhache:

I am glad that Senator Le Gresley withdrew his remarks about the Bailiff, because I must say that he did not express himself very well, and I gained the clear impression that he was suggesting that the Bailiff should not have approved my amendment. I am glad that he has made it clear that he is not suggesting that the Bailiff acted improperly in approving it. As a matter of fact as you, Sir, as the presiding officer have said, the amendment is plainly in order. The proposition asks the States to agree that the Bailiff should cease to be the President of the States and the States should elect their own President, and my amendment seeks to attach a condition to that. The condition is that the change should be approved by the public in a referendum, and that seems to me to be perfectly in order. If there is any complaint to be made as to whether a matter that we have debated this afternoon is or was in order, it relates to Deputy Le Hérissier's amendment to my amendment. I want to come to the remarks of the Constable of St. Mary, because in many ways I share her sense of quandary. I voted against the amendment proposed by Deputy Le Hérissier, not because I did not think that it was a very good idea to make the referendum binding upon this Assembly. Indeed, I wish I had thought of that at the time that I was Chairman of the Electoral Commission, as a way of avoiding the difficulties that subsequently ensued. But I was persuaded to vote against Deputy Le Hérissier's amendment by the speech of the Chairman of the Privileges and Procedures Committee, and when he said that it could not be done, that rather reinforced some reservations that I was going to express as to whether in fact it was practical to get the legislation through before the date of the election. Members have decided that I was wrong and I accept that decision. Members

have decided that where there is a will, there is a way, and as the Deputy of St. Martin put it, if there is a can do approach to this, then it can be done. I am assuming, Sir, that you and the Bailiff, when Deputy Le Hérissier's amendment was approved, will have taken the view that it was possible to achieve this end because otherwise the amendment would indeed have wholly negated my amendment. My response to the quandaries expressed by the Constable of St. Mary are that it is up to the Assembly to do what has to be done, if the proposition of the Constable of St. Helier is passed, and this amendment is passed. My understanding is that the amendments to the States of Jersey Law 2005, to substitute for "Bailiff" "elected Speaker" are relatively straightforward. There are not many of them that require to be done, and so the amendment would be short and the amendment will have a coming into force provision which would say: "This amendment will not come into force until it has been approved by the public in a referendum", on whatever terms it is that the Assembly subsequently agrees.

[17:15]

If the work cannot be done in time, or if there is argument as to what the amendment to the States of Jersey Law should be, and the Assembly cannot agree upon that in time then clearly, my amendment, even if adopted, will fall, because my amendment asks that the referendum take place at the same time as the general election. There is a purpose for that, because if the public are in the polling booths to vote, then it is very much easier to get them to vote in a referendum than it would be if one were asking them to turn out on a separate and special occasion, as we found in relation to the referendum on the recommendations of the Electoral Commission. I am not going to go on very long in my closing remarks. Senator Ozouf suggested that mine was a wrecking amendment, and that was echoed by other Members. I do not accept that criticism. I think it is a perfectly logical position to take, if one is opposed to the proposition that the Bailiff should cease to be the President of the States, but that if the Assembly disagrees with that and agrees with the Constable of St. Helier, that that decision should be put to the public in a referendum. I do not see those positions as being inconsistent at all, and my amendment was certainly not intended to be a wrecking amendment and I do not believe that in fact it is. If it were merely a question of deciding whether or not the President of the States Assembly should be the Bailiff or an elected Speaker and there were no other implications to the decision, I would entirely agree with those Members who would say that this was not a matter for a referendum. It would be a matter which was legitimately within the purview of this Assembly to decide. But I am quite clear that that is not the position. The position and roles of the Bailiff as President of this Assembly and as civic head of the Island are inextricably intertwined. Members, I suppose, will either accept that or they will not. But if they do accept it, then it seems to me to be logical that Members should vote in favour of my amendment, because the question of who is or is to be the civic head of the Island is a matter which legitimately affects the public of the Island. I brought my amendment in good faith. There is one other matter perhaps I should deal with, and that was the point made by Deputy Southern, and I think echoed by one other Member. That was that there could be a potential inconsistency between the decisions of the public in a vote on the Clothier recommendations and a vote on this referendum. It seems to me that that is a matter for this Assembly to deal with. It is perfectly possible to frame referendum questions which are not in conflict with each other, and if the Assembly agrees with my amendment and subsequently agrees with the Constable that there should be a referendum on this issue, it will be for this Assembly to decide, when framing the question for the Clothier recommendations, not to put a question which would enable conflicting answers to be given by the public. That does not seem to me to be too difficult. Members, I am sure, are fully *au courant* with the differing points of view that have been expressed during this debate. I thank Members for their contributions, and I maintain the amendment and ask for it to be upheld.

Senator P.F.C. Ozouf:

May I ask for a point of clarification? Much of this debate has centred around the issue of civic head and the presidency of this Assembly, and I am confused as to what Senator Bailhache is saying. Is he saying that the civic head and presidency and speakership of this Assembly are indissoluble and that it is incapable of having a referendum on any other question? Is he effectively saying that we are having a referendum on the issue of civic head, and the elected Speaker follows? The speakership follows?

The Greffier of the States (in the Chair):

The Senator has clarified that himself. He said they were inextricably linked, and the question is per the question. Is there anything you wish to add to that?

Senator P.M. Bailhache:

I am sorry. Perhaps I am at fault in not understanding exactly what Senator Ozouf's question is. I thought I had made it clear that I thought the 2 roles of the Bailiff were inextricably linked and that if one was making a decision about the presidency of the States, that there would be consequences insofar as the Bailiff's role as civic head of the Island were concerned. I am not sure I can add any clarification further than that.

The Connétable of St. Helier:

Could I seek a point of clarification, because the proposer said that if the referendum could not be achieved in time it would fall away? Would the main proposition as amended not also fall away, in that case? [Aside]

Deputy J.A. Martin:

I just wanted some clarification on something I said, and it has sparked some debate. The amendment as amended by Deputy Le Hérissier means that if we do have 2 referendums, that it is only this referendum that is binding and not any other referenda legislation? That is clear?

The Greffier of the States (in the Chair):

That is agreed. Yes, it is not binding. As the Solicitor General explained, and as Senator Bailhache alluded, it is not binding through the Referendum Law, it is simply the States must pass legislation to amend the States of Jersey Law, with a commencement provision that depends on the referendum.

Deputy J.A. Martin:

So it is not P.P.C. to do it.

The Greffier of the States (in the Chair):

No.

Deputy J.A. Martin:

Thank you.

The Greffier of the States (in the Chair):

Very well, the appel is called for on the amendment of Senator Bailhache, as amended by the amendment of Deputy Le Hérissier, and the Greffier will open the voting.

POUR: 32		CONTRE: 18		ABSTAIN: 0
Senator P.F. Routier		Senator P.F.C. Ozouf		
Senator S.C. Ferguson		Senator A. Breckon		

Senator A.J.H. Maclean		Senator F. du H. Le Gresley		
Senator B.I. Le Marquand		Senator I.J. Gorst		
Senator L.J. Farnham		Connétable of St. Helier		
Senator P.M. Bailhache		Deputy R.C. Duhamel (S)		
Connétable of Trinity		Deputy J.A. Martin (H)		
Connétable of St. Clement		Deputy G.P. Southern (H)		
Connétable of St. Peter		Deputy of St. Ouen		
Connétable of St. Lawrence		Deputy J.A. Hilton (H)		
Connétable of St. Mary		Deputy M. Tadier (B)		
Connétable of St. John		Deputy E.J. Noel (L)		
Connétable of St. Ouen		Deputy T.A. Vallois (S)		
Connétable of St. Brelade		Deputy M.R. Higgins (H)		
Connétable of St. Martin		Deputy A.K.F. Green (H)		
Connétable of St. Saviour		Deputy J.M. Maçon (S)		
Connétable of Grouville		Deputy N.B. Le Cornu (H)		
Deputy R.G. Le Hérissier (S)		Deputy S.Y. Mézec (H)		
Deputy of Grouville				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy R.J. Rondel (H)				

The Greffier of the States (in the Chair):

Very well, so the debate resumes on the proposition of the Connétable of St. Helier, as amended by the amendment as amended. Does anyone want to speak on the proposition? Deputy Southern.

Deputy G.P. Southern:

It is 5:25 p.m., Sir.

The Greffier of the States (in the Chair):

Do you have more than 5 minutes' worth, do you? **[Laughter]**

Deputy M. Tadier:

Can we propose the adjournment, on the basis, not because we want to get back early, but this has been such a game changer, and our tactics have to be thought through, I believe?

The Greffier of the States (in the Chair):

The adjournment is proposed. Do Members agree to adjourn?

Senator I.J. Gorst:

Just before you call the adjournment, could I ask the Chairman of P.P.C. to consider overnight the sitting. Myself and, I know, another Minister are currently due to leave the Island on a flight on Thursday evening. I am in the process of changing that to Friday, but I wonder if the Chairman could consider whether he thinks we will be sitting on Friday, or whether we can decide tomorrow that any business not taken after we have sat, perhaps late, on Thursday will roll over to the next States sitting, and come forward with a suggestion tomorrow morning before we start business?

The Greffier of the States (in the Chair):

That would be helpful. I could just announce to Members before we adjourn that 2 matters have been lodged this afternoon. The Draft Aircraft Registration (Jersey) Law, by the Minister for Economic Development, and the Draft Air Navigation (Jersey) Law, by the Minister for External Relations. Very well, the Assembly will reconvene at 9.30 a.m. tomorrow morning.

ADJOURNMENT

[17:24]