

# STATES OF JERSEY

## OFFICIAL REPORT

TUESDAY, 17th JUNE 2008

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

### **STATEMENTS ON A MATTER OF OFFICIAL RESPONSIBILITY**

#### **1. Statement by the Attorney General regarding the implications of the Police Procedures and Criminal Evidence (Codes of Practice) (Jersey) Law:**

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

The headline in the *Jersey Evening Post* on Saturday was: “Now they can lock you up indefinitely.” The secondary headline was: “Lawyers on alert as Minister scraps prisoners’ rights.” Both the headlines and the accompanying reports are inaccurate and potentially worrying to members of the public. As the Partie Publique responsible for many justice issues and as legal adviser to the States, I would like to make this statement about the law which I hope will be of some reassurance to the community. The provisions of Code C, which were made by Order under Article 61 of the Police Procedures and Criminal Evidence (Jersey) Law 2003 (P.P.C.E.), are guidance to the police about the treatment and detention of suspects before charge. The code was not itself designed to lay down limits on the period of detention as such, but by prescribing procedures to support the limits provided for by part 5 of the P.P.C.E., which is yet to come into force. Because part 5 is not yet in force, the position in relation to detention remains today broadly as it was before the enactment of the P.P.C.E., which is that, other than in relation to terrorism, there are no statutory limits to detention before charge. The procedures prescribed by the Order made by the Home Affairs Committee in 2004 allowed for multiple extensions of detention, but this is only part of the picture because these could nonetheless only happen to the extent that the law generally permitted detention to take place. The fact that there are no statutory limits to detention before charge does not mean that the police can detain a person indefinitely. They cannot do so and there are several safeguards in place against any abuse of power by the police in this connection. Firstly, the code itself requires that detention for longer than 24 hours must be authorised by a senior officer who can only authorise continued detention for a further period of up to 12 hours if satisfied as to the need to continue detention as prescribed in the code and so on for further periods. Secondly, as a public authority, the police are under a duty to act in a way which is compatible with the convention rights by virtue of Article 7 of the Human Rights Law. That means that they must have regard to an individual’s rights under Article 5 of the European Convention on Human Rights and ensure that he is brought promptly before the court. What amounts to promptness will depend on the circumstances of each case. For a serious or complicated offence, requiring considerable gathering of evidence, the period may be longer than in a simple or less serious case. Thirdly, Article 5.3 of the European Convention on Human Rights requires that a person in police detention: “Shall be brought promptly before a judge or other authorised officer authorised by law to exercise judicial power,” so that the lawfulness of his detention can be reviewed. Although the European Court of Human Rights has not set a specific limit, in one case, *Brogan v U.K.*, the court decided that a period of 4 days and 6 hours before a first court appearance was too long. In other cases relating to longer periods of detention, for example, *Koster v Netherlands* - 5 days; *McGoff v Sweden* - 15 days; *Salov v Ukraine* - 7 days, the court has unsurprisingly found a breach of Article 5. Because the Human Rights (Jersey) Law 2000 is in force, a breach of a convention right can be raised in the Jersey courts, so a person detained in Jersey who thinks that his detention is unlawful in terms of Article 5 can bring proceedings in the Royal Court alleging a breach of his right. There is no doubt that such an application would be heard by the court as a matter of urgency. Lastly, there is also the possibility of applying for a writ of *habeas corpus* or to the Royal Court under its inherent jurisdiction for a review of the detention. In the circumstances, it can be seen that it is highly unlikely that the right of an individual under Article 5 of the European Convention on Human Rights will not be observed. I am not aware of any challenge in the courts, whether successful or unsuccessful, to the use of police powers to detain suspects in recent times.

##### **1.1.1 Deputy R.G. Le Hérissier of St. Saviour:**

Could the Attorney General define whether there exists an absolute limit or do phrases like “promptly” make it very clear, in fact, that discretion still exists?

**The Attorney General:**

As set out in the statement, the Court of Human Rights has not yet set a specific limit. It is said in *Brogan* that 4 days and 6 hours was too long and the working assumption which has been taken by many member States, including the United Kingdom, is that 4 days is the maximum.

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

Could the Attorney General please explain under the provisions of the Articles of the European Court of Human Rights how the United Kingdom is therefore able now to have made this legislation for 4 days and how that is going to work?

**The Attorney General:**

I think that is a matter for the Prime Minister of the United Kingdom rather than for me.

**1.1.3 Senator S. Syvret:**

In his statement, the Attorney General says that the statement in the *Jersey Evening Post* was inaccurate. Is it not the case, as it appears to me from reading his statement, that it was only inaccurate insofar as it implied that the ability to detain indefinitely was something new? It seems to me from the statement of the Attorney General, and from the Minister for Home Affairs, that we have been living in a state of ignorance and, in fact, effectively, the power to maintain indefinite periods of detention was already in the existing Regulations.

**The Attorney General:**

No, Sir, I think that is not correct. I refer the Senator back to my statement and it is clear from my statement that although there are no statutory limits to detention before charge, the police cannot detain a person indefinitely for all the reasons which I have given. Therefore the articles were not accurate.

**1.1.4 Senator S. Syvret:**

Is it not the case that it is unsatisfactory for such a basic right as a person’s liberty to depend primarily upon them having to take legal representation to court, be it *habeas corpus* or be it under Convention rights rather than it being clearly defined in legislation that a person cannot be detained indefinitely without charge?

**The Attorney General:**

I think that is, largely speaking, a matter for political judgment rather than for me. What I would say, I think, is that the existence of a legal right is the same, whether it arises by virtue of the Human Rights Law and the application of Convention Rights or whether it arises by virtue of a statute which the States have adopted. In either case, if the person concerned has been kept in police custody for longer than he or she should have been, he or she will have to make that application to the court to enforce his right.

**1.1.5 Deputy K.C. Lewis of St. Saviour:**

I think this is a question of interpretation, Sir. Would it not be expedient to include the phrase “not to exceed X amount of days” to avoid confusion?

**The Attorney General:**

I think, Sir, that is a matter for the Minister for Home Affairs when she comes to make the next Order.

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



I have 2 questions, Sir. One, I am not a lawyer. In his statement, the Attorney General says: “Lastly there is also the possibility of applying for a writ of *habeas corpus* or to the Royal Court under its inherent jurisdiction for a review of the detention.” Could he please explain that to those of us who are not lawyers; and, on the subject of lawyers, could he tell us, as this has raised a significant degree of concern in the community, what the legal community has said to him, if anything, about these issues which have been reported in the *Jersey Evening Post*?

**The Attorney General:**

On the second of those questions, I am aware that there has been some e-mail correspondence passing between individual lawyers and a member of my department. I think that the result of that e-mail correspondence was that the individual lawyer was satisfied that his initial concerns were not justified, but I have not spoken to him directly so I cannot really add to that. On the first of the questions, the writ of *habeas corpus* is one of the prerogative writs. It is a very ancient writ and it literally means “let the body be released” and it is a mechanism by which one can apply to the court for an order that somebody be produced before the court to ensure that their safety is protected and they can make whichever applications to the court which the law allows them to make. It has the effect in Jersey that there can be an application to the Royal Court under its inherent jurisdiction to review detention as well, but it comes to the same thing.

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

Is this ancient practice, which I do realise now is something that I have had knowledge of in other circumstances... but in this instance, is this an ancient right that would be difficult, lengthy, known to a person who was held and also prohibitively expensive to a person who was held or is it something that is going to produce... although it is a last measure of mechanism, is it something that would be difficult for somebody who is incarcerated to enact and receive prompt attention for in an inexpensive way?

**The Attorney General:**

If I may, I will restrict the question to detention at police headquarters because this is what has given rise to the statement. There are provisions under the code for a person to have access to legal advice at police headquarters and it should therefore be absolutely possible for any such person to be made aware of his rights to apply to the court either for the *habeas corpus* or under the court’s inherent jurisdiction to review periods of detention, and I would expect all practising lawyers to be aware of that right. As to whether or not it can be done speedily, the court has always taken issues of the liberty of the subject very carefully and very speedily and so I have no doubt that it would be taken quickly and speedily by the court. As to the cost, the legal aid service provided to persons in detention at police headquarters is, for all intents and purposes, free, so that should not be difficult.

**1.1.8 Senator M.E. Vibert:**

I would like to refer to the last paragraph of the Attorney General’s statement and it states: “In the circumstances, it can be seen that it is highly unlikely that the right of an individual under Article 5 of the E.C.H.R. (European Convention of Human Rights) will not be observed.” The corollary of that, I presume, is that it is possible, though highly unlikely, that it will not be observed and also can he confirm that without a statutory limit, an individual does not have that security of knowing that he can only be held for a certain time and would have to apply to the court if he felt it was being abused rather than there being a statutory limit which would make his detention for any period further than that absolutely illegal?

**The Attorney General:**

On the first of those questions, I used that language really to indicate that it was, in my view, highly unlikely that the police would not observe the right of an individual under Article 5. There is, in my view, no doubt at all that the courts will observe the rights of the individual under Article 5 so I am grateful for the opportunity to clarify that particular point.

**Senator M.E. Vibert:**

The second point was that without a statutory limit, the person being detained has to rely on access to the court because there is not a statutory limit which would otherwise apply.

**The Attorney General:**

That is very similar to the question which Senator Syvret put to me. The legal right is there and whether it is a statutory limit or whether it is a right under the Human Rights Law, there would still need to be an application to the court but, ultimately, this is a question for the judgment of politicians when they come to look at the relevant legislation in the future. If it is thought that it is better to have the statutory rights than these rights, then, of course, that is entirely a matter for the judgment of Members. I just add that, so far, by enacting part 5 of the P.P.C.E. Law, that Members have indicated that is their judgment and I have no doubt that, at some future date, that part of the law - probably amended slightly - will be put before Members to come into force.

**The Bailiff:**

We have time for one more question.

**1.1.9 Deputy A. Breckon of St. Saviour:**

In the statement, the Attorney General has said that the detention may continue for a further period of 12 hours. That is from a senior officer. How long would that continue? Is there any guidance of what has happened in existing cases where it has, in fact, been done and the other question, Sir, which I think has been answered, is would anybody detained be aware of their rights and that this was happening and it was a 12-hour extension?

**The Attorney General:**

I think, Sir, in relation to how it has worked in practice, the Minister for Home Affairs has covered most of that in her statement which she is about to make, but the way in which it is working at the moment, it would require the Chief Inspector to authorise the further detention periods.

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

May I ask that the States consider a proposition that we raise Standing Orders, Sir, to allow for questions to be asked on these matters today. If we set aside 3 States days for business, it looks as though we will probably be finished well within the first day, Sir, and I think given the gravity of the topic and the concern in the public, that we should really enable all Members, who have questions, the opportunity to put them to the Attorney General and the Ministers in turn upon the subject and I would ask, Sir, that the States lift Standing Orders to allow those Members who still have questions the opportunity to do so. I did see that there were still a couple of lights flashing when you called time, Sir.

**The Bailiff:**

Which Standing Order are you asking the States to lift? I am just checking the Standing Orders, Deputy, because I do not think it is quite as straightforward as that. My recollection, although it may be in error, is that there is another Standing Order which requires the presiding officer not to allow question time to turn into a debate.

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

My request was to suspend Standing Orders so that questions can be asked and Standing Orders would cover all of the matters in relation to your judgment, Sir, on these issues. I am asking specifically that Standing Orders be suspended to allow Members to ask these questions that they still have.

**The Bailiff:**

I do not think you can suspend all Standing Orders, Deputy. You have to be specific in relation to the Standing Order that you wish to suspend and I imagine that the Standing Order you had in mind was 68(3) which says that after a member of the States has made the statement, the presiding officer shall allow a period of up to 10 minutes for questions. The difficulty with that is that Standing Order 63(8) provides that neither a question nor the answer shall be made a pretext for debate.

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

I am not asking for us to have a debate, Sir. I am asking for us to allow further questions.

**The Bailiff:**

If you lift the time limit on question time and there is no time limit on questions, you very quickly get into what is tantamount to a debate. It is a matter for Members. I think what you have to do, Deputy, is to propose that Standing Order 68(3), which is a Standing Order that limits questions after a statement to 10 minutes, be raised for the purpose of questioning the Attorney General without limit of time and that Standing Order 63(8) be raised so that the provision that neither a question nor an answer shall be made a pretext for a debate is also raised. Do you wish to make that proposition?

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

I do, Sir. I do not have any questions myself but I saw that Members did have questions and I think that, given the gravity of the subject, we should lift these Standing Orders, if possible, to allow those questions.

**The Bailiff:**

Is the proposition of Deputy Le Claire, that the provisions of Standing Order 68(3) and 63(8) be suspended so that the Attorney General may be questioned without limit of time on the statement that he has raised, seconded? **[Seconded]**

**Senator M.E. Vibert:**

It seems to me that I would support continued questions but I would prefer to hear Senator Kinnard's statement as well and be able to ask questions on both rather than do it piecemeal.

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

I would like put the counter-proposition, Sir. I believe the Attorney General has made an entirely comprehensive statement on this matter which is very well understood by the majority of Members and if some Members have difficulty or wish to pursue further questions, I have no doubt, Sir, that the Attorney General would be only too happy to put himself at their disposal for explanations at a later time but I would like to press on with business because I would wish to hear what the Minister has to say on the subject and I think that the aspects of legal interpretation are now effectively over.

**The Bailiff:**

Before I put the matter to the Assembly for a vote, I ask the Attorney General whether he would be prepared to make himself available for other Members to explain the statement further, should they so wish.

**The Attorney General:**

Indeed, Sir, reserving my Article 3 rights about torture. **[Laughter]**

**Senator S. Syvret:**

I would like to make the counter-point to that made by Deputy de Faye. This is the Island's legislature. It is here that we publicly hold the administration of power to account on behalf of the people **[Approbation]** and it seems to me entirely right that when we are dealing with a matter of

such potential gravity, and when there are still some ambiguities about the situation, we really should ask further questions.

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

I am just questioning whether it is necessary to have an extension at this moment in time. The Minister for Home Affairs has withdrawn her Ministerial Order for the moment and I, for one, and certainly others, I am quite sure, would like to have further discussions with her and possibly the Attorney General and if she is intending to reintroduce, at least it will be done with knowledge and hopefully be done through this House as opposed to a Ministerial Order.

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

In support of the statements that were made by Senator Syvret, can I just ask Members to consider the first paragraph of the statement this morning from Her Majesty’s Attorney General. In the second sentence, Her Majesty’s Attorney General makes the point that both the headlines and the accompanying reports are inaccurate and potentially worrying to members of the public. He then goes on to say: “I would like to make this statement about the law which I hope will be of some reassurance to the community.” States Members are always at liberty to speak to Her Majesty’s Attorney General if they wish. He may or may not be willing to speak to them but the matter remains that this statement was made this morning to reassure the community and private discussions among States Members, as suggested by Deputy de Faye, does not address the concerns in public of the community. I make the proposition and ask for the appel.

**The Bailiff:**

I ask the Greffier to open the voting which is for or against the proposition of Deputy Le Claire that Standing Orders be lifted to enable unlimited questioning of the Attorney General.

<b>POUR: 36</b>	<b>CONTRE: 12</b>	<b>ABSTAIN: 1</b>
Senator S. Syvret	Senator L. Norman	Deputy of St. John
Senator F.H. Walker	Senator T.A. Le Sueur	
Senator W. Kinnard	Senator T.J. Le Main	
Senator P.F. Routier	Connétable of Trinity	
Senator M.E. Vibert	Connétable of St. Lawrence	
Senator P.F.C. Ozouf	Connétable of Grouville	
Senator B.E. Shenton	Connétable of St. John	
Senator F.E. Cohen	Deputy J.J. Huet (H)	
Senator J.L. Perchard	Deputy J.B. Fox (H)	
Connétable of St. Ouen	Deputy S.C. Ferguson (B)	
Connétable of St. Mary	Deputy of St. Peter	
Connétable of St. Peter	Deputy G.W.J. de Faye (H)	
Connétable of St. Clement		
Connétable of St. Helier		
Connétable of St. Brelade		
Connétable of St. Martin		
Deputy R.C. Duhamel (S)		
Deputy A. Breckon (S)		
Deputy of St. Martin		
Deputy G.C.L. Baudains (C)		
Deputy P.N. Troy (B)		
Deputy C.J. Scott Warren (S)		
Deputy R.G. Le Hérisssier (S)		
Deputy J.A. Martin (H)		
Deputy of St. Ouen		
Deputy P.J.D. Ryan (H)		
Deputy of Grouville		

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

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

I would want to thank the Attorney General for his statement. My concern, Sir, which he may be able to help me with, is that, as an incredibly eminent lawyer, it took him a number of paragraphs halfway down the sheet and on to the back to explain to us, who have been working at this over the weekend, and read incredibly slowly and deliberately so that we could take it in, what the situation was. We are under no emotional pressure. We have the day before us. Would he not agree, Sir, that sitting in a cell in police headquarters wondering what on earth one's rights were, that a paragraph set out like this on a statement may be somewhat inadequate, relying on *habeas corpus* and human rights even less so, and that from the, as it were, customer's point of view, a clear statutory limit would be easier for his legal colleagues to communicate to their clients?

**[Approbation]**

**The Attorney General:**

I think I have answered that question already. There is a clear statutory limit in part 5 which, when the States bring it into force, will set that. The reassurance I was trying to give to the community today was that despite the fact that part 5 is not in force, in fact, the police do not have unlimited rights to detain people. Therefore, the reports that have been made in the media over the weekend were incorrect and members of the public might be concerned about that.

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

As very much a point of clarification here and obviously as a non-lawyer, in the fourth paragraph of the Attorney General's statement, it stated: "A senior officer can only authorise continued detention for a further period of up to 12 hours if satisfied as to the need to continue detention ... and so on for further periods." In the statement by the Minister for Home Affairs, which we are yet to have, the first paragraph in italics gives, as I understand it, the original Order and that refers to: "May authorise further detention up to a further 12 hours from the time of the review." Now, the clarification I seek is that in reading that as a layman, I find there is a conflict between those 2 statements because you have: "And so on for further periods" versus: "A further 12 hours" effectively full stop. Is it that the: "And so on for further periods" is covered elsewhere in the code and we are focusing on one particular paragraph whereas we should be taking the whole of the code, as it were, or does his statement refer to the revised amendment, or is there a further clarification to make?

**The Attorney General:**

I am grateful for the question. The difficulty in this, which is the one which I tried to explain in the second paragraph of my statement, is that this code was not intended to set down limits for periods of detention. What it was intended to do was to set down processes for procedures for how further extensions of detention would be authorised and that is why it is framed in the way it is. There may be more than one review of the period of detention while the person is in police custody and if there is more than one review, then the code, as it used to be drafted under the 2004 Order, required that the officer who would conduct the first review would then conduct all subsequent reviews. The difficulty in the question that has just been put to me is that it is assuming that the provisions of this

Order prescribe time limits. That is not what their purpose is. They are describing procedures for extending time limits. The time limits themselves are in part 5.

**1.1.12 Senator S. Syvret:**

In an earlier answer, the Attorney General asserted that either way, whether there was a statutory time limit or whether the situation remained as it is, it would have to be determined in the event of a dispute by going to court. Surely that is not the case. If there is a statutory time limit, the police must automatically release the person concerned when that time limit is reached unless they have reason to detain them and it seems to me that there is a fundamental difference, then, in respect of a statutory limit and then the difficulties involved in the person having to go to court proactively or get their legal representative to go to court to gain their release. So I would like him to explain that point. Also, it seems to me that the Attorney General places a great deal of reliance upon the right of a person to apply to a court either *habeas corpus*, human rights, *et cetera*, in order to gain their release. As the *Partie Publique*, as I think he described himself, responsible for many justice issues, will he now give a guarantee to the Assembly that anyone detained for longer periods of time will have guaranteed access to the courts and to lawyers 24/7.

**The Attorney General:**

Leaving part 5 aside for the time being, the States could pass a law which said that the police must not hold somebody in detention for more than 4 days without presenting them to a court. If the police then held somebody in detention for more than 4 days, what happens? How are the person's rights protected? He applies to the court. Under Human Rights Law, the individual has a right not to be detained for more than 4 days without application to a court. How, then, is the right protected if the police detain him, despite that Human Rights Law? The answer is he has to apply to the court in both cases, so there is much to be said in a statutory framework, no doubt for many of the reasons which the Dean advanced. That statutory framework does exist in part 5. There have been some difficulties with it, which is why it has not yet come into force and that will be tackled later, but in the absence of it being in force, the protection is still there for persons who are in police custody. Will I give guarantees that...? I am not sure what guarantees I was asked to give but it struck me that they were in rather wide terms.

**Senator S. Syvret:**

I am happy to clarify them, Sir.

**The Attorney General:**

Please.

**Senator S. Syvret:**

The Attorney General places great reliance on the ability of a person detained to apply for their release to the courts. It seems to me that if that is indeed to be the backstop that people are expected to rely upon, it follows they must have, then, full access to the apparatus of justice and therefore 24 hours a day 7 days a week access to legal advisers and, indeed, to the court.

**The Attorney General:**

I think the question of 24/7 access to a court has been one of the problems underlying the bringing into force of part 5 of the P.P.C.E. and this really is a matter more for the Minister than it is for me. What I am certainly able to say is that when a person wishes to bring their application to the court, I am quite sure that the court will do everything in its power to ensure that that application is heard promptly and when I say "promptly", I mean very promptly.

**1.1.13 Senator S. Syvret:**

May I ask a supplementary question? The Attorney General suggests that if the police held somebody beyond a statutory period of time without charging them, the person would still have to

go to the court for release. Certainly, it is true that they could go to the court but, presumably, if there is a statutory limit on the amount of time a person can be detained without charge and the police breach that, the police, then, are breaking the law and it seems to me that puts an entirely different complexion on the situation.

**The Attorney General:**

The police are, of course, subject to the law, as all of us are, and they are subject to that law whether it is a statutory law or whether it is the European Court of Human Rights directions as to what is unlawful or not. They are a public authority under the Human Rights Law so the position is, to my mind, 6 of one and half a dozen of the other as far as the police are concerned, but that is not in any sense to say that it is wrong to have statutory limits. The States have already adopted statutory limits. The point I am merely making is that the protection for members of the public is there at the moment.

**1.1.14 Deputy G.C.L. Baudains of St. Clement:**

It does seem to me that without a statutory limit on detention, the onus is on the detained person to obtain his or her own release while with a limit, the onus surely must be on the police to work within the time limits and it also, to my mind, has a secondary advantage of encouraging the police to work as quickly as possible, a pressure absent from a situation where further detention is available. Does the Attorney General not agree that a statutory limit would remove the uncertainty from a person who will be under stress at the time and instead give certainty and clarity to that person?

**The Attorney General:**

I have already answered this but there is no lack of certainty about the 4-day rule and to the extent that there might have been any police officers who thought there was a lack of certainty, I am quite sure that the debates that have taken place, the questions and answers given today, will make it quite plain what the position is. There is a maximum on police detention of 4 days following which the police would be acting unlawfully if the person has not been brought before a court. So I think there is certainty in that respect.

**1.1.15 Deputy P.N. Troy of St. Brelade:**

I would like the Attorney General to confirm that, in general, if someone is being detained for 3 or 4 days at the police station, it would normally be for quite a serious crime. It would not be for a low-level crime, as such, so could he confirm that that is probably the way in which that detention would be operated, that it is for serious crime levels rather than lower level crimes and also could he give a programme for the implementation of part 5 which is currently not in existence. What is his timescale, does he feel, for that coming forward?

**The Attorney General:**

As to the second question, that is a matter, respectfully, for the Minister for Home Affairs rather than for me. The first question is probably also more for the Minister for Home Affairs than for me because I am not accountable or responsible for the performance of the States of Jersey Police but, of course, I share the views of the Deputy that it is very unlikely that the police would want to detain someone for 4 days if they were investigating a parking offence and, of course, it is bound to be a serious offence.

**1.1.16 Deputy J.G. Reed of St. Ouen:**

In paragraph 2 of the Attorney General's statement, he speaks of the present situation which is that: "Other than in relation to terrorism, there are no statutory limits to detention before charge." Would the Attorney General be good enough to highlight what the statutory limit is relating to terrorism?

**The Attorney General:**

It is 48 hours' detention brought before a court and then, as far as I recall, it is 7 days when authorised by the court.

**1.1.17 Deputy K.C. Lewis:**

Anybody visiting London at the moment, Sir, will not fail to notice opposite the Houses of Parliament and Parliament Square that there is a demonstration by of a man complaining about injustices against the Iraqi war. It is illegal to have demonstrations there but one can apply for a temporary permit which they are entitled to. The gentleman concerned has a filing cabinet full of temporary permits which he submits every 7 days and he has been there 2 and a half years. It is just a matter of clarity, Sir, that if the inclusion was up to a maximum of X days, that will sort out the whole problem. Does the Attorney General agree that there must be clarity?

**The Attorney General:**

I am all in favour of clarity, Sir.

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

This is quite a difficult issue to understand. I might not have this right but just to put my point across, would there be an issue here if the courts, albeit with a skeleton staff or emergency type of arrangement, were prepared to sit on a Saturday or a Sunday?

**The Bailiff:**

I am wondering if that is a question for the Minister for Home Affairs rather than for the Attorney General. Does it arise out of the Attorney General's statement?

**The Deputy of Grouville:**

Well, I think so because I cannot see that there would be an issue if the person was able to be charged or let go so I think it is a question for the Attorney General.

**The Attorney General:**

What is under discussion here is detention before charge rather than detention after charge so once a person has been charged, the law is that that person must be produced promptly to the court. I think it is under the 1864 law and criminal procedure the expression is *aussitôt que possible*: as soon as possible. That is the current position. What we are considering here is police detention before charge and ... I am sorry, Sir, I have now forgotten what the question was. Saturday courts it was, was it not? One of the issues which is engaged in detention before charge bringing a person before a Magistrate is the problem which arises from constituting the court from having the Magistrate on call 24 hours a day 7 days a week, whether or not the court staff are going to be available to be brought on for recording equipment and so on, these are all matters, frankly, which are for the Minister for Home Affairs rather than for me to deal with.

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

As Jersey does not have a lay visitors scheme, is the Attorney General satisfied that there are sufficient safeguards at the police stations to ensure that those who are in custody will have access to the proper legal advice.

**The Attorney General:**

As far as I am aware, Sir, there is no doubt that there is access to legal advice. The Jersey Law Society does provide legal aid, there is a duty rota scheme as a result of which lawyers are on hand to advise persons in police detention. I believe that, therefore, does take place. The lay visitors scheme is something I am more inclined to think of in the context for the prison rather than police headquarters but, of course, insofar as the moment of charge is concerned the Honorary Police and Centeniers do just the exercise which lay visitors would do to make sure that a person has got no



complaints about his treatment. Again, I come back to the answer I gave to the Deputy of Grouville, that this is really more concerned with detention before charge rather than after charge.

**The Deputy of St. Martin:**

Could I just clarify the point that I do not wish to correct the Attorney General, but the lay visitors scheme is not anything to do with police? The purpose of a lay visitors scheme is have independent people come around the police station. One could hardly say that Honorary Police are independent even though they may be separate from the actual States police force.

**1.1.20 Deputy R.G. Le Hérisier:**

Recently there was a very highly publicised case where a person was arrested and could presumably have fallen foul, so to speak, of this particular process. Would the Attorney General comment on the fact where people are arrested and, in some cases, subsequently released why is there not a procedure in place where these people are asked if they would voluntarily attend at the station, and admittedly if they were not to attend there would be the possibility of arrest? Why is the process of arrest used with all the subsequent problems of finding people “guilty” before the process has run its course?

**The Attorney General:**

The question of whether to arrest or not is an operational question for the police and it is really not one for the Attorney. There will be occasions when, in the exercise of their operational judgment, the police think it is appropriate to exercise their powers of arrest and there will be others when they will invite persons to attend at police headquarters for interview. Really, I am not sure I can add to that. It is a matter for the police.

**1.1.21 Deputy A.D. Lewis of St. John:**

I wonder if the Attorney General could clarify something. That the situation with regard to the current Order that is causing Members some concern, was a result of an Order that was passed by the previous Committee and not therefore what, as some Members have suggested, that this is a result of the Ministerial system, and that that is at fault. Could he just clarify that the thing that is concerning Members is a result of an Order that was passed some years ago and not as a result of any change that has been made recently?

**The Attorney General:**

I think I take the fifth, Sir.

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

I did say that I was not going to ask a question but I think in defence of the question period it has been quite useful to ask Her Majesty’s Attorney General the questions that we have, and I thank him for his fortitude or strength in carrying on with his answers. I would just like to ask him this question. Given that questioning can occur under operational procedures this morning on an ongoing basis, one that we even question about whether or not that is appropriate, if somebody is detained in Jersey today, at the same time that question time began today, and then he is technically able to apply for release to the Royal Court on Saturday morning, they could technically be held for a further 2 more days during that detention until Monday morning, when they could apply. Would they then be able to be continually questioned under the law by the police in an operational way? Would those people that are arrested on a wrong day be able to be continually questions under the operational guidelines within the law for those extra 2 days, or would questioning be suspended until they were able to apply to the court when the court was able to sit?

**The Attorney General:**

The codes which have been promoted and to which the police have been working for a long time, even before the Order of the Home Affairs Committee in 2004, do provide guidance for how the

police should go about the detention of suspects before charged, what they should do to make sure meals are available, to make sure there are breaks in the question periods and so on. Ultimately, the reason that the police are questioning the suspects is because they hope to bring a charge before a court. It is the suspects' answers to those questions which the police want to get before the court. The court always has the power to reject, to not to allow the evidence of those suspects' answers to be given if it thinks that the answers have been given under some form of compulsion, answers given which do not truly reflect what the person would have wanted to say. There was a case involving a man called Prager many decades ago when the court held that his will had crumbled because he had been held in police custody for such a long time and subject to such extensive questioning that what he said was not reflective of anything that was credible. Therefore, the admissions that he made after a very long period of police custody were not admitted and his denials that he had put forward up to that point were admitted. So, the control of the matter ultimately lies in the hands of the court. As to the management of the police side, if there is no prosecution or if there is a complaint to the Police Complaints Authority or to the police about the way in which the police have dealt with the investigation that, of course, will be investigated and the ordinary rules which are set out in the codes will be applied against the conduct of the police officers conducting that investigation, which is a further protection for those who are taken into police custody.

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

Can I thank Her Majesty's Attorney General for the extensive question period?

## **2. Statement by the Minister for Home Affairs regarding the withdrawal of R&O 69/2008 Police Procedures and Criminal Evidence (Codes of Practice) (Amendment) (Jersey) Order 2008**

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

I make this statement because of public and Members' concern following an article that appeared on the front page of the *Jersey Evening Post* on Saturday, 14th June, under the headline: "Now they can lock you up indefinitely." The report alleges that I had authorised the indefinite detention of suspects without charge under delegated powers and that I had not consulted with interested parties. The amendment concerned is specific change to paragraph 16.5 of Code C of the Police Procedures and Criminal Evidence (Codes of Practice) (Jersey) Order 2004. In case Members are not aware of the material point in question the original wording of the paragraph 16.5 was: "The detention of any person for a period in excess of 24 hours must be authorised by an officer of the rank of Chief Inspector or above and the custody record will be endorsed to that effect. The officer conducting that review will endorse the custody record and may authorise further detention up to a further 12 hours from the time of the review." The amendment made by R&O 69/2008 was as follows: "The detention of any person for a period in excess of 24 hours must be authorised by an officer of the rank of Chief Inspector or above and the custody record will be endorsed to that effect by that officer. An officer of the rank of Chief Inspector or above may authorise a further period of detention of up to 12 hours from the time of the review and may conduct further reviews and authorise further periods of such detentions." In reality the only material or practical change that took place is that any Chief Inspector could carry out a detention review as opposed to the officer conducting the original review. This was a measure requested for practical reasons and to give more flexibility to the review process. The amendments to Code C contained in the Order did not affect permitted periods of detention. There is no power to detain indefinitely under R&O 69/2008, nor under the previous Order which was brought into force by the former Home Affairs Committee on 1st December 2004. The word "indefinite" means "not clearly defined or stated." In my view therefore, it is quite wrong to associate this with the law in Jersey on limits for detention and subsequent review. It also ignores the crucial point that the police manage the detention of suspects

within the requirements of the E.C.H.R. It is my belief that the present system of detention and review is operated perfectly compatibly with E.C.H.R. requirements. The police as the public authority under Article 7 of the Human Rights Law are obliged to act compatibly with convention rights and so must have particular regard to comply with Article 5.3 which means they must get detained people before court promptly. This is exactly what the police do in practice. The police are, of course, mindful of and work within the principle of the decision of the European Court of Human Rights in *Brogan v United Kingdom* where a period of detention of 4 days and 6 hours was held to be outside the maximum permitted period of detention without a person being referred to a judicial authority. In effect, since that decision of the European Court it has always been that where it could be justified on the circumstances of the case the final backstop for detention by police has been 96 hours or 4 days, although few people are detained more than 36 hours before a court appearance because of the requirement to place detained people before the court promptly. Since 17th April 2007, 3,306 people have been arrested and placed in police custody. Of these people 104, about 3 per cent, have been arrested and held in police custody for more than 24 hours prior to being either charged or released. Of those 104 people, 86 were held for between 24 and 36 hours, 17 or about 0.5 per cent were held for between 36 and 48 hours, and one person was held for just over 48 hours. I am advised by the police that the practice is that detention of any person for a period in excess of 24 hours must be authorised by an officer of the rank of Chief Inspector or above, and the officer conducting the review before the 24 hours has expired will endorse the custody record and may authorise further detention up to a further 12 hours time of the review. Although acting promptly will differ to some extent in each case and depending on the circumstances, as we have seen, where someone has been detained in excess of 24 hours, 36 hours has tended to be the maximum period adhered to following appropriate review procedures. Prior to the introduction of the P.P.C.E. (Police Procedures and Criminal Evidence) Law the police had already voluntarily adopted procedures to extend in 12 hour blocks under Code C and these were codified by the 2004 Order of the Home Affairs Committee, and I have a copy of them here, Sir, if Members are interested. An extension would need to be, of course with good reason, and in accordance with the requirements of Article 5.3 of the European Convention of Human Rights, the convention rights must and do take precedence. Consequently detention beyond 36 hours happens rarely. Firstly in order to observe an individual's rights and, secondly, in case it had the detrimental effect on subsequent judicial proceedings. I must emphasise that R&O 69/2008 did not alter the existing position. Nevertheless I have decided to withdraw R&O 69/2008 because I am a strong believer in civil liberties and would not wish the impression to be left that the Order was an attempt to give the police additional powers to detain. This will be made clear in the terms of any revised Order which may be proposed after further consultation, namely that there are no additional powers to detain. As an additional safeguard, I shall be taking advice from the Law Officers as to whether the implications of the *Brogan* decision of the European Court of a 96 hour maximum limit can be enshrined in the Order. Given the public interest in this issue I will circulate the draft terms of any new Order to Members as part of that consultation. My view, and that of the States of Jersey Police, is that extended reviews of custody should be conducted by the courts, and that everything should be done to ensure that people are brought before the courts promptly. Ideally time limits for detention by the police ought to be further covered by part 5 of P.P.C.E. which deals with bail and detention. Unfortunately, for practical reasons, it has not yet been possible to bring that part into force, but I am hopeful that we will be bringing a proposition to the States in the autumn to enable this to happen. I shall now come on to the circumstances behind the issuing of the Order on 5th June 2008. In April this year it was discovered that the amendment in question had been in abeyance for some time. In fact it had been approved in principle by the former Home Affairs Committee on 19th May 2005 by virtue of Act A16. Contrary to what was said in the *J.E.P.* (*Jersey Evening Post*) article, this was subsequently promulgated in the *Gazette* in accordance with Article 62 of the P.P.C.E. Law at that time. No comments were received as a result of the consultation process. The department sent the draft Order to the police on 8th April this year to check whether they were still content for it to be brought into force. The Law Draftsman was

subsequently instructed and the Order was then sent to the department for Ministerial approval. It appears, Sir, that inadvertently the Order was referred to me for signature without the usual procedures being followed. The Home Affairs Department has the policy of holding regular Ministerial meetings at which decisions are taken and from which the requisite documentation is raised for recording on the LiveLink system. However, on this occasion, tried and tested procedures seem to have broken down. I will be reviewing with my department the procedures involved and any lessons learned to make sure that this does not happen again. Having said that, the Authority of the Committee Act is transferred under Article 50(2)(b) of the States of Jersey Law notwithstanding the passage of time. Finally, I regret very much the way in which what was a minor change to current procedures, that is to allow any Chief Inspector to carry out a review rather than the original Chief Inspector, has been interpreted as something which it simply is not. The police do not and will not have powers to detain indefinitely. I apologise to Members and the public for the concern that has been caused by the misinterpretation of the effect of the Order and the way in which it entered the public domain.

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

Would the Minister first of all identify in what way the procedures under 62 Code of Practices Supplementary were not followed? Secondly, Sir, would the Minister not accept that assuming we take the Oxford English Dictionary definition of indefinite as: “Lasting for an unknown and unstated length of time” the following people confirmed to the media that a high profile suspect at the weekend could be detained indefinitely, and that people in the police service were: the Press Officer, the Custody Sergeant, the Duty Inspector and, I think, the head of C.I.D. (Criminal Investigation Department)? Would she confirm they all confirmed that a high profile suspect could be detained indefinitely in terms of the definition I have just given?

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

In terms of the procedures, Members will probably understand that this only broke in the news on Saturday and I have been dealing with queries from members of the public and the press ever since, so I have only been able to have a cursory look at the reasons behind what occurred on the day of the signing. Just a cursory look. I have indeed asked for a report and this is a matter that I will be taking up with my department in the days to come. But I have to say that I am not jumping to any conclusions at this stage. This is a matter that I have to investigate carefully, together with my department, and take on board any lessons learned. But, at this stage, I cannot say any more than that. I have not had the opportunity to have that in depth discussion with all my members of my department that will be necessary. In terms of what was asserted in terms of “indefinite”, I think the Attorney General has quite clearly made the point several times that the police are not able to hold anybody for an indefinite period of time. They are indeed curtailed on a number of fronts. One is the need to have to bring a person to court to be charged promptly. Promptly, promptly, promptly. Also they are curtailed by the *Brogan* decision from the European Court and they, of course, have to abide by the Human Rights Legislation. As to the assertion about who told what to the press; that is a matter, of course, that I again have to investigate. I have asked for any e-mail trail as to whether indeed what is asserted took place. I have not been provided with any of that, but that is an internal matter, I think, and I think, as the Attorney General has made it quite clear, any police officer that may not have known exactly what the terms were does indeed know. But I can absolutely assure everybody here that the Chief Officer of Police and those that are responsible for reviewing custody times are absolutely clear as to what all the provisions are in these very comprehensive codes which I have here today, and I am quite happy for Members to have a look at, Sir.

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

Would the Minister not accept 2 things; that the popular usage of “indefinite” is: “Lasting for an unknown and unstated length of time” and that to say “indefinite” is not indefinite is utterly

confusing. Secondly, Sir, if it is proven that there have been potentially tragic lapses in procedure, will she - as an honourable person, were those lapses to be proven - be resigning?

**Senator W. Kinnard:**

First of all, the word “indefinite” does not fit with the actual situation, which is the long-stop of 96 days and, indeed, the situation where the police are required to bring people before the court promptly. I do not accept what is being asserted by the Deputy. In terms of a lapse of procedure, as I have already said, I have not had an opportunity to look at this in depth - I have not yet had time to do that - that I will be doing, so it is impossible for me to say really at the moment what action would be appropriate to be taken.

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

Given that the Minister was President of the Committee when the proposed amendment was first proposed it is perhaps understandable that she would not read it too carefully, but who identified this amendment and asked for it to be brought, and who read and reviewed the amendments as written before they were picked-up, thank goodness, by the press?

**Senator W. Kinnard:**

Again, these are matters of detail which I have not yet had an opportunity to work through with my department.

**2.1.4 Deputy S.C. Ferguson:**

Surely the Minister can remember who came and said: “Hang on, we have not done this, we need it because we are having trouble with our Chief Inspectors having to stay on duty and sign forms”?

**The Bailiff:**

Deputy, I do not think you can ask a specific question like that if the intention is to identify an individual public servant, is it?

**Deputy S.C. Ferguson:**

I do not know, I think possibly it is of interest as to whether it came from the police or within the Minister’s department and so on.

**The Bailiff:**

Well, you can certainly put that question; did it come from the department or did it come from the police?

**Senator W. Kinnard:**

The original recommendation for the Order came, of course, from the Committee when it was made in the original 2005 Order and that will have come through the Committee system on a paper to the Committee. This latest Order came to me as Minister but I am still researching, Sir, the circumstances of how it came before me.

**2.1.5 Senator S. Syvret:**

I repeat a question put by Deputy Le Hérissier that I do not think was really answered satisfactorily, and I do not criticise the police for this because they do not want this, they believe, quite clearly, that this should be a matter for the courts but their clear understanding of the meaning of this was that they could renew the period of detention indefinitely. This was the opinion of the Duty Inspector, the Chief Inspector and the Duty Sergeant. This was the clear interpretation the police officers made of the situation.

**Senator W. Kinnard:**

I do not accept that assertion. As I say, this is a matter that I am taking up because it has been asserted and it is certainly not the view of the Chief of Police, it is certainly not the view of those who are responsible for reviewing these matters. I do not know the circumstances under which people were questioned in this matter, how questions were put or why indeed they were put. But indeed, Sir, I think it is absolutely clear to everyone now that, if they were not clear before, that there are indeed curtailments and always have been curtailments on the length of time people can be held in police custody without charge.

#### **2.1.6 Senator S. Syvret:**

The Order makes it clear that the terms of detention can be renewed, the periods of detention can be renewed up to a further 12 hours and for further periods of such detention. Now if the Minister is informing the Assembly that, in fact, such rights as to *habeas corpus* are protected by higher legislation then is it not the case that this Order is incorrect? It has been appallingly drafted [**Approbation**], it is incompatible with statutory legislation. Frankly, all of this stuff about indefinite and not clearly defined or stated... I mean, the difference between the 2 parts of the law cited in the Minister's statement is abundantly clear, one means "up to a period of 12 hours", the other one says "further periods". This statement is one of the worst pieces of sophistry I have ever seen come before the States.

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

I am not a legally qualified person and I doubt that there are very many of us in this Chamber who are, apart from our legal adviser to the States, the Attorney General, and the question was asked of me as to really a legal point as to does the second statement differ from the first statement in allowing unlimited powers of detention. I have said that that is not the case but I have been asked a legal question and I wonder if the Attorney General could assist and give a legal opinion on the 2 statements.

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

I think I have really said all I have to say on the subject. These codes were not designed to create time limits. The time limits are to be found in part 5 of the law. The codes are designed to create procedures, so the underlying implication in the question that somehow or other the codes authorise unlimited detention of suspects is wrong, because the codes cannot authorise that and if police officers thought they did they were wrong.

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

That is my point. The fact that the codes cannot authorise that renders them incompatible with statutory law.

#### **The Bailiff:**

I think the Attorney has probably answered that several times, Senator.

#### **2.1.7 The Deputy of Grouville:**

Could the Minister confirm if one of the driving forces or one of the issues here is the lack of Saturday court or emergency weekend court so that the detention before charge is kept to a minimum and, if so, who is responsible for putting arrangements in to ensure that the Saturday or emergency courts sit so that charges can be brought about promptly?

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

This is quite a long saga I am afraid, and the Deputy, of course, was a previous member of the Home Affairs Committee so she has some knowledge of this, and this is in relation to part 5 of the Police Procedures and Criminal Evidence Law which we have yet to bring into force, despite, I have to say, Sir, efforts on the part of the previous Home Affairs Committee and myself, as Minister, over about a period of 5 years. There are certainly longstanding minutes and

correspondence showing that we have been trying to fix this problem because of the difficulties in implementing the law in its original form and these, indeed, were discussed at the Home Affairs Committee on its meeting of 8th September 2005. At that meeting, Sir, a number of issues came out as causing difficulties for bringing in part 5 P.P.C.E.; one was the difficulty of Saturday courts. There was concern at the time that this would effectively mean that the Magistrate would be on call 24 hours a day, 7 days a week. There were also the costs involved which at the time were quite substantial in terms of bank holiday courts would vary from the cost of £62,000 to £78,000 per annum. Also additional costs of £120,000 to £180,000 per annum for standby cover that would be needed for weekends and extended obviously for some working days as well. There were difficulties, Sir, as well in terms of the legal aid provision because that was a significant factor in terms of the implications for the legal profession and the current legal aid system. The Law Society was consulted at the time by both the Attorney General and myself when I was the President of the Home Affairs Committee, and as the lawyers already carry out a significant burden providing legal aid there was reluctance at that time to see the legal aid burden extended any further. The solution, Sir, that we thought might work was that we held in-depth discussions with the Magistrate and the Assistant Magistrate so that we could amend part 5 of P.P.C.E. to alleviate the burden of the court but still obviously maintaining convention rights of the accused. The formula, Sir, that was put forward for part 5 was developed on the basis of some amendments which the Law Officers took forward into consultation with the U.K. Home Office lawyers and that did, in fact, take some time. The effect of the alternative arrangements does, in fact, reduce the overall implementation costs and, indeed, will enable us to bring part 5 of P.P.C.E. into force. But there will be some additional costs, of course, incurred.

**The Bailiff:**

Senator, I am sorry to interrupt you but...

**Senator W. Kinnard:**

I was just about to say, Sir, that we are now in a position where there has been agreement with the U.K. Home Office lawyers and we will be bringing part 5 to the States, hoping to bring it into force in the autumn.

**The Bailiff:**

I was looking to you because in accordance with precedent you are the Member who seeks to extend the time for the asking of questions. We have well expired the period during which the Minister can be questioned under Standing Orders.

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

I had thought that I made the point, Sir, in the first episode of this morning that it was to cover both question periods but if not, Sir, I again make the same proposal.

**The Bailiff:**

Very well, it is proposed that the time limit on questioning the Home Affairs Minister be suspended under Standing Orders, is that proposition seconded. **[Seconded]** I ask any Member who wishes to vote on this to return to his or her seat. I ask the Greffier to open the voting which is for or against the suspension of the time limit for questioning the Minister for Home Affairs.

<b>POUR: 29</b>		<b>CONTRE: 8</b>		<b>ABSTAIN: 1</b>
Senator S. Syvret		Senator F.H. Walker		Deputy of St. John
Senator W. Kinnard		Senator T.A. Le Sueur		
Senator M.E. Vibert		Senator T.J. Le Main		
Senator P.F.C. Ozouf		Connétable	of	

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

### 2.1.8 Deputy I.J. Gorst of St. Clement:

Would the Minister not confirm that in the absence of part 5 of the Police Procedures and Criminal Evidence (Jersey) Law the Order as is now written - and it probably appears in answers from the Attorney General as was previously written - does in actual fact allow for unlimited detention, because this Order is not about minimum periods, it is purely about the procedure for gaining a custody without a charge and therefore if one reads it in the plainest form of English it does allow for unlimited detention? I fail to see why the Minister cannot admit that and recognise that the important thing is to bring in part 5 as quickly as possible so that Members can rectify this situation we find ourselves in. **[Approbation]**

### Senator W. Kinnard:

I do not accept what is asserted. The Attorney General has repeatedly said that these are guidelines as to practice, and that the law that is guiding us is, indeed, a number of issues to do with the Human Rights legislation and the *Brogan* principle. The point is, is that Jersey is not in a situation where we have P.P.C.E. part 5 in force at the moment. That is not ideal from my point of view, from a political point of view I have been trying to get this on the statute books for 5 years. I am now close to doing that, hoping to bring it in September. The issues have been resolved with the



U.K. Home Office. I accept, from a political point of view - and I have been pushing this myself, from a political point of view - it is important to have P.P.C.E. part 5 in because we ideally should reinforce the legal framework and that law, together with the Humans Rights legislation, will together govern the time limits for police detention.

### **2.1.9 Deputy I.J. Gorst:**

I appreciate fully that what the Attorney General said is that anybody in custody without charge, the Human Rights legislation comes into play and that is as it should be. But what we are talking about here, and I hope the Minister will accept this, is the wording of this particular Order, and it does allow for unlimited detention. I recognise that somebody in detention they would then come under the auspices of human rights ruling and therefore one would hope that the 96 hours would come into play and they would be properly reviewed. But the Order as written appears clear; would she not admit that?

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

I am only repeating the advice that I received from the Attorney General that we have already received this morning. That Order does not allow the police to hold individuals in custody for unlimited amounts of time.

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

I am grateful that Deputy Gorst has got to the crux of the matter, Sir, because it does seem to me, as explained eloquently by the Attorney General this morning, that it is other laws or codes of conduct or legal precedents which define the limit of a period of detention, but what I am concerned about, Sir, is the same matter Deputy Gorst raised. That all that does not alter the meaning of the Order because I would like the Minister to advise why her Order included the words: "and may conduct further reviews and authorise further periods as such detention" which is quite unambiguous and the crux of the matter because it clearly indicates a never-ending process. It is not a misinterpretation, Sir, as alleged by the Minister but I believe a failure on her part to create an Order that did what was allegedly intended. What I want to know, Sir, is how did that occur because I am getting quite concerned about Ministerial Orders generally?

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

There are 2 questions there. One is about the legal interpretation of whether or not the Order says what it says or whether indeed it says what the Deputy is asserting, and I think the Attorney General has made it absolutely quite clear, and so have I. Indeed, as I must warn Members, we are not legally trained and if we look at the previous Order, a number of people have interpreted that in recent times as believing that the police are only allowed to have people in custody for 36 hours. Although that is... the usual case does not usually go beyond that, there have been one or 2 cases which have gone to 48 hours. So, Sir, I think it is wrong for us to try, as lay people, to interpret the legal meanings of Orders in legislation when we have been given the definitive answer by the Attorney General.

### **2.1.11 Deputy J.B. Fox:**

The question of these Orders is where the crux of this lies: the lack of information that has been circulated not only to the States Members and the public in the way that it is intended, and that is where the problem lies. The Minister already admits that inadvertently the Order was referred for signature without the usual procedures and then goes on to say: "occasion tried and tested procedures seem to have broken down." That is why I voted against the extension last time, because this is going on to a series of debates and discussions. What I seek reassurance from the Minister, that this subject will not be introduced until such time as it has been fully reviewed and brought back to the House for the House to consider because I think it is very important. What disturbs me is her statement that senior police officers know about it but not necessarily the lower ones. We have a department - or we did before I retired 10 years ago - that was responsible for

custody and for ensuring that people had their rights safeguarded and, indeed, to ensure. There is a question mark over that, and I would certainly like to be one of the people that had prior discussions before anything came back to the States in order to clarify some of these points. That is my question. Thank you, Sir.

**Senator W. Kinnard:**

Yes, I have already said that if and when another Order comes back it will be consulted upon with Members and Members will have an opportunity to obviously have their say prior to it being made. In terms of the assertions that have been made about certain police officers not perhaps knowing what the actual position was in relation to this, I cannot really comment further on that. There have been assertions that have been made. I have not yet had an opportunity to find out the veracity of those assertions but clearly I have stated that those that are at the frontline dealing with this are absolutely aware of what the situation is and indeed know these codes inside out. But because assertions have been made it would be my natural inclination to defend my officers, but assertions have been made and it is a matter into which I must look.

**2.1.12 Senator S. Syvret:**

Just returning to the words at issue, the original Order said: “Up to a further 12 hours from the time of the review”, the new Order now repealed says: “Further reviews and authorise further periods of such detention.” That seems to me to be abundantly clear as to its meaning. It means that in theory you could have the indefinite renewal periods of detention. It would appear from what the Attorney General has said and what the Minister has said that this wording of the now removed Order is simply not compatible with and is in conflict with statutory legislation. Would the Minister not then accept that this is simply an unholy mess and she might have got more credit from this Assembly had she simply come here and admitted this is a mistake and an error rather than engage in this sophistry?

**Senator W. Kinnard:**

I think on the first point it is a legal question on to the actual meaning of the Order and I do not know whether the Attorney General has got the stamina to answer that particular question again. I have come to this House, Sir, and said that I do not believe that there was any problem with the Order as made and that is the advice that I have received about it. But I have chosen to withdraw it because of Members’ concern and because of public concern. I have also undertaken to try to add in additional safeguards so Members may be absolutely certain that what I say is the case will be written on the face of the Order. That is what I am taking legal advice about it in order to try and achieve that to meet Members concerns. I have apologised to the public, I have apologised to Members; frankly, Sir, at this point until I have further information I am not sure there is much more I can do.

**2.1.13 The Deputy of St. Ouen:**

Obviously one of the main concerns that I have, Sir, is in comments made in the statement by the Minister which suggests that inadvertently the Order was referred to the Minister for signature without the usual procedures being followed. I would like to ask the Minister; is it normal procedure for the Minister to sign Orders and make Ministerial Decisions without fully considering the implications of that proposed decision? Was a report and supporting evidence provided to her to enable her to make that decision?

**Senator W. Kinnard:**

Again, I just have to say that given the shortness of time with this only happening on Saturday, I have yet to have an opportunity to investigate all the circumstances, and that is a matter I am taking up with my department after today.

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

I appreciate the Minister has still to investigate what went wrong but quite clearly in her own admission and with her apologies something has gone wrong. Can I ask 3 questions that maybe the Minister could prepare herself? The first is that given that Human Rights Law overrides any other codification or procedure that is currently in place in Jersey, how many people have had to be released in the past? Or have there been occasions when people have had to be released much to the dismay of the police who would have liked to have held them for longer periods due to the fact that the court was not available to them? Specifically, because we are now being told that the Minister wishes to undertake this review, will the Minister gives us 2 answers. The first is, when this code came into being did it come into being as a result of her signature? Will she, when she has understood and undertaken this review, present the findings to the Assembly for the Assembly to be appraised as to what did go wrong? The third question is, with the accompanying codes that the police officers determine the procedures from, are the relevant parts - although they will be well known by now - were the relevant parts in that code written to give the officers the understanding that they would require as pointed out by Her Majesty's Attorney General today? They are not lawyers either. They are police officers, they interpret codes and law as how they read them. They may not be as legally qualified in many cases as the Attorney General to know the overriding higher laws.

**Senator W. Kinnard:**

In terms of the Human Rights Law overriding, I think that has been said on a number of occasions. I am not aware, Sir, but again I would have to check for certain, but I am not aware of any circumstance where an individual has had to be released because they have not been able to be brought before a court. The Attorney General may have further information about that, but I am certainly not aware. Indeed, from the statistics that I have given, Members will see that the vast majority of people anyway are either charged or released within 24 hours. In terms of reviewing the circumstances, yes, it was under my signature that the Order was made but, as I say, there have to be further investigations on that particular issue. In terms of the findings of that investigation, at the moment, Sir, I cannot see any particular reason why I might not publicly tell Members what the circumstances were, but I would have to obviously take advice on that because we do have issues about identifying perhaps individual officers. So I would need to take advice. In terms of the code and the understanding of police officers, of course it is part of their training but Members will just, perhaps even looking at the codes, realise that even in this particular small area of police work it is very complicated. But I can assure Members that those who are responsible for looking after prisoners in detention are fully aware of the guidance in all of these codes.

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

It did not answer the question, Sir. The first 2 were answered very kindly, and I appreciate that. The third answer was not at all answering the question I put which was, in the codes that are written is there accompanying advice at the moment that refers the Law Officers to the fact that having reached the 4 days that they are required to release?

**Senator W. Kinnard:**

There is of course training on all of the codes on the laws.

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

I was intrigued to hear Senator Le Sueur on the news last night seemingly defending the Minister and saying that it was a simple error that anyone could have made and it is very difficult to proofread your own documents. My question to the Minister then, Sir, is did she proofread what was in front of her to sign, and if she did do that, did she query why the wording had been changed and what, if any, were the implications of that change?

**Senator W. Kinnard:**

This will obviously form part of the review but, of course, I am well known for proofreading everything that I am required to read before signing.

**Deputy D.W. Mezbourian:**

My question was not answered. I asked the Minister whether she queried why there was a change and whether there were going to be any implications from that change?

**Senator W. Kinnard:**

I did not query the change because my knowledge of what the change was, was that it was a very minor amendment relating to the number of senior officers who could, in fact, authorise an extension to time, not one officer. That was my understanding of what that amendment meant and that, I believe, is still the understanding that I am given by the Law Officers.

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

The Minister will be aware of Members and other members of the general public's concern about Ministerial Decisions and powers. The Minister has referred in her statement to procedural issues; would she confirm that the process is that a Ministerial decision upon advice must be signed and the Order must be signed, and the Ministerial seal affixed to that Order by the Minister? Would she confirm that in this case, for whatever reason, it is the problem of the Ministerial Decision that appears not to have been signed? Would she agree to take her report to the Council of Ministers so that the Council may review the procedures for Ministerial Decisions and Orders so that we can restore confidence in the process and to give Members assurances that there are proper checks and balances in the system?

**Senator W. Kinnard:**

Yes, Sir, I am more than happy to do that. In fact, I have already determined that that will happen. I have to say that I have worked with my department and those who have worked with my department on previous days of the Committee days, know that they are extremely professional and work very hard, and they have a very good reputation generally for doing the right thing and in terms of getting these things right they generally do. I have to say on this occasion we do seem to have slipped-up and I can apologise for that, but I do not have the absolute circumstances as to exactly what went wrong but there does appear to be a lack of a Ministerial Decision being filed at the same time. I am looking at those circumstances and I am certainly going to be discussing the matter with my Ministerial colleagues to ensure that we learn the lessons we need to learn and so that this situation does not happen again.

**Senator J.L. Perchard:**

Point of clarification, Senator Ozouf seemed to - I may have misunderstood - imply that the Minister had not signed this Ministerial Order. Can the Minister confirm that she did?

**Senator W. Kinnard:**

No, the Order has been signed by myself.

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

The Minister is claiming that she has withdrawn the Order because she is a strong believer in civil liberties; how could a Minister reconcile that statement when indeed the Order is made in her name, and if she was not a strong believer in civil liberties would she have left the Order in place?

**Senator W. Kinnard:**

I have to say that the intention that is being imputed into this Order was never the case, and I have to say my record on civil liberties in terms of bringing the Human Rights legislation to this House and getting it passed and in terms of doing my utmost to try and bring anti-discrimination laws to this House is well known. I think there is no question over my defence of individual civil liberties.

**The Deputy of St. Martin:**

The Minister has not answered my question.

**The Bailiff:**

Would you put the question again, what element was not answered?

**The Deputy of St. Martin:**

I will repeat it. The Minister is claiming that the Order is made because of her strong belief in civil liberties. If, in fact, she had not been a believer... why did she make that statement in the first place? **[Interruption]** Can I start again, Sir? The Minister is claiming that she has withdrawn the Order because she is a strong believer in civil liberties. How can a Minister make that statement when in actual fact the Order has been made in her name and, if in fact she was not such a strong believer, would she have left the Order in place?

**Senator W. Kinnard:**

I do not know how many times I have to say this; there was not a problem with the Order. It was not curtailing anybody's civil liberties and the reason that I made reference to civil liberties was that I would not wish the impression to be left that the Order was any attempt to give the police additional powers to detain. It was not and it will never do so. That is the reason why I made reference to my record on civil liberties, Sir.

**2.1.18 Senator J.L. Perchard:**

The Minister in her statement a moment ago said that she regrets the way the Ministerial Order has been interpreted. She quite absurdly maintains that the only material change to the Order that took place is, and I quote: "is that any Chief Inspector [- any Chief Inspector -] could carry out a detention review as opposed to the officer conducting the original review." Does she seriously maintain this view or will she withdraw that false claim which is, frankly, insulting to Members?

**Senator W. Kinnard:**

I have to say, it is quite clear in my statement. In reality the only material or practical change that took place is that any Chief Inspector could carry out a detention review. I do not know how many times I have to say it. Sir, I just think if we are going to have the same question I just will probably say: "I have answered it."

**2.1.19 Senator M.E. Vibert:**

Can I say I have no doubt about the Senator being a strong believer in civil liberties and I am sure that her record is second to none in showing that in this House, and I share those beliefs. In the light of those beliefs I did take some comfort from a statement within the Senator's statements saying that the final backstop for detention by the police has been 96 hours or 4 days. Now, I do not know where this is written down or encoded but I do know that Members appear to be very unhappy over the codes that exist that seem to rely on other laws to put a limit on legal detention. I would like the Minister to say whether she would give an assurance, possibly a reassurance, that she will introduced statutory limit on police detention, written down in a codified form as soon as possible?

**Senator W. Kinnard:**

Absolutely, Sir. I, as I say, am looking at a way in which I can put it into a new Order, if that comes before the House, but I am pushing on - as I have been pushing for the last 5 years - to bring into force part 5 of P.P.C.E. which will give and bolster the legal provisions we have to protect individuals rights. Sir, I have never wavered from the intention to try and bring that part of the law in as quickly as possible.

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

To me the major change is the additional few words at the end of the statement about the further reviews. I would like to ask the Minister, did the Minister question whether these additional further reviews and further periods of such detention, did the Minister ask the police whether this would be up to a day extra or was likely to be an additional 48 hours extra, because to me that is the major part of the change.

**Senator W. Kinnard:**

I interpreted it in the knowledge that I have about the *Brogan* decision and the European Court of Human Rights, so I do not share the interpretation that has just been given by the Deputy. I interpreted it as I have constantly said in this Chamber this morning, within the framework of human rights and the *Brogan* decision. So it causes me no concern.

**2.1.21 Deputy R.G. Le Hérisier:**

The Minister said she was going to look into more detail about the contrary stories about people asserting indefinite; will she assure me, Sir, that that inquiry, in order that it is utterly even-handed will be carried out independently, because in the same sentence she said: “You must remember I always defend my officers. How can the media in these cases feel that the matter is being approached independently? Secondly, Sir, would she not accept that when someone is told indefinite they will go for the common usage of the term and they will not engage in a conversation which says: “Oh, have you heard about *Brogan v. U.K.*? Have you heard about the Ukrainian case?” That is utterly ridiculous. People want their rights in a clear uncomplicated fashion. Thank you.

**Senator W. Kinnard:**

It is not I who made reference to indefinite, firstly. Secondly, I agree absolutely that people must have their rights defended and I am doing everything I can to ensure that they do, not just through the Human Rights Law but also by trying to bring in P.P.C.E. part 5. I did not say I always defend my officers. I said I tend to defend my officers because generally it is appropriate to do so, may I say. But that does not mean that I cannot take officers to task when it is necessary to do so, if indeed it is necessary to do so. I am jumping to no conclusions in this matter at all and I would ask Members to do likewise. Indeed, Sir, independent overview.... the matter is going to the Council of Ministers so there will indeed be discussion about the details of what happened, when, among my colleagues there and I would hope that Members would consider that that was certainly a degree of independent overview.

**Deputy R.G. Le Hérisier:**

I just have a supplementary. Would the Minister tell us how she intends to ensure that the press’ view - or the view of the people who have an entirely different interpretation it appears than her and some of her subordinates - that that view will be taken seriously?

**Senator W. Kinnard:**

I really cannot see how I can be accused of not taking this matter seriously. I have spent hours e-mailing my colleagues with detailed explanations. I have spent quite some time this morning making a statement and answering questions. I cannot see for one moment that either of my colleagues, surely - or indeed the public - think that I have not taken this matter seriously. I have taken this matter very seriously indeed.

**The Bailiff:**

I did not think that was the Deputy’s question. I thought - and the Deputy will correct me if I am wrong - he was asking you how you were going to ensure that the knowledge of the Chief Inspectors and people of that rank as to what these provisions mean percolated downwards to the people who are detaining members of the public.

**Senator W. Kinnard:**

Sorry, I did get a little carried away. I indeed will be requiring a report from my police chief on the matter as an initial step, Sir.

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

We will just get belt and braces on that if we can. Can we make sure that the situation as it stands today is also circulated to the lawyers in Jersey and the law firms that might be representing their clients so they have a full and clear understanding of the situation? Can I ask - and this is not a glib question because I do have great respect for the Minister's human rights record and her civil liberties stance - if there was not a problem, and we have been told in great depth today that there was not a problem, why did the Minister withdraw it?

**Senator W. Kinnard:**

To answer the second question first, I withdrew it because I wanted to listen to Members. Members were concerned. It was an area that was not simple to explain. The public had become concerned by the headline and I thought that it was far better to withdraw the R.&O. rather than have any kind of feeling hanging over it that it was any attempt to reduce the system of civil liberties. That is the reason I withdrew it. In terms of circulating to lawyers, I am aware, Sir, that some lawyers did contact members of the Law Officers' Department and I have asked a member of the Law Officers' Department certainly to circulate my response that I gave to Members on Sunday to those lawyers and, indeed, I will ask them if they would be kind enough to circulate as well my statement that I have made this morning.

**2.1.23 The Deputy of Grouville:**

Could the Minister confirm that there is a flipside to this, that this Chamber does not seem to be addressing either? In my time on Home Affairs there was a tragic case whereby the police were questioning a detainee. They were waiting for some information from overseas and had to let that particular person go because the information did not arrive on time and that man then went out and murdered the nurse, a few years ago. So there is a flipside to this that people's human rights have got to be considered, both the detainees and the people out there.

**Senator W. Kinnard:**

I thank the Deputy for drawing to our attention that human rights do not work one way, we also need to think about the victims. Thank you.

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

Surely that was the case that I asked earlier, were there any instances where the police were? So we obviously have on record that that was one.

**Senator W. Kinnard:**

I am not aware of the details of that. The Deputy obviously has related a case and I do not have the absolute details to hand to either confirm those details or not.

**The Bailiff:**

If no other Member has a question for the Minister of Home Affairs we will come back to the Order Paper and go to question time.

**QUESTIONS**

**3. Written Questions**

**1.1. DEPUTY S.S.P.A. POWER OF ST. BRELADE OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING COMPLIANCE WITH THE UNITED**

## **KINGDOM MERCHANT SHIPPING SURVEY AND CERTIFICATION REGULATIONS 1995:**

### **Question**

- (a) Can the Minister explain the grant of approval to allow the “Charming Nancy” and “Charming Betty” to operate whilst apparently exempting the vessel from Regulation 2(3) of the U.K. Merchant Shipping (Survey and Certification) Regulations 1995?

### **Answer**

The answer to the first part of this question is already in the public domain (MD-E-2008-0098), however to confirm the vessels ‘Charming Nancy’ and ‘Charming Betty’ have both been granted Passenger Ship Certificates under the Shipping (Jersey) Law 2002 and the Boats and Surf Riding (Control) (Jersey) Regulations 1969 under Ministerial Decision ED-E-2008-0098.

Prior to the granting of the certificates, both vessels were surveyed by the Maritime and Coastguard Agency (MCA) and a risk assessment of the operation was carried out jointly with Jersey Harbours. On the recommendation of the MCA, the certificates were issued subject to certain exemptions from EU Directive 98/18EC as applied to Jersey through the Shipping (Survey and Certification) (No 2) (Jersey) Order 2005. It was deemed reasonable to allow the vessels permission to operate subject to certain controls.

These exemptions and associated conditions are listed on the vessels’ certification to be displayed on board and can also be found attached to the Ministerial Decision granting the permits to Jersey Heritage Trust.

### **Question**

- (b) Can the Minister assure the Assembly that, given that the Jersey Heritage Trust (JHT) is taking over direct and sole responsibility for operating the ferry service to and from Elizabeth Castle, he is satisfied that the JHT has the maritime expertise as required in Law to set up and operate such a service?

### **Answer**

On change of ownership, the passenger certification was re-issued to Jersey Heritage Trust on the same terms as had been issued to Pure Adventure. We were pleased to be advised that Jersey Heritage Trust have retained the services of the senior vessel operators and this will continue to provide the marine competence based skills needed to operate the service along with ongoing driver training and assessments.

In consultation with Jersey Harbours, Jersey Heritage Trust has also developed a comprehensive Safety Management System (SMS) for the operation of these vessels which will remain under constant review. The SMS is a requirement under the Shipping (Survey and Certification) (No 2) (Jersey) Order 2005.

Jersey Harbours will be monitoring the service throughout the year and will continue to do so in future.

## **1.2 DEPUTY S.S.P.A. POWER OF ST. BRELADE OF THE MINISTER FOR EDUCATION, SPORT AND CULTURE REGARDING THE FINANCIAL COSTS TO**



## **THE JERSEY HERITAGE TRUST RELATING TO THE OIPERATION OF THE FERRY SERVICE TO ELIZABETH CASTLE:**

### **Question**

Would the Minister advise how much the two ferries used to transport visitors to and from Elizabeth Castle would cost to buy new in the United States of America, and if less than the £500,000 recently paid by Heritage Trust for two such vehicles, outline how the additional sums were justified?

Can the Minister confirm what budget the Jersey Heritage Trust has submitted, if any, to his Department for ferry staff for each vehicle plus maintenance costs, covered accommodation to carry out such maintenance, plus the specialist mechanical expertise to carry out that work?

### **Answer**

I have already undertaken to make available to all States Members a full report from the Jersey Heritage Trust into the issue of transport to and from Elizabeth Castle. The purpose of making that report available is to ensure that there is clarity over all the circumstances surrounding measures taken by the Trust to fulfil its obligations to provide public access to Elizabeth Castle.

I am expecting to receive that report in the next few days.

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

### **Question**

1. In the report "Distributional analysis of Income Support" issued on 4th June 2008, the Minister makes the following statement on page 3:

*"Considering all households and assuming that all the proposals put forward by the Minister for Social Security are approved by the States, including the increase in component rates from 1 October 2008, **56% of households will be in receipt of Income Support at a level equal to or above their benefit entitlement under the benefit systems replaced by Income Support.**"*

Will the Minister inform members

- a) whether this analysis includes the uprating of Income Support (IS) to include the increase of non-housing elements of IS to compensate for GST, and the expected rise in pensions and contributory benefits of 5.1% for October 2008, along with the anticipated annual cost of living rise in IS of 3.7% and therefore renders any comparison with previous benefits (pre 28th January 2008) invalid in terms of like-for-like analysis, and if not why not?

### **Answer**

This part of the question and several subsequent parts refer to a comparison with previous benefits. The aim of the report was to identify the situation of households at the first percentage downrate, which will now take place on 28 January 2009. This is the first date that any household will see a partial reduction in the level of benefit received and the report clearly sets out the number of households that will see a reduction on this date. Households previously receiving benefits now replaced by income support have not seen any reduction

in benefit at this point. There is little useful information to be gleaned from an analysis of households at an earlier date as all households are currently fully protected.

The analysis includes the expected rise in pensions and contributory benefits of 5.1% and the proposed rise in Income Support components of 3.7% (Which also takes into account the increase in the nonhousing elements of Income Support to compensate for GST). This is clearly set out on page 3 of the report.

### **Question**

- b) whether the further inclusion of major corrections to the IS scheme proposed in his statement of 3rd June, as follows
- Extension of lone parent component to parents of children aged 16 to 18 who remain in full time education.
  - High level personal care component to be available to parents of a child with a severe disability, without reference to parental income.
  - Automatic entitlement to first level personal care component for those with 100% LTIA award;
- further affects proper analysis of the impact of the introduction of IS on 28th January 2008, and if not why not?

### **Answer**

Again as set out on page 3 of the report, the three minor enhancements to the Income Support scheme are included in the analysis.

### **Question**

- c) whether he is prepared to produce properly collated figures to assess the impact of the original IS scheme, including accurate like-for-like figures for IS and previous benefits as of 28th January 2008 (already indicated on letters sent to IS recipients) showing winners and losers in real and percentage terms, without any uprating, to replace the first table on page 4 and the 6 groups analysed in the report and listed in the second table on page 4 of the report, and if not why not?
- In the light of his responses to the above will the Minister withdraw his figure of 56% (or 3,791 families) on the same level or better off than under the previous schemes?

### **Answer**

My department has undertaken an analysis of the position of claimants to indicate their position when the first transition downrate is applied on 28 January 2009. This provides useful information to the Department regarding the impact of Income Support on various household types. There is no operational information to be derived from undertaking an historic analysis of the position of these households on 28 January 2008.

Considering the amount of work that would be involved, I am not prepared to ask my department to produce these figures for 28 January 2008 as they would not provide any significant benefit.

There is no information provided in the responses set out above that would lead me to withdraw the statement at bottom of page 3 of the report which states that

“considering all households and assuming that all the proposals put forward by the Minister for Social security are approved by the States, including the increase in component rates from 1 October 2008, 56% of households will be in receipt of Income Support at a level equal to or above their benefit entitlement under the benefit systems replaced by Income Support.”

**Question**

- Given that “disposable income” has been reduced for the majority of benefit recipients by the combined impact of the change from HIE to HMA, the reduction in the levels of rent rebate/abatement (now the housing component of IS), and the 50% reduction in DTA for those not working, will the Minister now produce After Housing Costs (AHC) disposable income figures (based on the January 2008 levels) for members, and if not why not?

Under the AHC disposable income analysis what proportion and number of households are shown to be “on the same level or better off” than on previous schemes?

**Answer**

The introduction of Income Support did not affect rental or other housing costs and therefore an analysis of benefit “before housing costs” and “after housing costs” (AHC) in the old and new systems would give identical results.

**Question**

- Will the Minister inform members of the costs involved in the changes to IS and in particular, how the additional funds have been made available to protect those on Attendance Allowance, Adult Disability Allowance and Child Disability Allowance?

Will the Minister give examples of how increased access to the high level personal-care element will affect the level of benefits received by families with children with severe disabilities, before and after IS, using January 2008 like-for-like figures?

**Answer**

The costs for 2008 and 2009 are

	2008	2009
Additional Income Support	250,000	1,000,000
Additional protected payments	£685,000	£587,000

No additional funds have been made available. The additional costs involved in the changes to Income Support are available from within the existing budget. The analysis of cost undertaken before the implementation of Income Support was, of necessity, prudent and estimates had to be made for the distribution of costs within Income Support. It is still very early to attempt to analyse the ongoing cost of Income Support but I am committed to

providing the best possible support that can be afforded within the budget allocation. I am confident that the cost of these minor adjustments can be met. I will continue to monitor costs very carefully and to introduce further enhancements to Income Support whenever possible.

### Examples

Family with two children, one with a severe disability. One parent in full time work, one parent receives Invalid Care Allowance and stays at home to care for the child.

These examples use current component rates and compare the impact of including and excluding the high level personal care component from the Income Support calculation.

#### Example 1

Family in rented accommodation 3 bedroomed house

Parent in work earns £350 per week (£18,200 pa)

Parent with ICA receives £167.56 per week (£8,713 pa)

IS calculation before change in treatment of high level personal care

Total components, excluding Personal care	£569.31
Personal care component	£126.56
Total components, including personal care	£695.87
Total assessed income	£473.76
<b>Total Income Support</b>	<b>£222.11</b>

IS components after change in treatment of high level personal care

Total components, excluding Personal care	£569.31
Personal care component (not included)	
Total assessed income	£473.76
Total Income Support	£95.55
Personal Care component	£126.56
<b>Total benefit</b>	<b>£222.11</b>

In this example, the total benefit level remains at £222.11 per week

## Example 2

Family own their home

Parent in work earns £700 per week (£36,400 pa)

Parent with ICA receives £167.56 per week (£8,713 pa)

IS calculation before change in treatment of high level personal care

Total components, excluding Personal care	£342.93
Personal care component	£126.56
Total components, including personal care	£469.49
Total assessed income	£781.76
<b>Total Income Support</b>	<b>£0</b>

IS components after change in treatment of high level personal care

Total components, excluding Personal care	£342.93
Personal care component (not included)	
Total assessed income	£781.76
Total Income Support	£0
Personal Care component	£126.56
<b>Total benefit</b>	<b>£126.56</b>

In this example, the family will receive a benefit of £126.56 under the revised scheme, compared with no entitlement under the existing scheme.

## Question

4. Will the Minister state why he has not extended support for people with disabilities beyond October 2010, by adopting UK standards for their equivalent benefits (ie removing the means test)?

Will he further explain to members whether the extension of protection until October 2010 will be applied to new applicants for IS, or will they be treated differently, and if so how?

## Answer

The personal care component within Income Support is set at 3 levels –

- Personal care level 1 : £ 21.00,
- Personal care level 2 : £ 86.10 and
- Personal care level 3 : £126.56 per week

The UK disability living allowance is paid at 3 levels

- £17.75,
- £44.85 and
- £67.00 per week.

The highest level is only available to individuals who need frequent supervision day and night.

The States have endorsed the concept of targeting support to low income families in Jersey. The level of benefits available in Jersey ensures that a high level of support is available to those families in the greatest financial need.

Any claimant who received a benefit which has been replaced by Income Support has been provided with a protected payment, as long as they applied for Income Support before or within one month after the start date. Only in the most exceptional circumstances would an individual now be offered protected payments in respect of benefits that ceased payments four months ago (in other words, the claimant has not been receiving this benefit for the last four months and has not yet put in an application for Income Support).

New applicants for Income Support are assessed under the Income Support rules.

### **Question**

5. Will the Minister give examples of the “*additional incentives for lone parents to move into part time employment*” highlighted on page 9 and elsewhere in the report?

In particular, will he show how each additional £1 earned will be affected by a reduction in benefit, and what this reduction would be?

### **Answer**

These are set out in schedule 2, paragraph 5 of the General Provisions Order.

Earnings below £15.68 per week are completely disregarded from the income calculation

Earnings between £15.68 and £26.11 per week are subject to a 50% disregard

Earnings between £26.11 and £47.04 per week are subject to a 25% disregard.

### **Question**

6. Will the Minister explain to members what criteria have been used to produce the figure of £1 per week “deemed income” for each additional £250 of capital or savings over the capital limits in calculating IS? What consideration, if any, has he given to reducing the rate of interest on capital, which equates to over 20%, and does he not agree that this is a disincentive for people to save?

### **Answer**

The parish welfare system used a deemed income of one pound per each additional £200 of capital or savings over the capital limit. The Income Support system has used the same method of gradually reducing benefit as household assets increase but has used more generous parameters, so that the deemed income is one pound for each £250 of assets. The capital limits for pensioners have also been increased by 50% above the previous level.

As the capital below the limit is disregarded, the effective rate of interest is always below the deemed rate.

For example, if a pensioner couple had savings of £25,000.

Exempt allowance is currently £18,967.

Amount subject to deeming is £25,000 - £18,967 = £6033.

Deemed income is £6033 x 20.8% = £1254 per annum

This equates to a 5% income on the full value of their savings. (£25,000 x 5% = £1250 pa)

### **1.4 DEPUTY R.G. LE HÉRISSEIER OF ST. SAVIOUR OF THE CHIEF MINISTER REGARDING THE APPOINTMENT OF LOCALLY QUALIFIED PEOPLE TO SENIOR PUBLIC SECTOR POSTS:**

#### **Question**

How and when does the Chief Minister intend to report back to the Assembly on the implementation of the policy to ensure that more residentially qualified people are appointed to the upper echelons of the public sector?

#### **Answer**

Deputy Le Herissier will recall the report on Succession Planning I presented to the States on 12th February this year following the work completed by the Director of Human Resources in conjunction with a group of States Members. The Deputy will know, from his membership of that group, of the wide range of proposed actions contained in that report, which together are designed to ensure that the pool of locally qualified candidates for the more senior posts within the States is, over time, maximised.

I can confirm that each of the recommendations is being pursued and that the States Employment Board, as the appropriate body responsible for employment matters such as these is, under my Chairmanship, actively monitoring their implementation.

The Deputy will know that the benefits from effective succession planning are not something that can be achieved over a short time scale and thus the actions now being taken will only bear fruit in

the medium and longer term, however, he can be assured of the continued seriousness with which this matter is viewed by myself and fellow members of the States Employment Board.

**1.5 DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR OF THE MINISTER FOR HOME AFFAIRS REGARDING THE RE-ESTABLISHMENT OF A POLICE AUTHORITY:**

**Question**

When does the Minister intend to bring forward the proposition for the establishment of a Police Authority or its equivalent?

**Answer**

The establishment of a Police Authority is contained in Articles 4 to 7 of the Police Force (States)(Jersey) Law 200-. Although there is one aspect of the host law that is still to be finalised, I intend to publish the draft law for consultation this month and lodge by the 5th August for debate on the 16th September.

**Answer**

The establishment of a Police Authority is contained in Articles 4 to 7 of the Police Force (States)(Jersey) Law 200-. Although there is one aspect of the host law that is still to be finalised, I intend to publish the draft law for consultation this month and lodge by the 5th August for debate on the 16th September.

**1.6 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE CHIEF MINISTER REGARDING DOCUMENTS RELEASED BY THE WATERFRONT ENTERPRISE BOARD AT THE STATES MEETING ON 5TH JUNE 2008:**

**Question**

- (1) Would the Chief Minister confirm the following regarding the documents released by WEB to members at the States sitting on Thursday 5th June:-

**Answer**

The debate on the Masterplan was just that. It was not a debate intended to validate the current deal that is in course of negotiation with Harcourt. The reason the terms were explained to Members was to assure them that the Masterplan produced a commercially viable scheme which would actually increase the return and benefit to the public.

There appears to be some misperception that once the states had agreed the Masterplan and the land transfers WEB would immediately proceed to conclude the development agreement with Harcourt. That is not the case, it was always intended that prior to finalising the legal agreement there would be an updated series of due diligence which would include a final financial appraisal, the conclusion of bank guarantees and a legal appraisal of any outstanding issues, which includes any court cases.

Once the States agreed the proposition these actions were initiated by WEB. In order to respond appropriately to the rescindment motion it is intended that these actions will be completed before 1st July. The outcome will be shared with States Members. I now turn to the detailed questions.



**Question**

- (a) When were the documents presented to the Directors of WEB for consideration?

**Answer**

2nd October 2007

**Question**

- (b) Which WEB Directors were present at the meeting when the documents were discussed?

**Answer**

F.G. Voisin

Senator P. Routier

Senator Perchard

Deputy J. Huet

Jurat J. Tibbo

S. Izatt

**Question**

- (c) Were they discussed at more than one Directors' meeting?

**Answer**

No

**Question**

- (d) What was the outcome of the Directors' deliberations?

**Answer**

To quote from the minutes of the WEB Board Meeting on 2nd October 2007:

“The Board discussed the PwC Financial Capacity Audit which was circulated with the Board papers. It was agreed that this was a satisfactory report and was carried out as a due diligence exercise to give comfort to the Board of the financial standing of Harcourt”.

**Question**

- (e) Will he release the relevant minutes to States Members?

**Answer**

Extract provided above

### **Question**

- (f) How did the Directors of WEB propose to mitigate the risks outlined in those documents?

### **Answer**

The heads of terms entered into with Harcourt Developments Limited on 19<sup>th</sup> July 2007 in respect of the proposed transaction provide for the Developer to procure a bank/insurance guarantee in respect of its obligations under the Development Agreement as follows:

“The Developer will be required to procure the giving to WEB of a guarantee in respect of the Developer’s obligations under the Development Agreement to make the payments referred to in paragraphs 8.2, 8.3 and 8.4 [which total £50 million] together with £45 million in respect of the cost of establishing the Road System, the Guarantee to be given by a bank or by an insurance company which is acceptable to WEB and to be in terms acceptable to WEB.”

The Directors were of the view that the provision of a bank/insurance company guarantee was the most appropriate and secure way to mitigate any risk posed by the financial standing of Harcourt Developments Limited.

### **Question**

- (g) Did the Directors instruct the extra work suggested by PwC? If so can he release those reports or documents to States Members?

### **Answer**

No. WEB did not know when the Development Agreement would be available for completion and will, prior to signing the Development Agreement with Harcourt, be seeking a due diligence update to be undertaken by PwC.

Currently the Development Agreement is in draft form and negotiations continue between lawyers acting for the parties.

### **Question**

- (h) Were the documents presented to the Council of Ministers? If so when? If not why not?

### **Answer**

Both documents were produced on a confidential basis and were provided solely for the private use and benefit of WEB. These documents were not presented to the Council of Ministers.

### **Question**

- (i) If so, what was the conclusion of the Council of Ministers deliberations? Which Ministers were present at that particular meeting?

### **Answer**

N/A

## Question

- (j) When were the documents presented to the Chief Minister and the Minister for Treasury and Resources?

## Answer

These documents were not prior to 5<sup>th</sup> June 2008 presented to the Chief Minister and/or the Treasury and Resources Minister.

- (2) Would the Chief Minister further advise:

- (i) when, and by whom, he was first made aware of disagreements between Harcourt and its partner in Las Vegas;

## Answer

Deputy Sean Power on 19th May 2008

## Question

- (ii) when, and by whom, he was first made aware that a lawsuit had been filed against Harcourt in Las Vegas;

## Answer

Pat Power on the afternoon of 5th June 2008. Prior to the afternoon of 5th June 2008, Pat Power had confirmed by e-mail on 20th May as follows:-

**From:** Pat Power [<mailto:patpower@harcourthouse.com>]

**Sent:** 20 May 2008 18:37

**To:** [f.walker@gov.je](mailto:f.walker@gov.je)

**Cc:** Stephen Izatt

**Subject:**

Dear Frank

I refer to your recent e-mail to Stephen Izatt in respect of a recent article in the press.

This is a mixed residential/commercial scheme, on the outskirts of Las Vegas that we were proposing to develop in conjunction with local partners. Harcourt have provided all the finance and the partners were to manage the scheme.

When over time it became apparent that the partners had very little experience of development, it was amicably agreed that Harcourt would take over the construction related aspects. From the summer of 2006 we have financed every aspect of the development at the same time expressing our concerns at the sheer scale of the marketing costs, in what was an increasingly difficult market. Our attempts to curtail marketing and overheads met with such stout resistance that ultimately realising that our partners' main concern was not the scheme. Their main focus was their overhead. In the light of the ever tightening of the US market, we called a halt to all further expenditure.

To our surprise, rather than discuss this with us, they made a series of defamatory and false press announcements. The complaint to date has not been served on our Nevada subsidiary and it cannot be served on Harcourt Developments Ltd or any other Irish entities as they are not parties to the agreement and are outside of the jurisdiction.

Other than excavation which was a no cost arrangement, no contract for construction has been placed. We now intend to mothball the scheme until market conditions dictate otherwise.

Our Nevada attorney has strongly advised against any press release or to putting any comment directly or indirectly into the public domain until he files his response and counter claim (assuming they file a motion). We would therefore request that you keep the above information confidential.

Should you require clarification on any particular aspect please let me know.

*Regards*

*PAT*

*Patrick Power*

*Director*

*Harcourt Developments*

*18/19 Harcourt Street*

*Dublin 2.*

Pat Power did not update WEB or the Chief Minister following this e-mail.

#### **Question**

- (iii) who was responsible for monitoring the situation once it was known a disagreement existed between Harcourt and its partner;

#### **Answer**

It was envisaged that the detailed terms of any outstanding litigation would be ascertained as part of the updated due diligence exercise previously referred to. In addition it should be noted that the signed Heads of Terms with Harcourt Developments Limited for the Esplanade Quarter provide at paragraph 7.18 that:

“the Developer will be obliged to keep WEB informed of all material matters relating to the Development and such other matters as WEB may require..”.

WEB therefore retains the right to require the Developer to keep WEB updated of such matters.

#### **Question**

- (iv) whether he can assure members that no further action towards an agreement with Harcourt will be made until up-to-date information regarding the company is made available to members;

#### **Answer**

I can assure Members that no development agreement will be entered into with Harcourt until an up-to-date due diligence confirms the company is in a financial position to deliver the Esplanade Quarter development project. Furthermore, no lease will be entered into until guarantees from an independent bank or insurance company are in place. It has always been intended to set up such guarantees, and it remains the intention. I will ensure that States members will be kept informed of the results of the due diligence.

## **Question**

- (v) whether, in view of the seriousness of the situation, he will now bring the matter back before the States for further debate?

## **Answer**

The Council of Ministers is investigating the questions raised about the Waterfront Enterprise Board, and a full report on this and all related matters will be presented to the States to allow them to judge the merit of the propositions on the board of WEB and the rescindment of the Masterplan. The Council of Ministers need answers to these questions just as do States members and the general public.

## **1.7 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE MINISTER FOR PLANNING AND ENVIRONMENT REGARDING THE DEVELOPMENT OF THE WATERFRONT:**

### **Question**

Would the Minister advise:

- a) who has ownership of the Waterfront Masterplan – Harcourt, the Waterfront Enterprise Board, himself, the appointed architect – or a combination of any of them?

### **Answer**

The masterplan was commissioned, and is consequently owned by the Minister for Planning and Environment.

### **Question**

- b) whether alternative plans for the Waterfront which did not involve a sunken road were pursued and if not, why not and if they were, why were they not presented to the States?

### **Answer**

Alternative plans for the Waterfront, which did not involve a sunken road were developed prior to my appointment. These plans were inappropriate in scale and failed to address the problems posed by the separation of the Waterfront and St Helier. I could not support them.

On the recommendation of Mr Chris Shepley CBE, a renowned expert in town planning, I consulted some of the world's leading architects. Each independently stated that success for the Waterfront depended on creating connectivity through removing the barrier of the present multilane highway. Sir Michael Hopkins, my appointed adviser, proposed achieving the essential connectivity through lowering the road and building over.

The process of developing Masterplans rests with the Minister for Planning and Environment not the States. It would not be appropriate to bring a variety of alternative Masterplans to the States and ask Members to make a choice. On the contrary, the role of the Minister is to consult widely with the public and relevant stakeholders, including Scrutiny, and develop the most appropriate Masterplan, based on expert guidance and feedback.

It would be usual practice for the Minister for Planning and Environment to adopt a Masterplan without bringing the matter to the States. However I chose to bring the plan to

the States requesting that the Assembly endorse my intention to adopt the Masterplan. I would not adopt or propose a Masterplan that did not create connectivity through removing the present barrier of the road, to do so would be failing in my commitment to deliver the best possible solution for the Island.

**1.8 DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING BACKGROUND CHECKS OF CARE WORKERS EMPLOYED IN RESIDENTIAL AND NURSING HOMES:**

**Question**

What checks are currently carried out on the backgrounds of care workers employed in residential and nursing homes? What liaison exists with the appropriate professional bodies in the UK?

**Answer**

All care home owners in the charitable and private sectors (and this includes directors of companies, trustees and members of management boards and accountable managers, are subject to Police records vetting as per the Nursing and Residential Homes (Jersey) Law 1994. This is possible because Article 18 of the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002 refers explicitly to the *'the registered person'*.

Deficiencies in the law – we need to remind ourselves that the law was drafted over 14 years ago now – do not make it possible currently for care home managers in the charitable and private sectors (as defined in the above paragraph) to obtain Police record checks for their staff. The States of Jersey, therefore, cannot enforce a requirement by which care home owners in the charitable and private sectors vet their staff.

The Deputy has asked me an oral question concerning the regulation of care workers in care and residential homes and I would like to quote from my proposed reply to him, which is relevant here; *The States of Jersey has made available law drafting time in 2009 so that a new law – currently described as the Regulation of Care Law – can be introduced. This will increase the level of quality control and vigilance – and indeed, training and qualifications – which are required if the care of patients and clients is to be protected and seen to be protected. The Regulation of Care Law will be informed by best practice from the mainland, and by the outcome of the consultation process which was completed a few weeks ago now.*

My Department is currently working with the States of Jersey Police to determine whether it is possible to bring about Police vetting in the shorter term – either through a minor amendment to the existing law or by myself exercising my powers of decision making as Minister for Health and Social Services.

Finally, as to care workers employed in those residential and nursing homes which are directly provided by the Health and Social Services Department, Police checks are undertaken as a matter of routine and have been since 2002. The Deputy may well be aware that the Minister for Home Affairs is working on behalf of the States of Jersey to implement a vetting system which takes account of the Bichard Inquiry recommendations.

**1.9 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING TAXATION RATES:**

## **Question**

The Minister, in a response to a question on taxation on 13th May 2008, suggested that effective tax rates on the finance sector were around 12 to 14%. Will he now show members the basis for this estimate and further explain how these figures will be affected by the advent of the 10% tax rate?

## **Answer**

The answer is contained at Part (b) of the answer given on the 13th May, 2008. But to help the Deputy, these rates were found by dividing the £1,054 million by the £138.9 million figures given in that answer. And as that answer made clear, it is difficult to give an effective rate of tax for the company finance sector that is in any way a meaningful figure. These effective tax rates that he quotes are crude approximations, as the answer on 13th May also made clear. The effect of the move to the 10% rate has already been made clear, at various times, in various forums, so I do not intend to repeat the figures here, especially when the figures themselves would be meaningless when the starting point are the crude approximations of the 12% - 14% tax rates, save to say that with a tax rate of 10% being introduced over the next few years as IBC arrangements come to an end, the yield from this source will clearly decline. This is one of the factors contributing to the fiscal deficit (the so-called 'black hole') and the need to find alternative sources of revenue.

## **1.10 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE CHIEF MINISTER REGARDING NET INWARD IMMIGRATION FIGURES:**

### **Question**

- (1) Does the Chief Minister accept that, with net inward migration figures standing at 2,200 and population growth at 3,100 over the past 3 years, measures to control migration are not working, and if not will he explain to members what controls he believes are currently working and how?

### **Answer**

The Housing (Jersey) Law 1949 and the Regulation of Undertakings and Developments (Jersey) Law 1973 have regulated migration by limiting access to housing, and controlling the overall numbers of new migrants that can be engaged in the Island, for, respectively, 59 years and 35 years. These Laws have achieved this through a range of economic circumstances, whether buoyant as of recent years, or less active, and they continue to serve the Island appropriately.

### **Question**

- (2) Furthermore does he also accept that the target for 2% economic growth on the back of 1% (500) job growth has also failed? If not, where is the measure that indicates success?

### **Answer**

No, the targets for 2% economic growth with 1% workforce growth have not failed. In fact they are very much on track. Given the cyclical nature of the Jersey economy trends in any one year can distort the picture and it is important to look at trends over a number of years or over the course of the economic cycle to get the true picture. In the five years to 2007 workforce growth has averaged 0.7% and is therefore within the States agreed target. We do not yet have official figures for economic growth in 2007 but if it was 5% then growth in

the five years to 2007 was just below 2%. These are the measures that indicate success and show significant economic growth within the States constraint on workforce growth.

### **Question**

- (3) Does he not accept that with 600 of the net inward migrants being J cats and their families, many now permanent and with the right to buy, house prices for 3-bedroom properties and above will continue to rise? If not, why not?

### **Answer**

House price inflation in recent years is a product of the economic success the Island has enjoyed, increased willingness of lenders to lend and cheaper credit. This has combined with natural population growth, falling household size, changing demographics, social trends and inward migration to mean the increase in demand for housing has exceeded the increase in supply. 3-bedroom house prices are likely to rise further if we continue to enjoy economic success but not solely because of the demand from any increase in J-cats. To ensure that the needs of first time buyers who cannot afford to purchase at current first time buyer levels are met the States has already approved the sale of some 800 States rental homes to States tenants under a 25% deferred payment scheme (P6.2007) and will shortly debate proposals from the Planning and Environment Minister for 'Jersey Homebuy' (P74.2008) a scheme to allow the sale of homes on rezoned sites to qualifying first time buyers with a 35% repayable discount.

## **1.11 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE CHIEF MINISTER REGARDING PUBLIC SECTOR EMPLOYEES STANDING FOR ELECTION:**

### **Question**

In his response to a question from Deputy Le Hérissier on 3rd June 2008, the Chief Minister stated that there is no restriction on a politically eligible States employee taking holiday entitlement and time off in lieu to pursue any activity, including election campaigning, however should he wish to stand for election, he is forced to take unpaid leave and cannot use up unclaimed holiday entitlement. Notwithstanding the belief expressed in his answer that such regulations are consistent with EU Convention rights, will the Chief Minister seek legal opinion on whether such a restriction constitutes a disproportionate limitation on Article 11 of the first Schedule to the Human Rights (Jersey) Law 2000 and is discriminatory under employment law?

### **Answer**

There are two elements to the Deputy's question:

#### **1. Human Rights (Jersey) Law 2000**

The advice I have already received is that a politically eligible employee being required to take unpaid leave from the date of his/her formal nomination as a candidate until, if they are unsuccessful, their return to work no later than 4 weeks after the election results are known, is not incompatible with the rights guaranteed in Articles 10 and 11 of, and Article 3 of the First Protocol to, the ECHR.

#### **2. Employment Law**



I am not clear what the Deputy means in the question by “discriminatory under employment law”. Nevertheless, I am advised that the restriction to which he refers is compatible with existing legislation.

In view of my responses above, I do not believe it is necessary to seek further legal advice concerning this matter.

**1.12 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING ZERO-RATING FOR NON-LOCALLY OWNED COMPANIES:**

**Question**

- (1) In the light of the recent takeover of CI Fuel Supplies by a foreign-owned company, will the Minister explain to members how zero rating, as part of his zero/ten tax proposals, for non locally owned, non finance companies will affect taxation revenues following its introduction and in particular can he provide an updated figure on the £30m estimate of lost revenue produced in 2004?

**Answer**

I have already given these figures to States Members. I have no updated figures in relation to these companies from the ones supplied to States Members at the time I indicated an update of the fiscal deficit to a range of £79-94 million, and which suggested that recent estimates had updated the sources of income and had changed the loss from non-finance, non-local companies to a figure of £12-£14 million.

**Question**

- (2) What measures, if any, does the Minister have available to act against further tax revenue losses from this mechanism through continued increases in foreign ownership of companies trading, tax –free on the Island? If none, what measures, if any, can he propose to reduce further tax revenue losses?

**Answer**

I am currently considering a deemed rental charge on non finance non Jersey owned companies (the “Blampied” proposals). and will be issuing a consultation paper on the matter within the next 6 weeks, with a view to bringing these forward in the forthcoming 2009 Budget, as previously indicated.

**1.13 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE ‘20 MEANS 20’ TAX MEASURES:**

**Question**

Will the Minister clarify for members whether the ‘20 means 20’ tax measures include or exclude mortgage interest tax relief?

**Answer**

For those chargeable at the standard rate of tax of 20%, they will gradually lose mortgage interest tax relief, just as they will lose other allowances and reliefs under '20 means 20'. For those who are not subject to the '20 means 20' provisions, and who therefore benefit from the marginal rate of tax of 27%, they will still be entitled to receive their full mortgage interest tax relief up to the £300,000 cap.

This is in accordance with the intention of '20 means 20', which was to make the tax system more progressive by increasing the effective rate of tax for higher earners by reducing their allowances, thereby ensuring that the better-off shoulder a higher proportion of the overall tax burden.

#### **1.14 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE CHIEF MINISTER REGARDING THE IMPACT OF THE WATERFRONT DEVELOPMENT ON THE ISLAND'S ECONOMY:**

##### **Question**

- (1) Will the Chief Minister inform members what economic impacts are predicted for the Waterfront development on the overall Island economy, and what importance he places on these effects?

##### **Answer**

In an island economy like Jersey where land is scarce, the prospect of bringing reclaimed land into economic use has significant economic potential. The public consultation document on the Masterplan for the Waterfront highlighted how the development would bring economic benefits to the Island. It stated that by creating new investment, supporting innovation, allowing competition, encouraging enterprise and creating job opportunities it would help support productivity improvements in the economy and help achieve our economic objectives of economic growth, employment opportunities and low inflation. By improving the supply capacity of the economy, wider economic benefits could also arise in the medium term through efficiency improvements. The bottom line is it will add to our economic potential and create job opportunities for local people.

##### **Question**

- (2) Will he further state why he gave no indications of these impacts in his speech to the Assembly during the debate on the Esplanade Quarter Masterplan (P.60/2008)?

##### **Answer**

My speech during the debate, focused on the issues that I felt were of most concern to States members. The Ministers for Planning and Environment and Economic Development covered some of the economics issues in their speeches. As there seemed to be little debate about whether the development would generate significant economic benefits for the Island this issue was not a major part of my speech.

##### **Question**

- (3) Will the Chief Minister inform members of the grounds on which he has denied access to the Economic Adviser's Economic Impact Report on the Waterfront development, and will he now agree to release it, if necessary in redacted form or in confidence?

##### **Answer**

I have not denied access to any reports by the Economic Adviser on the Waterfront. The last report the Economic Adviser did for the Council of Ministers on the Waterfront was in February 2006 considering analysis from PwC on the economic impact of the proposed development at that time. A summary of the report was released to all the attendees at the Waterfront Forum on March 4 2006 at the airport.

**1.15 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING DOCUMENTS RELEASEDC BY THE WATERFRONT ENTERPRISE BOARD AT THE STATES MEETING ON 5TH JUNE 2008:**

**Question**

- (1) Would the Minister advise whether the documents released by WEB to Members on 5th June 2008 were presented to him before the debate on the Esplanade Quarter Masterplan and, if not, how was he able to satisfy himself regarding the financial aspects of the deal?

**Answer**

The documents presented to Members on 5th June 2008 were not presented to me in advance of the debate ; however WEB did advise that appropriate due diligence had been undertaken to ensure the suitability of the proposed developer and that no issues were raised in the due diligence work that would reasonably prohibit the use of that developer.

In addition the Treasury reviewed the complete Heads of Terms agreement in respect of the Esplanade Quarter Masterplan including all the financial aspects of the proposed deal and I received a detailed briefing, and assurances, from the Finance Director of the Waterfront Enterprise Board that all financial issues and risks had been thoroughly addressed

**Question**

- (2) If the said documents were presented to the Minister, what other work did he request be undertaken to satisfy himself that all risks had been mitigated as far as possible?

**Answer**

See above. The said documents were not presented to me

**4. Oral Questions**

**4.1 Deputy G.C.L. Baudains of the Minister for Transport and Technical Services regarding the annual use of hypochlorite by the Transport and Technical Services Department:**

Would the Minister advise what quantity of hypochloride his department uses annually and the main purpose to which it is put?

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

The Transport and Technical Services Department uses approximately 5,000 litres of hypochloride in the chlorination process of Coronation Park paddling pool over the summer months. The hypochloride is used as part of the chlorination process for the pool in accordance with bathing standard recommendations. The department also uses a number of office and toilet cleaning

products which have small quantities of hypochloride included in them. For information to Members in the past the department used hypochloride for 2 other applications: Jersey Harbours maintenance section (which has now transferred to Transport and Technical Services) previously used it in coastal areas for cleaning-down slipways and steps but for the past 4 years they have used a product called Antimoss, which is more environmentally acceptable. Hypochloride was also used as a control measure on the sewage treatment works when the denitrifying process produced excessive foam. This was discontinued 2 years ago and other methods have since been adopted.

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

I thank the Minister for his answer.

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

I have a supplementary. Given that the Coronation Park area I imagine is probably including the small bathing pool for the children, are there any environmental products that could be better used by the department and would he undertake to investigate alternatives given the fact that babies do use that swimming pool during the summer months?

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

Yes, I am very happy to look into that matter.

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

Thank you.

**4.2 Deputy K.C. Lewis of the Minister for Home Affairs regarding the establishment of computer criminal record checks with new European Union member countries:**

What progress, if any, has the Minister made in association with the U.K. authorities to establish computer criminal record checks with new European member countries?

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

Under our European Union agreement in 2005 each member state agreed to set up a central office which would, within certain circumstances, have the capability to make and receive requests for exchange of criminal conviction data between member countries. As such the United Kingdom Central Authority for Exchange of Criminal Records has been in existence since May 2006. This limited agreement only allows for the exchange of criminal record information where it is connected to an ongoing police investigation or prosecution. In addition, the central authorities also notify each other of convictions when a national of one of the E.U. (European Union) states is convicted of committing an offence in a second member state. At present there does not exist any mechanism or agreement for general or automated access to criminal record information between the member states. However, Sir, as recently as 30th May 2008, the European Commission adopted a wide range of proposals to promote a European justice area, part of which includes creation of a European criminal records information system. Such a system would form technological links between the independent criminal record databases held by individual states. The main aim of this process is to extend the sharing of criminal records for the purpose of vetting persons having access to and working with children and other vulnerable groups. The States of Jersey Police has on a number of occasions gained access to E.U. criminal record information under the described arrangements. Similar conviction information has also been obtained from non E.U. countries through other alternative policing and mutual legal assistance links. The States of Jersey Police maintains continuing contact with national policing and U.K. government agencies involved in developing proposals for the sharing of such data.

**4.2.1 Deputy K.C. Lewis:**

I thank the Minister for her reply, Sir. My question is with the greatest of respect to E.U. citizens coming into Jersey to live and work there is a very, very small minority coming into Jersey with extensive criminal records. The only requirement appearing to be if they have a European Union passport they can come into Jersey. Does the Minister favour autochecks? Thank you, Sir.

**Senator W. Kinnard:**

Am I being asked if I favour the automatic checking of people coming into the Island?

**Deputy K.C. Lewis:**

The Minister made reference to in the future there would be an automatic checking system through the U.K. computer system.

**Senator W. Kinnard:**

This is really in relation to record checks. I thought the question was asked in relation to actual positions and jobs. The issue of whether or not people are checked for criminal records coming into and out of the Island is a matter that is really dealt with by the Chief Minister's Department under their powers and the migration policy.

#### **4.3 Deputy G.C.L. Baudains of the Minister for Social Security regarding the provision of satellite welfare offices at Parish Halls:**

Would the Minister advise when, by whom, and for what reason the intention to provide satellite welfare officers at Parish Halls was abandoned? Would he also advise who was consulted regarding this change of plan?

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

I have to say I am a little surprised by the Deputy's question as the Parishes have in no way been abandoned. The Comité des Connétables has been closely involved in the development of income support for several years. With the exception of St. Helier, all Parishes have the facility to offer cash payments to income support claimants and to provide additional help with budgeting if required. Parish staff have received income support briefings and have income support literature available for parishioners. Each Parish Hall has a nominated Social Security contact and timetable has been agreed whereby income support advisers will attend Parish Halls to deal with parishioners' applications where necessary. Staff from the St. Helier Community Services Department have transferred to the Social Security Department and cash payments are also now available from Social Security. I think it is fair to say that the Constables and I have been surprised by the small number of parishioners choosing to access income support through Parish Halls. At present there are about 35 payments across the Island that are made through various Parish Halls in each week. Income support advisers have attended Parish sessions. Income support advisers are also able to attend claimant's homes where necessary and 6 home visits have been made since February.

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

Would the Minister confirm that in fact there was an intention that staff at Parish Halls should be trained by the Social Security Department but this was never completed? Would he also agree that having a presence at Parish Halls is an advantage for some people who may find difficulty travelling to town or difficulty even parking in town if they are not particularly mobile and their Parish Hall always was a more convenient venue for them, which now seems to be basically being squeezed-out of the picture as far as possible?

**Senator P.F. Routier:**

The Deputy is right to say that there was a very early intention to have Parish staff trained up to be assessors for income support. It became evident that the amount of training that would be required for perhaps the small numbers of people that would be visiting the Parish Halls meant that in many of the smaller Parishes it really did not become a viable option and it just evolved that it just really was not a realistic thing to be doing. I do again recognise what the Deputy is saying about the importance of having the availability of information at Parish Halls and that is feasible right now because any determining officer from our department has a timetable to visit Parish Halls. If a parishioner goes into their local Parish Hall and wants to have their assessment made within their Parish Hall, they can have that done by appointment. That does happen. We do have, as I say, the ability to go to people's homes if they are unable to move themselves.

#### **4.3.2 Deputy G.P. Southern of St. Helier:**

What consideration has the Minister given to the extension of the range of items which may be covered by special payments to match what used to be done on a discretionary basis by the Constables in their positions under income support?

#### **Senator P.F. Routier:**

I am not too sure exactly what the Deputy is getting at because if somebody has a request for a special payment that can be looked at. But does the Deputy have any specific thing in mind?

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

The Minister has already has his department - and I have made him aware of it - refuse a large winter fuel payment under special payments and for the moment I cannot think of other instances but there are a couple that spring to mind.

#### **Senator P.F. Routier:**

I think if the Deputy checks *Hansard* and recalls only a couple of weeks ago I answered that specific question about heating allowance.

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

If I may, Sir, the question was what consideration have you given to extending the range of items to match what used to be covered by the Constables under discretionary arrangements?

#### **Senator P.F. Routier:**

I believe that the current arrangement is quite comprehensive and if it is particularly winter fuel - fuel allowances - I answered that question last time. The arrangements for people who have a requirement for fuel payments are that there are regular fuel payments which will be made with income support, which income support claimants have been receiving on a regular basis. If someone has a large fuel bill, as I said last time, because of the regular payments that are now made there should not be a need to have those big bills paid from income support.

#### **4.3.3 Deputy J.A. Martin of St. Helier:**

I think the Minister said there are about 35 people who use the Parishes across the Island to receive monetary payments. Could he clarify to me whether all these Parishes are all signed-up to a service level agreement with Social Security and the people that are dealing with this money are either Social Security staff or have sworn the oath of Social Security staff, which was promised under the Income Support Law? Thank you, Sir.

#### **Senator P.F. Routier:**

The service which the Parishes have agreed to and signed-up to is to pay money over, which is an income support payment, which has been assessed by a Social Security person who has taken the oath obviously and followed all the instructions. All that the Parish is doing is to pay the money over and the claimant has asked that they can go to their Parish for their convenience to receive

their cash payment. There is no need for the Parish staff to swear a Social Security oath in those circumstances. All they are doing is passing on the money.

**4.3.4 Deputy J.A. Martin:**

Sorry, Sir, he missed the first part of the supplementary. How many have signed a service level agreement and I would like to disagree with his second part about not swearing an oath because an amount of money that is paid across by a Parish official would be quite easy, if they look at the rates, to obtain the income or the non income of the person which is supposed to be completely secret under the Social Security Law and I would hope the Minister could assure the States Members that he is going to look into this and get it sorted out immediately.

**Senator P.F. Routier:**

I will certainly speak with the Comité des Connétables to see if they feel it is necessary to update the mechanism. But my understanding is that the system we have in place is working very well for those people who are getting their benefit. But if there are some concerns about it I certainly will speak to the Connétables about that.

**4.3.5 Connétable S.A. Yates of St. Martin:**

I was going to ask for clarification on the question put by Deputy Southern. I believe the Deputy was asking the Minister about the discretionary payments that the Constables would be able to make under Parish welfare, which would have included help with expensive dental care, if it is a question of dental repairs or dentures, false teeth. An emergency payment of outstanding electricity bills, where a welfare recipient suddenly found a bill that could not be paid, in which case, in the case of the electricity bill, it might be done under a loan system with repayments over a period and in the case of dental care it could be paid for in full or also by a partial payment or by loan assistance. Now, I think basically that is what...

**The Bailiff:**

Come to the question, please.

**The Connétable of St. Martin:**

The question is what is the current situation in income support in dealing with this situation for needy and vulnerable recipients of income support?

**Senator P.F. Routier:**

I am very pleased to be able to advise Members that certainly with regard to dental support, people can make a request for going to their dentist to have dentures and large dental bills paid for. But what they need to do is to make a request first before they go and have that work done, not to just go along to any dentist and pay any price that the dentist would be asking for. So as long as there is prior indication that the work is necessary for dental health... we have had a request for cosmetic work to be done and we have refused that because it was felt that that was not a health matter for that work to be paid for. But I think if anybody has any particular need for emergency dental work or necessary dental work, they can approach income support and that will be paid for. With regard to the help with electricity bills, we recognise that some people do have difficulty budgeting. Income support does have sufficient money within the existing budget to cover the costs of fuel and electricity. If there are people with large bills, because they have built up a bill, we will help them to get through that in some way, shape or form. But with regard to just giving a lump payment to pay off an old bill, I do not think that it is appropriate for us to be doing that.

**The Connétable of St. Martin:**

I raised the question, Minister, of the situation of an assisting loan. Does the department offer income support recipients, a loan situation of where they can be helped out immediately and pay it back out of their benefits?

**Senator P.F. Routier:**

We do have the ability to do that.

**4.3.6 Deputy G.P. Southern:**

It appears to me, Sir, that the Minister has just given 2 completely contradictory answers. When I suggested and described an electricity bill as an emergency, as a high fuel bill, I was told: “No, we would not cover that.” When the Constable said high electricity bill the Minister appeared to say: “Yes, we are prepared to cover that.” Can the Minister explain the contradiction?

**Senator P.F. Routier:**

There was a bit of a difference between what the Constable was asking and what the Deputy was asking. The Deputy was asking for us to pay the bill whereas the Connétable was suggesting the possibility of a loan. There is a big difference between the 2. As I said, the income support system does have sufficient money in the ordinary budget to pay for fuel and we would anticipate that people would not run up large bills. So far as a grant to cover a large bill, we would not be suggesting we should do that but if someone is in financial need and does perhaps need help with working their way through budgeting for it and it requires some assistance in dealing with the fuel supplier, we can help with that and also possibly in the way of a loan.

**Deputy G.P. Southern:**

I thank the Minister for his answer. One of my constituents who came to me will be much comforted by the fact that you appear to have changed your mind.

**4.4 Deputy S.C. Ferguson of the Attorney General regarding the sharing of legal opinions with third parties:**

Would the Attorney General inform Members whether legal opinions are being shared with third parties and, if so, would he agree to reconsider his objections to sharing these with the Scrutiny Panels?

**The Attorney General:**

I believe, Sir, there may have been occasions when those to whom legal advice has been given have inadvertently not respected the decision of the States on P.198/2007 but I can say that the Law Officers have not authorised this and the Law Officers have not knowingly shared any such advice. Although, of course, the Law Officers will reconsider the views previously expressed if the States so request, I do not at present see any need to do so because the principles which we set out in our response to that projet remain good even if, from time to time, human error may occur.

**4.4.1 Deputy S.C. Ferguson:**

However, Sir, given that the particular situation in actual fact was solved in an amicable manner because of the sharing of the legal opinion, does the Attorney General not feel that this could also be extended to Scrutiny, that it would in fact make for a much more amicable relationship than heretofore?

**The Attorney General:**

You can drive over a nail without getting a puncture but you do not subsequently aim for nails.

**4.4.2 Deputy G.P. Southern:**

On the matter of legal advice, Sir, would the Attorney General explain to Members the difference between an action by government which is incompatible with the rights of the E.C.H.R. and that which is disproportionate under the law?

**The Attorney General:**



That came out of left field, Sir, I am not sure it is consequential to this question. Perhaps the Deputy would repeat it?

**Deputy G.P. Southern:**

I have a written answer from the Chief Minister to a question answered earlier today in which I asked about a restriction constituting a disproportionate limitation. I have received an answer that says: "Is not incompatible" - nothing about disproportionate limitation on particular rights. Could the A.G. (Attorney General) explain to Members and to me what the difference is between disproportionate limitation and incompatibility with human rights?

**The Bailiff:**

Has this got anything to do with the question put by Deputy Ferguson?

**Deputy G.P. Southern:**

It has got everything to do with the provisional legal advice.

**The Bailiff:**

I take your word for it, I do not understand the question, perhaps the Attorney General does.

**The Attorney General:**

I understand the Deputy to be asking me to criticise the Chief Minister's answer to one of his questions this morning. I ought to read the answer he has given first before I comment.

**4.4.3 Deputy R.G. Le Hérisier:**

Would the Attorney General not admit that in the fullness of time and after mature reflection that the notion that Scrutiny should get independent legal advice because of the inability of the Attorney General to release his advice could lead to a quite ludicrous situation to which he has often drawn our attention where parts of the States are faced with 2 bits perhaps of contradictory legal advice? Is this not ludicrous?

**The Attorney General:**

I do not anticipate that the States will be faced with contradictory legal advice if the advice to Scrutiny and to Ministers is given by the Law Officers' Department.

**The Bailiff:**

I think we will leave over your supplementary to the Attorney General, Deputy Southern.

**4.5 Deputy R.G. Le Hérisier of the Minister for Transport and Technical Services regarding the extension of the Connex bus service contract:**

Would the Minister clarify how the extended contract will incentivise the operator Connex to provide an improved service and would he advise whether the new arrangements will lead to reduced annual payments to the operator by the States?

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

The extended contract will be on the same terms as the original contract and therefore the provision of incentives for the operator is the same as before. The better description would be disincentives as the service contract primarily uses a system of penalties designed to ensure performance efficiency. Additional enhancements of the public bus service will continue to emanate from the department as they have done in the past with, for example, further experimental routes and timetable changes. Indeed the businesslike relationship between Transport and Technical Services and the service operator has been a key factor in service improvements seen over recent years. The renewed contractual arrangements will lead to a reduction of £100,000 a year on the contract price.

The contract extension, coupled with the settlement for the shift allowance, will therefore return £500,000 to the States which I have stated will either be reinvested into the bus service to provide additional or improved services, or utilised to provide contractual and technical support in preparation for the contract award in 2012.

**4.5.1 Deputy R.G. Le Hérissier:**

Would the Minister outline the major disincentives that are in the current contract?

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

Yes, I would be happy to do so. To give the Deputy and Members an idea of what the penalty system is, for example, route timings are listed in the timetable and there is a time span allowed around every bus stop within which the buses expect to keep to time. But obviously there is a reasonable allowance for error. However, where buses stray out of that, i.e. they are arriving early or very late then the penalty mechanism kicks in. Over the year - and the penalties apply on all aspects of the service - those penalties, as it were, mount up and it is possible for the department to claim, as it were, the equivalent of a fine back from the operator for not performing efficiently.

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

Would the Minister, in view of this renewal of the contract, see any possibility now of increased public consultation regarding the new routes that are envisaged, such as reinstating a bus users forum? Thank you, Sir.

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

I am happy that the consultation processes already in hand are working extremely well. We are, in fact, maintaining contact with members of the former bus users forum but I have to advise the Deputy that I do not see any particular merit in reinstating that group; we are indeed, as I say, consulting former members of it anyway.

**4.5.3 Deputy R.G. Le Hérissier:**

Would the Minister not concede that by, in total isolation, taking the decision to extend the contract he foreclosed the option of hearing from the Comptroller and Auditor General on other options that might be available?

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

Without bothering to take a poll of just how many Members catch buses locally on a regular basis, and with the greatest respect to the Comptroller and Auditor General, I am quite satisfied that over the last 3 years of dedicated study to the local bus system that I have all the required expertise to take the relevant decisions that need to be made.

**4.6 Deputy R.G. Le Hérissier of the Minister for Health and Social Services regarding the regulation of care workers in care and residential homes:**

When will the Minister be introducing robust regulation of care workers in care and residential homes?

**Senator B.E. Shenton (The Minister for Health and Social Services):**

I can advise the Deputy that the robust regulation of care workers in care and residential homes will be introduced at the earliest possible time. It is very clear that the current regulatory framework for such workers has over time become deficient as standards have increased and the need for vigilance has similarly increased. The States of Jersey has made available law drafting time in 2009 so that a new law - currently described as a Regulation of Care Law - can be introduced. This will increase the level of quality and control and vigilance and indeed training and qualifications which are required if the care of patients and clients is to be protected and seen to be protected. The

Regulation of Care Law will be informed by best practice from the mainland and by the outcome of the consultation process which was completed a few weeks ago. Being mindful such a law must now be some 18 months away from implementation I am currently exploring how police record checks can be undertaken on all care home staff within the existing framework by the exercising of my decision-making powers as Minister and potentially through minor amendments to the current law. My staff are currently discussing the interpretation of the present law with the States of Jersey Police to see what is possible in this regard.

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

I forgot to declare an interest in being on the board of such a home. On that matter, Sir, would the Minister inform us what is the procedure when one is dealing, for example, with a suitably qualified person but they are released by a home and the matter upon which they are released is one of sufficient concern that the U.K. professional body should be informed. Is there a procedure to do that at the moment?

#### **Senator B.E. Shenton:**

To be honest with the Deputy I am unaware. I will find out for him.

#### **4.7 Deputy K.C. Lewis of the Minister for Home Affairs regarding potential increases in penalties for knife crime and the carrying of knives in public:**

Following changes in legislation in the United Kingdom and recent events locally, will the Minister be seeking an increase in penalties for knife crime and the carrying of knives in public; and, if not, why not?

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

Article 16 of the Draft Firearms (Amendment No. 2) (Jersey) Law 200-, which is about to be lodged, increases the maximum prison term for the offence of carrying offensive weapons without lawful authority or reasonable excuse from 2 to 4 years to recognise the seriousness with which this offence is viewed. The draft law also contains new provisions in Article 17 making the carrying of articles with blades or points without lawful authority or reasonable excuse an offence and similarly prohibited the carrying of offensive weapons, blades or sharp-pointed objects, without lawful authority or reasonable excuse on school premises. The penalty for such offences is imprisonment for up to 4 years and/or a fine, although there is provision in the law for a defence where reasonable cause for carrying these things can be established.

#### **4.7.1 Deputy J. Gallichan of St. Mary:**

Could the Minister advise whether there is in fact consideration being given to allowing the police to search school premises for knives without a search warrant?

#### **Deputy W. Kinnard:**

A new provision, Sir, has been included under Article 20 - the power of search - to allow police officers without a warrant to enter and search school premises and persons on the premises for bladed or sharply-pointed objects when there is suspicion of an offence. Head Teacher's permission though must be sought and Head Teacher's guidance already contains the provision that: "No pupils, students or members shall be interviewed either in groups or individually by members of the police force except in the presence of a teacher nominated by the Head or Deputy. At the time any such request is made the Director for Education, Sport and Culture will be notified by the Head Teacher of the action taken." Sir, quite clearly there are safeguards in place and indeed this matter was consulted upon in 2007 and earlier this year with the Department of E.S.C. (Education, Sport and Culture).

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

I can confirm there were discussions on this. Can the Minister also confirm that there is no intention or thought whatsoever to allow random police searches for knives or anything else within our schools unless the Head Teacher and police have reason to believe there are offences being committed?

**Deputy W. Kinnard:**

Yes, Sir, I said in my answer that in relation to Article 20 it has to be in a situation when there is suspicion of an offence. I absolutely agree with what my colleague has just said.

**4.7.3 Deputy G.P. Southern:**

Can the Minister assure Members that should at any stage she consider any change to these particular items of law that she does not bring them by Order but by Regulation that the House can see, or by amendments to the Law?

**Deputy W. Kinnard:**

Matters such as this will always be legislation.

**4.7.4 Deputy D.W. Mezbourian:**

Will the Minister expand on the term “reasonable suspicion”?

**Deputy W. Kinnard:**

That is a general term that is used in virtually any circumstantial case where of course police officers have a certain degree of discretion. But I think probably the Attorney General might be a better person to ask for a definition of the legal meaning of it. Thank you.

**The Attorney General:**

I assume that meant on another occasion, Sir.

**Deputy D.W. Mezbourian:**

Sorry, Sir, I did not hear the Attorney’s response.

**The Bailiff:**

I think the Attorney General would like notice of that question.

**Deputy D.W. Mezbourian:**

Well, is he taking it that he has been given notice of that question?

**The Bailiff:**

Well, the Attorney General would like notice before he answers what is quite a complicated legal issue as to what constitutes reasonable suspicion in different circumstances. You can either put a written question to him, if you wish, or deal with the matter privately as you see fit, Deputy.

**4.7.5 The Deputy of St. Mary:**

I was listening intently to the Minister’s response to my earlier questions, Sir, but I may have missed... what is the involvement of the parents at the interview stage, please, Minister?

**Deputy W. Kinnard:**

I would have to check that also with my colleague from E.S.C. Clearly it is generally the case that where young people are interviewed by the police that parents will be present but I do not have that in my brief. But I cannot see that this circumstance would be any different. But as to the mechanism of achieving that I would have to consult with my colleagues before coming back to the Deputy.

**4.7.6 Deputy D.W. Mezbourian:**

I, too, may have missed something in the Minister's answer initially but I am left wondering why it has been decided that in this instance, or in these instances, a search warrant would not be required?

**Deputy W. Kinnard:**

Of course in a circumstance where there is a reasonable suspicion that knives are being carried on school premises means a situation in which the police may have to act immediately. In order to go back and try and get a search warrant before doing so, some tragic incident may have occurred in the interim period and that is the reason, Sir.

**4.8 Deputy S. Power of St. Brelade of the Minister for Economic Development regarding charges for the use of the new Harbour crane:**

Can the Assistant Minister advise whether charges for the use of the new harbour crane would be increased to cover the cost of the new apparatus and, if so, has the Harbours Department contacted any of the stevedoring or shipping companies, those that use the New North Quay, to inform them of this.

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

I can confirm that there is currently no specific facility charges for the use of any harbour cranes, however it is intended that a tonnage charge should be applied for the use of all the commercial cranes at the harbour. I can further confirm that consultation has been ongoing during the past 12 months with port users with the intention of applying the craneage charge from 1st January 2009. Thank you.

**4.8.1 Deputy S. Power:**

Yes, if I may be allowed to ask a supplementary? Can the Assistant Minister give an indication of the new tonnage charges and compare those to the existing charges so we may have an idea of the increase?

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

Yes, Sir, the new tonnage charges are £1.25 per tonne. As I mentioned a moment ago there is currently no charge for the harbour cranes, for any of the harbour cranes.

**The Bailiff:**

That concludes oral questions with notice. We come now to Questions to Ministers without notice, and the first question period is of the Minister for Health and Social Services, Deputy Le Hérissier.

**5. Questions to Ministers without Notice - The Minister for Health and Social Services**

**5.1 Deputy R.G. Le Hérissier:**

Is the Minister aware that perhaps inadvertently the regulatory regimes in care homes are leading to a situation where the number of double-rooms is being much reduced and there are difficulties apparently for married couples to occupy such facilities in residential homes? Is he aware of that, Sir, and, secondly, what does he intend to do about it?

**Senator B.E. Shenton (The Minister for Health and Social Services):**

I thank the Deputy for the question. We are, as he is aware, going through a consultation process with regard to residential and care homes and, as the Deputy is also aware, there is a need for more robust regulation in this area. The consultation process has identified a number of issues which need to be addressed and we are working flat-out to address these and that is just one of the issues that has been raised. But I think also the Deputy would also agree with me that when we are

putting the regulation in place we must not put such stringent regulation in place that we start putting the smaller homes out of the business and end up with a monopoly in the market. I think I have just answered a question that the Deputy may have been asking me in the future.

#### **5.1.1 Deputy R.G. Le Hérisier:**

Just a supplementary, and I thank the Minister and we understand the move to single rooms is often because of en-suite provision, but is he aware that this process is already well under way, well under way before the consultation process is likely to end and that we could find ourselves with a serious shortage of accommodation for married couples who wish to move into such homes?

#### **Senator B.E. Shenton:**

We do not currently have a serious shortage of accommodation, but yes one of the reasons for bringing this process forward is that we were aware of difficulties and possible problems in the future. I thank the Deputy, the Deputy has been giving great input into this area. I am not sure whether he will be conflicted in due course [**Laughter**], and I mean that jokingly, not nastily. But we are aware it is a very important theory and we are looking into it.

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

In answer to my question about prostate cancer 2 weeks ago, the Minister stated that his department was not going to introduce a prostate screening programme; that bowel cancer will be the subject of the screening programme. Will the Minister outline the proposals for the screening, including whether the screening will be free; will it be both for men and woman; and when will the screening programme begin?

#### **Senator B.E. Shenton:**

We are starting a bowel cancer screening programme. I do not have all the details yet because the Medical Officer of Health and her department are putting together the process and so on. I believe that it will not be limited to one sex and it will be for both sexes. I seem to remember that bowel cancer is about the fourth largest killer with regard to different cancers and that is why we are bringing that forward ahead of prostate cancer, which is slightly further down the list. I did read a very interesting article yesterday about prostate cancer which was published in a U.S. (United States) publication and we are well aware of the concerns the Deputy has with regard prostate cancer and we are hoping to move forward on that in due course. But at the moment we are putting bowel cancer in place first but we are well aware of the Deputy's concerns regarding prostate cancer.

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

May I just ask whether it will be free, the new screening programme, Sir?

#### **Senator B.E. Shenton:**

I would hope it would be. Again, I have not had the final costings forwarded from the department, obviously we are working within a finite budget. Ideally it should be free and that should be what we are aiming at.

#### **5.3 Deputy D.W. Mezbourian:**

It seems a long, long time ago since I sat on the review of the closure of the Leoville and McKinstry wards at Overdale, and I would like the Minister to update the House, please, Sir, on the current situation in those wards to advise us whether all patients have now been moved?

#### **Senator B.E. Shenton:**

No, I think it is fair to say there is still a certain amount of unrest regarding the closure of those wards and I am going to up to see the staff of McKinstry ward, I believe, on Thursday because they are unhappy about the closure. We are reaching the end of the process so that the actual closure

will be within the next few weeks. But I am well aware of the concerns and the points made within the Scrutiny report.

### **5.3.1 Deputy D.W. Mezbourian:**

May I have a supplementary to that question, Sir? Would the Minister advise whether there are patients now in both wards or have they been moved to one? Is either of the wards empty?

### **Senator B.E. Shenton:**

I know that there are definitely patients in the McKinstry Ward. I would have to check to see whether there are still patients in the other ward.

### **5.4 Connétable A.S. Crowcroft of St. Helier:**

With the warm weather now upon us, is the Minister aware of what steps his Health Protection Unit is taking to mitigate the odour nuisance being created by the Island's green waste compositing at La Collette?

### **Senator B.E. Shenton:**

We are in regular contact with the Transport and Technical Services Department and the Minister of Transport and Technical Services, to insist that they operate under best practice. At the present that is as far as we can go with regards this, is to make sure that they do operate under best practice.

### **5.4.1 The Connétable of St. Helier:**

A supplementary, please, Sir. The Minister mentioned he is in regular contact with the other department, would he confirm that the 2 Ministers have agreed to defer legal proceedings in order to allow the Health Department to go for an amendment to the law to protect it from being responsible for a bill should the Parishes' legal action take it down that road?

### **Senator B.E. Shenton:**

The Constable is partly right. Under the way the law as currently drafted it is up to the court to determine best practice and we could end up with quite a hefty legal bill if we start going into litigation with Transport and Technical Services. What we are trying to do is amend the law so that the Health Protection Department has more power to prove best practice itself. Because I think the Health Protection Department has much more expertise in this area - with all due respect to the court - than the court itself. So I think that it is an area where we will be bringing an amendment to the House but I think it is common sense and I would not want to spend hundreds of thousands of pounds of taxpayer's money and get absolutely nowhere.

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

Can the Minister please inform the House how far they are down the line with the unique health name and address register? How many people they have on it? Could he inform the House with this new name and address register what the take up is on existing screening programmes? Thank you, Sir.

### **Senator B.E. Shenton:**

I would have to come back to the Deputy with the exact answer because she has asked where we are today. The last time I spoke to the Health Department I think we were up to about 40,000-odd. But I will have to come back on that and, again, I will have to come back with the actual figure with regard the screening programme and the figures with regarding executed screening programmes.

### **5.6 Deputy R.G. Le Hérissier:**

Given all the problems with the birth of *New Directions*, old directions, U-turn directions, could the Minister confirm, Sir, that *New Directions* is indeed on course and that all the vital parties within

his department are totally behind that report and that all that simply remains to be done is a little bit of work on the financial side? Could he confirm that is the situation?

**Senator B.E. Shenton:**

To be honest, there is still a fair amount of work to be done on the financial side to get it to a standard where we are totally happy with it. As far as I am aware everyone within the department is behind *New Directions* but, as I say, there is still work to be done and it is on course, albeit as a delayed course, and a very slow boat. But we are trying to get there. What I do not want to do is bring something to the House that is half-cocked or half-baked and it falls down in a number of areas. It is also a process which I believe Scrutiny can offer a great deal of input and we thank them for their patience in this because they have been exceedingly patient with us with our delay after delay.

**5.6.1 Deputy R.G. Le Hérisier:**

Just a supplementary. Could the Minister confirm that there will now be a section in the report, as was not the case previously, on Social Services?

**Senator B.E. Shenton:**

There are a couple of areas where the report is a little bit light. I will not enlighten the Deputy on where I feel the other areas are light but we are hoping to bring a report that covers all areas that *New Directions* should cover, which includes Social Services.

**5.7 Senator S. Syvret:**

The Minister for Health and Social Services rejected an appeal from Mr. Simon Bellwood. He did, however, say in that letter and I quote: "However, in the wider public interest if you can furnish me with tangible facts which can be corroborated independently then I will consider how best to proceed." In the light of the following tangible facts, would the Minister for Health and Social Services now agree that an independent investigation into the precise handling of Mr. Bellwood's concerns at Greenfields be undertaken, particularly with regard to the activities of the civil servants? The tangible facts being demonstrated in the BBC Southwest Politics Show on 13th January; witness statements taken as part of the Madeleine Davis investigation; police interviews of former residents of Greenfields; interviews received by Gerald White; information received by Andrew Williamson; information received by the Howard Legal for Penal Reform. Does the Minister for Health and Social Services consider that list to be a sufficient amount of tangible facts to merit a proper independent investigation?

**Senator B.E. Shenton:**

I can confirm that we are undertaking an independent investigation into the circumstances surrounding the failure of Mr. Bellwood to complete his probationary process and we have promised on numerous occasions that this report will be made public to all States Members and members of the public.

**5.8 The Deputy of St. Mary:**

Given that the Minister has ultimate responsibility for Social Services, does he acknowledge the long-term social benefits that can accrue from a universal entitlement to early years' education and care and has he considered that money spent in this area would indeed be well-spent?

**Senator B.E. Shenton:**

I agree that we have to try and provide, as a government, universal care and move away from this lottery position, but I also am aware that there are a large number of people on this Island that can afford to pay for nursery care and perhaps we should not be subsidising those that are earning hundreds of thousands of pounds a year by providing free care. We have a limited budget. If this House wants to increase the budget of the Education, Sports and Culture to provide free care for



everyone, then so be it. It is a decision for the House. But it is important to at least give those on limited budget access to a certain number of hours free care every week. But it is the way that we carry out that policy that I have a few questions with.

#### **5.8.1 The Deputy of St. Mary:**

A supplementary, Sir. I did specifically ask did the Minister acknowledge the long-term benefits? We are hearing from *New Directions* that we are looking to the long-term health benefits to the Island. Does the Minister not consider that we need to look to the long-term benefits for social aspects as well, Sir?

#### **Senator B.E. Shenton:**

There are long-term benefits but there are also long-term benefits with a child staying at home with a mother that can spend time and look after the child in a quality home environment, as indeed my wife did with our youngsters. That was something that I was fortunate to be able to do because of my earning capacity. I could afford to live with only one income. There are other people not so fortunate. I think to turn around and say that nursery care is better than a loving mother at home does a great disservice to all those mothers that do stay at home and bring up their children. So I do not think you can be quite so black and white in this matter.

#### **5.9 Deputy J.J. Huet of St. Helier:**

I note that the Connétable of St. Helier was worried about the compost odour at La Collette and I would ask the Minister for Health and Social Services has his department done anything about the smells that can be once or twice a day in the First Tower area from the sewage that the people put up with, year in year out, day in day out, week in week out? What effect has he found in his department that this has on the health of these people and, if not, has he ever done anything to get rid of it? Thank you, Sir.

#### **Senator B.E. Shenton:**

I thank the Deputy for the question. I often wonder when people moan about the smell emanating from La Collette if we have a particularly... people living at Bellozane have put up with much worse in my opinion. Sometimes you drive past Bellozane and the smell is absolutely horrendous and I think as a States Assembly the quicker we can put a roof on the Bellozane treatment plant and improve the output from the plant the better, because also at Health we have concerns about the outflow in this area. I have great sympathy, and I think as a States body we need to try and address this as a matter of great speed.

#### **The Bailiff:**

That concludes, I am afraid, the first question period. We come to the second question period of the Chief Minister.

### **6. Questions to Ministers without Notice - The Chief Minister**

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

In the light of the Chief Minister's written assurance that an up-to-date due diligence on Harcourt will be done before any progress is made on the contract for the Waterfront, will he assure Members that the ratio of peak annual construction costs to company turnover levels will be included, along with an independent assessment of Harcourt's total property portfolio estimated by them to be £1.1 million and a proper examination of the hotel assets and their values and the illiquidity - the illiquidity - of the assets of Harcourt.

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

All such aspects will be covered by the due diligence and, indeed, other reports and will be made available to States Members and will be made available to the public. Further than that, in the event that the development agreement with Harcourt is still wished to be signed, in that event - as will then the bank guarantees - there will also be a full review made of the legal cases both in Dublin and Nevada by an independent lawyer also made available to States Members and the public. Finally, the Comptroller and Auditor General is to undertake a review of W.E.B. (Waterfront Enterprise Board) corporate governance and a review of whether or not W.E.B, itself acted properly in the whole circumstances leading up to and during the debate. All that information will be made available to States Members and to the public.

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

Supplementary if I may. Since the Chief Minister has taken the question wider in his answer, can he also include a statement about why the economic impact assessment conducted by the Economic Adviser was considered confidential and was refused to me on the night before the debate?

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

The report the Deputy has referred to was made public in 2005 at the Waterfront Forum and there is no reason, indeed, why he should not have it. Can I just refer back to his previous question? He mentioned the illiquidity of Harcourt. I believe he is not accurately reflecting the content of the PwC report but, of course, as I have already said that will be the subject of another due diligence report by PwC which he and other Members will have: it will be made fully available.

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

May I have a supplementary?

#### **The Bailiff:**

No, I want to move on.

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

But the Chief Minister has questioned what I have said and I wish to quote from the report itself, the very words.

#### **The Bailiff:**

I will come back to you. I saw Deputy Mezbourian.

#### **6.2 Deputy D.W. Mezbourian:**

In the recent report on early years' produced by my panel, we made a recommendation that the Council of Ministers should consider the appointment of an Assistant Minister with clearly identifiable cross-departmental overall political responsibility for children. We consider that to be one of the most important recommendations that we made, however the response that we have had from the Education Minister is that he is waiting for the publication of the *Williamson Report* before this will be considered by the Council. I therefore ask the Chief Minister when we can expect the publication of Mr. Williamson's report and, when it has been published, will he confirm that our recommendation will be considered by the Council?

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

I can confirm that the Council takes this extremely seriously and that it will be seriously discussed by the Council when the *Williamson Report* is available. That report is now expected to be available at the end of this month. In fact we have gone further than merely considering - I say merely - an Assistant Minister and have given some consideration to appointing a Minister with responsibility for children. But given the limits on the number of Ministers under the States of Jersey Law we can have that may be difficult. But we are taking the matter extremely seriously.

#### **6.3 The Deputy of St. Mary:**

From an exchange of e-mails to all Members recently it seems that there is some question as to whether the Scrutiny review into the importation of bovine semen will be finalised in time to be presented before the debate scheduled for 15th July. Will the Chief Minister advise whether he would be prepared for this matter to be debated in the autumn and, if not, advise the reason for the urgency? Thank you.

**Senator F.H. Walker**

This is a matter - and has been already - of discussion between the Scrutiny Panel Chairman, Deputy Ryan, and the Privileges and Procedures Committee, because it is clear that the Scrutiny Panel is struggling with the work in order to enable us to have a debate on 16th July. Deputy Ryan has asked P.P.C. (Privileges and Procedures Committee) whether it is possible to hold an additional debate the following week, i.e. 23rd July. That has been considered by P.P.C. but I have spoken to the Chairman and he has quite rightly said that is a matter for Members. I reiterate though previous comments, I would be extremely concerned - as would the industry or the majority of the dairy industry - if no debate takes place and no decision is reached before the summer break.

**6.3.1 The Deputy of St. Mary:**

Supplementary, Sir. Given that the importation, if it is allowed - if the States do agree it - Sir, would not be an overnight instant quick fix for the industry, could he please elaborate what the urgency is that this debate take place before the autumn?

**Senator F.H. Walker**

It is very simple. It is the livelihoods of dairy farmers and I consider that to be important both to them and to Jersey.

**The Deputy of St. Mary:**

I am sorry but I must press the Chief Minister on this, I cannot see what difference 2 months would make, Sir, when industry people themselves are saying this would take several years, perhaps even up to 10 years to change the industry significantly?

**Senator F.H. Walker**

I think, with respect to her, the Deputy is missing a vital point. If the dairy industry in Jersey is to have a future, most dairy farmers, certainly a significant number of them, need to make significant capital investment in the future of their businesses. They have been stalling on making that investment now for many months because of the debate on the importation of semen. I do not believe it is realistic or acceptable to expect them to go on stalling when their livelihoods, as I have already said, are at stake.

**6.4 Deputy G.P. Southern:**

In reference to a previous answer from the Chief Minister he appeared to suggest that I was misrepresenting the comments of the PwC report. Does he accept that the report itself says: "However, caution should be exercised as the bulk of the group's asset base is not liquid"?

**Senator F.H. Walker**

That is one of the comments made in the PwC report and the Deputy - not for the first time - is quoting very selectively. Sir, I do not intend to go into this in detail this morning. The Deputy has put it forward, we have various votes, we have rescindment motions, votes of no confidence, votes of censure in just about everybody and everything and I will be answering all these points in full during one or more of those debates.

**6.4.1 Deputy G.P. Southern:**

Can the Chief Minister assure Members that he will get a response - comments - back to those particular propositions in good time for the debate and not on the day?

**Senator F.H. Walker**

We will get the comments to Members as soon as we possibly can. Of course we have limited time anyway, and I am not complaining about that, because of the shortness of the lodging period in these instances but, yes, of course, we will get comments back to Members as soon as we possibly can.

**Deputy G.P. Southern:**

Is that a yes or a no before the debate, Sir?

**Senator F.H. Walker**

It is as soon as we possibly can, Sir.

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

In view of the earlier question regarding the possibility of an Assistant Minister for Children, could the Chief Minister give his opinion in view of the belief by the Minister for Planning and Environment that there is at times a conflict between the 2 roles of being a Minister for Planning and a Minister for Environment? Would the Chief Minister agree that it is worth examining the possibility of an Assistant Minister or an all-out Minister for the Environment? Thank you, Sir.

**Senator F.H. Walker**

That has not seriously been put to me and not discussed by the Council of Ministers. I personally do not see that there is such a great conflict which would justify the appointment of an additional Assistant Minister. Again, we are number constrained under the States of Jersey Law and I think frankly the issue of children ranks somewhat higher on the importance scale than this one.

**6.6 Deputy S.C. Ferguson:**

While we are talking about Ministers for Children and so on, have the Council of Ministers not given any consideration to Ministerial representation for the aged in the Island? Now, there is in the U.K. general evidence of abuse of old age pensioners whether in homes or in a home circumstance, and perhaps the Ministers should be casting their eyes upon that. I would point out the somewhat minor case of abuse where the old age pensioners who are house-bound and cannot get out are being deprived of their milk deliveries through economic circumstances. Would the Chief Minister like to comment on that?

**Senator F.H. Walker**

This issue, just as the issue of Assistant Minister for children, has arisen in the past and again it is another thing that I and, I think, the majority of Ministers would very much like to establish. The problem is we are limited under the States of Jersey Law to 12 Assistant Ministers, for reasons I support, and if therefore we were to appoint an additional Assistant Minister it would mean that some other duties currently covered by Assistant Ministers would have to fall. Either that or we add significantly - and it is a very significant issue - to the portfolio of an existing Assistant Minister which may be attractive and may be possible but it will not necessarily be easy.

**6.7 Deputy R.G. Le Hérissier:**

Can the Chief Minister confirm that in the light of recent events he is totally happy with the role and the performance of W.E.B.?

**Senator F.H. Walker**

At this particular instance, no, I cannot. I am, to say the least, annoyed that I have been portrayed as either being an idiot for not checking my facts or being dishonest in misleading the States. I am far from happy from the information I was provided with before the debate took place. I have asked serious questions both of Harcourt and of W.E.B. to which I have not yet received the full answers and I will be in a much better position to give not just the Deputy, but the States generally

and the public my assessment and my recommendations when I receive the answer to those questions. [Approbation]

**6.8 Deputy J.A. Martin:**

Much has been made about the limitations of having a Minister - probably - for the elderly and a Minister for Children, would the Chief Minister not consider then that all Ministers and Assistant Ministers with their great large portfolios already should be absolutely 100 per cent first a States Member and have no other employment outside this House and then they could maybe cover [Approbation] their great big portfolios they give themselves? Thank you, Sir.

**Senator F.H. Walker**

I do not really see the point of that question. I think if States Members have other employment and have had other employment before they were appointed as Ministers or Assistant Ministers and declared that, which I am sure they did, it is unreasonable to expect them suddenly to give it up. I am very confident with the application level of my Ministers; I am very pleased with the application level of my Ministers, others may not be but I am, and I am very pleased with the general level of application by Assistant Ministers.

**6.9 Deputy G.P. Southern:**

In his answer on page 14 of the written answers, the Chief Minister states clearly: "I have not denied access to any reports by the Economic Adviser on the Waterfront." Does he then deny that on the morning of the debate he has told me that the report that I requested from the Economic Adviser was confidential and he could not release it to me?

**Senator F.H. Walker**

Yes, it was in essence a confidential report but I was in error when I said that to the Deputy. It has already been put into the public arena and is therefore, of course, absolutely available to the Deputy and other States Members.

**6.10 Deputy J.B. Fox:**

In light of the questions this morning about the elderly and young people and Ministers and Assistant Ministers, will the Chief Minister or the Council of Ministers be reviewing the Assistant Minister's role at this time to be able to look at ways of improving the coverage that does not exist at this time?

**Senator F.H. Walker**

The role of Assistant Minister and the relationship between Assistant Ministers and the Council of Ministers has not developed as far or as comprehensively as it should have done, and I regret that. There have been numerous discussions on how it can be improved, that is still being worked on. I regret that the issues that the Council of Ministers has had to deal with in recent months - not least Haut de la Garenne and now, of course, the Waterfront issue - have delayed a number of other projects which we would very much have liked to have done but time has just not made it possible. But I have not forgotten the Deputy's strong interest in the role of Assistant Ministers and I do assure him that action will be taken in the shortest possible timescale.

**The Bailiff:**

That concludes the second question period of the Chief Minister.

**LUNCHEON ADJOURNMENT PROPOSED**

**The Bailiff:**

The adjournment is proposed, if Members agree, we will adjourn until 2.15 p.m.

**LUNCHEON ADJOURNMENT**

**The Bailiff:**

Very well, the Assembly now resumes the consideration of further statements and the first statement to be made is from the Chairman of the Comité.

**STATEMENTS OF OFFICIAL RESPONSIBILITY**

**7. Statement by the Chairman of the Comité des Connétables regarding Island-wide Rate Figure**

**7.1 Connétable K.P. Vibert of St. Ouen (Chairman, Comité des Connétables):**

I wish to inform Members of the costs to ratepayers across the Island of the Island-wide rate for 2008. This has been determined in accordance with the Rates (Jersey) Law 2005. The 2008 annual Island-wide rate figure is the 2007 figure of £9,780,626 increased by the Jersey Retail Prices Index for the 12 months to March 2008 of 3.2 per cent, resulting in a sum of £10,093,606. In accordance with the Rates Apportionment (Jersey) Regulations 2006, 55 per cent of the annual Island-wide rate figure is to be met from the domestic rates and 45 per cent of the Island-wide rate figure is to be met from the non-domestic rates. Having rounded the figures to 2 decimal places the resulting rates to be charged this year will be 0.64 pence per quarter for domestic ratepayers - an increase of 1.6 per cent on the 2007 rates; and 1.16 pence per quarter for non-domestic ratepayers - an increase of 0.87 per cent on the 2007 rates. The difference between the percentage increase in the rates across the 2 groups of ratepayers is due to the fact that there is a 2.6 per cent increase in non domestic quarters but only a 1.3 per cent increase in domestic quarters. The apportionment of the 45/55 split is of the £10,093,606 which needs to be raised, not determined by the number of quarters.

**The Bailiff:**

Are there any questions for the Chairman? Senator Vibert.

**7.1.1 Senator M.E. Vibert:**

The Chairman of the Committee wondered if we would have any questions on this. I have got one. I wonder if he could tell in layman's terms if a member of the public asks me about this how I could explain it simply?

**The Connétable of St. Ouen:**

I suggest he ask that person to ring his namesake.

**7.1.2 The Deputy of St. Ouen:**

Perhaps the Constable could inform this Assembly... one of the consequences of large increases in commercial property as proposed in the Waterfront plan and the increase in quarters that have been identified, if this 45/55 split remains the same would it mean that in real terms the domestic rates would continue to increase however the commercial rates would decrease quite dramatically?

**The Connétable of St. Ouen:**

When the law was brought in in 2005 there was a commitment to a 3-year period. This is the final year assessment of that apportionment and the review body which had assisted the Comité des Connétables in the first place will now be called to meet to look again at the apportionment with the present day quarters figures.

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

I am hoping the Connétable can clarify something that obviously I have misunderstood. I notice that the domestic rate is going up at an increase almost twice that of the non-domestic ratepayers and yet the last paragraph seems to tell me it should be the other way around, if in fact there is a

2 per cent increase in non domestic quarters then surely the rates should be going down in comparison?

**The Connétable of St. Ouen:**

I think, Sir, where the Deputy is confused is on the fact that it is the number of quarters which is used to determine the 45/55 per cent split of the money not of the quarters - of the total money needing to be raised, not of the quarters that are in hand. I accept it is a very difficult concept to understand, Sir, but that is the reason for the apparent discrepancy.

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

I am glad the Constable understands; I will just trust him.

**The Greffier of the States (in the Chair):**

Very well, we come now to a statement that the Chairman of the Environment Scrutiny Panel will make. Chairman.

**8. Statement by the Chairman of the Environmental Scrutiny Panel regarding the replacement of Bellozane Incinerator**

**8.1 Deputy R.C. Duhamel of St. Saviour (Chairman of the Environmental Scrutiny Panel):**

At the last States meeting on 3rd June 2008 the Transport and Technical Services Minister made the following statement: "We have been requesting now for some time further talks with the Environment Scrutiny Panel's consultants which have been flatly refused by the panel." The statement was not challenged at the time as it was not relevant to the line of questioning that was being pursued in relation to the release of cost schedules P.72/2008 proposition. It is important that I correct the record for Members. The panel has not made a decision to deny access to a meeting with our consultants. The Environment Scrutiny Panel invited Juniper Consultancy Services Limited to present their findings to States Members as part of a public exhibition on waste issues on 25th April 2008. Following this presentation the company agreed to repeat the presentation at a date to be determined for the benefit of those States Members who did not attend. On 21st May 2008 the Scrutiny Office received an e-mail request from Transport and Technical Services with an attached schedule of key issues that the department wished to discuss with Juniper at a meeting in the next few weeks. Juniper was made aware of these key issues. At the panel's next meeting on 22nd May 2008 the panel briefly discussed the request and agreed that the cost of any additional meeting specifically requested by Transport and Technical Services should not be borne by the Scrutiny Panel. The draft minute of the meeting records that the panel considered a request by the Transport and Technical Services Department that Juniper visit to discuss the report with them and the panel agreed that it did not intend to meet the cost of such a visit. This decision was not adequately conveyed to Transport and Technical Services. When Juniper were approached to finalise the date for the repeat presentation of their findings they indicated that they were unable to meet any date in advance of 1st July 2008. Since that time the Environment Scrutiny Panel has been made aware of the confidential minute of the Council of Ministers dated 8th May 2008 in which the Transport and Technical Services Minister was requested to extend an invitation to Juniper to clarify certain matters before the States debate scheduled for 1st July 2008. The panel has also now been advised that Transport and Technical Services made a direct approach to Juniper. Juniper Consultancy Services Limited has properly indicated that they cannot undertake work directly for Transport and Technical Services while still undertaking work for the Environment Scrutiny Panel. The panel, however, is keen to arrange a meeting between Juniper, Transport and Technical Services and the panel at which the Transport and Technical Services can raise any issues or concerns that it has with the report. Unfortunately, as stated above, there is no possibility of a meeting until after the planned date of the debate. Having just received the Council's minute on 13th June 2008 and being appraised of the concerns raised by the Council of

Ministers which will require our consultants to undertake additional work, the Environment Scrutiny Panel will make further representations to Juniper to seek to undertake this analysis in advance of 1st July 2008. However, as set out above the panel is not confident that the extra work can now be completed in the time available before the debate. The panel is therefore of the opinion that in view of the large sums of public expenditure involved in the proposed replacement of the Bellozane incinerator, Transport and Technical Services should defer consideration of this item until the department's officers have resolved all outstanding issues with our consultants.

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

I am very concerned at suggestions that it should be further delayed. One of the issues that I would like clarification on - in the interests of openness and transparency and so I can properly scrutinise what has been happening - is there is a line in here that says: "This decision was not adequately conveyed to Transport and Technical Services." I feel this might be part of the problem for the delay. Can the Chairman elaborate on this - this rather coy wording - and tell us his understanding of what was conveyed to Transport and Technical Services and give us an assurance that in future procedures are in place so that decisions will be adequately conveyed to departments in future.

#### **Deputy R.C. Duhamel:**

Certainly, Sir, in a minute from one of the officers it was stated that the panel has considered the request - this is a letter from the officer to one of the officers of the department: "The panel have considered a request from yourself to have the meeting with Juniper and have decided that they do not want this to take place." As I said earlier in the statement, Sir, this did not adequately convey the sense of the meeting that took place which was a request for a private meeting to take place, and that has been officially documented by Juniper, between Transport and Technical Services and Juniper. As stated earlier, Sir, Juniper Consultancy Services are still under contract with the Environment Scrutiny Panel and the Council of Ministers on 8th May specifically asked T.T.S. (Transport and Technical Services) for them to carry out another body of work. No letter has been received by the Environment Scrutiny Panel, either from the Council of Ministers or a proper letter from Transport and Technical Services making us aware of this particular request.

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

A brief supplementary. What was said in the statement was the decision was not adequately conveyed. It seems to me that the wrong information was provided saying they did not want it, not that it was not adequately conveyed.

#### **Deputy R.C. Duhamel:**

The conveyance of the decision that was taken at the meeting was that a private meeting... the cost of which would not be borne by the Environment Scrutiny Panel.

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

I am grateful to the Chairman for acknowledging that the correspondence sent to Transport and Technical Services Department did not adequately convey the views of his panel, which was that they considered the request to have a meeting with Juniper and have decided "that they do not want this to take place." The panel, according to the Chairman, were previously discussing the costs of getting Juniper over, would the Chairman confirm that Transport and Technical Services Department offered to defray some of those costs?

#### **Deputy R.C. Duhamel:**

The Minister is inaccurate in what he is suggesting and I have a minute from the Greffe as of yesterday suggesting that perhaps the minute that was written was not adequately conveyed to the department and notifying the Environment Scrutiny Panel of suggestions that would have perhaps allowed a wording to properly convey what the decision was. As stated, the decision of the Environment Scrutiny Panel was that it did not wish to pay for the cost of a private meeting



between Transport and Technical Services and Juniper. What it did not say was whether or not the panel was of a wish to progress a meeting at which Transport and Technical Services would be able to put their points of view, which obviously we do support. Likewise, it did not say - because we were not aware until 13th June of the Council of Ministers request - that this request goes further than a meeting but are specifically asking Transport and Technical Services to undertake a further body of work, through our consultants, before the debate.

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

The Chairman is asking effectively, as I understand it, for a further delay. We had a briefing at lunchtime in which we were further made aware of serious issues at Bellozane which his statement does not reflect in relation particularly to problems lately with the chimney. Can the Panel Chairman please explain to me what his recommendation would be if we do face a situation of effectively having to shut down the Bellozane incinerator: what are we going to do with all the rubbish?

#### **Deputy R.C. Duhamel:**

The panel have made it abundantly clear through its discussions, certainly internally, that there are strong alternatives either for shipping recyclable material - which are allowed under the law - to U.K. or European recycling facilities, however the materials have to be fairly clean. One of the difficulties with all of this is the element of food waste contamination in the waste materials that are collected by the Parishes. It has been a suggestion for a long time, Sir, that perhaps - and certainly it is intimated in the Juniper report - one way of not only reducing the load on the ailing plant - and nobody on the Environment Scrutiny Panel denies that - would be to recycle greater quantities of material and in order to achieve that in the simplest, easiest and most cost-effective way an element of the food waste has to be taken out in order to achieve that.

#### **The Greffier of the States (in the Chair):**

Senator Ozouf, we cannot allow this to turn into a debate on...

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

I was just going to ask the Chairman whether or not he would provide a report to the Assembly effectively setting out a detailed implementation plan so that Members can be apprised of either of the 2 options.

#### **Deputy R.C. Duhamel:**

The Environment Scrutiny Panel - I think I speak for all Members - will be quite happy to provide an alternative plan for the way forward but only if there is a general consensus among the House that that is, in fact, within the remit of the Scrutiny Panel. Hitherto we have been told that it is okay for us to scrutinise existing policies of the department but indeed if the States would like us to do that then I am quite happy to undertake that on behalf of the panel in short order.

#### **8.1.6 The Connétable of St. Helier:**

Would the Chairman not agree with me that the state of the incinerator chimney which we are all concerned about gives the Island a problem it has to deal with anyway, regardless of when this debate takes place on the replacement of Bellozane, and that T.T.S. and the Parishes are going to have to work closely together to make sure that we can deal with the fact that the incinerator is coming to the end of its life.

#### **Deputy R.C. Duhamel:**

I would do so. I certainly agree with the comments of the last speaker. He is absolutely right. Whatever happens in terms of a debate taking place and a decision as to a replacement for the ailing plant at the moment, the existing plant will have to be nursed or coaxed to deal with the materials for the intervening period until the new facility is available. We are told by the department that that

could be up to 3 years, perhaps a little bit shorter. Nonetheless there do exist very cheap methods of dealing with the Island's waste in the interim which would inevitably drive-up the possibility of recycling targets to a higher level and prove to the Island once and for all that there are perhaps greener sharper ways, and certainly more cost-effective ways, of dealing with the Island's waste rather than going for an expensive piece of kit.

**The Greffier of the States (in the Chair):**

Deputy Scott Warren, I have allowed this to stray rather too widely but if your question is to elucidate the statement I will allow it but if it is to continue the general debate on waste I think I must say we are coming to the end.

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

Would the Chairman agree that any delay would be very short but would make Members more confident about the decision that is, at the moment, tabled for 1st July, having consulted Juniper further on its recommendations? Thank you.

**Deputy R.C. Duhamel:**

I think that is absolutely right, Sir. The Council of Ministers quite rightly on 8th May set out their worries, so to speak, in making the request to the Transport and Technical Services Minister to ensure that Juniper, our consultants, were offered the opportunity to set out an additional piece of work to allow the Council of Ministers to come to the conclusion that what was being put forward by the Transport and Technical Services Minister as part of his proposition was indeed the way forward. I have to stress, Sir, in repetition, that this work cannot be undertaken before 1st July. The delay is not due to any intransigence or any other reasons on behalf of the Environment Scrutiny Panel. Quite clearly, Sir, our consultants are prepared to do this piece of work and we are quite keen that this work is undertaken so that all Members can be privy to the full details in order to make a balanced consideration when the time comes.

**The Greffier of the States (in the Chair):**

The Assembly will come to the arrangement of business at the end of the meeting, they have heard your views, Chairman, and a decision will be taken about the 1st July date. We come now finally in statements to a statement made by the Assistant Minister for Home Affairs. Assistant Minister.

**9. Statement made by the Assistant Minister of Home Affairs regarding the origin of the skull fragment found at Haut de la Garenne**

**9.1 The Deputy of St. John (Assistant Minister of Home Affairs):**

I have now reviewed the Chief Officer's report and relevant correspondence and am able to answer the questions raised by Senator Perchard and Deputy Power that were referred at the last sitting. It remains the case that there is no definitive scientific finding as to the nature of the fragment found on 23rd February 2008, which might indicate whether or not the statement made subsequently by the Senior Investigating Officer was incorrect. So I trust Members will understand that this is an ongoing investigation and that therefore it is not possible to make any further comment. If deemed necessary, any such matters could form part of a brief for the Committee of Inquiry which has been proposed to proceed upon completion of the investigation. Thank you, Sir.

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

I thank the Assistant Minister and while I do know and understand the sensitivities that surround this ongoing inquiry I do think there is a certain aspect that the Assistant Minister will surely want to get cleared-up. As the find at Haut de la Garenne on 23rd February was described at the time as what appears to be the partial remains of a child, will the Assistant Minister advise the Assembly what action is now being taken to establish the accuracy or otherwise of that description?

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

At the time the on-site anthropologists and forensic scientists were led to believe that that was what the item was. Without undertaking further forensic tests on the item, which is no longer of any interest in the investigation, it would not be possible to draw a full conclusion on the item, Sir. As it is no longer relevant to the investigation I see no further reason to establish whether it is or is not what people think it is. The fact is that it is inconclusive and, as it is inconclusive, Sir, and irrelevant to the inquiry at this stage, we will not be commenting on the matter any further, Sir. Thank you.

### **9.1.2 Senator J.L. Perchard:**

I thank the Assistant Minister and understand his dilemma. Will the Assistant Minister arrange for the material found on 23rd February to be released to the States of Jersey Pathology Department in an effort to assist the police identifying the origins of the material?

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

I think not, Sir. I do not think the Pathology Department here has the level of expertise that will be required to make such a judgment, Sir. We have used some of the top labs in the U.K. and they have had difficulty, Sir. This is not an exact science and if it is required to be investigated further, Sir, it would cost further money which is no longer of any relevance to the investigation. This particular item, as we have said on a number of occasions, is no longer relevant to the investigation at this time. However, it does form part of the evidence for the case and will be kept as such in case it ever is required, Sir. Thank you.

### **9.1.3 Deputy D.W. Mezbourian:**

I would just like to make a point to anyone considering making a statement in the House. As we are all well aware, the House is never - or not always - fully attended by Members and at the last sitting, indeed, some of us were absent. So to have a statement which makes reference to questions raised and were deferred at the last sitting but without identifying what those questions were, it is difficult for those of us... **[Interruption]** I think perhaps, Sir, someone is phoning the Deputy to raise the same point with him as I am making now. Indeed, Sir, not only for Members who are perhaps absent from the House at the time but for those people are listening - and no one seems to be listening to me at the moment, certainly not within the House. But I repeat, Sir, for those members of the public who may not have heard the questions raised at the last sitting, for those Members of the House who may not have heard, may I ask that in this instance the Assistant Minister reminds us what the questions are or were that he is referring to and reiterate that for future statements Member will remember my comment.

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

**[Aside]** The Deputy has a fair point and I will recite the question as was given to us at the last session for the benefit of Members and particularly for the benefit of the Deputy. Deputy Power asked the question and it was as follows, Sir: "In view of the forensic opinions as to the nature of the alleged fragment of skull found at Haut de la Garenne, does the Minister still maintain her view that the comments made by the Deputy Chief of Police at a press conference on 23rd February were appropriate?" That was the question and I apologise, the Deputy is quite right it should have been stated when I answered the question, Sir.

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

In lieu of the fact that the Assistant Minister has now indicated that the fragment found on 23rd February is no longer of relevance to the investigation, is it not in the interests of the Home Affairs Department to put that non-relevant piece of fragment into the public domain? Thank you.

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

No, Sir, because whatever way you look at it this item is still evidence and until a conclusive result is achieved from further forensics, it will remain evidence. Unless the Attorney General can correct me otherwise I would imagine any type of evidence uncovered in this type of investigation would have to be kept until after any subsequent trials, if indeed there are some, Sir. Thank you.

**Deputy S. Power:**

Sorry, can I ask him just to clarify that last answer. I understand the Assistant Minister to have said that the item is no longer of any interest to the investigation. If it is no longer of any interest to the investigation how can the Assistant Minister call it evidence?

**The Deputy of St. John**

I think that is a matter for greater minds than mine from a legal profession, Sir. As far as I understand it, it is evidence and it should be kept as such until the investigation is completed. Perhaps the Attorney General could clarify that, Sir?

**The Attorney General:**

I am sorry, Sir, that I was not in the Chamber at 2.15 p.m., I apologise to Members. Can I ask what precisely I am asked to clarify?

**The Deputy of St. John**

Mr. Attorney, I wonder if you could clarify. The Deputy has asked that the evidence which I am making reference to in this answer be released to the public as it is no longer of relevance to the investigation. My understanding is that all evidence remains as such until any court proceedings or any subsequent investigations are completed. That is now evidence - Crown evidence, I assume - and the Deputy is asking whether that is the case or not?

**The Attorney General:**

I now understand the point being asked. My firm advice to Members is that this is not a matter which ought to be put in the public domain at the moment because it might have an impact upon any of the prosecutions yet to come. I do not, for my part, think it is appropriate that we risk the integrity of those prosecutions and the judicial process by analysis of evidence, whether directly or indirectly relevant at this stage. It is very difficult to tell what evidence might be relevant. The police may well have reached the view, as I think has been expressed previously, that the piece of skull - or not skull as the case may be - which was referred to in February no longer forms part of the police investigations. That would mean that it is not part of the prosecution case. But there is no way of knowing at the present stage whether it may or may not form part of the defence case, in which case all relevant material in relation to that would need to be provided to the defence as part of the duties of disclosure. For all these reasons it is just not appropriate to risk prejudice to the integrity of the judicial process in my view at this stage.

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

Will the Assistant Minister look into the case which I think was publicised in the National Press whereby it was indicated that the item that was found was not bone and in fact that the further investigation that was required was to find out whether it was coconut or walnut?

**The Deputy of St. John:**

You have concerned me greatly that the lab in question made any statement at all to the press. Having said that, Sir, they have said - and this has been in the public domain already - that the investigations or the science used to establish what this item is are inconclusive, Sir. So I do not see how one could say categorically whether it is wood, coconut or anything else, Sir, without further investigation. They have said that to us, this particular lab, but I was most disturbed and concerned that they released that information in the first place, Sir. I will repeat, without further forensic tests we cannot prove conclusively that it is bone or any other items, Sir.

### **9.1.6 The Deputy of St. Peter:**

A supplementary, if I may. Would the Assistant Minister confirm that in effect that the lab indicated in very clear terms that to quote: “This ain’t bone” and that further investigation was required to find out exactly what it was in relation to what form of wood it was?

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

I could go into more forensic detail as to why they could not make such a statement but I have been advised not to by our legal advisors, Sir, but I can categorically state that this evidence has not been proved conclusively as to exactly what it is and I do not wish to comment any further on the item, Sir, as I have been advised not to.

### **9.1.7 Connétable M.K. Jackson of St. Brelade:**

The Assistant Minister refers to the ongoing investigation and of course its significant associated costs. Could he give Members any indication or indicate to Members whether there has been any move from his officers as to how much further this investigation will carry on for? Thank you, Sir.

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

That will depend on whether the Constable is talking about the specific area which I am talking about here which is the Haut de La Garenne investigation or the greater abuse investigation. The abuse investigation generally could go on for many, many months, Sir. There is precedent here in other jurisdictions where it has gone on for considerable time. With regard to the actual site at Haut de la Garenne investigations there are almost complete, Sir.

## **PUBLIC BUSINESS**

### **10. School milk: continued funding (P.66/2008)**

#### **The Bailiff:**

That concludes the time allowed for questioning the Assistant Minister. We now come to public business and the first item is School Milk continued funding (Hardy Perennial) P.66 in the name of Deputy Southern.

#### **Senator J.L. Perchard:**

Excuse me, Sir, before we start on the hardy perennial could I declare an interest as I have an interest in the dairy farm at home and ask the leave of Members.

#### **The Bailiff:**

Yes, Senator Perchard has declared an interest.

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

As Members will recall the Chief Minister carries out my duties in relation to the dairy industry. While we are no longer active dairy farmers we still have a financial interest in the Milk Marketing Board, of a remote nature I admit, but I would prefer not to take direct part in this debate and declare an interest, Sir.

#### **The Bailiff:**

Very well, Senator Ozouf, has declared an interest.

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

Unfortunately I cannot declare an interest, I have been trying to lease a cow all week but nobody will lease me one, Sir, so I am afraid I have to stay. **[Laughter]**

#### **The Bailiff:**

I ask the Greffier to read the proposition.

**The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion to express their support for the continued funding of school milk and to request the Chief Minister, after consultation with the Minister of Economic Development, to bring forward for approval by the States provision for this funding to be inscribed in the budget of the Economic Development Department in the Annual Business Plan 2009 and ring-fenced for this purpose until such time as the new dairy and appropriate financial structures for the dairy industry are in place.

**10.1 Deputy G.P. Southern:**

It is indeed a pleasure to get on to what apparently appears to be a more straightforward proposition. But considering the arcane nature and the torturous path that we have taken this morning perhaps that may not be so because this is indeed a minefield for politics and economics, and a simple topic it is. But as I start my speech, the first thing to mention is that it is indeed referred to by yourself as a hardy perennial. Indeed this is, I believe, the third - it may well be the fourth time - I have come and brought this to the Assembly. For those Members who are inwardly groaning and saying: "Oh, not again" may I remind Members that they should not shoot the messenger but recall that this time last year I brought an amendment to the House to ring-fence school milk funding for 3 years, which I thought at the time was the appropriate length of time that it would take for the dairy to complete its reorganisation. I still believe that is the case and that that is the content of the proposition before them. But as many have said school milk is obviously supported by many in our society, and I believe the majority of parents certainly on the Island support the continued provision of school milk. However, politically it is not at the top of anyone's agenda. It was never at the top of the agenda of Health when it was with their remit; it was never obviously at the top of Education's remit; and it is certainly not, nowhere near, the top of Economic Development's agenda. In fact in their comments they say, and this indeed is very low rating: "The review concluded that funding school milk had the lowest priority of any potential bid for funding within the evaluation criteria." The lowest funding indeed. I have no argument with that at all because it has to remain somewhere, I believe, it happens to have been put in the remit of Economic Development but their key criterion is in the sentence: "The States Strategic Plan objective of realising 2 per cent real annual economic growth." So quite rightly no one is going to make a fortune through school milk so it does not fit in with their own agenda of promoting economic growth. It is not an easy target. Nonetheless it is with them and remains with them. Now, why it is there is because of a recommendation by advisers, commissioned by the then Economic Development Department way back in 2001 reporting in 2002, I believe, by Dr. McQueen who suggested that on the provision of school milk: "The guaranteed continuation of the present level of States support for school milk and welfare milk programmes at least until the end of 2004." That is summed-up by the Economic Development Department's decision in 2007: "The intention remains to withdraw this funding pending the successful reorganisation of the dairy industry." So it has accepted that what we need is a successful reorganisation of the dairy industry and then we should be considering the role of school milk. The question is; has that happened yet? Again, I turn to the department's own comments: "The process of reorganisation of the dairy industry has been tough but key initiatives are now underway." Note: underway. Not completed. "Getting agreement to relocate a modern dairy operation at Trinity, which will increase the efficiency and lower costs of production; the capacity to extinguish debt through the sale of the Five Oaks site." Are they done? No? Are they likely to be done in the next 18 months, perhaps outside 2 years? Probably. When they are done and we have got the new dairy up and running so we can be completely efficient about it - a nice modern dairy and the debt has been removed - then we are in a position to consider the overall funding of the dairy industry and the role of school milk within that. That is the case, I believe. They then go on: "Penetrating the lucrative export market for added value products", is that done? Well, no, there has been a little progress made but not very

much. "Realigning milk production with market demand by retiring just over 2 million litres earlier this year", has that been done? It has indeed. Why has that been done? Because the industry itself and the dairies within that industry set about doing that and it has succeeded. So in my report I point to the rising price and the now acceptable level of production. So the dairy itself has done what it can to get things right. It now needs to complete the last 2 phases, which is moving into the new dairy and selling-off to remove the debt of its present site. That is the key element. I believe that will be sorted within the 2 years. We are on the verge of that. We should not be changing things now. So I believe continued funding for school milk has the support of people on the Island and certainly should be continued for the moment. Let us turn for a minute to the economics of the whole process and again I will refer to the Minister's own comments, and in paragraph 2 the Council of Ministers does not feel that there is a compelling economic case to maintain a subsidy to this industry and it then goes on to the economic case, which it sums up as saying: "This leaving a net profit to the dairy of around only £14,000." So, school milk, around £180,000 to £190,000 has a profit only of £14,000. So, one has to ask: "Why are the dairy doing it?" But the dairy are not daft; they are not throwing money at this and what they say is while this is not a proportionately large amount, the Jersey Dairy regards school milk as an extremely important product for several reasons. It gets children into the habit of consuming a healthy product at a time when many do not have a healthy diet. It also is an opportunity to teach children about the relationship between food and the countryside. The importance of a healthy diet and the value of the Jersey countryside. The Jersey Dairy is launching an educational scheme **[Laughter]** - and the Constable of Trinity is once again distracting me from my delicious milk - part-funded by the money we hope to receive from school milk. From September, primary school children will be invited to spend the day at Hamptonne Country Life Museum, learning about the relationship between Jersey's countryside and their food and about the importance of a healthy diet. They propose that of that £14,000 profit that they get from school milk, they will spend £10,000 on it - on that particular scheme. Now, that is called effective marketing. Get milk to the kids who are the consumers of the future and the whole thing works. It is effective marketing, that is what we are talking about and that is what we wish to maintain. So, the economic case does make some sense. Moving on, what I would like to do is just point to what is happening on the mainland. We have heard some debate over recent years about milk and the position of school milk. Earlier this morning, in a brief hiatus between questioning the Attorney General and the Home Affairs Minister, I popped downstairs to examine... to have an explore on the net. What I found was the following list of towns or areas or authorities who have recently decided to re-introduce and to pay for school milk; Sheffield, Doncaster, Greenwich, West Berkshire, Cornwall. The list could go on. If I had looked further, I would have found some more. In Scotland, what we find is that the Scottish Executive is, at this moment, examining legislation to pave the way for every school in Scotland to once more provide free milk. Councils will be given the power to provide snacks such as fruit or nuts during intervals or breaks. This should allow for the return of free milk and the provision of fruit juices. So, we are talking about milk as part of a healthy diet. In part of this article it says, while I do not wish to rehearse the health argument: "Despite recent reports about concerns over whether children benefit from milk, due to its fat content, Sue Baic of the British Dietetic Association sought to reassure parents, children need a lot of energy and full fat milk, for the under 5s is entirely appropriate." We do not do full fat milk; we do reduced fat milk. Semi-skimmed milk is probably better for the over 5s, as with some of the fat removed there is more calcium in proportion and she added that free school milk benefits all ages of children. So, that argument is still correct. Many, many areas in the U.K. are re-introducing school milk as part of a balanced healthy diet. This is the way things are going. In summary, what I ask this Assembly and the representatives in this Assembly is, at a time when in the U.K. many, many authorities are putting their weight behind and putting their faith in school milk, should we, at this stage, be withdrawing our support from such a service? I think not. I maintain the proposition and will answer questions and take comments.

## **The Bailiff:**

The proposition is seconded. **[Seconded]** Does anyone wish to speak? Deputy Lewis.

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

Thank you, Sir. I have always supported school milk, Sir. I think it is a valuable food supplement at break times and lunch times. It is good for young, growing bones. It is also good for old, growing bones too and I definitely will be supporting this proposition. Thank you.

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

I am certainly not happy for there to be no replacement were school milk to be withdrawn. In my view, Sir, pieces of fruit for every child could perhaps have been seen as an acceptable healthy alternative. But, having said that, the letter that we have all received from the Jersey Dairy quite clearly states that the Health Promotion Department here will be influenced by the findings of the U.K. School Food Trust. It states that the Trust does conclude that milk and dairy food should be available at school lunchtimes. So, Sir, I look forward to hearing from the Minister of Health regarding the timescale, firstly, for introducing fruit into schools under the Healthy Schools Initiative but also, Sir, and we have already heard from the proposer that certain towns in England are re-introducing milk. I would like to hear the latest thoughts from Health on this. Thank you, Sir.

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

Yes, Sir, I am one of those unfortunate enough to remember dealing with this proposition when I was President of Employment and Social Security back in the 1990s. It has been going around ever since. I thought, in recent years, we would have come to the conclusion that this subsidy was there purely for the benefit of the dairy industry. I think that is acknowledged by the fact that the money for this provision comes out of the budget, not of Health but of Economic Development. It is there as a subsidy to the dairy industry. I think dressing it up and saying: "Oh, there might be health benefits, the Milk Marketing Board think it is a good thing." Well, I suppose to repeat that phrase we heard this morning; they would say that, would they not? But I have to say this is purely and simply a matter of how we can best help the dairy industry. It is, to me, in fairly crude financial terms, a matter of yes, we believe that pending restructuring of dairy, we need to give them some financial support. We can give them that financial support in a variety of ways and indeed the Economic Development Minister does provide that support in a variety of ways. I can think of a number of ways in which he could provide that support; the simplest by far being to write out a cheque to the dairy. One of the most complicated methods he could use would be to suggest to the dairy that we would buy pots of milk for school children, half of which might not get consumed and a bit of which might give a bit of profit to the industry but it is the most convoluted way of giving a minimum amount of benefit to the industry that I can imagine. So, really, I can well understand Economic Development saying: "Firstly, if we are going to give aid to the dairy industry, we will do it in a better way than this and, secondly, how much aid do we need to and can we afford relatively to give that industry?" The Deputy, in his proposals, does indicate, on page 7 that the dairy gets over £1 million a year in support. Granted it is dwindling as the dairy restructures itself. That support is there in a far more significant sum than the £190,000 we are talking about here. To try to do it in bits and pieces in different ways strikes me as being the most inefficient use of resources and not achieving the objective of either the dairy industry or the Economic Development Department. I suspect that if the Economic Development Minister is forced to live within his cash limits and was told to spend £190,000 on school milk, he would say: "Okay, I will do that" and reduce the direct aid to the industry by similar amounts. Now, where is the advantage to the industry in that? Instead of giving them a grant out of which they make £14,000 a year profit we are going to reduce a grant which gives them £190,000 on the bottom line. It just does not make sense to me. If the dairy want to carry on doing this provision to the schools at their own cost, well that is fine. They are quite at liberty to do so but, from our point of view, I cannot see any reason



for going around this complicated way of doing things. I thought that we had just about put this issue to bed but I have, I suppose forgotten it was election year.

**Deputy G.P. Southern:**

I resent the implication of what he said there. I brought this 4 times in and out of election years. That is absolutely an outrageous abuse.

**10.1.4 Deputy S.C. Ferguson:**

I can assure Deputy Southern I am not going to insult him ... much. **[Laughter]** No, to be serious, I do have a lot of sympathy with the proposition. It is an emotive subject, milk, for the health of growing children and particularly to prevent rickets. I do, however, question the subsidy on the grounds of health alone. Milk was a necessity for growing children, particularly in the industrial areas but, since the 50s, nutrition has improved to the point where, for example, rickets became virtually unknown in our society. At least, it was. I note that there is a recurrence of rickets in some of the ethnic communities in the U.K. and there is also a higher risk of it if you are a strict vegetarian. This might be one of the reasons for the re-introduction of school milk, as mentioned by the Deputy. But it also gives us a conflict in the advice that we have been given. Children need vitamin D and calcium from milk but fruit would be better because of obesity. Also, too much time outside with sunscreen prevents skin from producing vitamin D but you must wear sunscreen because of melanoma. You know, is it any wonder that parents are confused, let alone States Members? However, on balance - and based on the anecdotal evidence - a lot of the milk delivered to schools is not drunk. Furthermore, I have heard no reports from the Medical Officer of Health, but perhaps the Minister for Health and Social Services can confirm this; I have heard no reports of an outbreak of rickets in the Island. On these sorts of grounds I cannot justify the expenditure of £190,000 a year for school milk. I do think, however, that this proposition is aimed at the wrong section of the population. At the last sitting of the Assembly, I asked a question about the delivery of milk to housebound pensioners and, as Members will remember, my question was bounced around from Ministry to Ministry until Senator Ozouf took pity on me and agreed to answer it. If we cut the school milk, then it is totally uneconomic for the delivery company to deliver milk to pensioners. At the moment, on record, there are only 260 old age pensioners who have their milk delivered. The delivery cost is 31p per delivery and delivering twice a week for a year, twice a week to these 260 would cost about £8,400 a year for milk worth about £11,500 at retail prices. It is with great reluctance that the gentleman has had to stop deliveries but the figures just do not stack-up. As Chairman of the Public Accounts Committee, I cannot justify the spending of £190,000 to cover delivery costs of £8,400. I happen to think though that there should be some way to organise deliveries to our elderly and housebound population, particularly as their numbers are growing and the requirement to make deliveries of groceries and milk will become even more acute. I shall be working on it but I happen to think that the States should make a contribution as well. I would give you a quote from the bottom of one of the invoices: "The States are a disgrace. I hope when they reach our age and are housebound, like us, they will be treated the same." That is a cry from the heart. I understand the Minister for Social Security may have suggested the purchase of long-life milk. I would be interested to hear if he has ever tasted it. Good in an emergency but not long-term. I really cannot justify support of this proposition, not on the basis of the evidence I have got so far. If we need to aid the industry, then there are better methods, as has already been outlined by other speakers. Thank you, Sir.

**Connétable G. W. Fisher of St. Lawrence:**

Thank you, Sir. I rise to seek 2 points of clarification and reserve my right to speak later on. The first point of clarification, it says towards the end of the proposition: "Until such time as the new dairy is in place and appropriate financial structures for the dairy industry are in place" so there are 2 conditions there. What worries me and it worried me last year when we were talking about 3 years commitment, is that we do not know how long the new dairy is going to take to be in place.

We have approved that the new dairy should be at the Howard Davis Farm but we have not yet approved the amendments to the covenant and it may not happen. It could go on for years. We do not know. So, that seems to me like an open commitment if we go forward. So I would like clarification on what that really means because it does not say a dairy at Howard Davis Farm, it does not say a dairy anywhere in particular but it could take some considerable time. I am even more concerned about this fairly vague phrase of "appropriate financial structures". What does that mean and who is going to determine those structures? You could argue there are probably appropriate financial structures in place at this very moment, for all I know. I have not done an audit of the accounts but I assume that they are being run properly and effectively but maybe they are not and I do not know really what that means, Sir. So, perhaps could we have some clarification on those 2 points?

**The Bailiff:**

From whom, Connétable?

**Connétable G. W. Fisher:**

Well, I do not know whether you would be happy to do so, Sir, or the proposer but somebody because it seems to me that both points are pretty vague and, reading that, there is no... well, there is a long, possibly a very long-term commitment or it might be a very short-term commitment. I do not know but I do not really know what it means and who is going to decide. Thank you, Sir.

**The Bailiff:**

Do you wish to reply?

**Deputy G.P. Southern:**

I am definitely willing to reiterate what I said in my speech and is in my report that the intention is that until the new dairy is in place and up and running and until the debt problem has been solved. What is happening now is that what profits there are, substantial chunks of it, are going into servicing a debt and that could be solved by the selling of the site and a restructuring of the finances of the dairy. It is as simple as that.

**Connétable G. W. Fisher:**

I thank the Deputy for his clarification, Sir, but I do not think that is what the proposition says. Thank you, Sir.

**The Bailiff:**

If you are asking the Chair as well, Connétable, it seems to me that what the Assembly is being asked to do at this stage, is to express their... there are 2 things; firstly to express their support for the continued funding of school milk and secondly, to request the Chief Minister to bring forward certain funding arrangements and the proposition expresses a view as to the kind of funding arrangements which the Chief Minister should bring forward. It seems to me that that is very open ended, as you rightly say. So, it probably is very difficult to say what it does mean but it is a matter for the Chief Minister, if the Assembly adopts the proposition, to take into account when he brings forward his funding proposals, whatever they might be.

**Connétable G. W. Fisher:**

Thank you, Sir.

**10.1.5 Senator B.E. Shenton:**

Thank you very much. I am afraid, for those of you that are sitting on the fence on this one, I am not going to be of much assistance to you. I asked the Head of Health Improvement at Les Vaux Centre to come forward with a statement on this issue. If I can read the statement out and then just clarify? Unfortunately I have printed it out very faintly so I have got to put my glasses on. The

Health Protection Unit statement is as follows: "Milk and other dairy produce continue to play an unquestionable part of a child's balanced diet. Nutritionists recommend that, as part of a healthy diet, children consume 3 portions a day, from the milk and dairy food group. The Public Health Department's position is that we will continue to endorse milk and other dairy products as part of the modern day dietary requirements of local school children. National surveys have identified that the majority of school children achieve recommended levels of calcium from other sources outside of school milk. This is in part because many non-dairy food products are now fortified with calcium. The same survey identified that children's diet is poor in terms of fresh fruit and vegetables. Only 2 to 3 daily average portions are being consumed, which is well below the recommended 5 a day. Local surveys of Jersey children suggest similarly low levels fruit and vegetable consumption. The Public Health Department's position reflects this change in children's diet and supports the position that the subsidy currently attached to free school milk in schools should be transferred to free fruit and vegetables in schools, which would offer better value for money." Well, we have no means of doing that. Certainly, within my budget at Health I have not got spare money to put into free fruit and vegetables. However, we are working with Education, Sport and Culture quite aggressively on a healthy schools initiative which is moving forward at great pace. I think what we have got to bear in mind on this is - although from a sentimental viewpoint, and I am a great fan of school milk personally but maybe some of that is sentiment - that life today is a lot different than life was in the past and perhaps... Deputy Ferguson mentioned about rickets in school children but perhaps obesity is a bigger problem these days than a poor diet. So, once again, I apologise to those that are sitting on the fence. Milk does have its value but if we were going to target with a blank sheet of paper, fruit and vegetables would be our number one target with regard to provisions for school children.

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

Thank you, Sir. May I congratulate Deputy Southern for his use of a visual aid; a glass of milk in front of him and I assure him that any official dinners we arrange in future, C.P. and otherwise, we will make sure there is plenty of milk on the table for the Deputy to drink. **[Laughter]** I certainly would not want him suffering from rickets. But, like Senator Shenton, I would hope that this debate does not become a debate about the healthy or otherwise aspects of giving free milk to young children of primary school age. While I appreciate everybody's view and quite often that is coloured by what they experience themselves, I rather tend to listen to the advice of the Medical Officer of Health, who perhaps knows a little bit more about it and up to date information on it than many of us. She is concerned about the increasing levels of obesity in young children and she fears that the Island could be heading for an abyss of poor health in the future, with today's children having a shorter lifespan than their parents. So, we should be encouraging our children to eat better, to take more exercise, *et cetera*, which, as the Minister for Health and Social Services said, we are working very actively with Health. Education works very actively with Health to promote that. Deputy Southern referred to some parts of the U.K. looking to bring back school milk. I will only quote one thing to Members and I think it is a very relevant thing to quote. There was a very large survey undertaken in the U.K. by the National Diet and Nutritional Agency - a survey of young people aged 4 to 18 years. It was acknowledged as the most comprehensive summary of the dietary habits and nutritional status of school children and adolescents in the U.K. and it concluded that, on average, children aged 4 to 10 - that is a group we give school milk to - consume more than the recommended healthy amount of calcium. A minority of children of this age do not consume an adequate amount. So, there is a big concern that by helping the minority, we might be putting the majority at a disadvantage because, milk, as well as its nutritional aspects, is fattening. Interestingly, the children or young people aged secondary school age, on average take in less than the recommended nutritional intake of calcium a day. So, if you were looking at it on health grounds, you would be giving milk to secondary school children, not primary school children. I certainly do not support the rather arcane idea that this is a wizard marketing wheeze, by getting them young, you will keep them. What is the next suggestion? That we should be subsidising

Jersey Royal new potatoes for children so that they can get used to them and want to eat them later on? Or perhaps La Mare vineyards would want to get in on the act, which would rather probably please me better. But I think we should get away from the health aspects. We will continue to do whatever the States want Education to do but I think Members should be looking at this as it was primarily proposed which was on economic grounds; of a benefit to the dairy. I think there are a couple of issues that I would be very interested to hear Deputy Southern's response to. One is that of course we now have at least one independent milk producer and I wondered, under competition rules, how this would work out if you were subsidising the dairy, Jersey Milk, and what about independent producers? They would not be getting that subsidy so that seems a bit odd. Also - sorry if the Deputy would listen - also in that it is an interesting point that if you look at the nutritional aspects only, I believe organic milk is said to be more nutritionally suitable than inorganic milk which is of course another issue. But, I think we should look at it quite clearly and openly; the debate should not be about nutritional aspects or otherwise. It is an economic debate and is this the best way to give £14,000 to support the agricultural industry? I remain to be convinced, from the arguments I have heard so far.

**10.1.7 Deputy S. Pitman of St. Helier:**

Thank you, Sir. I should ask the Minister if he has heard of skimmed milk? If you bear in...

**Senator M.E. Vibert:**

Is that directed at me? I am a bit confused.

**Deputy S. Pitman:**

Yes, the Minister for Education, Sport and Culture.

**Senator M.E. Vibert:**

Yes, Sir, I have heard of skimmed milk, half skimmed milk, all sorts of milk I have heard of.

**Deputy S. Pitman:**

If you bear in mind that G.S.T. (Good and Services Tax) is exempted on the building of conservatories, swimming pool maintenance and fuel for private yachts and that 1(1)(k) residents do not pay an equal proportion of our tax, than the rest of us; and we cannot afford to give something to our children that they need as part of a healthy diet - that is something that is proven by evidence. We cannot, Sir, afford £190,000? States Members who suggest that we cannot do this on economic grounds... it is ridiculous. Thank you, Sir.

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

Can I just confirm that the Deputy is wrong in her allegation that those items of yacht fuel are exempt from G.S.T., they are not.

**10.1.8 The Connétable of St. Martin:**

The debate is sort of going a little bit awry here, Sir. I listened to the Minister for Treasury and Resources and how it was such an inefficient way of subsidising the dairy of industry and how the Minister for Education, Sport and Culture was saying that he has no evidence that milk is of any great value and that fruit and veg are better, I probably agree but unfortunately fruit and veg are not the fashion at the moment, Minister, and I am just wondering who is going to ask how many children get sent to school with a packet of crisps and a bottle of Fanta [Approbation] and I quite frankly think that as long... and I know, when I have been up to the school to ask if any of the parents might like to receive a Christmas hamper, I have been told that is really... they cannot tell me because of data protection and I know, if I went up tomorrow and asked if any children came to school without having had breakfast, I would be told that that was not available because of data protection. As long as there might be one, 2 or 3 feckless parents in my Parish, I will support the provision of school milk and I would urge every other Constable do the same. [Approbation]

### **10.1.9 The Deputy of Grouville:**

Let us be totally honest about this, as far as the dairy are concerned - this is about subsidising the dairy and the dairy industry. Quite frankly, I do not have a problem with that. If it means that we keep cows in our fields and we prop up the dairy industry that, to my mind, is a very good thing. Milk going to primary school children is also, in my opinion, a very good thing. It has no educational benefit, I grant you but for those, as the Constable of St. Martin has just said, who arrive at school without any breakfast, it is a good thing. It gives something to these children, it is of quality, it is a genuine Jersey product, so that too is a good thing. Fruit, veg and nuts and all the rest of it I am sure is lovely. As the Medical Officer of Health says, that is probably better for our children than the milk. But, the children are not going to eat a lettuce leaf or a bowl of nuts. They would prefer the milk. In actual fact - and I make no apology for banging on about this - we are going to have to change the way we think about things. Where are we going to get in years to come - maybe not immediately - the banana for our school children? Which banana plantation, which orange grove and even which apple orchard are we going to get these fruit and vegetables from? The price of oil is going to dramatically change the way we are and we behave and what we transport to this Island. So, all in all, I think it is a good thing this subsidy is going to the farmers. It is a good thing our children are getting milk; something of genuine Jersey for them in the mornings. So, all in all, I will be supporting this wholeheartedly.

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

Today at lunch time I was privileged to be invited by year 6 of St. John's school to partake in a Chinese lunch which was very, very healthy and it was part of a project they were doing on China. I took the opportunity, as I had done the week before, with the year 5 group, to ask them what they thought about milk and it was quite an interesting revelation. I asked them did they like having school milk? I asked for a show of hands because the Master was particularly interested in this as well. I hope I did not break any data protection rules here, Sir, but the hands were raised and more than two-thirds said they liked having school milk. I then asked them would they prefer to have fruit and vegetables and nuts. Only 3 hands went up, Sir **[Laughter]** which I think indicates what the Constable was saying and what the Deputy was saying. It is quite a consumable item, milk, it is easy to drink and most children appear to like it. It is quite sweet. When I was at school often the milk was warm and sometimes off and not kept very well and was really rather unpleasant. That does not seem to be the case anymore, Sir and of course it is only 2.5 per cent fat whereas in those days it was yellow milk and it was full fat and I am sure it was very unhealthy. That can be mitigated now, through the science that the dairy has and it is very, very low in fat. I was intrigued by the letter from the dairy and of course it did have a vested interest here but the evidence was compelling. The evidence from the Health Department is not quite as compelling, contradicting it. It is not saying that we should not have milk and the Senator quite rightly said that a balanced diet is just as important, and I do accept that; but the Dairy's letter is really quite compelling and it outlines some of the benefits of milk consumption. They list quite a long list there of things that the body benefited from and obviously the children would. It also talked about the calcium intake declining over a number of years and this would help to stop that decline. But it also gets children into the habit of eating and drinking something that is healthy, which is perhaps easy to get them into the habit of doing rather than what we would like to get them to eat, of course, which is fruit and vegetables as well. The Deputy of Grouville highlighted the issue about the countryside too and anything that can be done to help support the dairy industry gets my vote and I am sure it gets votes from many other Members. This is a small item that helps. The report and the comments from the Council of Ministers say it is not a compelling economic case. Well, it might not be the most compelling economic case we have heard from the Council of Ministers, I am not suggesting that it is, but there is a case. There is definitely a case. It might not be compelling but there is a bigger picture here. There are children we want to encourage to have healthy diets, there is a dairy industry that needs any help it can get and there is the opportunity to get children introduced to a healthy food which they may well carry on consuming in adult life, which the Minister felt was

marketing nonsense. I am sorry, that is a fact and that will happen. I know of children, particularly in some of the town schools and I am sure the Minister will agree with this, who go to school with no breakfast. They will often socialise at school around their milk and bring their cereals in sometimes. I know some staff have brought some cereals as well and they consume a breakfast at school and have school breakfast clubs that do that. School milk: when I have been into the school recently, when they have the milk, is a very sociable time. I remember it when I was at school as well. You sit around and you have your milk. It is almost like that tea party you will have when you get older but it is around milk and the children socialise around it. I remember that and I saw my children doing that very thing last week at St. John's and it was a good example of interaction and socialising. You cannot put a price on that though, Sir. Is it worth £164,000? I do not know. Maybe it is not. I happen to think it is. It is a small element that is worth keeping. I was very interested to hear what Deputy Southern said about other counties in the U.K. reconsidering the prospect of introducing a healthy food and one of them was milk. So, are we going to throw it out at the time that schools and districts in the U.K. are thinking about reconsidering it? I think we would look rather silly. E.D.D. (Economic Development Department) I am sure have got better things to do with their money. Maybe that is not the department that should be dealing with it but I can tell you one thing, Sir; they are perhaps the department that has got the most money. If you talk to Education, you talk to Health, you talk to Home Affairs, it is a very different picture. They do have a few pots, Sir. Other departments do not so, for the time being, perhaps it is the wrong department to take it from, but they have the money. Maybe that should change. The thing that concerned me most, Sir, is that if we were to remove this, where is the something else that we said we would talk about having? Where is the proposal to bring in fruit, nuts or the funding for it? Maybe E.D.D. should be giving that money to Education so they can have a healthy program in their schools? I do not see that anywhere in the papers that I have seen, nothing at all. Sir, I would urge Members to support this. I think we would look daft if we do not. I can see no compelling argument not to do it but I see plenty of compelling arguments to do so. It has many benefits. I cannot see too many downsides and I think E.D.D. can afford the money. Thank you, Sir.

**[Approbation]**

#### **10.1.11 Deputy J.B. Fox:**

Last week we had a very successful Jersey environmental week, in which about 500-odd young people went round to all sorts of local activities, many of which involved the countryside and I went to 2. I went to an organic farm and I went to Hamptonne with 2 separate primary schools from St. Helier. Being a St. Helier Deputy, I wanted to see how the knowledge of our young people had improved because, when I first went around with some students, when I was on a governing body of Rouge Bouillon School, I was shocked to find - some years ago, admittedly- that milk came from a carton. They did not know it came from a cow and, fortunately now, they not only know that a lot of our food is grown locally, they now see it in the shops and they can tell you whereabouts they go and see it and everything. But they also work out that Mummy pig and little pigs love strawberries, which might not sound like much, talking about it in the States, but it gave them a huge amount of fun and entertainment and discussion about pigs and what they eat normally and how they are brought up, *et cetera*, and it was a very good conversational piece. Now, school milk is a similar sort of thing. It does have the thing that someone that gets to later on in life, like I do, that has too much milk maybe, that looks obese or heavyweight or whatever you like to say, but for most children, what we are trying to do is to create a healthy diet and the schools have. The various programmes that I have attended - and my colleagues as well - in places like La Moye, where they have various weeks or months where part of the curriculum, part of their schooling is to learn what is good for them and what they eat and it... well done, Deputy Southern, you have got milk this afternoon. But there are other things that we are not producing in schools and I was interested to see on one occasion with one of the schools, into the lunchboxes that the children have and there is still the not very good items, the sweet items; the sweets, the fizzy drinks, *et cetera*, but at least, as has already been said, there is milk. I would like to see this milk ration to be continued

until we start getting co-ordination into saying yes, we have a healthy food policy, we want to bring our children up with healthy eating and healthy diets, *et cetera*, but we need to find ways of doing that. Yes, it has been said to us we might not have bananas or oranges have to travel from other sides of the world but do we notice in our countryside now, there are more orchards starting to appear and there are more local horticulturalists that are growing soft fruit, *et cetera*, and I think that we should be considering this not just as a financial means but for the wellbeing of our youngsters. Not all of them might be poor or not be able to afford it but the other side of the coin is how many of them are getting the good food? That is a question we do not know but if we are able to support and encourage young people to have a better diet then we will benefit later on, both in health and in work and everything else. I am going to support this proposition. It is only an interim... I am quite sure it will come back again. It always seems to do so but on this occasion I think we should be looking forward, not just in monetary terms. Thank you, Sir.

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

It is always good to follow 2 or 3 speakers who I absolutely agree with. I would just like to add a few things. We have heard from the Minister for Treasury and Resources and he is not sure this is the right way to do it. We have had no amendments. We have heard from the Minister for Health and Social Services and he is not quite sure if this is the right way to do it and is it on health grounds, or is it not? Or should there be something else? Again, we had no amendments. We had a very, very good talking to by the experts on milk - by the Minister for Education, Sport and Culture - and it is not good for you. He even quoted - and I really, really have problems about this and I have asked before that he is very concerned, like the Medical Officer of Health is - about the obesity of the children on our Island. Well, in the last Medical Officer of Health report, there was a graph charting children between 5 and 10 and 11 and 14 and it was segmented into 3 parts; normal weight, obese and morbidly obese. Some of these 14 year-old children, under the scales, weighed under 5 stone. There was no underweight on this chart and I queried this. So, I really get annoyed when I know there are mothers in this Island and fathers - families - who have a real problem getting their children to eat anything that is of solids and they have a severe problem of being underweight. We have the Minister for Education, Sport and Culture telling them not to drink milk. I have one myself. He will drink 5 pints of milk but to try and get him to eat a piece of fruit, I might as well try to poison him. I try and dress it up, I cut it up, I do everything... but he will drink his milk. Now, okay, this is not the argument for free school milk. We have been told it is purely economical and I am sure the dairy were really happy and the farmers out there to hear from the Assistant Minister who represents the Economic Development on agriculture - the Constable of St. Lawrence - to say: "I have got no idea. Why should we agree to this today? I have got no idea when we are going to get a new dairy. It probably will not even happen or it could not even happen." Well, I am sure that instilled some real good feeling among the farmers in the dairy industry out there. I cannot believe some of the comments I have heard from the so-called, as I say, Ministers. We have a letter from the dairy. Now, unless this is purely made-up on the hoof, as they say... **[Laughter]** I have not come to how many cows we need yet because I am getting an expert on the cows. I am getting a bit defined about which of the bulls... I have certainly gotten the cows down to it but we have a letter from the dairy where it talks about a programme that they are going to put back in with and it has been devised, it says to me, in support of both the Education Department and the Health Department and the dairy is willing to... An estimated cost to the dairy of £10,000. Now, as I say - I think, you know - you can listen to the Constables and Deputy Fox. Of course we know there are families out there whose first thing that the child will see to eat or even do anything with is their free small carton of milk. Now, I am not prepared to take that away from any of our children. It has not been proven to me on health grounds. I am told it is totally economical grounds and I am in full support of... I am not a Jersey girl. I am knocking on doors around town and they will not be, as Deputy Fox says, very surprised - well, a lot of them will think, you know - that there is a machine that makes these boxes and somewhere the liquid comes from, like Coca-Cola. But this comes from a cow and they are prepared to re-invest the money to

help give our children education and I think that is a very good thing. Where is the new generation of Jersey farmers going to come through? Maybe this is a seed into this, a very early seed, taking children around farms, seeing the real cows, seeing how it is all done. Maybe you think it would put something into their heads. I mean, it is part of Jersey and, as I say, I am really... I will finish, Sir, because I am probably repeating. I have not gone on about my expertise is about the cows, I think I found out, on the other panel, is that a litre per cow - average 4,000 - we will not need around 25 or 26 cows. I do not know what they will be doing but **[Laughter]** the amount of milk that they produce. We were told yesterday by both sides of the argument, you cannot just turn off their tap - or the udder - and then turn it back on again so I do not know whether this is a purely economical argument. Well, we could make butter. Anyway, so I think that is where I did want to finish. I think the arguments against are pathetic. I think if they really wanted to do something better for the children, all of you Ministers had some chance to bring in an amendment and none of you did it. You stand up in this House and tell us: "It is purely economical." Well, as the Deputy of Grouville has said, if it helps our heritage, if it helps our farmers, if it keeps cows in the field and it stops town children thinking that most milk is delivered from a machine in a green, blue or yellow box, I am sure we can afford this money, Sir and I will certainly be supporting it. Thank you.

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

I had intended to approach this debate in a rather business-like manner but I have to say I have been rather overwhelmed with the vast tonnage of nostalgia dripping around us. I feel myself part of almost what would have been described in the late 60s as something of a loving for school milk. It is tough for me on the nostalgia basis because I went to one of those rough, tough boys schools where the milk arrived - and this is going back some time - in small bottles in big metal trays and you could hear them crash outside the classroom where they were deliberately left in the sun for an hour or 2 so that the cream congealed to an unpleasant crust on the top. When it came time to drink this, various grim and ghastly small boys' trivial games ensued. That was my grim education but I have to say that I can see where States Members are coming from here. I do see this vision. I want our school children to sit down to nice steaming bowls of new Jersey potatoes with some butter from the dairy and some Jersey mint and possibly venturing out in the playground for a bit of bass wrapped in foil, perhaps stuffed with some herbs from the school herb garden and, why not, big bowls overflowing with local fruit; apples, pears, strawberries in season, lashings of Jersey dairy cream? It is just such a wonderful picture, is it not? It makes me want to go back to school **[Laughter]** and the sheer joy of knowing that our little ones are being cared for like this. I mean, you have to love children, do you not? **[Laughter]** Because you know their parents are voters. **[Laughter]** But are lashings of strawberries and cream and milk and Jersey rod-caught bass the appropriate way to subsidise our agriculture and fishing and dairy industries? Regrettably, no it is not. **[Laughter]** It is quite clear to me, from the very brief amount of information contained, that the Jersey Dairy puts an enormous amount of effort into producing, packaging in special little cartons and sending out Jersey milk to the various school recipients and the figures are fairly stark. There is something like £164,000 going in but the dairy only makes a profit of about £14,000. So, there is £150,000 missing and that, surely, tells us all that if we are interested in subsidising the local dairy industry in any way, this really is not a very good way of doing it. Now, I suspect that we have probably reached the point in the history of the Jersey Dairy, where subsidies are not as directly appropriate as they used to be. We are all hoping that, with the new dairy, the local industry will be able to stand on its feet and I suggest to Members that when it does, one of the things that the dairy will very seriously consider is delivering milk, in some form or another, perhaps by special dispensers that should keep the product chilled over a day or 2 or perhaps make up a variety of novelty drinks that ensuring a provision of some form of milk to schools could be seen very much in the interests of the Jersey Dairy to pursue on their own basis as a private enterprise. This brings up the question of should the States still be continuing in finding all these various and interesting ways of subsidising various activities in the Island? It would be, I am sure,



ludicrous in fact for me to suggest that we should somehow subsidise a yearly round of new potatoes for all school children to take advantage of and similarly the fish would be out of the question but here we are doing it for milk. It is, I know, a matter for Members individually to weigh-up but I have to say that times are changing - that must be clear to us all - and there are better ways, more economical ways... and I realise that some Members find that perhaps a bit of a struggle to look at it in such stark terms, but there are better ways of doing this and we really need to face up to that fact. If we are to do anything, it will be to use our political influence with those at the dairy and say: "Please, we want to encourage you to take note of where your future market for milk might be. It clearly does lie with school children and why should they not be encouraged?" But should they be encouraged to drink milk with taxpayers' money and milk as opposed to a fruit or to nuts or to any other particular food product? I think that the old chestnut has really come to the end of the road. Members may disagree with me but I cannot support this proposition.

#### **10.1.14 The Connétable of St. Brelade:**

We have heard from several Members, predominantly regarding the health benefits to children and I was, quite frankly, disappointed when receiving the proposition to note that of the some 8 pages, there is really only one small paragraph on page 6 regarding the benefit to children. Likewise, on the comment from the Council of Ministers, once again, a very small comment on the benefit to children. I think the whole issue is about the benefit to children and notwithstanding my observations on the original proposition, I think we are talking about a drink here as opposed to food such as fruit and nuts as has been alluded to by the Minister for Health. A child will probably choose, instead of milk, a bottle of pop as has been suggested by the Constable of St. Martin and, for me, Sir, I would far rather see a child drinking milk. I concur with the previous speaker and recall those half pint bottles of warm milk and strongly suggest that that is no longer appropriate but certainly technical advancements in milk delivery should be looked at and I think would end up making the whole exercise more economic and more eligible to children. As such, Sir, I would be keen to support the proposition. Thank you.

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

Well, Sir, I thought I could glibly just stand up and say: "It is election year, I will be supporting it" and sit down, which is probably one option. The other reality is that I have debated this issue I think at least 7 times since I have been in the States and every time it is the same argument. I have always supported the argument for school milk and it has been rolled-out time and time again about the benefits of the calcium and the vitamins and the children and everything else but it really just begs the question, what is the States doing repeatedly setting aside time to address this issue? Should it not now be time for the States to finalise this issue and request the Council of Ministers to please put this in some budget or set aside in some position so that we are not for ever more debating the merits of demerits or whatever else of school milk? It is a bit like us discussing our pay and how embarrassing that is. As a great supporter of school milk, I feel it is unnecessary to continue to have to debate this year after year after year. It is really time for the Council of Ministers to recognise - as I am sure this will be supported - that this is an issue that needs looking at, but it also needs looking at in setting-aside away from a budget of a Ministry that can argue. I do not know if it is possible - the Minister for Treasury and Resources no doubt could tell us - but surely we could set this aside in a bracket that would be necessary funding items that are outside of the general budgets of Ministries. The reason I say that is because it is an issue to do with the welfare of children, and the welfare of children covers very many parameters. It covers the Health and Social Services parameters and it covers the Education parameters and it covers the Housing parameters, so to bandy it around from one Ministry to another and then throw it at Economic Development is really just moving the issue around and perpetuating this debate. £164,000 for the milk in my view is neither here nor there. It just demonstrates that we are not taking on board the requirement that the States has a duty of care to ensure that when the children are in our care during school time that those children are adequately clothed, adequately educated and adequately

nourished to undergo the learning process that we are asking their parents to deliver them to us for. Now, I have been at school with no food and I have been at school with food that was stolen off me; I have been at school with money that was stolen off me, and I have been at school all day and unable to go home, and not just one day or 2 days or 3 days a week, normally 4 or 5 days a week, and not just one week in one term, but most terms right through to secondary education, and what we ended up doing was taking vodka to school, because we thought: "Sod it, we will just get drunk at lunchtime, because we are not going to get any food because the bullies will steal it off us." We have a duty of care to make sure that the children that are in our care are adequately nourished, and I plead with the Council of Ministers to take on board this request, that we get away from the politics of the school milk and we start looking at the needs of the children in today's society and where those needs are not being met or provided for by the parents, that we take on board our responsibilities. There are today, and there will be tomorrow, children who are going to school who will not be adequately nourished, and it will be no fault of theirs, and in some instances, no fault of their parents that that is the case. But if they return home inadequately nourished, then that is our fault. I apologise for the unparliamentary use of the word that I used in the heat of my argument, but I really do think that Members need to ask the Council of Ministers to take this political argument out of this arena and look at the issue more sensibly.

#### **10.1.16 The Connétable of St. Lawrence:**

First of all, I, to a large extent, agree with Deputy Le Claire. I would like to refer to what Deputy Martin was talking about when she was wandering around the fields looking at the cows - not around the houses, I do not think - it was round the fields she was wandering. She referred to me talking about maybe the dairy would not be built. Well, until this House has made a decision on the covenant, *et cetera*, nothing is certain. I am certainly fully in favour of building a new dairy personally and I am sure most Members are, but nothing is certain until this House has voted on it. That is the point I was making, that this proposition is unclear and imprecise. Anyway, I have made that point. What I am going to now do is talk about Economic Development's views on how we have arrived at not providing this money in the budget. The Economic Development Department undertakes a fundamental review of its expenditure to ensure that it is delivering maximum value from its budget in accordance with the Public Finances Law. The department uses a zero-based approach which triages statutory, committed and discretionary expenditure. The 2007 budget review assessed all E.D.D. outputs against criteria determined by the department's key States Strategic Plan objective of realising 2 per cent real annual economic growth. The review concluded that funding school milk has lowest priority of any potential bid for funding within these evaluation criteria. However, given the commitment given by the previous E.D.C. (Economic Development Committee) funding was included in the 2007 budget. You will remember that Dr. McQueen said we ought to keep going until at least 2004, so we have gone 3 years beyond his recommendation. As this commitment has now lapsed, provision of school milk is assessed as a discretionary spend with the 2008 Business Plan and budget exercise. It is almost certain that based on the evaluation system that is used for budget prioritisation, school milk funding from the E.D.D. budget will not be available in 2008 and beyond. This is wholly consistent with the Public Finances Law that states that accounting officers are legally bound to deliver best value from the funding allocated to them. With regard to the Public Finances Law and above prioritisation process, the E.D.D. cannot recommend the continuation of funding for school milk from its budget. In addition, in economic terms, funding for school milk represents additional subsidy to the dairy industry that already receives the highest level of subsidy within the agricultural sector. As indicated above, there is no economic justification for continued funding. So this is where I agree with Deputy Le Claire, that I think the Council of Ministers needs to go away and consider how the £164,000 is going to be produced, because all we are giving to the dairy from E.D.D. is £14,000. The rest of it seems to be, listening to all the arguments around the Chamber, educational benefits, health benefits, somebody suggested housing benefits. In other words, why should E.D.D. have to fork out the whole lot when most of it seems to be for other reasons? The Deputy of St. John was

saying E.D.D. has the money; well, who has the biggest budgets around here? Health and Education by far. So it is really quite wrong that E.D.D. should be shelling-out £164,000 to produce a benefit of £14,000 to the dairy. So I am not against the idea, but I think the way we are funding it is totally wrong and I say that the...

**The Deputy of St. John:**

If the Connétable would give way.

**The Connétable of St. Lawrence:**

I beg your pardon, sorry?

**The Deputy of St. John:**

If the Connétable would give way, can I just correct something you just said? I did not suggest that E.D.D. should be doing it. What I was suggesting is that at this very moment in time, E.D.D. has the money. Education, Health and Home Affairs simply do not, and the Council of Ministers need to review that, and I do agree with what you are saying now, Sir.

**The Connétable of St. Lawrence:**

Thank you, Deputy. No, I mean we are talking about next year, and therefore there is time in putting the figures together to allocate them correctly across the States' budget if we so decide today to go along with school milk. I do not agree that we should go along for an indefinite period, which is possibly what this projet is suggesting, but the projet is on the table. So I think the whole thing does need to be looked at very carefully. If we decide this afternoon to go with it, the allocation must be realistic and not hitting E.D.D., which it is at the moment, and has done for a number of years. It just is not right.

**10.1.17 Deputy D.W. Mezbourian:**

I will be brief, because most of the arguments have been rehearsed both for and against, and Deputy Le Claire and the Connétable of St. Lawrence have alluded to my thoughts exactly, when they have drawn to our attention the fact that it is the responsibility of the Council of Ministers to resolve what is a clear political issue as to who should fund what is of course the provision of a balanced diet, with its long term benefits to our children. In response to Deputy De Faye, so strongly opposed to any further subsidy towards our dairy industry, or indeed, it seemed to me, to subsidies *per se*, do we not subsidise Connex? In response to the Economic Development Department, who do not want to further subsidise this, do we not subsidise the Heathrow link and about being told the cost to the taxpayer? To me, Sir, you have heard the arguments and I am quite prepared to support this until we have the comments from the Council of Ministers, who say they support the possibility being explored alongside other initiatives to improve the health of our children as part of the new direction strategy which is currently being developed by the Health and Social Services Department. They support the possibility being explored of providing, I believe, fruit to children in our schools. Until they come to this House with something on the table to deliver, I am convinced that we should support the proposition for the retention of school milk.

**10.1.18 Senator S. Syvret:**

I think this debate is quite simple and clear-cut, and I would have thought Members ought to be able to make their minds up quite readily without spending a huge amount of time on it. The issues are quite plain. These days, frankly there is no particularly convincing health argument for subsidising school milk. There was in the post-war years when there was an issue of malnutrition, but these days, that is not the case. It is therefore entirely inappropriate for it to sit within the Health budget, but is it a good thing to make this milk available to those children who want it? Is it a good idea to subsidise the dairy industry? Yes, I believe it most certainly is, and this expenditure has always frankly, quite honestly, been - or at least has been for several decades - a subsidy to the dairy industry masquerading as a health benefit, and really, we ought to just be honest about it, say

that we want to support the dairy industry and we want to give the children the opportunity to get a taste for milk, and we ought to just accept that it is part of the Economic Development portfolio of the Island. I think we just ought to make our minds up and get on with it, and what Health and Social Services may choose to do in the future by way of encouraging children to be supplied with fruit at schools is a matter for them. The question is, do you believe we should carry on this element of subsidy to the Island's dairy industry? Personally, I believe yes.

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

Deputy Mezbourian I have noticed has been in fighting form all day. I am sure it is more than just milk she is drinking to get such a violent reaction. She raises the point about the subsidies from the Economic Development Department supporting air links. Members will be well aware that we provide subsidies across the board to many other areas, the Battle of Flowers, the Air Display, all sorts of different areas, and rightly so. I think, Sir, that we should first of all congratulate Deputy Southern for bringing this proposition. I think we should congratulate him for his persistence and I think we should particularly congratulate him for drinking what I think is about his fourth or fifth glass of milk today, when in reality, I have never seen him drink milk in the last 2 or 3 years, but nevertheless, he is making his point very clearly. Without doubt, Sir, this is an emotive debate; it is an emotive subject. It is absolutely right that we should be considering how best we nourish children in our schools. There is no shadow of doubt about that. It is an important issue and we have heard from the Minister of Health and Social Services with regard to fruit and the benefits that are associated therein with the type of dietary requirements of children. There is an answer required with regard to obesity: obesity is growing in children, and clearly there is a very high fat content in our milk. There are many other nutrients in the milk which are equally beneficial or more beneficial. It is a subject that needs a great deal more consideration, but I think that the question of where the subsidy for this lies is probably the most important and relevant issue. I know that when Deputy Southern stood up earlier in his opening remarks, he opened, I think, with the comment that this was a minefield for economics and politics. Well, it is not a minefield for economics. It is fairly clear-cut. There is no economic case for supporting school milk, for supporting the dairy. It is £14,000 we are talking about. As far as economics are concerned, it is absolutely an open and shut case we should not be doing it. But does that mean that we should not be supporting milk for schoolchildren? That is a different story. Certainly listening to the mood in the Assembly today, the most emotive arguments, it is pretty clear to me that the Assembly are saying: "Well, yes, we should be looking after our schoolchildren, and yes, we should be providing school milk" because it seems to me that fruit might be good for children, but in fact, we all know, certainly those of us who have children, that children tend not to like what is good for them, and fruit may be good for them; we may be telling them it is good for them, it does not necessarily mean they are going to eat it, however much we may try and encourage, cajole and otherwise. I would like to raise very briefly a point that the Deputy of St. John has raised about Economic Development, suggesting that we have bucket loads of cash available to splash out on any venture that we so choose. I would just point out to the Deputy that in fact, we have a budget of just over £16 million. We have bids in excess of £19 million, and we do assess very clearly those areas that do need support. It is very, very difficult for us to make our budget work and I do appreciate other departments have similar constraints, but I can assure him that we do not have bucket loads of cash to splash around, and unfortunately, on the economic model scoring criteria, school milk did not score highly at all; in fact, it fell out at the bottom. That is the economic case. I do not believe there is an economic case to support this. However, I do believe there is a case to support appropriate nutrition for our children in our schools. I do not think there is much else that I want to really add. From an Economic Development point of view, I am in a position where I am going to not support this proposition for the economic reasons. I would like to see the Council of Ministers coming forward with some suggestions in the future in ways in which we can provide appropriate nutritional support for children. Thank you.

**10.1.20 Deputy P.N. Troy:**

Members are saying that we are shelling-out tens of thousands of pounds to give support of £14,000 to the dairy and of course - and we even heard an accountant saying that - I think when you look at the bigger picture, if I went down to Le Mare Vineyards and I picked up a £10 bottle of wine and I went to the till and I gave them £2 and said: "You are making £2 profit out of that, so there is your £2" they would throw me out of the place. They would say: "Well, hang on a minute, we have the cost of our grapes, we have staff cost, promotion cost, delivery cost, all sorts of other costs, so why are you only giving me £2?" That argument that States Members are putting forward is, quite frankly, flawed because when you are handing over the larger sum of money, you are supporting the industry overall, and some of that money that you hand over at the till goes to the farmers, it goes to the dairy for all their equipment and other costs and so on, so that argument just really does not stand up. Certainly, if I had 53 apples in this Chamber, 53 oranges in this Chamber and 53 nuts in this Chamber, I know that I would definitely have a lot of trouble giving away the nuts, Sir, and the thought of having nuts in school in general should be abandoned. I think Members may have the wrong point there on what I was saying. Certainly in my family, I at least have a degree of yin and yang in that my daughter is a vegetarian and my son is someone who will not touch a vegetable at all ever. Over the years, I have tried to persuade him on countless numbers of times - tens of thousands of times - and I think now that he has attained the age of 18, I have decided to give up. Certainly, 50 per cent of children will not eat vegetables in school, but I do know that more than 50 per cent will drink milk.

**The Greffier of the States (in the Chair):**

I call upon Deputy Southern to reply.

**10.1.21 Deputy G.P. Southern:**

With much relief, I will try and be brief, Sir, but there are one or 2 points that must be made, I think. So I thank everyone for their participation in the debate, and running as a theme through all of the objections, whether on health grounds or whatever, or economic grounds, was the repeated refrain that each Minister has had the opportunity to put the alternative. Where are the amendments to say: "Give it to them to spend it in this way"? I mean, they are not there. The opportunity has been there, but it has not been taken, so all these arguments are saying: "It is not quite right. It is not quite the right way to do it, it is not quite the right thing to do." Where is the proposition that says: "Take this £200,000, give it to so and so for fruit in schools"? Now, I might have agreed totally with that; I might not, but nonetheless, but where was it? It was remarkably absent. But there was some misunderstanding around, and I think the Treasury and Resources Minister, who said: "Half going to waste" I think he is thinking back, like Deputy De Faye, when his knees used to fit under a desk - I do not know if they still do - and he said: "But the Scrutiny Panel that looks at the dairy industry, the sub-panel has polled schools and found that the majority appreciate milk provision; most children drink the milk and that there is little wastage in the system. Most schools would like to see the service continue indefinitely and feel that it represents a positive use of public money." That is the reality in schools. He further said: "But this is entirely the wrong way, the accountant's hat on, to dish out any money whatsoever" and he referred to the figure, the graph that I supplied on page 7 of my report, and failed to mention that already, over the period indicated from 2005 to 2010, we are seeing a reduction of £120,000 in support for the industry through quality milk payments, so there is already a reduction in the system. We are taking money away; we are supporting less. On top of that, members will remember that we completely abandoned any subsidy on what used to be called welfare milk, and we have taken £360,000 over the last couple of years out of the indirect support for the industry and put it straight into income support, where I do not know how much is spent on milk, but there is no guarantee that it is. So we have taken substantial amounts of money away from the industry already. I will just briefly refer to Deputy Mezbourian's comment, when she said most of the arguments have been rehearsed, and I think she was accurate in more ways than one, because we heard, I think, some rehearsed arguments coming from Minister after Minister, going through the list of objections that came from the Council of

Ministers, and it was almost - it felt certainly like that to me - that people have said: "Oh, I will take that bit" and: "I will do this bit" so the Minister for Education said: "I will do the bit on obesity." There is no proven link between milk consumption and obesity, none whatsoever, but he banged on about obesity and said: "Oh, this is a terrible risk." He did not say: "And 5 fruits, we are already promoting it and we are going to chuck some of our money into the pot." Then I do not know which speech of the Assistant Minister for Economic Development I will want to address, but I will address the second one, since he described that as a speech. Here we come to something that again Deputy Martin picked up on, and this technical worry that he has that this might be indefinite support and that we should be voting for it because of that, when in fact, it is in his remit to make damn sure that the new dairy is up and running in the shortest time possible, and that the land is sold off, the debt is dealt with in the shortest time possible. It is his remit, so to him I say stop your pettifogging objections and get on with your job, and this will not last very long, this support, but this is about - and I return to - the health and welfare of our children and the first part of what the Minister for Health and Social Services said, it was absolutely clear to me: milk and other dairy produce continue to play an unquestionable part in a child's balanced diet. The Public Health Department's position is that we will continue to endorse milk and other dietary produce as part of the modern-day dietary requirements of local schoolchildren full stop. All right, let us please get on and vote for this proposition and that is the way you can guarantee that I will not be bringing back next year and the year after, because the dairy will be in place and it will all be sorted. Somebody else can bring it and suggest a way forward.

**Senator M.E. Vibert:**

I did not want to interrupt the Deputy when he was in full flow, but I did ask the question about the fact there is now an independent dairy producer, and how this related to that.

**Deputy G.P. Southern:**

I consider that if you wish to maintain the £200,000 support, put it out to tender, deal with it, bid for it, sort it. If you want competition in this area, do it.

**The Greffier of the States (in the Chair):**

The appel is called for. The vote is therefore for or against the proposition of Deputy Southern. The Greffier will open the voting.

<b>POUR: 38</b>		<b>CONTRE: 8</b>		<b>ABSTAIN: 0</b>
Senator S. Syvret		Senator F.H. Walker		
Senator W. Kinnard		Senator T.A. Le Sueur		
Senator P.F. Routier		Senator M.E. Vibert		
Senator B.E. Shenton		Senator T.J. Le Main		
Senator F.E. Cohen		Connétable of St. Lawrence		
Connétable of St. Mary		Deputy S.C. Ferguson (B)		
Connétable of St. Peter		Deputy G.W.J. de Faye (H)		
Connétable of St. Clement		Deputy A.J.D. Maclean (H)		
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy A. Breckon (S)				
Deputy J.J. Huet (H)				
Deputy of St. Martin				
Deputy P.N. Troy (B)				

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

## **11. Draft Taxation (Land Transactions) (Jersey) Law 200- (P.185/2007)**

### **The Greffier of the States (in the Chair):**

Very well, the Assembly now comes to the Draft Taxation (Land Transactions) (Jersey) Law 200-. Members will recall that the principles of this Law were adopted on 12th March. The Law was then referred to Scrutiny under Standing Order 72(1). The Scrutiny Report has been presented, we therefore resume the debate and I have to invite the Minister to propose the articles, but Minister, there are a number of amendments in your own name, and I wonder if the Assembly will be content for you to propose the articles as amended by your own amendments. Are Members content to proceed in that way? Very well then, Minister, I invite you to propose the articles. Do you wish to propose then *en bloc*?

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

Yes, I think that would be probably in the interests of efficiency, but before going into the articles themselves, maybe if I make a few brief comments following the report that the Scrutiny Panel made; their first report, I have to say, because they are still in the process of looking at this issue in more detail. Just to remind Members, in March we agreed the principles of this and noted that at the present time, it only refers to residential property and not to commercial transactions, and there was a certain amount of uncertainty there and that was why one of the objects of the Scrutiny Panel was to see to what extent that that issue might be addressed. That is an ongoing topic and I have continued to work with the panel in that respect, but I think if we look at the report from the panel, that simply highlights the difficulties which I certainly came across, and others did, in trying to introduce and encompass commercial transactions in this law. That remains an objective and I will work with the panel to continue to try to achieve that. However, the panel did make some other recommendations and those I am happy to consider and I shall be responding to those in the next few weeks. This law, if approved, would result in Land Transaction Tax being payable on the majority of residential share transfer purchases, and I emphasise residential. The tax payable will be exactly the same as the stamp duty that would have been payable on a matching freehold transaction. There are a number of measures in the law to provide or prevent avoidance, not least of which being it will be illegal to register the transfer of shares unless the tax has been paid. Discounts to first time buyers have been included to mirror stamp duty relief in that respect, but I take note of the comments from the Scrutiny Panel that first time buyers' rates might need to be reviewed, and I will be picking this up in my budget at the end of the year, not just for stamp duty transactions, but of course for freehold properties as well. When this proposition was originally

lodged in December last year, I purposely left a reasonable amount of time before bringing it to the States, recognising that there might well be comments from practitioners about some of the practical aspects, and those comments were received and I thank those who responded. I have endeavoured to deal with all those comments and reflect them in the amendments to this law, which are also before us, which really have been put in there, and I am grateful for the assistance of the law draftsman and the previous Solicitor General, who worked with my officers and myself in order to produce this workable law. So that is by way of background, Sir. I now turn briefly to the articles in question, and particularly where we have brought in amendments. We have amended Article 1; in particular, it is due to the difficulties regarding commercial property. The definition of land is restricted to a unit with dwelling accommodation, but the change in the definition of occupier does not mean that someone buying a share transfer property to let would not pay land transfer tax; indeed, they will pay, and that is covered separately by an amendment to Article 3. Article 2 indicates the charge and Article 3 describes the transactions which are to be subject to land transfer tax. Paragraph 2 clearly states that the fact that a purchaser may not be entitled to live in the property under the housing law does not affect the requirement for that person to pay land transfer tax; in other words, a non-Jersey resident buying a share transfer property as an investment will still be required to pay L.T.T. (Land Transaction Tax). Amendment to Article 4 imposes the duty to pay transfer tax within 28 days following the date of transaction, or the payment can be made upfront in the same way with stamp duty, and this article mirrors the similar effects in terms of stamp duty. Article 5 allows income tax to gather information. Article 6 gives effect to the schedule about valuing transfer tax purposes. Article 7 imposes a surcharge where the tax is not paid by the due date; there is an extra 10 per cent will be payable. Article 8 gives the Comptroller a general discretion to reduce or omit the tax where appropriate, and Article 9 requires the Comptroller to issue a receipt when tax is paid. Article 10, which has been amended, makes it an offence for a company to register a share transfer unless the tax has been paid, but that amendment now relocates that offence to the Companies Law, where it will therefore come to the attention of company secretaries. Article 11 requires people to keep records. Article 12 allows the Comptroller to raise an assessment in 2 cases where it appears returns have not been made. The remaining Articles 13 to 23 are largely procedural ones. Article 13 allows the Housing Department to provide the Comptroller information, but only for the purpose of this law. Article 14 ensures discretion is applied consistently. Article 15 makes provision for the Treasurer of the States to recover unpaid tax. Article 16 creates offences. Article 17 contains provisions on the commission of offences, while Article 18 gives the right of appeal against any decision or assessment. Article 19 allows the Comptroller to correct an error of omission. Article 20 allows the Comptroller to issue replacement certificates where the original receipt has been lost. Article 21 allows the Minister for Treasury and Resources to make orders for the purposes of the law. Article 22 amends the stamp duty to the fees law in line with Article 14, and Article 23 provides for the citation of commencement of the law. The schedule is amended to reflect the various changes made to these amendments. That, Sir, in a whistle-stop tour, is what the law says, but if I can just perhaps close by repeating my thanks to the members of the Corporate Affairs Group, the panel and their adviser for the diligent way in which they have approached this task in agreeing how this law should be implemented. I propose the articles *en bloc*.

**The Greffier of the States (in the Chair):**

The articles in the schedule as amended are proposed and seconded? [**Seconded**] Does anyone wish to speak on the articles or the schedule?

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

I would just like to ask, Sir, in Article 7 where the Land Transaction Tax is overdue for payment after 28 days, and there is a surcharge of 10 per cent, is that the same percentage as on an ordinary property transaction?

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



I welcome this, and I congratulate the Minister for bringing it, and I also congratulate the Corporate Services Scrutiny Panel for having conducted a review in it. If I could, I would like to just take us back to a vein of concern that I had the last time we sat down to discuss complex a tax situation, in that even in this preamble - there was not really a preamble, there was an article by article introduction - there really has not been as much of an explanation or a States' involvement; maybe something I missed. I certainly cannot recall something, but I am left to rise to just ask while this seems to be quite comprehensive in the occupation of property and it seeks to tackle 3 areas, as laid out in the beginning of the proposition that relate to the occupation and the transfer of shares, what is now missing? Can the Minister please explain what has not been tackled and what practices are still occurring that need to be looked at, what sorts of operations are involved, because I believe - and have always believed - that there will be a significant tax income from this type of transaction, and I believe that the share transfer market has significantly had an effect on Jersey's property prices. I also am concerned that there are a number of corporations that may still be operating share transfer transactions that may not include occupancy, and I do not know if that is the case, so I am just rising to tell the Minister that I applaud his work in bringing it forward; it is not easy, it has been a difficult year. It is obviously complex, there is obviously going to be some financial benefits, but what is going to be left undone? What is not tackled? Who is not paying? Whose has not been looked at; one of the questions that remains answering and I think it is important, because I remember the previous Her Majesty's Solicitor General stating that she had inherited some share transfers unbeknown to her in some way, and that the introduction of a tax on those sorts of benefits would be extremely complex. So it is as simple as that: who are we not taxing? We know who we are taxing now.

#### **11.1.3 Deputy R.G. Le Hérisier:**

Partly on Deputy Le Claire's question, we are not taxing the commercial side, and in terms of background, I would recommend he does read - or reread, because I am sure he has read it originally - the Scrutiny report, because it has a lot of explanations, because it was one of the most difficult scrutinies, quite frankly, we have been involved with. All of us struggled to make sense of the issue and it was enormously difficult. I think one person, Sir, who is being left out of the general sort of good feeling that is going around, very unusually, is of course the Deputy of St. Martin, and I have no doubt he will be saying a few words, but he was the person who initiated all this and brought the Minister for Treasury and Resources into this big hole - I mean, the other hole he is in, another big hole, as we know - but this hole from which he has only been able to partly extricate himself, and I think he deserves praise, but it was enormously difficult, Sir. We had very good help, which the Deputy will find in the report from the professionals in trying to explain all the intricacies of this and I know the department has struggled enormously to come up with a system, and quite frankly, we are very grateful that they have: praise at last, so thank you, Sir.

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

Kind for Deputy Le Hérisier to say kind words about me. Indeed, it was, it was way back in December 2004 that I lodged the particular proposition. I did so really because out of frustration, because having asked too many questions of F. and E. (Finance and Economics) when they were going to come forward with some form of legislation I thought: "If you want a decent job doing, do it yourself" so I brought the proposition to the States and it was unanimously approved. However, it has taken a long time to come to fruition and in fairness, I think really when we debated it initially, there were 2 parts. I separated that purposefully, because of the commercial side and the residential, and it was quite clear through the Blampied Report, *et cetera*, that there were going to be complications in trying to draft something which would extract some form of revenue from those commercial properties. However, I do remind Members probably that on page 8 there is a relevant part of the Scrutiny Panel's review, where it says: "We therefore agree the Treasury Minister's policy of bringing forward a law on a residential property first, while continuing to work on the options for taxing commercial property" and I concur with that. I would rather that we were

able to come along with the whole cake, but I remember when we debated this in March, I said we had better have half the cake to ensure at least we are going to get something, and I would hope that the powers that be will get to work on finding out a way in which we can get much more equity between the system. But I do congratulate the Corporate Services Panel. We did have a cosy chat and we obviously came out with some positives, because you are agreeing: “Well, why do you propose that we go halfway?” So I would like to compliment everybody and certainly recommend that what we have here recommended to the House.

#### **11.1.5 Deputy P.J.D Ryan of St. Helier:**

I am not going to add very much to the words that Deputy Le Hérissier and others have spoken about our review, I would just thank people for their kind words. In the course of the review, there are, however, a few things that I think need to be brought to the attention of the House, and they really revolve around the inequities that still remain to some degree within housing policy, and this was, if you like, a by-product of our review. I know the Housing Minister intends to look at them, and I hope he will do so fairly quickly, because I think there still remains certain inequities in the way that housing policy treats the sale of flats to first time buyers, either through flying freehold or through the share transfer system. The introduction of flying freehold was intended - certainly, that is my understanding, and I think it is the general understanding of everybody - and was introduced in order to get rid of share transfer, largely. Unfortunately, that has not happened and once we started to look at it fairly clearly and carefully, it has not happened for some fairly obvious reasons, that there still remain some advantages with share transfer, and there still remains some advantages with share transfer today, and if you look at our report, you will see that we are asking the Minister to look at a somewhat almost revolutionary situation - we are not saying it is feasible, but we are asking him to look at it - whether he would tax through stamp duty the share transfer system slightly higher over a period of time than flying freehold in order to nudge the market in that particular direction. I do not know if Members have picked that up, or indeed, if the press have picked it up, but what we are saying is that it might be possible to positively discriminate in favour of flying freehold in order to move the market more and more in that direction and then the Housing Minister maybe could look at his policy as well to see if we could move in that direction, because I think we all agree that really, flats should be being sold through the flying freehold system rather than the share transfer system, because for no other reason, it is simply more difficult and more complex to tax through L.T.T. than it is through the normal stamp duty process, and I think that is just logic that we can all probably see fairly easily. I do not think there is much more to say, other than in general, we felt that the advantages to first time buyers should generally be reviewed by the Minister anyway, and we think that in certain areas, they may not be adequate; certainly the threshold above which the discounts on stamp duties certainly appear to be much, much too low now, and so we would support a fairly comprehensive review of the financial incentives to first time buyers through the stamp duty law. I think that is about it, Sir. We look forward to the Minister’s further work and his officers’ further work on the commercial side. Although that we think the stamp duty that will be obtained, or the L.T.T., rather, that will be obtained through this law is probably more than the £1 million that he has budgeted for, we think that it could be approaching twice that amount, but nevertheless, the big one of course where we are losing revenue is through the L.T.T. potentially on commercial property transfers as others have already said, so we look forward to him and his officers’ further work so that we will have something that we can scrutinise in that area. Obviously it is difficult for us to scrutinise a vacuum, so we wait to see what he will come up with.

#### **The Greffier of the States (in the Chair):**

I call on the Minister reply.

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

In response to Deputy Scott Warren, the 10 per cent surcharge we have for Land Transaction Tax is because there is no way of ensuring otherwise that payment is made at the due time. When one purchases a freehold property, you cannot register that in court unless the stamp duty has been paid upfront, and there is something tangible you can see. Because in this case there is nothing tangible to be seen, it has to be adopted in a different way, and we have approached this in 2 ways, and I can deal with Deputy Scott Warren's comments and that of Deputy Le Claire at the same time, because the 2 ways are firstly to charge this surcharge if the payment is not made at the right time; but secondly Article 10, as amended - and that is on page 2 of the amendments - gives an onus on the company secretary; the company secretary cannot register a share transfer to registered members unless the secretary has evidence that the tax has been paid. So in other words, there would not be a validly recorded entry in the share register unless the secretary has that receipt. That I think will ensure, in answer to Deputy Le Claire, that any loopholes from the point of avoiding the duty can be minimised. As to what needs to be looked at still, Deputy Le Claire, well, Deputy Le Hérisier's answer to that, the answer is primarily that of commercial property transactions, which as I indicated in the preamble in March, is quite a complex issue. I have to say, I apologise to the Deputy of St. Martin for not mentioning him again today. I did refer to him in my opening speech on the preamble and he is quite right in saying that this has taken a long time. The proposition that he put forward acknowledged the need to bring this in 2 ways, and he and I had the same view, that it is better to have half the cake than none at all. I also thank Deputy Le Hérisier for his comments about the assistance which my officers have given me in what has been quite a complicated bit of law drafting, because we are breaking new ground. Finally, to Deputy Ryan, the Chairman of the Panel, I take his recommendation about positively discriminating in respect of maybe trying to tax share transfer deals more than flying freeholds, and I will certainly look into that one. I do that with a certain degree of trepidation. This law was designed to avoid an anomaly between freehold transactions and share transfer transactions, and now we are suggesting that we create another anomaly to try to solve a bit more of another problem. So as I say, I will look at it, but I do not necessarily promise in that particular respect that I will follow their advice wholeheartedly, but either way, I will advise the panel of my reasons for either accepting or not accepting their recommendations. As to that, about reviewing the first time buyer rates, yes, I do accept that recommendation and I will be reviewing those. As to the estimate of revenue, the original estimate of revenue was made about 3 years ago. I have not updated it because it is a moving target the whole time, but like the Deputy, I suspect - I hope, indeed - that the revenue will now corrected by £1 million a year. This time next year or a little bit later, I will be in a better position to know. Meanwhile, Sir, I thank Members for their patience and their interest in this matter, and having maintained the articles, I put them to the vote.

**The Greffier of the States (in the Chair):**

I put the articles and the schedule as amended. Those Members in favour of adopting, kindly show. Yes, the appel is called for. Members are in their designated seats. The Greffier will open the voting.

<b>POUR: 40</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator S. Syvret				
Senator L. Norman				
Senator F.H. Walker				
Senator W. Kinnard				
Senator T.A. Le Sueur				
Senator P.F. Routier				
Senator M.E. Vibert				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator J.L. Perchard				
Connétable of St. Ouen				

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

**The Greffier of the States (in the Chair):**

The articles are adopted in Second Reading. Do you propose the Bill in Third Reading, Minister?

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

Yes, Sir.

**The Greffier of the States (in the Chair):**

Seconded? **[Seconded]** Does anyone wish to speak? I put the Bill in Third Reading. Those Members in favour of adopting, kindly show; and against. The Bill is adopted in Third Reading. Just before we move to the next item, I will just notify Members of 2 matters: Members will find in their pigeonholes a copy of P.A.C. (Public Accounts Committee) report 3 of 2008 relating to the lease of St. Helier Yacht Club, and also notified Members that a further Order has been tabled this afternoon, made last Friday by the Minister for Transport and Technical Services: the Road Traffic (St. Martin) (Amendment No. 9) (Jersey) Order 2008.

**12. Draft Crime (Disorderly Conduct and Harassment) (Jersey) Law 200- (P.55/2008)**

**The Greffier of the States (in the Chair):**

We come now to the Draft Crime (Disorderly Conduct and Harassment) (Jersey) Law and I will ask the Greffier to read the citation.

**The Deputy Greffier of the States:**

Draft Crime (Disorderly Conduct and Harassment) (Jersey) Law. A Law to create an offence of threatening, abusive or disorderly conduct and an offence of harassment to enable restraining orders to be imposed in respect of persons convicted of harassment and for related purposes. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

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

When this matter was brought before the States in January 2007, there was general support in principle for the substantive provisions of the draft law. Concern and opposition were expressed, however, in respect of the scope of the term “insulting”, with much of the opposition centred on visible representations being defined as insulting. These concerns have been addressed in this new draft by removing from the definition of threatening and abusive conduct reference to displaying any writing, sign or other visible representation that is threatening, abusive or insulting. The revised article restricts the committing of an offence to using words that are threatening or abusive, behaving in a threatening or abusive way or engaging in disorderly behaviour. Furthermore, since withdrawal of the original proposition, I have consulted with the States of Jersey Police, the Honorary Police, the Council of Ministers, the Attorney General, States Members and Scrutiny; indeed, the Education and Home Affairs Scrutiny Panel have provided some useful comments for the benefit of Members. The purpose of this draft law is to deal with anti-social behaviour, low-level disorder and stalking, and are clear legislative provisions. Anti-social behaviour consistently comes out as one of the top concerns of the public. Successive police surveys and the Jersey Annual Social Survey have highlighted how low-level disorder and anti-social behaviour contribute to people’s feelings of being unsafe, particularly at night in St. Helier. In the past couple of years, I have also received a number of letters, calls and e-mails from people who have suffered harassment caused by stalking, about which the police can do very little. Deterrent and balance are the watchwords here in this draft legislation: deterrent, because those who would engage in anti-social behaviour will know that this law gives the police clear and very necessary powers to deal with them; balance, because the draft law strikes a balance between the need for such legislation and the very legitimate right of freedom of expression in a democratic society. The decision to proceed with the new law arose when deficiencies were identified in the customary law by the Magistrate and the States of Jersey Police. This legislation is a positive move to enable the police to remedy low-level public disorder and harassment, and in so doing, improve the quality of life for Islanders. It seeks to fill perceived gaps in our current legislation and brings Jersey closer in line with U.K. legislation, notably the Protection and Harassment Act 1997. At present in Jersey, public order offences are primarily enforced using common law powers, notably arising from the offences of being drunk and disorderly, committing a public nuisance and causing a breach of the peace, or acting in a manner likely to cause a breach of the peace. Offences also exist within statute law under the policing of roads, parks and beaches legislation. There are, however, gaps in the powers provided by such legislation which can be demonstrated by the difficulties experienced by police officers and the Magistrate when dealing with the variety of public order incidents that commonly occur. Although I presented this matter first to Members last year, it may be useful to revisit the criteria needed for the above offences to be committed, which will demonstrate that far from being too onerous or draconian, or a sledgehammer to crack a nut, without this proposal, the police and Magistrate have too few tools. For drunk and disorderly to be prosecuted, the disorderly conduct needs to be supported by evidence beyond all reasonable doubt that the offender was drunk and therefore not fully in control of his actions. A person could be very clearly disorderly, yet in the absence of other criteria, not committing any offences. Breach of the peace is a common law offence which requires participating in violence, either against another person or property. The offence of conduct likely to cause a breach of the peace also covers situations where an outbreak of violence is imminent due to a person’s actions or behaviour. Police officers therefore have powers to deal with people where violence is imminent. There are incidences, however, where the behaviour of an individual may cause some violent reaction, but where that reaction is considered to be too remote in terms of time or distance to be considered imminent, and the behaviour

therefore cannot be dealt with under these common law powers. In terms of public nuisance, a person offends under this common law offence if he or she does an action which damages the health, comfort, morals or the comfort of the public. Although potentially this is a wide-ranging offence, in practice, prosecution is often hampered by the need to show that more than one person was affected; in other words, the police generally need to have at least 2 formal complaints, which does not provide help where a solitary member of the public has been adversely affected. The Policing of Roads, Parks and Beaches legislation covers a range of low-level nuisances in public, such as littering, spitting and dog fouling. It also includes behaviour or clothing in a manner likely to offend public decency, but this tends to be restricted to instances which are deemed to be sexually offensive, and is therefore very limited in scope. Police officers can also arrest for the common law offences of refusing to obey the lawful orders of a police officers or obstruction of an officer in carrying out his lawful duty. This is of course in respect of illegal behaviour. If a legal, albeit socially unacceptable act was being carried out, an order to cease such action would not in fact be lawful, particularly if there was no reasonable concern that the commission of any other offence was imminent, but it is possible to find a range of situations where someone may act in a manner which is unacceptable to society, yet not unlawful under current legislation. Someone could be abusive or threatening to individuals where no outbreak of violence is likely, and where no drunkenness is present, resulting in socially unacceptable behaviour for which the police have little or no powers to deal with appropriately. Members perhaps will recall that I presented some of the difficulties that might be currently faced by officers last time, and I have some more here today, the difficulties that they face in dealing with anti-social behaviour and low level disorder. For example, most recently, a group of young people were behaving in what was felt to be an intimidatory manner, spitting and being abusive towards a local St. Helier retailer. These new powers in the draft law would enable the police to deal with such behaviour, but at present, it is unlikely that any prosecution under existing laws would be successful. Home Affairs believes that the public have a right to expect protection from such loutish anti-social incidents. The police have experienced many examples, such as the following: at 11.00 p.m. at night, a group of, say, 5 young men while leaving licensed premises in the town centre, start singing and shouting very loudly in the street. Although they are slightly intoxicated, they are not drunk and neither their co-ordination nor their speech is affected. Other persons are walking by in the street and appear to be ignoring the group. Despite the request of the police officer to desist from such behaviour, they continued to sing and act in a loud manner and shout as they walk up the street, and the officer does consider that they are being disorderly. Although the behaviour - I think all of us would consider - would be disorderly, there is not the evidence sufficient to say that they are drunk. They are not demonstrating violent tendencies, and so no breach of the peace is imminent, and in the absence of complaints from people, there is doubt in the officer's mind as to whether a public nuisance offence is being committed. The officer could consider arresting the group members to refusing to obey orders, but there may, however, be a strong defence case put forward that owing to the absence of complaints about the behaviour, no public nuisance has occurred or was about to occur, and therefore the arrest would be deemed unlawful. This kind of example portrays the sorts of issues that officers have to consider on the street, and which tends towards confusion and hesitancy, as it is not clear whether or not offences are being committed in the circumstances, despite the fact that a reasonable person may consider the actions of the group disorderly. The draft law would clarify the offence as disorderly conduct, giving clarity to both the police officer, and indeed, the defendant. There are many other examples, but as it is late, I shall not go through too many of them - I think Members will be relieved to hear - but ones I would draw Members' attention to is where, for instance, a young woman was walking down a street and there was in fact a sober male who, for whatever reason, walked up to within 6 feet of her and frighteningly verbally abused her and he was abusive about her appearance. She burst into tears and was terribly shaken by the incident. Again, there was nothing that the police could do under existing powers. This law would assist in that example. Furthermore, in the absence of this draft law, there is currently no offence to deal with stalking or causing harassment where one person only may be affected and where violence or

a breach of the peace is unlikely to occur. While both men and women can become victims of stalkers and indeed they do, a number of women have in recent years contacted me with very disturbing tales of their experiences of having been stalked. For example, one woman spurned the advances of a male admirer, despite her pleading with him to leave her alone he persisted in waiting outside of her place of work each evening. As she left he calmly followed at a distance behind of about 50 metres without speaking or approaching her. He was clearly aware that she knew that he was doing it as eye contact was often made and she regularly broke down in tears on seeing him. Whenever she turned to confront him he turned back and walked away and this continued day after day for a number of weeks causing her extreme distress. His behaviour, Sir, could not be said to be disorderly because he was sober. There was no imminent outbreak of violence as he kept his distance. Again, as I have said, under existing legislation there is no strong evidence that an offence was being committed and the police have been in the very frustrating position of having to advise the woman concerned to take out a civil injunction or having to wait until something more serious and further happens before they can lawfully act. Notwithstanding, of course, that they do give suitable advice to males in this situation, but currently the police are limited in their ability to back this up. The Crime Disorderly Conduct and Harassment Law seeks to fill these gaps in the police's ability to deal with disorderly conduct and antisocial behaviour by in fact legislating against threatening and abusive words or behaviour, engaging in disorderly conduct and harassment. It states that a person commits an offence if they engage in: "Disorderly behaviour or use words or behave in a way that is threatening or abusive within the hearing or sight of a person likely to be caused alarm or distress." Such offences, Sir, maybe committed in public or in a private place including in a dwelling, except those instances where both parties concerned are within the same dwelling which I shall return to in a moment. An offence is committed if a person intends such actions to be disorderly, threatening or abusive or if he or she is aware that they may be disorderly, threatening or abusive. Sir, I have been asked why this law does not deal with issues of domestic violence and abuse. The decision to proceed with the new law arose when the deficiencies were identified in customary law by the Magistrate in the States of Jersey Police. The deficiencies were in respect of public order offences. It was never intended that this law would address issues relating to behaviour between 2 people in a private dwelling usually associated with what we term "domestic violence or abuse". In relation to that particular issue, the need to achieve a balance between the protection for victims and what has been referred to as "domestic freedom of thought" was appreciated from the beginning. Domestic violence may of course be prosecuted at customary law in the same way as other assaults, whereas the disorderly conduct focus of this draft law is all about conduct in public which does not constitute an assault but that is threatening, abusive or disorderly and for which there is currently no satisfactory ground for prosecution. The Committee of the day sought advice on this point when it was first debated and was advised that to include acts done in a dwelling as now described in Article 2(2), would have created a situation in which a private argument in a dwelling between say a husband and wife would give rise to an offence unless it is reasonable or otherwise covered by one of the defences contained in Article 3 of the draft law. This, Sir, I believe would have gone far beyond what had been intended and what I believe the States would have been prepared to pass. The Committee received further advice along the lines that the offences that the draft law creates are unlikely to be the answer to the social problem of domestic abuse and that there are existing criminal offences which cover this more serious conduct and which would be charged in the normal way. These are the reasons why the draft law has been framed in such a way as to exclude instances where both parties concerned are within the same dwelling. Where the draft law also legislates against someone pursuing a course of conduct that amounts to harassment, provision is made for restraining orders to prevent repeat offending. The law provides for a number of defences to the offences created and in doing so it mirrors similar provisions in the United Kingdom. It will be a defence for an accused person to prove that they had no reason to believe there were any persons within hearing or sight who were liable to be caused alarm or distress, or that the conduct was in fact reasonable. It will also be a defence for a person accused of harassment to prove that their conduct was reasonable in the

particular circumstances. This defence is wide-ranging to ensure appropriate proportionality. The issue of proportionality has been uppermost in the consideration of this draft law. Members may be reassured that the changes that have been made have been made in response to comments and concerns raised during the last debate. The balance to be struck, Sir, in terms of human rights is to weigh up the likelihood of the police not performing their obligations under the Human Rights Convention and creating a structure where the police and the Magistrate can deal effectively with public disturbances and antisocial behaviour. Of course Human Rights Convention constraints apply not only to the police but also to the prosecution and the courts, all of which are there to protect the rights of the citizen. In relation to the reverse burden of proof, which appears in relation to certain Articles such as Article 2(5) and Article 4 in respect of the harassment charges, the provisions are carefully drafted in accordance with the Human Rights Convention in that on each occasion where there are provisions with a reverse burden of proof there are balancing provisions which allow the accused a particular defence and it becomes again a burden on the prosecution to prove guilt. The question has been raised by the Education and Home Affairs Scrutiny Panel as to the manpower and cost implications of this draft law, particularly on the police, the prison and the Magistrates Court. There are in fact, Sir, no identifiable costs and manpower implications. It is envisaged that this new law will be applied with a light touch, often more as a form of deterrent or prevention, thus it is not envisaged that a large number of prosecutions would result from its introduction, but rather that it would enable the police and the Magistrate to respond appropriately to low-level antisocial behaviour and harassment. A significant section of our community is concerned about antisocial and disorderly behaviour and as I have already indicated, many rate it among their highest concerns in respect of their quality of life. This proposed legislation is necessary for the police and the Magistrate to be able to confidently and comprehensively tackle the wide range of incidents that occur and to combat antisocial behaviour. Deterrent and balance is the approach taken. The new draft law will also prove useful in a 'carrot and stick' approach in support of the Safer St. Helier project and the Building a Safer Society strategy. This draft legislation is as much a tool of prevention as it is one of enforcement. It will have a significant impact, Sir, at the lowest level of crime and disorder, for instance among young people and many offences will be dealt with through the Parish Hall Inquiry system, particularly where young people are concerned. Sir, I recommend the draft Bill and I propose the preamble to the Bill.

**The Greffier of the States (in the Chair):**

Are the principles seconded? **[Seconded]** Does anyone wish to speak? Deputy Le Claire.

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

I support the Home Affairs Minister in trying to give the police the powers that they need to tackle low levels of antisocial behaviour. In the last 2 years I have had personal experience of what it is like to have a sick child who is in a serious condition and having to not only try to deal with that but also try to deal with the fact that at 4.00 a.m. there are fireworks going off in the park opposite the hospital and children breaking bottles and screaming and shouting. It really should not be occurring. Levels where people were going into the Emergency Department toilets just because they wanted to change their make up or God knows what. Those issues also translated into the Howard Davis Park where there were a number of antisocial occurrences and people contacting me and telling me that they were extremely concerned about the levels of antisocial behaviour taking place and the levels of destruction that were occurring in the park in relation to the park itself which I think we have a duty of care to make sure we maintain. Now, in looking into this, not only did I see that we had passed the Parks Legislation to give more powers to the police, but I was also most thankful to the States of Jersey Police through the Minister and the Assistant Minister's attendance at that time with their community police officers and the honorary police officers and the offices of the Constable to addressing these issues and to try to address the issues of things like people riding their bikes through Colomberie, through the Colomberie traders area. It has just gone on and on and on and on and on. There has been a report to me only yesterday from one of the traders in



Colomberie that a gentleman was in his office and he wanted me to bring it up that a large group of people were regularly attending at the Harve des Pas Pool now and urinating in public against the back wall and drinking and shouting and screaming and larking around that was very upsetting to the people who were down there playing with their children, and at the time he was down there with his grandchild. Now, in my mind, that is a level of low antisocial behaviour that the police officer could tackle and hopefully could tackle in such a way that a deterrent is put in place through a verbal intervention and a verbal warning by the police officer to stop that happening again and to take names and addresses *et cetera* to stop that sort of activity. Because, especially in town, it may not be happening in all of the other Parishes, it certainly is happening in St. Brelade, it certainly is happening in St. Clement, it certainly is happening in St. Saviour, but it most definitely is happening in St. Helier that there are levels of antisocial behaviour that are causing us to have a significant deterioration on our quality of life. I have lived in town for many years - in fact most of my life - and since I was a child remember all manners of antisocial behaviour going past our house and also the house I now live in, with people returning home from night clubs and pubs, *et cetera*, singing loudly at 3.30 a.m., 4.30 a.m., and not realising that their singing and everything else is having a detrimental effect upon the people that are having to live in town. So, I think there is a need for us to give the police some more powers because I have noticed this since I was a child and it has been going on and it has not got any better. So something is missing. We have, I think, something like 400 police officers or thereabouts, maybe 500. Today I saw 3 of them standing on the corner of town in the streets by Wests Centre - where the cows are - and I thought how good it was to see a uniformed police officer on the streets in town and we so rarely see that. I remember I was performing in this show next and I was a busker and they had standing next to me on stage a policeman and I said: "Hang on a minute", I said: "This does not look real" and they said: "Well, what is wrong with it?" I said: "Well, you are shooting a street scene and I am a busker and there is a police officer in sight, it does not happen, there are no police officers in sight in street scenes, especially when there are buskers"...

**Deputy R.G. Le Hérissier:**

On a point of clarification, if I may? If the Deputy would be so kind? When he said 500 police officers, was he including all the Honorary Officers as well as the States?

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

Yes, I was talking about the... anyway, my point is that I am trying to make 3 points. The first point I am trying to make is that there is a problem and we all accept that, we all know it. Some of us experience it more on a daily basis than others. I live on the main drag and it certainly would not be as bad, I have said this before, if they knew the words. But at 3.30 a.m. when they do not know the words and they are singing away, it really does annoy. The second thing that I am trying to make the point on is that perhaps there is a need for more police officers on the beat and perhaps there is a need for more police officers on the beat to have greater powers and I liked the words this time around of the: "low-level light touch antisocial behaviour intervention techniques" that the Minister is telling us that the police wish to exercise and the Magistrate wishes to exercise because it is those small changes in direction that can get us in the right destination where we need to go rather than having, which is my third point, a whole lot of new people in La Moye. Because there is a significant amount of low-level antisocial behaviour and I do note that the manpower and financial implications in this proposition are none for the States of Jersey. But I would suggest unless we intend not to exercise these new laws or unless we intend to ask the police, through the Minister, to instruct the police to exercise it in a light-handed way we will see significant increases to the States in terms of financial and manpower consequences because there are significant levels of antisocial behaviour occurring in Jersey. Now I am sure the Constables of the Parishes, the larger Parishes who know this better than anybody, will concur with me and other Members who are aware of these issues as well. We have got, I do not know where Deputy Fox is, but in a former life he will give testimony to what I am saying. There is another point I am missing, I forgot to

make; oh yes, that is the other side of the coin. When I was being informed that... who says there is never one when you need one? When I was being informed of the antisocial behaviour at the Harve des Pas Swimming Pool - which I have yet to report to the police officially - I was also told and I think it is quite fair to say, I was told quite crossly: "Look, there goes another one on a bike, not doing anything about that. They stopped my wife yesterday for no reason whatsoever to breathalyse her, they have got all these manpower and resources to do all the things that really are not necessary, why are they not tackling the things that are necessary?" The arguments have always been they do not have the resources. Well, the argument today is the police do not have the legal resources in their armoury to tackle the crime and I am sure that the Minister and the Attorney General, if we talk to him privately - not today - will concur with this. So here we are, if we support this then I certainly do hope that the Minister will take an active interest and I know it is not usual, but an operational interest, or the Assistant Minister take an operational interest in ensuring that these new laws will go some way in tackling the actual events that are troubling people in these situations as I have mentioned; in the parks and in the swimming pools and in the other areas around the Island where we have reported them time and time and time again and they just keep happening. So I will support it. There is some more law, there is some more power to the police, there is some more support from a town Deputy who lives in one of the most populated alcohol-fuelled districts in the Island. There is some more support from me. There are some more votes, there is one of the country Parish Senators. Here is some more support for the police instead of criticism, yes, okay. Here is some more support for the police unlike Senator Perchard's criticism and little snide remarks, here is some more support for the police. Can we take an operational interest, please, in addressing the concerns of the constituents who have raised these issues before?

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

I supported the last proposition and I am going to support this one again. But there are a few comments I would like to make. The first one which is on the Scrutiny Report. There was a question here, when you withdrew the previous draft law you indicated you would consult Members; beside with ourselves, what other consultation has taken place? It is interesting to know that Home Affairs has consulted with the States of Jersey Police, the Honorary Police, the Council of Ministers and the Attorney General. One could say they have all got a vested interest. What I am rather disappointed in was where was the wider consultation? If we want to get the police working with the community it is a means of going out into the community. I think an opportunity has been lost here with the Home Affairs not going out to the wider community, maybe made a few Parish Hall inquiries again trying to put across how difficult a job it can be to be a police officer at the same time needing the public to work with them. I feel this opportunity has been lost possibly when there is consultation, it would bear in mind just do not talk to those with a vested interest. But alongside this piece of law, because Deputy Le Claire mentioned about it, what we are doing here, we are giving the police officer a statutory law as opposed to common customary law. But, I think in all policing issues and certainly I am not going to compare my policing with Deputy Fox because his is far superior to mine, but there is a question of how you deal with people in the street and what I would like to see certainly - if we are going to give the police stronger laws - can I please see policemen with a smile on their face walking down the street, looking at people in the eye, not avoiding them? What is wrong with having this personal contact, the one-to-one approach? So it is one of the instances where we do feel that probably heavy-handed policing cannot help a situation. Get back to good coppering, good commonsense. Have the approach, to feel you are building-up a trust and a working relationship with the community you serve. So, while welcoming this piece of legislation, I would try to get across the message to all police officers whether they are honorary or States, to work with the community that they serve. If they can build up that relationship, there should not be the need for the antisocial behaviour. Get their trust back.

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

I also support this law. I was a member of the Safer St. Helier Group and I know that there are many groups who worked together looking at issues, so that I would say there was consultation. Home Affairs and the groups that went out under different areas looking at issues relevant to this law. I am pleased to hear the Minister say there will be proportionality. Obviously nobody wants to see a huge number of arrests and obviously working with the community for the States Police and the Honorary Police is going to be paramount. But this is good that it is being introduced today and we just must be assured that it is now going to be effective.

**12.1.4 Deputy S.C. Ferguson:**

Yes, I am still a bit concerned about the subjectivity of this law and carrying on from the comments - the excellent comments - of the Deputy of St. Martin, the application of common sense particularly with reference to Article 2(1)(c). Heavy-handed use of laws like this would continue to drive a wedge between the police and the public. The Minister talks of low-level public disorder. Well, I looked up the scale of fines and this low-level public disorder is 3 months at La Moye and a fine of £2,000 and a criminal record. Now, the Minister made reference to loud singing. If they are going to be charged, does this really deserve 3 months and £2,000? If they are not doing any harm except possibly keeping people awake, that this could give them a criminal record and affect their whole careers. Is this proportionality? I have no problem with significant harassment or stalking. But, as I say, I am concerned with the subjectivity of a low-level disorder. Are we starting to extend criminality to include the whole population? After all, the ninth principle of policing is that the test of police efficiency is the absence of crime and disorder. I am undecided as to whether to support all of this.

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

I welcome this with open arms. This new law, Sir, will assist the police greatly in bridging the gap where many of the issues raised by the Minister were issues and are issue that bug the public very much in many of the low-level harassment and disorder issues, particularly that affect residents and tenants in every sphere of life. This will give the police more... well, to be seen to give more credibility, that they are now going to be able to, with this new law, assist the general public a lot more. Where the public in the past have been aggrieved by issues that have not been able to be dealt with legally by the police. So, as far as I am concerned as Housing Minister, I welcome this with open arms. It is a great step forward. It will certainly give a lot of people, the general public, the knowledge now that some of these little issues that some people consider to be unimportant but are really important to the lives of people where they are being harassed or nuisanced by individuals, the police now can act upon it. I welcome this and I think it is going to make a tremendous difference to the general public in their perception of the police, but it will make a huge difference to those people that are affected and I urge Members that this must be one of the best pieces of social legislation to assist them in the last few years. Sir, I welcome it very much.

**12.1.6 Deputy J.B. Fox:**

I will support this proposition but I do not want States Members to run away with the idea that this is the panacea for all the ills that happens with petty crime here in the Island. It is a useful tool and that is what it is. A useful tool is that when you have got a gap in your legislation you sometimes need propositions like this to fill in those gaps, but it is not going to solve, as I say, all the ailments and everything else. For a start, you have got to have a policeman to be able to police, whether it is a States Police or Honorary Police, whether it is in the public street or whether it is, as the previous speaker just said, on a housing estate or whatever. But you have also got to have a policeman that is being given the skills, the training to be able to do his or her job. The importance of that is paramount, because some of the aggression and some of the things that are being said is unfortunate but sometimes true. Good policing is a well-trained person with experience of life and also that can use discretion. Discretion is the better part of valour. The amount of times that it is easier to, say, take someone in and then take them to the Parish Hall and have them charged and then they end up

with a criminal record and that usually, if they do not get cautioned for a first time offence or whatever, but usually what happens after that is that you get negativity come into it. So it is a balance and the balance again is very important. You need this, as I say, I am not going to go on quoting but just bear in mind that you need the right type of policeman and you need the community spirit to be brought in and the experience and patience. That is, I think, all I need to say at this moment in time.

**12.1.7 Deputy R.C. Duhamel:**

Yes, I am in general support, by and large. I just want to make one point and that is for the Minister to consider, not just for this proposition but for others, whether or not the time has come to bring the fines and the time that people are locked up in La Moye Prison for into some kind of synchronicity. We are told that it costs in the order of £40,000 to keep a prisoner in La Moye, so that is working out at round about £800 a week and it does strike me, Sir, that there is an element of unfairness, if you like, in terms of whether or not a penalty of a prison sentence is delivered or a lesser financial fine. I think, personally, that perhaps the financial fine should be in excess of the cost of paying for your upkeep if you were sent to prison for a prison sentence. But something, I think, that we have not looked at for a long while and perhaps the Minister would like to bear this in mind, not just for this particular proposition, but indeed in future so we have some kind of parity between the 2 systems of penalty.

**12.1.8 Senator M.E. Vibert:**

I would like to thank the Minister for taking heed of the concerns that I and some others raised when this was last brought before the States and withdrawn and pleased to see that in reference to insulting, particularly to do with written placards and so on, where there was a concern it would be detrimental to quite reasonable protest has now been withdrawn, I can now support this law. I think that the importance of this law is it will give the police the power to warn people that this law is in existence and that they can be charged under it so that hopefully people will voluntarily stop doing whatever it is that is causing this behaviour, insulting behaviour, and I also think it is very important that we have a law that will outlaw stalking or harassment which has been missing from our armoury and I think it is something that is long overdue. So, I commend this law to the House and hopefully it will be supported by all.

**12.1.9 Deputy J.A. Martin:**

Yes, just a few comments and I do not want to be one of the only objectors. I am not sure if I am going to support this yet. I hear a lot of the light touch and I look to my right and behind me at 2 old-style policemen and we do not have those any more and I hear stories and these lesser offences, and this again I think we have got in some places a sledgehammer to crack a nut. Early evenings on a Friday and Saturday - and I say early evening - it could be 10.30 p.m. to 11.00 p.m. that when the police decide that there is insulting or likely to be threatening behaviour by 14, 15, 16 year-olds and they are not warned, they are taken to the police station. Suddenly they are ringing around for parents or someone to come and get them because they have some very much hardened criminals in the police station and they cannot accommodate both obviously in the same area. Now this happens now, I suggest that this law gives a lot more power. I question Deputy Le Main's comments about this is great for people who live in close quarters and housing estates. I think under this law - and I may be interpreting it wrongly - if you have an over-zealous policeman and a family a few doors up having their nice Sunday... or even lighting the barbecue and a few guests arriving and the music is loud and then they might be having a bit of a moan about the miserable neighbours up the road who they do not like. Well, how far is insulting? What have they got to call them? The police could be called in. I am asking the question, Sir, and it says: "was threatening and abusive" and even: "within the hearing or the sight of a person likely to be caused alarm or distress by the words or behaviour." Now, I know what that means to me and I would be more assured and I am not knocking our police force at all, I just think, as I say, we have different

codes now that obviously there is not what the old bobby used to say: “Right, on your bike. If I see you again, mate, tonight you will be down the Parish Hall”, they do not do that and we have got to be realistic. I do have a serious question under Article 2 though, as well: “Not in the same dwelling including the dwelling except that no offence is committed if the words or behaviour are used by the person inside the dwelling and the other person is also inside the dwelling.” I think the Minister added... because I was going to ask whether domestic violence was covered because I would hate, you know, somebody to be able to threaten their spouse or live-in partner and nobody take any notice with highly threatening behaviour. But my question is and we have masses on the Island of tourism and agriculture and unregistered accommodation, which some people are sharing the same room. Now what would happen in this instance? You may have different nationalities. I would assume there is some great offence may be caused to these people in the same dwelling. So have we missed something here? As I say, the rest of it, the harassment I totally agree, we have no harassment laws or stalking laws and I do not think they go too far. I am still quite concerned about some of this and the defence of the accused to prove that he had no reason and all of this. So I have not yet made up my mind completely not to support it, part 1, but I will listen to what the Minister has to say. But I wish I had more faith in the light touch that the Minister promises and what I see going on around the streets.

### **ADJOURNMENT PROPOSED**

**Senator L. Norman:**

This matter is not going to be finished this evening. It is 5.30 p.m. and I propose the adjournment, Sir.

**The Greffier of the States (in the Chair):**

It does appear there is still some way to go. Are Members content to adjourn and reconvene tomorrow morning?

**Deputy R.G. Le Hérisier:**

Can we see how many people do wish to speak?

**The Greffier of the States (in the Chair):**

Well, there are a number of lights, at least 6 lights on. We are only on the principles of the law, there is another item of public business to deal with and the arrangement of business. It would seem sensible to adjourn and reconvene at 9.30 a.m. tomorrow.

**ADJOURNMENT**