

STATES OF JERSEY

OFFICIAL REPORT

THURSDAY, 19th MAY 2011

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[9:30]

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

PUBLIC BUSINESS – resumption

1. Code of Practice for Scrutiny Panels and the Public Accounts Committee: amendments (P.49/2011)

The Bailiff:

The next matter on the Order Paper is the Code of Practice for Scrutiny Panels and Public Accounts Committee Amendments - Projet 49 - lodged by the Chairmen's Committee and I will ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion to refer to their Act dated 12th March 2008 in which they approved the Code of Practice for Scrutiny Panels and the Public Accounts Committee and to approve the following amendments to that Code in relation to the number of Members who can serve on Scrutiny Sub-Panels and to the role of rapporteur (a) in paragraph 4.21 after the words "... Sub-Panel Chairman to report to the full panel on a regular basis." insert the words: "The minimum number of Members on a Sub-Panel is 3, a Chairman and 2 others."; (b) in paragraph 4.25, after the words "Rapporteurs will progress their investigations on their own initiative and direction" insert the words "through fact-finding visits, calls for public submissions but not hearings".

1.1 Senator S.C. Ferguson (President, Chairmen's Committee):

There is a saying in Yorkshire that the best committee is composed of 2 people, one of whom is ill. **[Laughter]** On the other hand, this is not appropriate for Scrutiny where we are spending the taxpayers' money. The job of Scrutiny is to review policy or the effectiveness of the application of policy and to report on this, based on the evidence. It has become apparent over the past year that there could be a situation where a sub-panel could consist of 2 members. The quorum established for Scrutiny Panels and Sub-Panels is half the membership. This could result in a review being conducted by a single member and obviously we would not want to cast aspersions on any member but it would be extremely difficult to produce a clear, unbiased report on this basis. Consider if you had perhaps Deputy Southern and I on a panel together, if one week Deputy Southern was the sole member conducting the hearings and if the following week, I was the sole member conducting the hearings. It is unlikely, with the greatest respect, that we ... well, it is highly possible, I would not say it is likely, it is possible that you would get 2 entirely different views of the same circumstances. So we feel that this is not a good situation to be in. In the circumstances, it would be quite possible for the main panel to refuse to accept this report if they felt it was not appropriate and this would put Scrutiny in danger of losing its reputation for solid evidence-based reports. The problem is that once you lose your reputation, it is extremely difficult to regain it. Scrutiny has spent nearly 9 years, including the shadow period, developing a reputation for good reports and it would be disastrous to lose the reputation. As a corollary to this, the role of the rapporteurs also needs to be clarified and part (b) of the amendment clarifies this. This is a piece of housekeeping for Scrutiny in order to tighten-up the rules and I ask the Assembly to support this.

The Bailiff:

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

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

It is very rare for me to be mentioned in about the fourth line of a report supporting a proposition. Members will not be surprised to find that I objected to this move and what I am tempted to say: "If the cap fits, wear it." The dangers that are being pointed out by the Chairman are ones I believe

that anybody can fall temptation to, of being unable to put down political values when you walk into the role of Scrutiny and put your Scrutiny hat on and do a good job. That matters whether you are 3, 5, or one on any panel. I think it is in the Scottish system they are quite content that individuals go off and beaver away and receive officer help to sift through the evidence to bring reports to their Chamber in order that they can hold policy to account and examine policy in a rational way. They trust their members. Why do we not trust ours? I wonder why that could be? As I say, it is perfectly possible to run a system where a single member goes away with an officer and produces a perfectly competent job without political bias. Unfortunately, I feel that with 3, 4 or 5 members, slowly we are seeing drift towards political bias. I am all too aware of the fact that once you lose your reputation for clinically and rationally looking at the balance of opinion and do not take political views on board automatically, one puts Scrutiny at risk. I am very aware of that. I am scrupulous to avoid the mudslinging that goes on from Ministers who are saying it is just biased material. It is easier when you have got 3, 4 and 5 members on a panel because you can take a sounding as I do, and unless you get total agreement on not only the content but the wording of what you come forward with, you do not come forward with anything. It is easier - but it is not by any means impossible for a single person - if 2 people were to work together to produce a balanced proper-evidenced examination of policy and where we are going. So I shall be voting against this because I think it shackles - in only a slight way but it is a shackle nonetheless. It limits the range and the scope and the ability of Scrutiny to get business done. Since we are there, I have thought about the numbers. Here we are. There are 28, 29 Members of this House who are not on the Executive. How many of them are active in Scrutiny Panels at the moment? I think we are down to 13 now, the magic number 13. There are a lot of people not examining things and here we are saying you can only work if you have got 3 people. One person, 2 persons, cannot do that by themselves when hardly anyone, when less than half I think less than half of those available, are acting in Scrutiny. Come on. Why would we do this? I shall be voting against and I encourage all members of Scrutiny who are active to vote against this. It is a limit on what we can do and I believe that most Members of this House have the probity to do a good job and to sift the evidence in a proper manner rather than otherwise. We do not have to limit this capacity of Scrutiny in order to protect ourselves from those who might introduce political bias into the Scrutiny process. I will be voting against it.

1.1.2 Deputy D.J. De Sousa of St. Helier:

Myself, Deputy Vallois and the Deputy of St. Peter some time ago were asked by the previous Chairman of the Chairmen's Committee to carry out a review of the Code of Practice. We had to write to the Scrutiny Panels on several occasions before we even got any replies back on views that they had and views that they thought needed changing within the Code of Practice. Each one of us also had 2 panels where we visited and asked the members of those panels to give us evidence and give us ideas on how they felt the Code of Practice could be improved. I am not quite sure where this comes from, this proposition, because it was not brought up in the course of that review.

[9:45]

I am very surprised that my colleague to the left of me missed one vital important fact of Scrutiny. Scrutiny is evidence-based. Regardless of who we are, we gather evidence and that evidence is put into a report. Therefore, this proposition is absolutely not needed. I was going to mention numbers but the Deputy did that and the fact is, if we cannot already get Members on panels, how in the world are we going to get sub-panels together? When I put forward to do the Dental Review, the first time that I put out for Members to join me on the sub-panel, I did not have a single reply. How in the world are we going to work to this when we are already struggling to get Members to take part in Scrutiny? I will be voting against this and I hope all other Members involved in Scrutiny will do so too.

1.1.3 Deputy R.G. Le Hérissier of St. Saviour:

I take obviously a slightly different view. The logic that Deputy De Sousa applied, that it is evidence-based, therefore if there is one person or 3 persons, as long as that person is operating to that philosophy, all is well. I do not see that. I think we all bring prejudices to the table. That is in the nature of the job. I think it was Harold Wilson who said that politics was the rearrangement of prejudices. What we do in Scrutiny, of course, is test ourselves out through the means of other people asking questions, spotting where we are biased and so forth and I think that is a healthy process and I think it is absolutely intrinsic to the process of Scrutiny. It is intrinsic to other processes where groups are integral to how they work, juries being another one, for example. I am well aware, obviously it depends on the balance that there is within a panel and I was thinking of that issue, for example, when we voted for a new member of P.P.C. (Privileges and Procedures Committee) yesterday. It is absolutely important because we do bring prejudices, biases, our own backgrounds, and whether we like it or not, those backgrounds have informed how we think. We pretend we are totally rational. I am not saying I am irrational although I have felt like that a lot over the last few days. **[Laughter]** We pretend we are totally rational but we need other people to stand up to us, to test us, to tease out our inconsistencies and our different views. That is what makes for a healthy group and I fully admit there is a real danger of going to the other extreme which of course is group-think where you have got a group of people who think very much alike and you have got no one on the panel who really stands up to them and asks them the solid, testing questions. I think a panel which has people like that is the healthiest panel and, by definition, to quote General De Gaulle: “*L’Etat c’est moi*; the State is me.” I do not think one person can be everything and can be their own rational examiner and observer. They need other people to keep them on track, to keep them healthy. We all need that but the balance is vital and I would love to see a lot more of that in Scrutiny. Unlike other people, yes, it is at a crossroads - I do not doubt that for a moment. We do need to ask fundamental questions, some to do with the intrinsic workings of Scrutiny and some to do with Scrutiny in the bigger picture of Government where people feel it is being disregarded. Some people did feel it should be an opposition and they find the whole rather ponderous and tedious process of Scrutiny lacks political bite and they would much prefer to be involved in a much more edgy kind of process than this rather ponderous, bureaucratic one that sends me round the bend a lot of the time that does surround Scrutiny. But I simply cannot go with the notion. I can see there are cases where one person may have a special interest, may have brought some special knowledge, some special background to an issue but even that can be a bias. I have got parts of my career where I was very involved and I know I will see issues through the prism of the biases, the history and the experiences I have had at that time. It means I can come with a very informed view but it often means I come with a very biased view to the situation, as does the Deputy of St. John because he has got similar biases from his own background. So the whole process of Scrutiny is to test each other’s biases out, to bring them out into the open and to get ultimately the best fact-finding process you can in place having done that. So I am all for this proposition on that basis.

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

An unintentional or maybe intentional consequence of adoption of these measures might well be further restrictions on the current accepted practice of the presentation of minority reports in this House. Should that be an intended fallout of this measure, I think it would be a reprehensible move and on that basis, because it has not been mentioned within the report, I think that perhaps it is an intended consequence and I will not be supporting the measure.

1.1.5 Deputy M. Tadier of St. Brelade:

I have mentioned it before in the Assembly but clearly our Scrutiny model is not the same as that which operates in the U.K. (United Kingdom) for example, the Select Committees, insofar as its composition because in the U.K., of course, the Select Committee system mirrors pretty much on a proportional basis the way that the House of Commons at any one time is structured. So if you have a preponderance of any one Party at any one time, they will also have a majority on Scrutiny

and it will be roughly proportional. However, we do not have that so I think the first thing to bear in mind is that Scrutiny is always going to have a majority, if you like, of what I would call opposition members. Necessarily, it will always have that because opposition members will not be in Government and they will become Scrutiny members. I know Members do not necessarily like the term “opposition” but I think we have to deal in perhaps simplistic terms sometimes. So Scrutiny will have more members who are not in Government who perhaps do not have the ideological confidence of the rest of the House to be in government and so necessarily they will have to be in Scrutiny. So that is an issue already perhaps. I was going to save this point for later but I think it is worth saying it now. We talk about that Scrutiny must be evidence-based and it cannot be political, which are all very noble aspirations, but at the end of the day, if you do not want Scrutiny to be political or if you want to take the risk of any political bias from Scrutiny then just do not appoint politicians. We are all politicians and we have certain panels which we appoint from the States or which are appointed which must not be political in any way, and that is why we do not allow politicians on it. There is an ongoing debate, of course, about whether the Consumer Council should be headed by a politician. Of course, we know that the current incumbent does a very good job but there are certain things which should not necessarily be done by politicians. Of course, Scrutiny is a political body and there will always be this tension between politics and what should be the ideal of objectively dealing with evidence. One could even go the next step and say so long as one’s biases are based on evidence, then that should be okay, should it not? For me it is not so much a question of political bias. It is just perhaps simple common sense dictates that if you have more than one or 2 pairs of eyes looking at an issue, you will see things which you would not necessarily have seen otherwise. So I think the point of the whole is greater than the sum of its parts is very true when considering Scrutiny. That said, I am not 100 per cent convinced that this is necessarily the way forward or entirely necessary. One consideration is that we already have Scrutiny officers. Now, they do provide the non-political point of contact for Scrutiny members and a good Scrutiny officer should always be there to challenge Scrutiny members, whether that be on the main panel or on a sub-panel and if they think that the panel is going off in a direction which is inherently politically motivated rather than based on facts, they will say: “I do not think there is the evidence for that.” So, for example, if we are conducting a review and I say: “I think that this evidence says that Jersey should stop private property and that all property should be owned by the State”, and perhaps my 2 colleagues on that panel would agree with me because they have got similar leanings - let us say for argument’s sake - the officer should say: “Well, I do not think there is any evidence at all for that kind of statement. You have to really back that up.” So a good officer, if you like, if we take the scenario where you have 2 members on a panel, your officer is your third member, if you like, in that sense. So I think there is an inbuilt safeguard already. Another possible solution is rather than having an obligatory 3 members on a sub-panel, why not just raise the quorum to 2, so say we can have a sub-panel composed of 2 members but the quorum must be 2 because what is the point in having 3 if only 2 are going to attend anyway. It is very strange. If only 2 are going to actively do the work, it seems strange not to just say the quorum must be 2 and leave it at that. That said, I think if I am being even-handed, common sense would dictate that 3 pairs of eyes are better than 2 because I think the dynamics of the group are better with 3 on there. So in an ideal world, you appoint 3 members to a sub-panel and all 3 should attend that sub-panel. I will give an example. Very early on in my Scrutiny experience, we conducted a review on the Board of Visitors at the prison. I am still yet to see any meaningful results back from the Minister for Home Affairs for that even though it was praised as an even-handed report by the media and we certainly benefited from the presence of the Constable of Trinity on that because he was able to provide a different perspective. He was older, certainly, and more experienced in political terms than Deputy Trevor Pitman and myself and he was able to provide some balance and we came up with some recommendations which reflected the different levels of experience but also the different drives perhaps which we all recognised were necessary in a modern society but were also taking into account traditions and principles of even-handedness. So I think this is really just a bit of housekeeping. I think we can go either way on this. I think the important thing is that the

quorum should be 2 but we need to encourage as many Members to participate in Scrutiny as possible. But I would say that the underlying problem for Scrutiny for me, and I think for other Members, is sometimes we ask ourselves what is the point of Scrutiny if perfectly sensible and non-contentious recommendations are not taken on board? Now, of course, we know that not all recommendations and findings will be backed up by the department but we saw yesterday - and I have to mention this example - we conducted a political review, which was far-reaching. We went into many schools. We talked to the teachers; we saw the great progress that is being made in a coherent political programme to teach youngsters who can now vote from the age of 16 about the political system and we were very impressed by the work that has been going on in the schools so that is to be commended. One would have thought, coming up with a very what I would call non-contentious suggestion that perhaps registration forms should be made available to students in schools so they can register at which point the teachers can just send those to Parish Halls, it does not seem like rocket science. That is not a politically biased move in any way. If it is politically biased, it is only because we want young people to vote in the same way that we want all members of society to take part in our democracy. Now, when these kinds of recommendations are met with complete obstinacy, one has to question what is the point in being on Scrutiny and how on earth are we going to get 3 members to join a sub-panel if we are having trouble getting people interested in Scrutiny in the first place? These are the bigger issues that need to be dealt with rather than necessarily 2s and 3s. So I will leave it at that. I do not think it makes a great deal of difference but I think of course the more people who participate on Scrutiny, the more people that are involved and also involved in all aspects of the report, then of course you are going to get a better level of Scrutiny but only if Scrutiny's findings and recommendations which are evidence-based are taken on board. Otherwise, let us not bother. Let us move to a proper system of oppositional government and leave it at that.

[10:00]

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

I would just like to follow on from what is political about the education and not having registrations in schools, which was a question put to the Minister for Education, Sport and Culture and if it is not political ... I know which way this Minister for Education, Sport and Culture voted on 16 year-olds having the vote. He voted against. Is it political that he does not want them to have the registration? Well, we will leave that one there. I was very disturbed by the President's opening speech about there will be one ... if the President was listening to evidence, there would be one view and the next week maybe it be Deputy Southern, it may be Deputy Pitman, it may be Deputy De Sousa, there would be a different view. Well, to me, evidence was evidence and I worked in Scrutiny on 2 panels, the Health and Social Services Panel and Economic Development, and we had 5 members on each panel. If you do not think this is political, this is absolutely the final nail in Scrutiny's coffin. They do not like the reports. They do not want to do anything. You have heard that you have got 13 people participating. I am sad that Senator Breckon's proposition never went through. There are certain things nowhere going near my remit as Assistant Minister for Health and Social Services that I would love to get involved in and I am willing and able, which I could mention names but there are people in here who are not doing. They do constituency work and they bring private Members' Bills but they do not work on Scrutiny. I am very sorry. This is one step too far. You have one Minister as corporation sole but you cannot have one or 2 on a Scrutiny panel questioning them and doing a report. What is fair? Obviously this has come from one report or something that was absolutely somebody did not like and to me, if this goes through today, if I was on Scrutiny, do it. You have got 6 months to go to the elections or 16 weeks to the nominations. Resign and there will be no legislation going through this House **[Approbation]** because the Chair has to refer to the Head of Scrutiny. Obviously then you might get 4 or 5 Constables stepping forward just in the name of being there or just to be a "noddy". I am sorry, no, I am very sorry. Scrutiny are in their own hands. If I was on Scrutiny now and this goes through, I would not do any more Scrutiny work because you are taking away, you are saying if you cannot

... it is political. Of course there is political. You will have a view but in Scrutiny at least if you question a report, you will have reams and folders ... I have still got them in my locker when I was on the Scrutiny ... of evidence, transcripts and everything. Yes, you can. You can present them one way or the other but if they are questioned, you have to have the evidence. You get a Minister in front of you, 2 officers either side, no papers, no anything, and just believe me, take my word on it. So I am very sorry ... and it is fine the way Deputy Vallois says ... and she has just crossed the void, as they say from being **[Laughter]** not politically... Like me, I am the 'red in the bed', I suppose, because **[Laughter]** they ... well, I am often held up to be, we are inclusive because we have Deputy Martin in and she is an Assistant Minister. **[Laughter]** Well, that is great, is it not? Well, it is not just Scrutiny members. I really think if you really want to kill Scrutiny, vote for this. I will not vote for this. I just think it is another thing that really they cannot work with 13 people covering all those Ministers and they do not want to be covered. I do not care if it is one on one. I want one on one, at least one on one, and if you ... 3, no way. It is not going to work and that is exactly more power to the Executive. They do not want to be questioned. They do not want a report put together that is only one or 2 people. Got to be 3 people? No way. I am very sorry, this really is going too far and I really mean it. I am really serious. If people on Scrutiny ... if this goes through, give up. I am very sorry.

Senator S.C. Ferguson:

A point of order. In view of the unexpected furore of this particular bit of housekeeping and consideration of human nature, the Chairmen's Committee will withdraw this at this time. **[Approbation]** It may come back in a different form but I would ask the permission of the House to withdraw it.

Deputy M.R. Higgins of St. Helier:

Can I ask you a question? How can the Chairman of the Chairmen's Committee say it has been withdrawn by the Chair but it is from the committee? Has she asked the other members?

The Bailiff:

It is a matter for the Assembly. The proposer of any proposition is entitled to ask for it to be withdrawn at any stage but after the debate has opened, as it now has, it requires the view of the Assembly so what the President is saying is: "Does the Assembly agree to this matter being withdrawn?"

Connétable D.J. Murphy of Grouville:

I am sorry, can I bring a point of order with Deputy Martin's speech just now, when she referred to Constables as "Noddys". Is that unparliamentary language and certainly it is untrue as far as I am concerned so perhaps she would like to apologise?

The Bailiff:

Yes, I am sure that she does not mean all Constables are "Noddys". **[Laughter]**

Deputy J.A. Martin:

No, some are Big Ears. Noddy, Big Ears, whatever you like.

The Bailiff:

Or that any other Member is a Noddy.

Deputy J.A. Martin:

It was not unparliamentary I can assure you.

The Connétable of Grouville:

I am sorry, I did not hear that because there was so much noise. Did she apologise?

Deputy J.A. Martin:

No, I said if I offended you with Noddy, it could be Big Ears. [Laughter] There is nothing ... I am very sorry. I did say I am very sorry if that offended you.

The Bailiff:

Very well. So the matter before the Assembly is whether the Assembly agrees to this proposition being withdrawn. The appel is called for. I invite Members to return to their seats. If you wish it to be withdrawn, you vote pour. If you do not, you vote contre. The Greffier will open the voting.

POUR: 32	CONTRE: 9	ABSTAIN: 1
Senator P.F. Routier	Senator A. Breckon	Connétable of St. Mary
Senator P.F.C. Ozouf	Deputy R.C. Duhamel (S)	
Senator T.J. Le Main	Deputy G.P. Southern (H)	
Senator B.E. Shenton	Deputy S. Pitman (H)	
Senator J.L. Perchard	Deputy M. Tadier (B)	
Senator S.C. Ferguson	Deputy T.M. Pitman (H)	
Senator B.I. Le Marquand	Deputy T.A. Vallois (S)	
Senator F. du H. Le Gresley	Deputy M.R. Higgins (H)	
Connétable of St. Helier	Deputy D.J. De Sousa (H)	
Connétable of Grouville		
Connétable of St. Brelade		
Connétable of St. Martin		
Connétable of St. Clement		
Connétable of St. Lawrence		
Deputy of St. Martin		
Deputy R.G. Le Hérisssier (S)		
Deputy J.B. Fox (H)		
Deputy J.A. Martin (H)		
Deputy of St. Ouen		
Deputy of Grouville		
Deputy of St. Peter		
Deputy J.A. Hilton (H)		
Deputy P.V.F. Le Claire (H)		
Deputy S.S.P.A. Power (B)		
Deputy K.C. Lewis (S)		
Deputy I.J. Gorst (C)		
Deputy of St. John		
Deputy A.E. Jeune (B)		
Deputy of St. Mary		
Deputy A.T. Dupré (C)		
Deputy A.K.F. Green (H)		
Deputy J.M. Maçon (S)		

2. Draft Public Elections (Expenditure and Donations) (Jersey) Regulations 201-(P.51/2001)

The Bailiff:

Then we move next to the Draft Public Elections (Expenditure and Donations) (Jersey) Regulations 201-, Projet 51, lodged by the Privileges and Procedures Committee. I ask the Greffier to read the citation.

The Greffier of the States:

The States, in pursuance of the Order in Council of 14th April 1884, have made the following regulations.

2.1 Connétable J. Gallichan of St. Mary (Chairman, Privileges and Procedures Committee):

I hope this can be dealt with as expeditiously as possible because, in fact, these triennial regulations simply renew the very minor modifications, the rules that were put in place for the 2008 elections and the 2010 by-election. P.P.C. hopes that all Members share the view that it is important that election expenditure is regulated to ensure that there is a level playing field between candidates. Before 2008, the absence of any controls clearly led to the lack of such a level playing field. For example, a wealthy Senatorial candidate, who could afford to print an expensive glossy leaflet and email it to every elector, was likely to have become much better known than a candidate of more modest means who could not afford to do that. Placing a monetary limit on how much a candidate can spend to create a level playing field is a feature of many democratic systems. Before 2008, concerns had also been raised about a lack of transparency in election funding in Jersey. There had been allegations, which hopefully were unfounded, that some candidates had received large sums of money for their campaign from individual or corporate donors. Before 2008, there was no restriction on this type of donation and no way for the public to know what sums may have been given to a candidate. Third party campaigning was another issue that was not regulated in Jersey before 2008. Although third party campaigning is not common in Jersey, it is nevertheless important to ensure that restrictions are in place to prevent an individual or organisation from spending significant amounts of money to favour one or more candidates or to prejudice others. As I have mentioned, these regulations are almost identical to those already in place and although the regulations are, by their nature, relatively complicated, experience in 2008 showed that the restrictions appeared to work very well and they certainly achieved the main objective of preventing any candidate spending excessive amounts of money on their campaign. Members who stood in 2008 elections may recall that a helpful guide explaining the regulations was circulated to all candidates and it is P.P.C.'s intention to update and to circulate that guide to all candidates in the forthcoming elections this year as well. Having said that, I propose the principles of the regulations.

The Bailiff:

Are the principles seconded? [**Seconded**] Does any Member wish to speak?

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

Obviously very important legislation and I congratulate P.P.C. for continuing to make sure that we have this sort of protection in elections and also for the facilitation of newspaper leaflets and also the new introduction this year of the website which will be not ... the Chairman is shaking her head but I have just read that in the report so maybe I can ask for some clarification before I proceed, please.

The Connétable of St. Mary:

I am sorry, it was just an involuntary shake of the head. We had the website for the last elections as well.

Deputy P.V.F. Le Claire:

I do not remember that; getting old probably. I do remember that there was Senator Ben Shenton who was initiator, if I am correct, of this legislation and I think we all owe him a great debt of gratitude for that because it does help us retain some sort of level playing field. Now, the more you are in politics, obviously the less of a level playing field there is for the opposition so I am as guilty as any candidate that is standing that has been known for a while in having that advantage. Some of the propositions I have been tabling recently and some of the amendments I have been accused of electioneering ... it is quite sad because some of the propositions that have been coming lately are over a year and a half late and had I been making amendments to them at the time they were meant to be in the Assembly, it would not have been an accusation at all. However, there is actual activity that occurs in the Assembly on a regular basis which could be construed as an advantage

for somebody in an election which I think P.P.C. needs to think further on in the coming years and also in relation to the exposure that Members have in relation to their portfolios in the coming years and how those exposures may be limited or curtailed during an election period and I give, for example, Harbours and Airports. We have television screens emblazoned with the names of the Ministers and the work that they are doing. We have Harbours and Airport magazines with glossy photographs of the Ministers who are running their portfolios. We have Constables, with the greatest of respect, because I share in this, I am guilty as anybody, I share in the glory of having had an opportunity to put my 5 questions out into the public domain through the Parish magazine and quite rightly the Constable of St. Helier has allowed all Deputies in St. Helier to benefit from that but that does give us all an unfair advantage, it could be said, against those who would wish to stand in the elections who have not been known so far this year. So I think there needs to be some consideration about the money that is used from States coffers in relation to the ongoing work that is necessary for the work of, for example, Harbours and Airport but also minded in relation to the fact that it could be advantageous to the political representative that is just doing their job if it was seen that during that election period, magazines and television screens, *et cetera*, were giving somebody an unfair advantage. Now, the world is a changing beast and Senator Ozouf has brought us into the modern world with the tweeting that is occurring. I do not know if he is tweeting during this debate but he certainly **[Aside] [Laughter]** ... aside from doing a tremendous job right now, the Minister for Treasury and Resources is ... no, he is not tweeting right now and he is not saying I am giving a great speech. He has done in the past but I do not think he **[Laughter]** ... when I agreed with the proposition that he was bringing.

[10:15]

So seriously, while I welcome the legislation, P.P.C. needs to be - I think - mindful and perhaps in dialogue with the Constables and the Ministers in relation to the subliminal advertising that goes on. If you take, for example, a Formula One racing car and you take an advert on a Formula racing car which goes past you at 600, 700 miles an hour or however fast they go - certainly too fast and noisy for me - you will spend £1.5 million for a couple of inches of advertising on a Formula One car because the power of advertising in those mediums is significant. We need to recognise the fact that a Parish magazine, especially in St. Helier, goes into every household and if the Constable is there every month of the year in the Parish magazine saying: "And another word from the Constable", "And another word from the Constable", "And another word from the Constable", on top of the fact that the Constable has great opportunity through the course of the year to promote Parish issues and address States issues, you are basically cementing into place and in the minds of the electorate what a wonderful job the Constable is doing. Now, our Constable, in my belief, in my opinion...

The Bailiff:

Deputy, I am sorry to interrupt. These regulations are dealing with the limitations on finance. They are not dealing with the matter which you are discussing.

Deputy P.V.F. Le Claire:

I thought it was in relation to third party expenditure and whether or not this would be appropriate.

The Bailiff:

It is not dealing with the fact that sitting Members who inevitably have a certain advantage because the media report on what they say.

Deputy P.V.F. Le Claire:

The Parish magazines are sponsored by the Parishes themselves in some respects.

The Bailiff:

Well, I do not think it is covered in these regulations unless the Chairman says otherwise. I do not think it is covered and so really you are making a proposition that you would like the regulations to do something else.

Deputy P.V.F. Le Claire:

Well, as it was a preamble, I was saying what I would like to see in the future from them.

The Bailiff:

Right, but what we are debating is what is before the Assembly now.

Deputy P.V.F. Le Claire:

Right, Sir.

Connétable L. Norman of St. Clement:

Just for clarity, I cannot speak for other Parishes but certainly the wonderful magazine in the Parish of St. Clement is totally self-funding. It is not supported financially or politically by the Parish at all.

Connétable M.K. Jackson of St. Brelade:

If I may, on a point of clarification and to compliment the Constable of St. Clement's words in terms of St. Brelade's *La Baguette*, our Parish magazine, the editor makes a point of avoiding political comment, particularly for this reason.

The Bailiff:

All this goes to show is that we are getting away from the point of these particular regulations. Now, does any Member wish to speak?

Deputy P.V.F. Le Claire:

I was still speaking, Sir.

The Bailiff:

I am so sorry, Deputy. I beg your pardon.

Deputy P.V.F. Le Claire:

I was probably speaking incorrectly but I was still trying. I am off track, Sir.

The Bailiff:

Yes, carry on.

Deputy P.V.F. Le Claire:

So let us just park the Parish magazines as good contributions and not appropriate for this debate. I have got it wrong. Publicity, sponsored publicity and the amount that somebody can spend in an election and the attribution and the ability for third parties to influence collectively expenditure is outlined within the regulations and it has been deemed appropriate that if third parties are able to spend money in support of a candidate or to the detriment of a candidate, that has been looked at in light of European Human Rights legislation and it has been deemed appropriate by the P.P.C. Committee, through no doubt Her Majesty's Attorney General's Office, that it would curtail the rights and freedoms of individuals if there was not allowed to be a certain amount of third party opportunity in free elections. So we have the opportunity for third parties to influence elections by spending a certain amount of money in favour and also we have a reasonable argument to say that that should be tempered somewhat in respect of negative advertising also. That has been rounded off in these regulations to the maximum half of an Island-wide election, I believe, somewhere in the region of about £4,200-odd. That is an awful lot of money really, £4,200, if you are going to run a

campaign and it mentions people running campaigns and there has been a call in the media for business people to step forward and I agree, business people should step forward. But also people from all walks of life should step forward and, in my view, more women should step forward in this Assembly if possible and challenge for seats because I certainly do feel that we have got a predominance of people in the Assembly that have managed to achieve political position because of their abilities as businessmen rather than unfortunately in my view a broader sprinkling of our community. No doubt, there is great benefit in having able business people and businessmen in the Assembly but I think it would be much better if we had a better sprinkling myself. I think it is a bit too top-heavy. So I am a bit concerned recently and I do not know how this would be addressed but perhaps the Chairman of P.P.C. can let me know whether or not this would be cause in these regulations. But I have been chatting recently about elections with people, as no doubt other people have, and I have been told - and it is the Jersey rumour mill no doubt- so-and-so is preparing 21 business candidates and they have all signed to a Code of Conduct and they are standing in elections against Deputy Pitman and the Deputy of St. Martin and they are targeting these districts and this is what they are doing. Now, if that is correct, if there are 21 business people who are forming a loose collective through a Code of Conduct to target elections, I want to know what protection we have as individuals trying to serve our community against that kind of an onslaught.

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

I am pleased to follow Deputy Le Claire. I was horrified to hear that he could even be accused of electioneering. That never ever crossed my mind in all the time I have known him. But it is quite interesting talking about money because I thought I had finally arrived or crossed over to the dark side the other day because I received an envelope and when I opened it, it had some money in it. Yes, sadly it was only 3 pesos from Cuba so **[Laughter]** and it was just a souvenir from Deputy Le Hérisier's holiday so it looks like I have not been invited to the dark side yet. But this issue of money in envelopes... Now, I was for many years a staff representative and a union representative. When I stood, I received a small sum from the union and it is in the register. What these regulations, I am afraid, will never do is do anything about the situation where some third party, probably a wealthy individual, is going to support someone else with a nicer envelope than the one I got with an awful lot more money in it because how will it be traceable? It will not be and that is the reality. I really welcomed when we did move to election expenses because I did not stand in 2005 but we saw the really appalling stuff that came out of a really, I have to say, revolting group called Elect Jersey who were really set up to smear anyone who was, as I say, often to the left of Attila the Hun. Now, they offered certain people nice glossy very expensive videos because I know the gentleman who filmed them. He did have some problems getting a few of the candidates to speak coherently, I am told, but that was all done free of charge. They had a website which specialised really in attacking other candidates. How will we ever really stop that? Now, what Deputy Le Claire is touching on is very relevant and it is quite sinister. We are seeing very vociferous minorities who it is almost like the Sark situation where they want democracy but only if it suits them. I just say it is very difficult for P.P.C., I appreciate that being on there, but some of these things really will be little more than tokenism. It is doing the best that we can. I am on P.P.C. now and I realise how difficult it is. We are talking about newspapers. Well, it can be so subtle or perhaps unsubtle. How are we going to do anything at all about the media coverage and the way they portray us? Someone said that they report on everyone. Well, yes, they do but they certainly report in different ways and you know I am going to say it, but the wonderful *Jersey Evening Post* will be in court later this year for defamation. Am I going to get a fair crack of the whip come the election? What can I do with that? What can P.P.C. do about that with election expenses? Deputy Shona Pitman - just lies - and it is quite shocking and appalling and yet only yesterday, we heard that websites that any one of you - us - may wish to set up, young people cannot even access those, websites which are just at the end of the day about opinion because that is what politics is. It is your opinion, your interpretation of the facts. Yet the *Jersey Evening Post* or the other channels, the BBC, Channel 104, young people can access all of that. So it is all very

interlinked. We talked about glossy images being available. Deputy Le Claire has. Well, I have not noticed those I must admit on TV screens and things but the Scrutiny magazine... gone, is it not; or going? I thought it was a good magazine. I do not think anyone could accuse it of being a really promotional thing because you did not exactly get a lot of coverage to put your personal views because it was about the evidence that you had come up with. Maybe you read it possibly but we have got rid of that, yes, as we are saying, with the Council of Ministers, lovely glossy pictures everywhere. They get all the interviews with the media. It does not really matter what they say, how vacuous it might be or might not be. It might be very good but by nature of the system we have got, some people will get more coverage by nature of the prejudice of certain businesses. For instance, the *Jersey Evening Post*, they will be in there with another businessman for the smears on myself and my wife. So I think P.P.C., as Deputy Le Claire says, we need, difficult as it is, to take this further on. We do not want to see the days when people could pay £40,000 for an election campaign and it is good that we have made these steps. People should be there on merit and I do hope that we ... I know that we have tackled this late in P.P.C. but hopefully we can get when all of us can have the same leaflet put out across the Island rather than perhaps relying on the paper. Hopefully, we can come up with a way, probably very difficult with our postal service under threat where all those leaflets, manifestos, can go out the same day, arrive and be guaranteed to arrive at the same day and then the public can make their decision. You might say I have got an advantage because I am one of those people who knock on doors so I get seen but then I put the work in like a lot of Deputies in St. Helier do. That probably is the real reason why we had Article 3(9)(a) to stop people like that getting in. So I think I will leave it there. I just do want to see a level field. For instance, I do not want to see like we did have with Article 3(9)(a) where some people were prosecuted, some people were not. I will be publishing some documents later this year. Jersey has got to a just, democratic system and, in an election year, more so than ever.

2.1.3 Senator A. Breckon:

I welcome this and I welcome the fact that it is an update of where P.P.C. started from. I say that for a number of reasons because I have experienced living through this when election expenses were not accountable and people could spend as much as they wanted. It was a worrying thing because some people had very deep pockets. There were massive signs, there were glossy brochures, there were posters all over the place and it was to the detriment of the ordinary person wanting to stand. It was a bit of an insult. If we look now at what a postal mail drop would cost across the Island, you are probably talking £15,000. This is set at a level which was fixed at and that is where we should be because the old campaigns, if you look at that, it was about a team of helpers. I am looking I cannot see him, but I am looking at the back of Senator Le Marquand when I say that because he knows how valuable that is if you have friends and colleagues from different organisations that are willing to take 200 or 300 leaflets and do a certain area. That is really what it should be about and they are doing that not because you have press-ganged them into it or not because you have given £20 for doing it. They are doing it because they believe in some of the things you want to do and they are helping. Now, it is difficult to quantify that because people want to do that and I hope P.P.C. will say well ... because Senator Le Marquand would testify, I am sure, because I know because I have seen it myself, people will say: "Well, I will take 200 leaflets and I will do this estate" or "I will do this area" and that happens. They do not want anything for doing it but how do you quantify that as time? It is difficult to do that and I hope P.P.C. are not going to do that because that is part of the old tradition I think that we should not lose. The other thing that happened - and if you think of a Senatorial election - is professional people were hired to break down databases of electors and put that into a mail drop and address things to electors individually. Now, that is a substantial expense and again by putting the base where we are, we have taken that out. There have been rumours of some serious money spent on campaigns and this is pitched at the right area because people, whether it is if you look at the Parish of St. Mary, for

example, you could probably give everybody £5 and ask them to vote for somebody because the amount of money that is there and the amount of electors, you are probably at that level.

[10:30]

Put your money firstly on a £5 note and say: "Please bring this back to the Parish Hall." So that might be the easiest way to cure that particular one. The other thing is I have noted it on here and I am not sure how this could be done because we are talking about P.P.C. is keen to regulate excessive negative campaigning. But then as sitting Members, if somebody wants to publish how we voted on a particular thing, if you go back, say take something contentious like Queen's Valley, there was nobody left in that particular debate but how did people vote on that? Well, somebody - and there might be, say, a group-like concern - might want to publish that and take a page out of the paper and say: "This is how people voted; they have done it in the past." What we do not want to do is squash enlightened debate about some of the issues because as sitting Members, I am afraid, we have to be accountable for the way we voted on certain things. If somebody wants to publish that and put it on a leaflet and put it through people's doors or put it on Members' doors or ... The other thing, I am not sure how far P.P.C. are with this, probably ahead of me, is how do you put a price on technology and social networking? Especially a lot of younger people now, stuff whizzes around and it does not cost anything. If somebody has put a message on, people join in and the cost of that is virtually nothing. Advertisers of all descriptions have cottoned on to this and they are doing that. I am not sure how P.P.C. could quantify any of that and if somebody put a message on it saying: "Do you agree with me?" how do you actually do that? If somebody has already got a blog site, they need not be a sitting States Member, they could be just active in the community doing things and I know there is somebody particularly active say in the Isle of Man and it is over: "It is your Government, look what they are doing" and they do that in the U.K. as well, so you are under a bit of a microscope. We have an excellent website that shows our voting records but maybe we should link some of this and do this on nobody's behalf and just say: "We are the sitting Members. This is the information about us." But generally I welcome this but I am interested as well in how P.P.C. might do this because they talk about there is a balance between the human rights, freedom of expression and somebody not being able to say something for or against a candidate or a number of candidates. I think there may be some tension there and what we do not want to do is get bogged down with it because we want to have fair and proper elections where we discuss the issues and have the debates. We need to be encouraging people, not discouraging them, and to do that they need quality information. They need to be able to challenge what we have said, what we have done, what we put in manifestos, previous promises; things like that need to come under the microscope and the media certainly will do some of that. But perhaps other people in the community; organisations, business organisations, community organisations, might want to do the same thing but we do not want to bog them down with red tape so I think there is a balance. The expenses thing, in my mind, is right and personally I would not spend anything like that; I would not even bother because where this is for a lot of Members is with the legwork. It is not about producing glossy stuff and this really is about getting out there and meeting the community because if you want them to vote for you they have to feel that if they have a problem or an issue they want to talk to you about they can come back to you and say: "I remember when you said this or you were at a meeting or you knocked on my door" that is what it is about. We need to get back, I think, to some of the basics and it is good that P.P.C. have done this. What they have done is they have halted a flow that was going in a dangerous direction because there was too, too much money being spent. I notice the last time there were a number of candidates, who did or did not get elected, who have not complied with filling in that, so maybe they should look at the sanctions as well to make sure that everybody did; I think it was 3 or 4 who did not. Thank you.

2.1.4 Deputy D.J.A. Wimberley of St. Mary:

Yes, I think this is, on the whole, a good proposition and P.P.C. are to be commended. There are some big steps forward here; the transparency surrounding expenses, all donations over £100 will

have to be declared and publicly available and, as I understand it from the regulations, I hope the Chairman will correct me if I am wrong in making these assertions, all expenses will be listed and, again, available for the public to see. That is all good and a big step forward. I have just got a few comments really; the *J.E.P.* supplement is indeed money well spent. It is the views of the candidates in their own words and so cannot be spun or whatever in one way or the other. That is an essential part of P.P.C.'s role. They say it costs I think around £10,000 and that is money well spent. Also they say that they are committed to setting up an election website and presumably that too would have all those manifestos there for all time, if you like, or for any member of the public to go online and find what the candidates are saying about themselves. That is good if P.P.C. stick with that and I hope they do because I think it is just written in here as a we intend to do that and I hope they do do that and, again, it is a good step forward. My only observation really... and it follows on really from what Senator Breckon said about quality information and from what Deputy Le Claire said about the advantage and, of course, what we all know which is the advantage that sitting Members have simply by virtue of their extra knowledge of how the system works, the fact that they have sat here for 3 years or 6 years or 20 years, they have an advantage. That is fairly obvious; they get reported in the media, they are on the front page of their departmental magazine or whatever it is. The corrective to that would be to have a section in the gov.je website or within the new election website, where members of the public could first of all have easy access to the manifestos and the statements that candidates made at the last election so the voters can see: "Ah, that is what they said last time" and ideally, as the website progresses through the years to come, what they said at the time before that. Also, what we need on that website is easy access for the voter to the story behind the candidate; what they do or what they did in the last 3 years. They want to be able to get at the voting record. They want to be able then to go from the proposition about G.S.T. (Goods and Services Tax) or about the Millennium Town Park. They want then to be able to go to the Hansard, if they so desire. There are voters who want to check to that level; what we said, what we did and which way we voted and why. They will not read the collective words of Deputy Duhamel or Deputy Pitman or Deputy Wimberley or the Constable of St. Clement, of course they will not but they will dip into what interests them and they will find out what was said by that person they are interested in, whether or not they want to vote for them. I think that should be available and to all intents and purposes it is not available now. You try finding a specific debate on a specific topic on the States Assembly website, you just try and the average voter would simply not know where to begin. I hope that the new election website will tackle some of those issues; will enable the voter to navigate the voting record, will enable them to find specific propositions on topics that interest them and be able to find the Hansard and how they can find the Hansard of the debate on those propositions. At the moment I reckon that those things would be absolutely impossible. There is no index to propositions; if you typed in Millennium Town Park or Town Park or Gas Place, I do not know what you would find. You certainly would not get dates of debates, you would not get voting results immediately; in fact it would be impossible. I do hope that P.P.C. take that on board. If voters are interested or even half-interested they should be encouraged to find out. They should be enabled to find out and not have obstacles put in their way and, as I say, it is the only corrective to the advantage that sitting Members have is that the public can find out what we did and what we said. Thank you.

2.1.5 Deputy M. Tadier:

Three words to start off with: electioneering, electioneering. Okay, we will carry on now but I think that reference is probably more appropriate slightly earlier during the speeches. I can explain that later on, by the way, if anyone did not get why it is 3 words; it sounds like 2 words. Senator Breckon I think touched on the issue that there is a problem, first of all, with websites. If you have a pre-existing website or blog site, which some of us already do and which other candidates who maybe were not successful still have up and running, how does P.P.C. deal with that issue? For a start the website may have been free to set up; certain websites, certainly if their blogs are free and if you are doing it yourself there is no labour cost involved. We talk about a notional cost for

certain expenses on page 18, so even if things are free, because perhaps you know a friend in printing and he or she does some printing for you, you will still be charged for that or that will be put down as an allocation of your expenses but how does one judge that for a website, which you can do yourself, which is free anyway? Which leads me on to the next point, which I did bring up in the working party on elections and I am not sure if it has been taken into consideration, is that it is not simply sufficient to say that everybody should make a declaration. We need receipts; we cannot work on a trust basis. That is not to say that candidates are disreputable but it is important that surely if you are allowed to spend, let us say, £8,000 roughly you should have to account for every single penny of that. It is not simply satisfactory to make a declaration because one will tend to put things down: "I think I paid £100 for these posters. I think I paid £2,000 to print these leaflets." Exactly, get a receipt, that is right and that receipt should be submitted to P.P.C. or to the Judicial Greffe and that should be published on the website, right down to the final penny because how does one estimate? I know the arguments have been had that well you can tell roughly if people have been spending £8,000 or £15,000; you just look at how many big posters they have and then you work out how much those posters cost but of course that is impossible. First of all that is not going to happen; people do not go around counting leaflets, they do not go around counting posters, measuring the size and then working out what they would cost. I would like to know why P.P.C. have not gone down the road of demanding receipts for every piece of expenditure that happens and making sure that people do submit it. Maybe this is something which needs to be brought in over a period of time. I know that elections, certainly for new candidates, are very traumatic times and neither do we want to be overburdening them but there has to be a certain level of probity I think. Deputy Le Claire's interesting comments about the exposure that either certain high profile members of society or States Members indeed get is a valid one; perhaps not immediately part of the considerations for this. I think the issue about Parish newsletters is one consideration; what about Parish newsletters that get sent out perhaps a month before the election? Presumably most Constables would not do that because it is not seen as a good thing or if they did issue Parish newsletters during an election period I hope that they would make sure that there was no obvious preponderance of large photographs of themselves or articles written by themselves or about themselves in those newsletters. But I think currently, if we are honest about it, Parish newsletters do feature what the Constables are doing in their Parish and that is quite rightly but they are also States Members, so that is an issue there. I know that, similarly, those who publish the newsletter in St. Brelade they are very careful not to give any political bias to the Deputies but it often seems to me that the work that the Deputies do or the issues that they have raised in the Parish are included in the newsletter but they are not attributed to the Deputies themselves and there is a foreword by the Constable saying: "These things are going on in the Parish and these things I am mindful of." It can perhaps give an impression to the electorate which is not complete, shall we say in diplomatic speak. There is also the issue about how does one deal with leaflets which perhaps get distributed before election time? If I speak to potential candidates now and what I would say to them is, if they are a viable candidate, I say: "You want to get your information out to your constituency as soon as possible." Hypothetically speaking, if there was a candidate wanted to run for Constable in St. Brelade I would tell her: "You need to go and distribute as many leaflets as you can on some random issue, it does not really matter what, saying there is this issue going on in the Parish" or perhaps be more frank saying: "I am going to be standing for Constable in 2011 in October. I want to let you know that now."

[10:45]

Is that provided for? That is great but if that is provided for in here how does one differentiate between what is an election leaflet, let us say, now or if it is just a newsletter, where somebody is raising an issue and they can spend perhaps £20,000 if they want to distributing a newsletter for themselves to that Parish and then later declare perhaps 2 weeks later that they are going to stand as a candidate? These are issues which I think need to be considered. That is not to say that of course any regulations that are brought forward by the Committee will cover all these loopholes but they

certainly, I hope, would have been considered at some point. I am also concerned about the comments or I would like it explained that a newsletter going to each and every home is not a good use of taxpayers' money because certainly we have had a Scrutiny newsletter in the past and I know that has been scrapped but certainly that went to everybody's home and it was a leaflet which you could put the information about the whole of the happenings of Scrutiny. I do not see why a leaflet, with every candidate in the elections, certainly that is relevant for that particular district, could not be done in a leaflet. To say that it is a bad use of taxpayers' money I find that outstanding because surely that is the best use of taxpayers' money; they want to know exactly who is standing for election. I know the argument will come back that we have *J.E.P.* inserts; the trouble is not everyone buys the *J.E.P.* and once you have opened the *J.E.P.* to find the insert you will already be tainted by the *J.E.P.*, so you have that issue. People would want, I think, an objective centrally-distributed leaflet from Government, which is not necessarily alongside some other political statements in the same newspaper, which may or may not be biased to one or more candidates. I think those are just the points I have to make. Of course I commend the rest of the good work. It is important that we have a level playing field for expenses but it is only limited to expenses, I think that is the issue. Of course there will always be those who have advantages in politics and those who do not because they may have a high level of exposure. They may be politically more astute than others of course and it would be nonsense to have a level playing field in all of those areas because that does not allow for the human nature and fair competition. Certainly, when it comes to expenses, I think we are all agreed now that simply just because one is wealthier than another that should not provide an unfair advantage. I do commend the work but I would still like to know if these points have been considered.

The Bailiff:

Yes, can I just remind Members this is a re-enactment of existing regulations which governed the last election. Deputy Le Hérissier?

2.1.6 Deputy R.G. Le Hérissier:

Yes, I support Deputy Tadier's support of the proposition. In terms of the amendment I would just make a point that where it talks of distribution on the Island as opposed to distribution through an English language newspaper, I think that is necessary. Members may have forgotten that some years ago there was a proposition put through to liberalise the public *Gazette*. It never led to the results that were expected; in other words if somebody wished, through another medium, to set up their public *Gazette* or wished to compete with States recruitment advertising, for example, which of course has been much reduced in recent years, but if they wish to that possibility now exists. Similarly, if a Constable wished to announce a tea party through the *Gazette* they could do it through another means; that was the intention. The reform has never really materialised into the freedom and the competitive informal postal environment that was envisaged but at least this does give the possibility of that occurring; at least it does give the possibility. The other thing I would say, Sir, and I will negate your admonishment to us, is yes, it is great to have a level playing field but I think what people do miss are elections with a bit of spark, elections with a bit of life. The irony was, of course, such elections did take place in the 19th century. They were accompanied by enormous bouts of litigation as well where people were suing each other from here to kingdom come. They were incredibly exciting; they were often unbelievably personality-based. There was very little policy involved in all this disputation that was occurring. The one thing we lack and I know we have struggled with it, I am sure P.P.C. struggles with it, is how can we come up with an election format that livens up the whole process where there is some real edge to the proceedings, there is some real ding-dong, so to speak, and people are really having passionate, difficult debates with each other? We know the Senatorials; if you want to kill off excitement you could not have come up ... and it is very difficult, we realise that, we have all struggled with it but it does need to spark and I am not quite sure how that can be done; certainly not with the kind of numbers, for

example, that appear on a Senatorial campaign. That may be as phase 2 of the reform but how you legislate for that is a very different matter.

2.1.7 Deputy D.J. De Sousa:

It is just really to ask for a piece of clarification and hopefully the Chairman, in her summing-up will do that. It was intimated in Senator Breckon's speech; social media, will this be covered under these regulations?

The Bailiff:

Does any other Member wish to speak? Very well, I call upon the Chairman to reply.

2.1.8 The Connétable of St. Mary:

I am glad these were not new regulations. **[Laughter]** I will try and mop up as quickly as I can. I am grateful that, I think, pretty much everybody was generally supportive. There are some queries; I think we will get to the real nitty-gritty of those when I come to the actual regulations themselves but just if I can pick up a couple of things. Of course, Sir, and as you rightly said, being in the public eye and politics brings with it some recognition and we cannot do anything about that. There are other people in the community who do things such as community service, different things they might do, you would give them equal amount of a public face. But that, I am afraid, is the nature of life and certainly with the nature of politics. What we are trying to do is take the monetary advantage out of the situation as far as we can here with these regulations. A number of Members, Deputy De Sousa just brought this up again, have talked about where we are going with social media; how do you quantify that, *et cetera*? Members will be aware that these are triennial regulations and it is always the best intention to replace those as quickly as possible with actual legislation and that had been the P.P.C.'s intention and we worked very hard towards that. But it was precisely because of these emerging technologies and how we should be looking at them that we realised that we were not ready yet to put something cast in stone for that. We are actively looking at how these things are being dealt with in the jurisdictions where there are expenses regulations. To see how things... for example, a website that you have 365 days of the year but obviously you use it to promote yourself more towards a re-election. How do you quantify that? Most of the expense, if there is an expense, has been done already but these are things we need to look at. That is precisely the main reason why we have not come back with the draft legislation. We direct a lot of time to it but, as people are aware, we had a lot of things like Freedom of Information on the agenda as well and we had to prioritise, which is why we have come back with these regulations and I am sure that the next P.P.C. will take that definition further and I hope that satisfies Members on that. Obviously P.P.C. cannot change all of the attitudes and the way things are done. We have targeted what we can do. Deputy Pitman mentioned media that might have a slant on a candidate or a sitting Member or whatever; media operate within guidelines within codes of conduct and, by his own admission, there has been a remedy that he has been able to pursue. It may not be to everybody's taste but it is something we cannot do in these regulations but there are other remedies and this continually evolves. Senator Breckon made a very good point and we do mention it in our comments. There is a fine balance between tightening everything down and allowing the freedom of expression that we all take for granted. We have been very careful on that, which is exactly why donations to third party campaigning has to be in there, it has to be allowed but we have to do our best to put a cap on it. I am afraid that the cash donation in the brown envelope, that Deputy Pitman is so worried about, if a candidate receives money and then spends it in the campaign that will come out in the declaration. There is at least an onus on the candidate and of course any anonymous donations should hopefully, ultimately, benefit a charity if the regulations are followed to their conclusion. For the Deputy of St. Mary, he sent me a note about him not being able to see what happened about a family member or a friend providing what is, in effect, a professional service such as setting up a website. Of course there is in the regulations the discussion of notional expenditure; anything that is done as a gift to someone but by somebody who

has a professional service, the actual cost of that has to be declared as the notional expenditure, even if there was actual no physical cash expenditure and that forms part of the limit that is allowable. Also, for the Deputy, I have very little problem accessing the relevant sections of the debates, *et cetera*, from the States website. There is an index; the dates of debates of all the propositions is listed and they are searchable, for example, you type in anything that interests you. It is accessible, the search engine does work and it gives you times of each debate which points you to the right section of Hansard and I am quite happy to go through that with him later. But of course there is the new website which, I am assured, is even more user-friendly. It is a bit like Christmas, it has been coming for quite a long while but I hope that it is getting nearer all the time. The question Deputy Tadier made about why there is no requirement for receipts; it is quite simply because there is an element of trust and people do not necessarily have a receipt for absolutely everything. They certainly do not have a receipt necessarily for notional expenditure. There is nothing to stop a candidate putting their receipts in if they have them but the Judicial Greffier has the power to ask for receipts if it is widely obvious that the declaration cannot possibly be accurate, so that is available. Expenses incurred at any time before a poll, with the intention of securing that candidate's success in an election, are caught by these regulations. If I, for example, was to declare myself to stand for Constable of ... from some office now: "I am intending to stand in the 2011 elections, here is my leaflet" that would be caught by these regulations because I am doing it now in advance of that election, so that would be caught; any expenditure at any time before the poll. Of course there are not true candidates until nomination day but that would be looked through, I am certain. Deputy Le Hérisier is quite right; when I do propose the right relevant article that we have amended ourselves it will, effectively, open up the forum where publication can be made to a greater arena where in fact the publication of the document or the publication of the manifestos is made, is a moot point at the moment; that is still under discussion but it will have a wider implication than under the current regulations which are due to expire. I think possibly, hopefully, I have covered everything except just to tell Deputy Le Hérisier, before he leaves, to get back on the fence, Deputy, for just one more moment please, that we are indeed looking at ways that we can liven up things, liven up this election. We are planning some innovative ideas for getting the messages across. I might tell you them later, I might give you a nugget but we are actively planning to do that. Certain prominent Islanders may be involved such as that chap, Hedley; I am not sure what his other name is but we may have something there. Finally, just to say I am looking at ways to keep the information published on the vote.je website this time and keeping it up for future reference. We had a bit of a glitch last time but hopefully in future that can be done so that it will be accessible to the public approaching the next elections - the ones after these - to see what the manifestos of this connotation were because that certainly is our intention to set up our website again and it was set up for the last elections and was quite extensively used. Sir, I maintain the regulations.

[11:00]

Deputy P.V.F. Le Claire:

Sir, I do apologise. You are quite right, Sir, that these are re-enactments of triennial regulations but it does state that there are a number of minor amendments to these regulations. I did ask, in relation to what I understand may be the case of a number of people forming and helping and co-ordinating 21 candidates who are encouraged to sign a Code of Conduct, how would that be captured? Because the Chairman did not answer that in relation to my question in her summing-up, during the rest of her summing-up I managed to identify that it might be caught in Regulation 9 but I would like to ask Her Majesty's Attorney General, if, under Regulation 9, one or more people are identified as a third party operating in an election, is there any requirement if they, at that level of organisation, where they are signing Codes of Conduct. Do they need to declare themselves as a *de facto* party, or do they need to declare themselves publicly as an organisation or a conglomerate?

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

I wonder if I may take a moment to find out the answer to that question, particularly on the question of whether there needs to be a declaration of a political party. I know we will be coming through to all these regulations on an item by item basis, so perhaps I could deal with it at that at that point.

The Bailiff:

Deputy Pitman, you wanted clarification?

Deputy T.M. Pitman.

Yes, please, Sir. I think I heard the Chairman right, did she say that effectively there is no candidates until the nomination? Because for instance I have leafleted all my residents in Berkshire Court to tell them we were hopefully managing to narrow the road, *et cetera*, and I do not want that to be charged against me for just keeping my constituents informed.

The Connétable of St. Mary:

Under the Public Elections Law, which of course is separate to this, candidates become actual candidates at nomination but if someone who is anticipating being a candidate actively campaigns towards an election before the election, before they declare, that would still be covered. I am sure the Attorney General will correct me if I am wrong but it says in part 2 in Regulation 3: “Expenses are a candidate’s election expenses if they are incurred at any time before the poll by the candidate with the candidate’s expressly required consent to promote or procure the candidate’s election at the election.” So, whether or not you have actually formally declared, if you are working towards an election and then you subsequently do declare and become a candidate that would be counted, as far as I understand.

Deputy T.M. Pitman:

Can we get clarification from the Solicitor General, Sir, because to me that is just doing our job and we must all do it; we must send out leaflets about issues we are working with.

The Bailiff:

Can I suggest that we do that if we come to the relevant regulation? At the moment the Assembly is just deciding whether to adopt the principles of these regulations, which are a repeat of the previous regulations.

The Deputy of St. Mary:

May I ask a further point of clarification? I am not sure it will come up in the regulations specifically. I was not sure whether the Chairman committed to having the last manifestos, the manifestos at the last election, up on the website that the committee are thinking of setting up, because if not then obviously the members of the public cannot see how we performed against our manifestos.

The Connétable of St. Mary:

I am not sure that that is possible, to be honest, because we have a different provider. We have secured the same domain name but it has been supplied in a different way. It may not be possible but a number of the candidates’ manifestos are still available in other forms on the internet, but certainly I cannot commit to that but I will see if it is possible.

The Bailiff:

Very well. All those in favour of adopting the principles kindly show. The appel is called for in relation to the principles of Projet 51. I invite Members to return to their seats and the Greffier will open the voting.

POUR: 41		CONTRE: 0		ABSTAIN: 0
Senator T.A. Le Sueur				
Senator P.F.C. Ozouf				

Senator T.J. Le Main				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator F. du H. Le Gresley				
Connétable of St. Helier				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Bailiff:

Senator Ferguson, do you wish this matter to be referred to your Scrutiny Panel?

Senator S.C. Ferguson (Chairman, Corporate Services Panel):

No, thank you, Sir.

The Bailiff:

Very well. Then we come to the regulations. There is an amendment to Regulation 16, Chairman, which means you wish to propose Regulations 1 to 15 *en bloc* and take questions on the individual regulations? How do you wish to proceed? These are essentially a re-enactment.

2.2 The Connétable of St. Mary:

I would be very happy to propose them *en bloc* if that meets with your approval because, as you say, they are a re-enactment.

The Bailiff:

Clearly Members can raise any questions on any particular regulations and any Member can ask for a separate vote on any particular regulation. So, are Regulations 1 to 15 proposed?

The Connétable of St. Mary:

Yes, Sir, I would like to ...

The Bailiff:

Of course, yes.

The Connétable of St. Mary:

Regulation 1 sets out the interpretation of expressions used in the regulations. The legislation only refers to the election of Senators, Connétables and Deputies and not to other public elections and so it does not apply to elections for Centeniers or Procureur du Bien Public or to any future referendum. Regulation 2 gives effect to the schedule which we will come to, which defines donations and anonymous donations. Regulation 3 defines candidates' election expenses as any expenditure incurred by a candidate at any time before the poll for the purpose of procuring the candidate's election or prejudicing the chances of other candidates. Although a candidate will normally take decisions on spending himself or herself it is important to stress that a candidate can also be responsible for expenses incurred by others if this expenditure is undertaken with a candidate's express or implied consent. So, for example, if a candidate's friend offers to spend £1,000 on placing adverts in the newspaper to promote the candidate, and the candidate consents, this expenditure is part of the candidate's own expenditure limit, even though not actually incurred by him or her. Expenses can be direct, such as the payment to a printer for the printing of leaflets and can also be notional for when services are provided at a discount. The difference between the normal market value of the provision of a website, for example, and a discounted price is treated as a donation and therefore a notional expense that must be counted as part of the candidate's overall total. Paragraph 7 of Regulation 3 explains how shared expenditure will be treated and this may be particularly important as several candidates stand on a shared platform, or on behalf of a party. Paragraph 8 covers the situation where a candidate may use goods again, which could apply for example to posters or rosettes left over from a previous election. Regulation 4 gives the actual monetary limits that candidates are entitled to spend in an election campaign. P.P.C.'s objective has been to find a figure that allows a campaign to be run but which means that candidates of modest means are not disadvantaged by candidates who are willing to spend large amounts of money. The limit is split into 2 parts and the basic fixed amount is £2,700 for Senators and £1,600 for Connétables and Deputies, plus the sum of 11 pence for every registered voter. These have been increased in line with inflation since the original regulations. Regulation 5 is self-explanatory and says that candidates will not be permitted to keep any anonymous donations, as to allow them to do so of course would potentially open up a significant loophole in the legislation. If there was no restriction a single anonymous donor could give a series of anonymous donations to a candidate and the rules on declaring the identity of donors could be circumvented. Any anonymous donation received must be forwarded to the Treasurer of the States who will make arrangements for it to be distributed to charities in Jersey. Regulations 6, 7 and 8: the 3 regulations refer to the process for making a public declaration of election expenditure. This is done after the election and must be submitted within 15 working days. This is considered an appropriate balance between the need to declare relatively quickly and the time it might need to get all invoices back from the suppliers. The declaration is sent to the Judicial Greffier and must contain full details of election expenditure and candidates must declare full details of any donations received with a value of over £100 so that there is full transparency on the source of any funding received by a candidate. P.P.C. hopes the

legislation will meet voluntary compliance and so no in-depth investigation or policing will be required. The Judicial Greffier can nevertheless, as I have said earlier, require candidates to produce invoices, receipts or other proof of expenditure if he feels it is required. Regulation 8 is self-explanatory and imposes a requirement on donors or others who have paid expenses for candidates to provide the necessary information and documents to allow a candidate to be able to comply with the obligations mentioned under Regulations 6 and 7. Regulation 9 deals with third party expenditure, which is defined in simple terms as any expenditure to promote one or more candidates or to prejudice the election prospects of a candidate. It is expenditure incurred without the candidate's knowledge. It is that knowledge or the absence of it which defines whether expenditure is a candidate's own or third party. I can give examples if members require, for example, very quickly, a friend phones a candidate and says he is going to put 3 adverts in the local *Evening Post* to back the candidate. The candidate agrees and the candidate must then make sure that he or she can fit this amount of expenditure into his own limit, as it has been consented to. But if a friend speaks to a friend of the candidate who says: "Do you think X would like this?" or speaks to the candidate's wife: "Would your husband like me to do this?" The candidate's wife tells her husband, he says nothing, does not object, then he is implied to have given consent. If a person decides to place the adverts without telling the candidate or without making any contact with the candidate's campaign and the first the candidate knows of this is when he actually opens the paper and sees the adverts, this is quite clearly third party expenditure. Regulation 9 gives the definition of a third person acting alone and in this context a person of course includes any body of persons corporate or unincorporated. The Regulation sets out how 2 or more persons can work together and are therefore considered to be one single third party for the purposes of legislation. The regulation makes it clear that people who incur expenses separately but who are co-ordinating their efforts are also considered as one single third party. It is very important to understand that it ensures that people who are co-ordinating their efforts cannot claim to be acting individually and therefore claim to be able to have more than one third party limit to the expenditure. There may be occasions when an examination of the facts will be necessary in relation to third party expenditure to ascertain whether or not there has been any breach of the regulations. This could potentially occur, for example, in relation to the campaigning on a particular issue. If, for example, an organisation ran a series of advertisements in the lead-up to an election urging electors to think very carefully about the environment and about the future population levels on the Island this would only be treated as a third party expenditure if there was a clear and direct intention to promote any particular candidate or candidates or prejudice others. By contrast an advertisement that encouraged electors not to vote for any candidates who had supported a particular policy in the States would clearly be caught by the restriction as it would be simple to identify those persons targeted by the negative advertising. Regulation 10 gives the limits applicable to third party expenditure and this will be limited to one half of the maximum allowed to a candidate in the election. So, if a third party is running a campaign covering more than one election held at the same time, for example all Deputies' seats in the Island this will cut across all the number of constituencies and to ensure that that is limited to a reasonable amount the total of expenditure allowed in these circumstances to the third party would not exceed one half of the maximum allowed to a candidate in an Island-wide election. This is a balance between the need to ensure fairness and not to prevent at the same time a genuine freedom of expression of opinion. Regulations 11, 12 and 13 mirror the provisions of candidates described above in relation to the prohibition on anonymous donations on the making of declaration of expenses after the election and on the verification of expenditure. Third parties that spend less than £550 are not required to make a declaration. Regulation 14 contains details of a range of offences that are set out in the relevant sections. These cover all aspects of breaches of the provisions. Paragraph 2 of Regulation 14 sets out the procedure that the Judicial Greffier must follow if he suspects that regulations have been contravened. Because any contravention of the regulations is a normal criminal offence the matter will be passed to the Attorney General for it to be investigated and the Attorney General may of course ask the police to investigate and if appropriate a criminal prosecution could be

instituted. Regulation 15 makes it clear that any declarations received by the Judicial Greffier will be available for public inspection. It is important that this system of regulation leads to a transparent process where the public are able to obtain full details of the amounts spent by candidates and third parties and in addition details of whether any donations have been received to assist with election expenditure. Sir, I propose regulations 1 to 15.

The Bailiff:

Very well. Is that seconded? **[Seconded]**

[11:15]

2.2.1 Deputy P.V.F. Le Claire:

Sir, may I speak please? Because I did ask for clarification from Her Majesty's Attorney General, I will be reverting to that request, but in addressing the regulations that have been proposed it is a little bit difficult to try to do them one at a time in the right order but some of my concerns ... and perhaps I will try to be as clear as possible so that I can get answers where I need them. This is a question that I would like to ask of P.P.C. and I would like an answer. Is there any requirement for people conducting campaigns that promote or damage candidates, as a third party, is there any requirement for those names to be published alongside the advertising? I will give an example. When the States moved from a committee system to a Ministerial system I took out a full page advert showing who had voted which way for the Clothier proposals and I got it wrong in respect of Deputy Hill. He was quite annoyed at me because he had voted in favour of the Clothier proposals but I missed him. I was required, before placing the advert, by the *Jersey Evening Post* to attribute myself as the person that was placing the advert. Now, I certainly did not do myself any favours among the people that were re-elected and certainly annoyed some of my colleagues whose elections were not successful and later, on reflection, possibly a stupid thing for me to have done. Nevertheless, I felt strongly about it at the time. It did teach me one thing, which is at that time the *Jersey Evening Post's* policy was that I could not place an advert without putting my name to it. Then at the last but one election we saw a front page banner advert on the *Jersey Evening Post* advocating people to not vote for myself, Deputy Martin, I believe, Deputy Southern, Deputy Pitman, because we had approved States Members parking; an anonymous advert that was placed on the front page a day before, or the penultimate day of the election. I reserved cautiously one last advert for the day of the election, knowing that something like that might come along, because we had been warned about it during the speech of the debate by Senator Ozouf who said the media would be doing this, and it alerted me to the fact that there possibly could be a campaign at that time about the parking. In his speech, if you go back to Hansard, you will see that he warned Members, and I remember it quite clearly, that if we voted for parking there would be people ... and he has done the same recently with the Senatorial elections, and at the time it was published I made the point, and I annoyed Deputy Hilton and others, because I pointed out we were not the only people who had supported States Members parking. I made the point that I did not even use it because I was in town, but I believed it was valuable for Members who needed to come in. The *J.E.P.* ran with that and said: "Well, in the future we are going to make sure that we do not allow anonymous contributions of that manner." That is a great thing for the *J.E.P.* to adopt as a policy. I always thought when I had taken out an advert years earlier that that was their policy anyway. Maybe their policy had changed and was reintroduced after I had done mine. I do not know. But what I would like to ask, because we are not obliged to regulate the media's policies, whether or not under legislation where requiring publication of people who take out advertising in a positive or a negative fashion, are we going to endeavour to make sure that those people who are taking out those advertisements are attributable at the time of those adverts? If we are not then we should be because if you do get a situation where you have, as I have indicated, a group of people possibly working as a third party, not necessarily declaring themselves as a party, but operating as a covert political party, if they are operating and collectively organising, coaching, speech training, promotion, sharing of posters, sharing of time, sharing of friends, sharing of friends' time but then

evidently legislatively providing financial support among themselves to promote a grouping of people within this Assembly, how are we going to be able to track back? Let us say for example they supported, I do not know, let us just say the business community, for the sake of argument. How are we going to backtrack? Because we have Senatorial elections, Constables' elections and Deputies' elections and Deputies' elections with different amounts of voters which would then carry on into the 11 pence per voter issue, how are we going to calculate back that third party expenditure for all of those individuals who knowingly, or implicitly, and that is important, how are we going to know if their implied consent, because they may have signed-up to a code of conduct, or they may have attended a couple of meetings with these people collectively to say: "Let us get this through. Let us get these other people out of politics. Let us get some more support in there. Let us get some more business people behind us in the States." How are we going to know how to backtrack that expenditure to marry it up with the expense allowance that these people have in the Assembly? It is a tricky one and I am certain it is not caught in this legislation. I think P.P.C. needs to, if they have not in the future, sit down and run these scenarios with the Law Officers - certainly and Her Majesty's Attorney General - and I am sure that they have the answers if they are asked the questions; they are intelligent people. Then that leaves me just with my earlier question which was to Her Majesty's Attorney General. It is along the same sort of vein. If you have a collection of people who are organising themselves to the point where they are incurring expenses, meeting on a regular basis, perhaps signing Codes of Conduct, promoting certain candidates, do they then have to declare that within these regulations, or are they then a *de facto* political party and need to declare it under other legislation?

The Bailiff:

Are you in a position to answer that question?

The Attorney General:

I think so, Sir, yes. There is no formal requirement for any affiliation of people to declare themselves as a political party unless they wish to sponsor candidates, of course, who wish to campaign on the basis that they are a member of a political party. So, a group of individuals have no obligation in law, as far as I am aware, to form themselves into an official or registered political party. I think the answer in part to the Deputy's question may be if one looks at Regulation 9(1)(b), if 2 or more persons are acting together they are third parties if they are acting without the express or implied consent of the candidate. It seems to me that if an affiliation of a group of 2 or more people are acting to promote a candidate with the express or implied consent of the candidate then that becomes the candidate's expenditure and is assessed and has to be declared. If they are doing so without the express or implied consent of the candidate then they would have to declare it as third parties. I am not sure that I can be of any greater assistance than that.

Deputy P.V.F. Le Claire:

That is very helpful. Thank you, Sir. That answers my question.

Senator P.F.C. Ozouf:

Sir, can I make a point of clarification? He mentioned my name in the course of his remarks. I think that he suggested that I had warned in the States Members parking debate that there would be issues and then he linked my name with the fact that there was an advert and I hope that he was not impugning any suggestion of my involvement in that. I think that my involvement was that I was in favour of free parking and I was the one who sorted it out, so I would not want the record to suggest that I was doing anything improper. I never had anything to do with any adverts and I would ask him respectfully if he would withdraw that. I think I was on his side at that time.

Deputy P.V.F. Le Claire:

I do not feel I need to withdraw but I would certainly apologise if the Senator feels that I was trying to impugn his contribution at the time. I think it was merely me trying to show how much he has a

finger on the pulse in relation to these things when it comes to how the media will react. Now, if he feels that he still wishes me to withdraw he can ask again and I would be happy to.

Deputy M. Tadier:

Sir, may I ask a supplementary of the Attorney General?

The Bailiff:

Yes.

Deputy M. Tadier:

Following on from 9(1)(b), parts (i) and (ii), there seems to be 2 issues but first of all, are we opening ourselves up to potential litigation, or will the courts be hearing lots of cases when somebody says: "We have some third parties here purporting to act on my behalf, but in fact they are doing no such thing." The other issue I was thinking is if somebody is providing support, albeit that support has not been requested and it is deemed that the parties which are acting together in such a way which is beneficial to the candidate, the candidate can simply then say: "Well, I will endorse this support" and then they will be allowed twice as much of their expenses as they would before. So, if you can comment on those 2 issues please.

The Attorney General:

To deal with the second one first, I think if the candidate endorses the support they are receiving then it ceases to be third party money and it becomes the candidate's expenditure. So, there is no doubling-up; you do not add the third party's expenditure to the candidate's; it is one or the other. With regard to the second, these regulations do not give rise, as far as I can see, to any civil claims so there is unlikely to be civil litigation. There is either an offence under the law for failures, in which case they will be investigated and prosecuted in appropriate circumstances, or there are no offences made out and so in a sense I am not sure if that answers the Deputy's question but it is not a matter I think for people claiming or not claiming that people are third parties or acting on their behalf or not. If it appears that there is an offence made out there will be a prosecution and if it turns out that the facts on which the offence was based are not correct then doubtless the individuals concerned will be not guilty of the offence.

Deputy T.M. Pitman:

Sir, you did ask me to wait with my question to the Attorney General. Could I ask it now because I think I have forgotten it? My question was, how do we avoid the risk of any Member - because I am sure everyone does it - giving out newsletters as to what is going on within their Parish or District. That is not electioneering, that is doing our job. How do we get out of these pitfalls of me advising what is the outcome of some work I have done for a group of residents in a particular estate *et cetera*? That cannot be an election expense, that would be ludicrous surely, could you advise?

The Attorney General:

I think it is very difficult to give any categoric statement because it will so much depend upon the time context and the factual context in which any communications are made. It seems to me that if it is the normal practice of an individual who is a Member of the States to give information, a regular newsletter, there is probably no difficulty with them continuing to do so. The test is whether what they are doing is actively seeking to procure their election in the forthcoming election, or alternatively to procure that someone else is not elected. As I say, it is a matter of fact and degree and one would have to look at all of the circumstances surrounding any particular instance of that kind of publication to determine whether it falls into those categories.

Deputy T.M. Pitman:

It is a pretty grey area really, is that what you are saying?

The Attorney General:

I am saying that if one sounds a large question one generally gets a large answer. It is one of those things. If the Deputy is able to give me total specifics I will try and be more specific in my answer.

Deputy G.P. Southern:

Sir, if I may - because I am particularly sensitive to the possibility of breaking any electoral law nowadays in any way, shape or form, accidentally or deliberately, or otherwise - can I narrow it down? So, for example, before I am declared as a candidate in an election, if the day before I sign somebody up and say: "Here, fill in an electoral registration form" am I canvassing? Or if I talk to a potential voter about the possibility of getting a pre-poll vote and getting somebody around to take that vote because they may be disabled, am I canvassing?

The Bailiff:

Well, I do not think this comes under this law, does it? This is all to do with financial support.

Deputy G.P. Southern:

The point is activities designed to promote yourself as a candidate, I think that is the wording. We got a piece of information before, as far as the Chairman of P.P.C. was concerned it could be before declaration night. It is important, Sir, because we do all sorts of things.

The Bailiff:

That is under a different law.

The Connétable of St. Mary:

Yes, what I was going to say is that is under the Public Elections (Jersey) Law. Just to respond, if I may, to what Deputy Southern just said, the meaning is expenses. We are talking about election expenses incurred any time before the poll and the filling out of various forms is not necessarily expenditure. The printing of documents to secure an election ... if I was to print a leaflet before I was a candidate, any time before, and with the express intention of standing in the election and becoming elected that is an election expense and we are only dealing here with these regulations with election expenses and donations.

The Bailiff:

So, Deputy, getting a voter to fill in an electoral form is under a different law that we are not considering today, so I do not think you can ask the Attorney General about that.

[11:30]

Deputy G.P. Southern:

May I also ask the Attorney General then a second question and unrelated question but about a party? If, for example, a third party were to take out an advertisement in the paper that, for example, gave the results of a vote which happened to be 29:22 and said: "These people, this group of people [for example] is a covert member of the Black and White Party [just for the sake of a description] and if you vote for them you will get more of the same and if you vote for these people, different list of names, you will get change." How would that affect expenses? If there was a big list of names, would that be perhaps 22 people's individual election expenses and would that be shared?

The Attorney General:

I think on the assumption that it was a whole list of individuals and those individuals were not expressly or impliedly consenting, it was simply a third party, it would relate as a third party expenditure.

Deputy G.P. Southern:

And if they were consenting?

The Attorney General:

I would have to consider that a little bit further as to whether that expenditure is pro rated among all the candidates to whom it might relate or a different kind of test is applied. I am sorry, I cannot give an answer to that straight away.

Deputy G.P. Southern:

If I may encourage the Attorney General to put that somewhere high on his list of things to make, do and mend in the next few weeks, I would be grateful.

The Bailiff:

Very well. Deputy Shona Pitman?

Deputy S. Pitman of St. Helier:

My question has been answered.

The Bailiff:

Very well. Deputy Tadier?

2.2.2 Deputy M. Tadier:

If I take the regulations with which I have some concerns in order, that might help everybody involved. I will leave the first point because it will not go down too well. It is not a priority. First of all, with regulation 3(1)(b), we are told about notional costs. So, for example, if someone prints a poster for you who is a printer, even if somebody draws a picture for you who is an artist or does something which could be charged for, that has to be put down as a notional cost even if that is done for free. There are issues surrounding that anyway. I think it is difficult to judge, but what we have not heard about is notional costs for labour for those who deliver leaflets for you. Normally, when you deliver leaflets, you would pay a postman to do it and there is a minimum wage which exists in Jersey, although the notional costs for employing a post person to deliver your mail would be more than the minimum wage. So I think it is a question for the Attorney General. Is there any reason why anybody who has a group of helpers, let us say 10 helpers who, if you did not have those helpers to your availability, you would have to pay for a group of 10 people at market rate and it might well be that a company would do you that service for, let us say, £500. They will say: "We will deliver all your leaflets for you to a certain area for £500." Is it the case that volunteers who are giving a service in terms of their time and labour should also be included as a notional expense?

The Attorney General:

I think the answer to that question is to be found in the schedule to the draft regulations. It is schedule 6 which provides that services provided voluntarily by individuals at no charge would not be classified as a donation for the purposes of expenses. So I think there is no difficulty with people having groups of supporters who give of their time and go around and hand out leaflets. I do not think that falls within the definitions contained within the regulations.

Deputy M. Tadier:

I still see an issue though because certainly they are giving of their time and their labour and it does not seem to me any different to somebody else who may give of their time.

The Bailiff:

Deputy, you have heard the answer from the Attorney General so there you are.

Deputy M. Tadier:

Yes, certainly, Sir. Okay, it is perhaps just a political point now then to make in a speech. I do not see any difference to somebody who produces a poster for you and if you are paying for the costs of the poster, the ink and the paper, and the labour cost is given for free, I do not see any difference to somebody delivering leaflets for you around an estate, which is also done for free, because the labour costs and the time costs are there. So I do not see why one should have to be paying notional costs for labour for the printing of leaflets or for the printing of other things which are done voluntarily, although I do think it is valid that one should have to pay for the physical production. So if it costs physically £5 for 500 sheets of paper and it costs an extra £20 for the printing, I think it is quite right to be charged the £25 but one should not be charged for the labour costs for that person who is a supporter of you and who is doing voluntary work for you, and I would like the Chairman to comment on that, please. The next point relates to number 7. Again it is just a point I made earlier and I will be asking for these parts to be taken separately. It deals with the verification of expenses I think that should be requiring receipts to be given to the Judicial Greffier. It says here: "The Greffier may request in writing a candidate to produce invoices, receipts and other proof." I am concerned that it is optional rather than obligatory because what if someone said there is a malicious phone call and they say: "This person, I have reason to suspect, has been spending more than they say because that particular candidate is not particularly popular with that individual"? You could get one candidate who is being targeted while another one is not. I think it should be across the board, submit your receipts. That is not necessarily a point everyone will agree with but if anyone has got any issues with that, I invite you to either vote against that particular article or abstain. The big issue for me is to do with the third parties acting together because it is not a level playing field. If you have third parties who are not related to the candidate in terms of support or the fact that they are not endorsed by the candidate officially, you are limiting their power and there is a whole load of questions to do with freedom of expression here in society and, conversely, candidates who are all independents can act together on a platform and they can all claim individual expenses and they can, if they want to, divert all of their expenses into targeting one particular candidate. This can work both ways. We have seen this, I believe, in the past in the 2005 elections where there were a couple of candidates put up who we all knew were not going to get elected. They got elected subsequently as Deputies, I think. Well, one of them did. And their sole purpose was to discredit other candidates on that platform so that that candidate or those candidates did not get elected. Even though they would not get elected themselves, it is basically a kamikaze operation. Now, they can do that, we can still do that today. If I wanted to, for example, in the 2014 elections, there is nothing to stop myself and perhaps a group of 5 or 6 candidates standing on a platform that we do not want Senator Ozouf to get elected, or conversely it could happen the other way around, and we will benefit from having 5 lots of around about £8,000 if we are all standing for Senator. We will have £40,000 to target Senator Ozouf, and that could work the other way around, I hasten to add, but working from the outside, that is not possible. Third parties on the outside, who seem to be co-ordinating their efforts, and that could be in the form of a lobby group, which is not a political party, are not able to do that. So there are all kinds of contradictions here and what I am worried about is that we are putting overly draconian legislation through to stop civil society groups which have a valid interest in making political expressions. There is also another issue which I think needs to be considered. Where do you draw the line about whether you are promoting a particular individual or whether you are promoting policies? I think the G.S.T. (Goods and Services Tax) example was particularly valid. If one puts a poster up right across the Island saying: "Say no to G.S.T.", implicitly, that is going to have an impact on those candidates who perhaps did not vote for G.S.T. so they are going to be disadvantaged, but where is the line if you produce a list after that of saying these candidates did not support exemptions, and I think there are issues which need to be looked at there. This part, I suggest it is a mess. I am not suggesting it could easily be anything else. I think there are always going to be contradictions and I am worried that there is not going to be an even playing field. I am also concerned that these things are going to stop and stifle civil society expression and debate in what should be a valid and legitimate way because simply they are not allowed an even playing

field between the candidates who can co-ordinate as individuals and third parties who are not allowed to co-ordinate as individuals and I think that has been done. I think one of the consequences of that will be that it will stifle any civil society movements who want to form a round policy quite legitimately and so I certainly cannot support parts of 9 and I encourage other Members, if they feel the same way, to vote against that. I think those are the issues. I do have concerns about the fact that we are stifling freedom of expression. I know there are going to be grey areas here all the time and of course one would hope that common sense would be adopted at all times but I think these points needed to be made.

Deputy P.V.F. Le Claire:

On a point of order, Sir, having reflected on my rather churlish ... I do not know if that is the right word, but churlish remark about “I will withdraw those comments if Senator Ozouf wishes to ask me to withdraw them again”, I do not know why that came out like it did. I think, on reflection, that was wrong of me to say that. Senator Ozouf expressed the fact that he wished me to withdraw something that was inappropriate and, instead of doing so, which I should have done, I made a smart remark. I apologise for that and I withdraw the remark, Sir.

The Bailiff:

Thank you, Deputy. Does any other Member wish to speak on Regulations 1 to 3? Senator Le Main?

2.2.3 Senator T.J. Le Main:

It is more of a plea to the Chairman of the Privileges and Procedures Committee. It is quite obvious to many people and probably to those unaccustomed to the local political scene who wish maybe to be a candidate or otherwise that these are quite complex regulations in regard to ... all right. I do want to go home as well, President. **[Laughter]** I urge the Privileges and Procedures Committee, through the chairlady, that something is put in place that people can understand it quite easily, because quite honestly there seems to be a lot of questions being asked by Members and it is not everyone that goes on to the internet, even in today’s age, but I would like to see a fairly good paper put together so people can either go into the States Bookshop or otherwise and get advice on these regulations and I urge the chairlady to do that. Thank you.

2.2.4 Senator B.I. Le Marquand:

I wanted to ask the Attorney General a question in relation to an issue that arose in discussions on the P.P.C., which we did not really resolve and that was on Regulation 3. I ask this because I think clarification of this will be of great assistance to Members in a practical way. It makes reference there to a candidate’s election expenses if they occurred at any time before the poll. The question I was going to ask was this: if a candidate had stood at a previous election and incurred expenses then and then reused material, shall we say posters, things of that nature, would they not then have to declare those?

The Attorney General:

That is dealt with expressly at Regulation 3(8) where a candidate uses or reuses election goods supplied for the purpose of the previous election. Those are not declared again.

Senator B.I. Le Marquand:

Thank you. I had not seen 3(8). Thank you.

2.2.5 Deputy T.M. Pitman:

I hope I am not jumping the gun. I just wanted clarity about the exemptions for newspapers and broadcasts and websites because it says: “Other news service, television or radio.” Does that include the citizens’ media who are starting to interview a lot of people? Surely that should not be

classed as a third party and then get charged, and I do not think that is covered anywhere. If it is, I apologise, but I would like clarity on that, please.

(11:45)

The Bailiff:

Does any other Member wish to speak? Very well. I call upon the Chairman to reply.

2.2.6 The Connétable of St. Mary:

I will be as brief as I can. Firstly, dealing with Deputy Le Claire's point, of course the advertisement he referred to relating to parking happened before there were any regulations in place. It happened before the 2008 elections. So while we are, as he knows, not responsible for setting out the publishing guidelines, as any media organisation, I could not say whether there would be a requirement to give names of persons placing an advert but there certainly would be a requirement under these regulations for the third party donor when making their declaration to give their name and sign that declaration, and likewise if there was a group of people working together. Deputy Tadier, I am grateful for his comments. He has expressed his views. I think the Attorney General has dealt exactly with his points on notional costs and in fact the schedule does make a difference between what is done voluntarily when it is done by a layperson, something which is in the line of that person's professional activities. So that is covered. He has a different view to receipts than the committee. He has made no amendment and I urge Members not to abstain or to vote against this article because it is exactly what we have been working with and we have encountered no known problems. I could at this point just say something I forgot to mention earlier. There was a question raised about how many people had not filled in their declarations in previous elections. I know there was a question in the Assembly recently on this. My recollection is that there was only one person who did not comply with the requirements and had subsequently left the Island so there was no action necessary there and obviously they were not elected. As for Senator Le Main, I am grateful for him raising this again. I did allude to it briefly in my preamble speech but P.P.C. did publish guidelines before the last election. We do intend to publish them again and I will make sure they are available from other sources, such as the Bookshop, so that everyone can have a look at exactly what is permitted and what restrictions candidates do need to comply with. I think I have covered everything. I have not had a specific request so far to take anything individually but I am open to that if Members wish but otherwise I maintain those regulations.

The Bailiff:

Very well. What are proposed at the moment are Regulations 1 to 15 and the schedule. Does any Member wish to have a separate vote on a particular regulation? Deputy Tadier?

Deputy M. Tadier:

I would like Article 3 to be taken separately, although it is only 3(1) and ...

The Bailiff:

It has to be the whole of 3.

Deputy M. Tadier:

Okay, that is fine, 3, 7 and 9 and I think that is it.

Deputy P.V.F. Le Claire:

In the course of events of coming to terms with the error I made in regard to Senator Ozouf, I lost track of what we did with the amendment. On a point of order, did we ...

The Bailiff:

No, no, the amendment has not yet been dealt with. That is Regulation 16.

Deputy P.V.F. Le Claire:

Right. Thank you, Sir.

The Bailiff:

Very well. So we will first then take Regulations 1 and 2, which includes the schedule. So is the appel called for? No. All those in favour of adopting Regulations 1 and 2 in the schedule, kindly show. Those against? They are adopted. We then come to Regulation 3, upon which a separate vote is called for. Does anyone ask for the appel?

Deputy M. Tadier:

I did, yes, 3, 7 and 9.

The Bailiff:

The appel is called for then in relation to Regulation 3. I invite the Greffier to open the voting.

POUR: 41		CONTRE: 1		ABSTAIN: 0
Senator P.F.C. Ozouf		Deputy M. Tadier (B)		
Senator T.J. Le Main				
Senator F.E. Cohen				
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy A.E. Jeune (B)				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				

Deputy A.K.F. Green (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Bailiff:

Then we will move to Regulations 4, 5 and 6, take them together. All those in favour of adopting those regulations, kindly show.

Deputy M. Tadier:

Can we have the appel, please, Sir?

The Bailiff:

The appel is called for in relation to Regulations 4, 5 and 6 and The Greffier will open the voting.

POUR: 44		CONTRE: 0		ABSTAIN: 0
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator F.E. Cohen				
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				

Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Bailiff:

We then come to Regulation 7 where a separate vote has been requested. Do you ask for the appel, Deputy? Does anyone ask for the appel?

Deputy M. Tadier:

Yes, Sir, and on 9.

The Bailiff:

And on 9, yes, thank you. Very well. Then, on Regulation 7, the appel is called for and the Greffier will open the voting.

POUR: 40		CONTRE: 3		ABSTAIN: 0
Senator P.F.C. Ozouf		Deputy S. Pitman (H)		
Senator T.J. Le Main		Deputy M. Tadier (B)		
Senator F.E. Cohen		Deputy T.M. Pitman (H)		
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisssier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy A.E. Jeune (B)				
Deputy A.T. Dupré (C)				
Deputy T.A. Vallois (S)				

Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Bailiff:

Then Regulation 8. All those in favour of adopting Regulation 8, kindly show. Those against? Regulation 8 is adopted. We then come to Regulation 9 where the appel has been asked for. So this will be voting on Regulation 9 alone and the Greffier will open the voting.

POUR: 39		CONTRE: 4		ABSTAIN: 0
Senator P.F.C. Ozouf		Deputy R.G. Le Hérisssier (S)		
Senator T.J. Le Main		Deputy S. Pitman (H)		
Senator F.E. Cohen		Deputy M. Tadier (B)		
Senator J.L. Perchard		Deputy T.M. Pitman (H)		
Senator A. Breckon				
Senator S.C. Ferguson				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy A.E. Jeune (B)				
Deputy A.T. Dupré (C)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Bailiff:

Very well. Then we take Regulations 10 to 15 inclusive. All those in favour of adopting those regulations, kindly show? Those against? Regulations 10 to 15 are adopted. So we then come to Regulation 16 and there the P.P.C. themselves have proposed an amendment so I suggest, Chairman, if you ...

Connétable J.L.S. Gallichan of Trinity:

I assume, Sir, that all the business will be finished this morning. I have a funeral to attend at lunchtime and I would not be back at 2.15 p.m. Just in case it is still sitting, Sir, just give my apologies.

The Bailiff:

All right. Thank you, Connétable. I propose, if you agree, Chairman, that we read the amendment and then you will take proposed regulation 15 as amended?

The Connétable of St. Mary:

Yes, Sir, I would like that.

2.3 Draft Public Elections (Expenditure and Donations) (Jersey) Regulations 201-(P.51/2011): amendment (P.51/2011 (Amd.))

The Bailiff:

There is a corrigendum which has been circulated to an error in the amendment. So I will ask the Greffier to read the amendment as corrected by the corrigendum.

The Greffier of the States:

Page 24, Regulation 16(a) in paragraph (1), for the words beginning “published in” to the end of the paragraph, substitute the words “published and distributed in Jersey”; (b) in paragraphs (3) and (4), for the words “publish and/or distribute”, substitute the words “publish and distribute”; (c) in paragraph (6)(i) for the words “published or distributed”, substitute the words “published and distributed”, (ii) for the words “publication or distribution”, substitute the word “publication and distribution”.

The Bailiff:

So, Chairman, I invite you to propose Regulation 16 in its amended form.

2.3.1 The Connétable of St. Mary:

This regulation covers the free publication that P.P.C. must undertake which includes information about each candidate supplied by the candidates themselves. This was introduced in 2008 when 2 inserts were published in the *Evening Post*, one for Senators and Connétables and one for Deputies. The insert was published again for the 2010 Senatorial by-election. As explained in the report accompanying the amendment, P.P.C. is currently investigating whether it would be preferable to distribute manifestos by post to every household rather than using an insert, and the amendment gives flexibility to use either method. The regulation makes it clear that P.P.C. can set the length and format of the manifestos and in 2008 and 2010 there was a 650 word count limit. Paragraph 6 gives legal protection to any publisher of the material by making it clear that only the candidate is legally liable for matters such as claims for defamation arising from any submission. I propose the amended Regulation 16.

The Bailiff:

Is that seconded? [**Seconded**] Does any Member wish to speak on Regulation 16? Very well. All those in favour of adopting Regulation 16 as amended, kindly show. Those against? It is adopted. Then we come to the remaining Regulation 17. Do you propose Regulation 17, Chairman?

2.4 The Connétable of St. Mary:

I do, Sir. This regulation is simply the usual citation provision and provides that the regulations will come into force on 25th July 2011, which is the date on which the 2008 triennial regulations will expire. I maintain the regulations, Sir.

The Bailiff:

Is that seconded? **[Seconded]** Does any Member wish to speak on Regulation 17? All those in favour of adopting Regulation 17, kindly show.

Deputy M. Tadier:

Could I ask for the appel, please?

The Bailiff:

The appel is called for in relation to Regulation 17. I invite Members to return to their seats and the Greffier will open the voting. If all Members have had an opportunity of voting the Greffier will close the voting.

POUR: 41	CONTRE: 0	ABSTAIN: 0
Senator T.A. Le Sueur		
Senator P.F.C. Ozouf		
Senator T.J. Le Main		
Senator F.E. Cohen		
Senator J.L. Perchard		
Senator A. Breckon		
Senator S.C. Ferguson		
Senator B.I. Le Marquand		
Senator F. du H. Le Gresley		
Connétable of St. Ouen		
Connétable of St. Helier		
Connétable of Grouville		
Connétable of St. Brelade		
Connétable of St. Martin		
Connétable of St. Clement		
Connétable of St. Peter		
Connétable of St. Lawrence		
Connétable of St. Mary		
Deputy R.C. Duhamel (S)		
Deputy of St. Martin		
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 of Grouville		
Deputy P.V.F. Le Claire (H)		
Deputy of Trinity		
Deputy S.S.P.A. Power (B)		
Deputy S. Pitman (H)		
Deputy K.C. Lewis (S)		
Deputy I.J. Gorst (C)		
Deputy M. Tadier (B)		
Deputy A.E. Jeune (B)		
Deputy T.M. Pitman (H)		
Deputy A.T. Dupré (C)		
Deputy T.A. Vallois (S)		
Deputy M.R. Higgins (H)		

Deputy A.K.F. Green (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Bailiff:

Do you propose the regulation in Third Reading then, Chairman?

2.5 The Connétable of St. Mary:

Yes, Sir, I would like to do that and if I could just take the opportunity to clarify something. I said I would come back to Members about whether I could get the previous manifestos of candidates published. I have looked into this or the Greffier has passed me a note, very kindly. The effect, of course, of the regulations is that you have to have a level playing field for all candidates. All candidates must be treated the same. Regulation 16 deals with that. So we have to offer our services in the same way as all candidates. So having other candidates for previous ex-manifestos on the website would possibly be, I understand, in contravention of that. So, at the moment, all I can guarantee is that candidates' manifestos which are supplied in accordance with these current regulations will be published as these regulations require.

The Bailiff:

Very well. Are the regulations in Third Reading seconded? **[Seconded]** Does any Member wish to speak in third reading? Deputy Tadier?

Deputy M. Tadier:

Just to ask for the appel, if no one else wants to speak, Sir.

The Bailiff:

Right. Very well. Then the appel is called for in relation to the Third Reading. I invite Members to return to their seats and the Greffier will open the voting.

POUR: 39		CONTRE: 1		ABSTAIN: 0
Senator T.A. Le Sueur		Deputy M. Tadier (B)		
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator F.E. Cohen				
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
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 of Grouville				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy A.E. Jeune (B)				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Bailiff:

Very well. Before we come on to the next matter, can I inform Members that the Minister for Treasury and Resources has lodged Land Transactions Under Standing Order 168(3) - 1 Coastlands, Grève d'Azette, St. Clement - Lease.

3. Draft Incorporated Limited Partnerships (Jersey) Regulations 201- (P.54/2011)

The Bailiff:

Then we come next to the Incorporated Limited Partnerships. Connétable, do I understand you will be acting on behalf of the Minister in this one?

The Connétable of St. Clement:

Yes, Sir.

The Bailiff:

And is it also correct you want to take the regulations - Projet 54 - before the Appointed Day Act?

The Connétable of St. Clement:

Yes, please, Sir. That would be the logical way to do it, Sir.

The Bailiff:

Do Members agree to take that in a different order? Very well. Then I will ask the Greffier to read the citation of Projet 54, Draft Incorporated Limited Partnership (Jersey) Regulations lodged by the Minister for Economic Development.

The Greffier of the States:

Draft Incorporated Limited Partnership (Jersey) Regulations. The States, in pursuance of Article 21 of the Incorporated Limited Partnerships (Jersey) Law 201-, have made the following Regulations.

3.1 The Connétable of St. Clement (Assistant Minister for Economic Development - rapporteur):

Members will recall that we approved the Incorporated Limited Partnership Law last year and it has recently been approved by the Privy Council. Under that Law, the States are able to make regulations and it is wise to make regulations for the winding-up of any such entity in the future. I am sure Members know, but winding-up is an insolvency process that entails selling all of the

assets of a business entity, paying off creditors and distributing the remaining assets to the principals and then dissolving the business. These regulations in fact mirror the arrangements under the Companies Law 1991 which regulates for winding-up or dissolution of companies. These regulations provide for the voluntary winding-up of solvent I.L.P.s (Incorporated Limited Partnerships), the creditors' winding-up of insolvent I.L.P.s and for the winding-up by the court on just and equitable grounds. I propose the principle, Sir.

The Bailiff:

Is the principle seconded? **[Seconded]** Does any Member wish to speak on the principles? Very well. All those in favour of adopting the principles, kindly show. Those against? The principles are adopted. Deputy of Grouville, this matter falls within your Scrutiny Panel. Do you wish to have it referred to your panel?

Deputy C.F. Labey of Grouville (Chairman, Economic Affairs Panel):

No, Sir.

The Bailiff:

Very well. Assistant Minister, do you wish to propose the regulations *en bloc*?

[12:00]

The Connétable of St. Clement:

Yes, I would like to propose them all in one speech, Sir, but just say a few words, if I may, Sir.

The Bailiff:

Of course.

3.2 The Connétable of St. Clement:

Part 1 deals with the preliminary matters: it provides that where the draft regulations provide a question to be determined by the general partners of an I.L.P. or by all the partners of an I.L.P., these matters will be determined in accordance with the partnership agreement or, if the matter is not addressed in a partnership agreement, by unanimous agreement of the general partners and partners. General partners are those ones who are involved in the day-to-day management of the business and the partners are merely the investors. The intention is that on all occasions where action needs to be taken or decisions made as a result of these requirements under these Regulations, the Regulations act as the default position but this is a backstop position, but this backstop position may be altered by the provisions of the partnership agreement if it states otherwise. Part 2 gives the details of the voluntary winding-up, which as I said before winding-up which as I said before mirrors the arrangements under the Companies Law. Part 3, details of winding-up arrangements if a winding-up is to be made by the Royal Court which, as is this case the companies under the Companies Law, is designed to be interpreted flexibly and not confined to particular instances. Part 4 is the creditors' winding-up arrangements and it is to be used in circumstances where a voluntary winding-up is not possible; for example, where the I.L.P. becomes insolvent. Part 5 deals with the arrangements which contain provisions where more than one kind of winding-up is taking place. The final part, part 6, contains the miscellaneous usual provisions. I propose the Regulations.

The Bailiff:

Are the regulations seconded? **[Seconded]** Does any Member wish to speak on any of the regulations? Very well. All those in favour of adopting the Regulations 1 to 70 kindly show. Those against? They are adopted. Do you propose the regulations in Third Reading then? Seconded? **[Seconded]** Does any Member wish to speak to the Third Reading? All those in

favour of adopting the regulations in Third Reading kindly show. Those against? They are adopted in Third Reading.

4. Draft Incorporated Limited Partnerships (Jersey) Law 2011 (Appointed Day) Act 201- (P.53/2011)

The Bailiff:

Then we come to the Draft Incorporated Limited Partnerships (Jersey) Law 2011 (Appointed Day) Act - P.53/2011 - lodged also by the Minister for Economic Development. I will ask the Greffier to read the Act.

The Greffier of the States:

Draft Incorporated Limited Partnerships (Jersey) Law 2011 (Appointed Day) Act 2011. The States, in pursuance of Article 40 of the Incorporated Limited Partnerships (Jersey) Law 2011, have made the following Act.

4.1 The Connétable of St. Clement (Assistant Minister for Economic Development - rapporteur):

This Act simply if approved will bring that law into force in 7 days' time. I make the proposition.

The Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak? Very well. All those in favour of adopting the Act kindly show. Those against? The Act is adopted.

5. Standing Orders: selection and appointment procedures (P.61/2011)

The Bailiff:

Projet 60 has been deferred. Therefore the next matter on the Order Paper is Projet 61 - Standing Orders: Selection and Appointment Procedures - lodged by Deputy Tadier. I will ask the Greffier to read the proposition.

Senator P.F.C. Ozouf:

May I just test the mood of the Assembly? I get the sense that Members are trying to - or certainly Members that I have spoken to - would like to conclude the sitting at lunchtime and not go on in the afternoon. There is Council of Ministers and other meetings, and I am not sure what the view of Members is in relation to this. This could be a major debate, opening up all sorts of issues, and if that is the case then can we start the debate and then finish it in 2 weeks' time, or do Members want to put off this debate and commence it in 2 weeks' time? I am just testing the mood of the Assembly, because I know that a number of Members have expressed the view that lunchtime really should be the ... I do not know whether Deputy Tadier wishes to consider that before we get going.

The Bailiff:

Can I just say from the Chair, I think to adjourn debate half held is not good practice? One forgets what one says. If it is to be dealt with it should be completed, I would have thought.

Deputy M. Tadier:

I do not see the need for this to be a long debate. I think much of these arguments came out in the previous debate with Proposition 6 earlier in the year which was brought by the Deputy of St. John. I do not intend to speak for very long. Personally I do not see any reason why there needs to be opposition from P.P.C. or the Council of Ministers, and if they will agree to accept this proposition

then I do not think the debate will need to go on for very long. So I am happy to go home earlier rather than later, but that is not in my hands. I leave it with Members after they have heard the arguments which hopefully do not need to be too long.

The Connétable of St. Mary:

May I just make an observation here? I have often thought that debates on things I propose will not take very long, and I am always amazed. So I do not think we should worry about that, to be honest.

The Bailiff:

Well, the matter is on the Order Paper and the proposition has been called, so I invite the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion (a) to request the Privileges and Procedures Committee (i) to review the selection process for members of Scrutiny Panels and the Public Accounts Committee (P.A.C.) and to assess the advantages and disadvantages of these positions being filled by appointment by the relevant chairman or election by the States Assembly; (ii) to consider whether it is appropriate that Ministers should also be allowed to be appointed as Assistant Ministers (and vice versa); (iii) to review whether the appointment of members of Scrutiny Panels and the P.A.C. should be made before the appointment of Assistant Ministers; (iv) to review whether Assistant Ministers should be able to serve on Scrutiny Panels; (v) to consider whether the current procedures set out in Standing Orders for questioning candidates standing for Minister and chairman are sufficient; (vi) to review voting by secret ballot to include the rationale for holding votes in secret, and whether this should be extended to votes of no confidence; (vii) to review the voting system by which appointments are made when more than 2 candidates are contesting a position; and (b) to request the Privileges and Procedures Committee to report back to the States with recommendations following the conclusion of its review of the matters listed in paragraph (a).

5.1 Deputy M. Tadier:

I am slightly concerned. I have had comments saying that Members have better things to do. I would remind Members first of all that there were supposed to be 2 debates scheduled for today which I had lodged. I had lodged them in good time over about 5 weeks ago, and it was also due to goodwill that it was pointed out on the last proposition, for example, that the Comité des Connétables were happy to accept it but the timescale was not reasonable. Now they also had 4 weeks to submit the amendment; they did not do that. But I appreciate they are busy; we are all busy, but there has been an element of goodwill here already and so I would hope that would be reciprocated by the Assembly. Now, just to preface the actual proposition: firstly, I am not asking for anything radical here, I do not think. What I am simply asking for is those many issues which have been debated in the House time and time again, or they have come out indirectly in other speeches, and I am simply asking that this should be looked at by P.P.C. I have not even put a time limit on that. So if it is not possible for them to carry out during the present Assembly because of their work load that is up to them to prioritise. But these are ongoing issues which I think are important to most States Members. The second point I would make is that I am slightly disappointed with the comments, because first of all I take one line perhaps out of context, but from P.P.C., this is P.P.C.'s merit in carrying out an investigation into these matters. Then I am told: "But we had an Electoral Commission." Now the first fallacy to dispel is that the Electoral Commission will not be looking at these kinds of issues because these are housekeeping issues; that they will not be concerned about whether or not we elect Scrutiny members before we appoint Assistant Ministers; they will not particularly be commenting on whether it is right for Ministers to vote for Scrutiny matters. They will simply say: "These are matters for your Assembly to decide,

and you need to decide these things.” What they will be deciding on is on boundaries and how members of the public elect us; more high level things like that, not the minutiae and micro-management of the workings of this Assembly. So I do not see any real reason for the opposition. I also accept there has been lodged in the meantime a proposition from the Council of Ministers, P.76. This was only lodged on 16th May; it was announced a couple of weeks earlier. But if I am to put it bluntly, my proposition was here first, and I do not see that it is necessary to set up a completely different organisation when P.P.C. is perfectly constituted already with a cross-section of Members from the Assembly, not one which is weighted in favour of what I would call perhaps the Executive. I think we have got P.P.C. there already; we do not need to reinvent the wheel. It is a very simple argument today, whether we want to look at these issues and if so, I hope that we can be positive about this and dispatch with it in an even-handed and expedient way. Turning to the actual proposition then, the reason for this... and I was drafting this during the debate of the Deputy of St. John because I could see at the time, although there was much merit in his proposition - and to remind Members, the proposition at that time was to do with the Assistant Ministers, should they be appointed by the States or not. Now that is a very perhaps controversial matter to bring. It is certainly one which is of concern to States Members, but I think States Members at the time all agreed that it was not right to look at these things in isolation, because there are much bigger questions which came out in that debate. So if I simply go through fairly quickly what I am asking for. I will ask for these to be taken separately, so if Members feel that there is no need for these to be looked at individually they can throw out a particular item. I would say that there is merit in some of them more than in others. First of all I am asking to look at the selection process for members of Scrutiny Panels and P.A.C. to assess the advantages of these positions being filled by appointment by the relevant chairmen. The argument has already been made I think and it is a compelling one, that Assistant Ministers should be appointed by Ministers, because they need to have the confidence of the individual Minister. So why on earth are we having membership of Scrutiny Panels appointed by the whole of the House which includes Ministers? So there are 2 parts there: should Ministers be able to vote for Scrutiny? Should they have any part in appointing Scrutiny members? I do not give the answer; that is for P.P.C. to discuss. I have some views of my own. Secondly, why not make the whole thing a lot simpler and just say that the Scrutiny chairman, who should be appointed probably by the whole House, why not let him or her then choose a panel with which he or she can work? Because at the end of the day we all know that the House just rubberstamps usually whatever the chairman selects. It would be a very bizarre situation if the Chairman of the Home Affairs and Education Scrutiny Panel were to select 3 individuals and the House said: “No, I want you to have 3 other ones.” That is never going to happen; so why not regularise these things? This is something I think P.P.C. can look at. Second part: to consider whether it is appropriate that Ministers should also be allowed to be appointed Assistant Ministers. This is something that makes me slightly uneasy. It may make other Members uneasy when we have a high profile Minister for Planning and Environment who has got enough on his plate I would suggest dealing with those issues, who has been appointed as an Assistant Minister with no endorsement or otherwise from this House to a completely new position which is essentially that of a Foreign Affairs Minister. I am not saying that Senator Cohen should or should not be doing that; I am sure he has many qualities which would be required of a Foreign Affairs Minister. But the point is we have not had a debate about whether we even need a position which is the equivalent of a Foreign Affairs Minister. We know we already have a Chief Minister who can represent the Island. Guernsey does it in that way but they have got a completely different system; the Chief Minister’s role is completely different over there. That is why whenever we are over in London we tend to see the Chief Minister literally on every occasion that I have been there; and that is fine. But we have a Minister for Treasury and Resources who is also equally capable and vocal at representing our Island. So these are issues I think that need to be looked at at the round. Why are we having Ministers who are becoming Assistant Ministers? Should Assistant Ministers be able to be Assistant Ministers in 2 different departments? We have got one in the Health Department who is also at the Treasury. These are massive portfolios, you know. How can one

dedicate one's energies - even doing one job properly I think is hard enough a lot of the time, let alone 2 of those. To review whether Assistant Ministers should be able to serve on Scrutiny Panels. The arguments have been well rehearsed. We know that there are some very good Assistant Ministers who I think, if we are to be fair, can neither be said to be on one side or the other. They are fairly independent; as an independent as you can be as States Members; and they have things which can be offered, as I would suggest many of us do, both to the Executive and to the Scrutiny section. So there is an argument to be looked at there as to why Assistant Ministers should not be allowed to serve on Scrutiny. We know that we have a numbers issue on Scrutiny and I think that could provide a gap, a bridge, between the Executive and Scrutiny which is much needed, as well as providing areas of expertise. Of course one would presume that P.P.C. would also consider the fact that we would not want Assistant Ministers to be scrutinising their own departments; I think that would go without saying. But that certainly is an area which I think merits further thought. The fifth part is to consider whether the current procedures set out in Standing Orders for questioning candidates for Ministers and chairmen are sufficient. This is slightly more niche, if I can put it that way. I do not think everyone is necessarily going to go for it. But I do think that there is a certain deficit when it comes down to policy determination between choosing between candidates. We have one candidate and then another, let us say, if it is for the post of Minister for Transport and Technical Services and we can question them for 10 minutes, but then we do not have any real debate about what their qualities are. This is not something which I am saying would be easy to do, but it would be nice in my opinion for those 2 to go out of the room and then let us have a short debate about the merits of one candidate and the other on policy matters - not to do with personalities, of course - and find out what the consensus is and have maybe a mini-debate which would be limited to a certain amount of time for what the House is looking for in terms of policy direction from that particular department, and then deciding which candidate gives the best showing.

[12:15]

That could even be done before the vote, before they speak, or after. Part 6 is to review voting by secret ballot. This would include the rationale for holding votes in secret and whether it should be extended to votes of no confidence. This is something which has perplexed me for a little while, is that we vote for Ministers and chairmen and other positions in secret, and I can see the arguments for and against that of course. We could argue that we are no different to the public when they vote, and it is absolutely right that somebody should be able to vote in confidence and in secret without necessarily fearing any kind of prejudice that if they did not vote for the right candidate they may not be given a position. That argument is fairly well rehearsed. Why is it then that votes of no confidence do not have the same rationale, because surely there is just there is just as much risk when you are voting for a vote of no confidence for somebody of there being political reprisals; because I think it would be much more likely to lead to animosity or acrimony if you are supporting a vote of no confidence in somebody, rather than not appointing them to a position. The other argument is of course that we should all be big enough and brave enough to take these things because they are political decisions. But I would say that the same rules should apply to both. I am not saying that one way or the other we should vote in secret or one way or the other we should vote in open. I usually prefer to vote in the open; transparency is usually the best policy. But there does seem to be an inherent contradiction here. I think I have presented that very quickly, but those are the arguments. I am not arguing for each of these points individually, saying that we should necessarily do these things, but I certainly think there is merit for P.P.C... and if I can just pre-empt again a couple of the arguments which I think are going to come back, the Electoral Commission will not be dealing with this, I can guarantee you, even if we say to them we would like to look at these areas. They will simply say: "These are not issues for us. These are issues for the Assembly to decide." That is exactly what the Privileges and Procedures Committee is there for. We do not need another big debate on the review of the machinery of government, the composition of which is inherently flawed anyway. We have been told that we can have the Chief Minister on it, 2

Ministers, the Chairman of the Public Accounts Committee, the President of the Scrutiny Chairmen and 2 other members. So there are only really 2 members that the House can in reality vote for out of all that number. I think this is completely heavy-handed; it is unnecessary. We have a body already to look at this and they can look at it at their leisure when they find time to do it. So I make the proposition and I ask for Members' support.

The Bailiff:

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

5.1.1 Deputy R.G. Le Hérisier:

Again at the risk of rushing Deputy Tadier, but I do support this and I had hoped that the Chairman of P.P.C. would have said: "These are very legitimate matters for inquiry and we certainly will look at them." I mean, there is the issue of looking at issues very close to the election, given that obviously we may have a totally new House and we may have people with fresh views and so forth. But if they were to inherit the support as what you might call an *aide-memoire* to assist their thinking, all well and good. But that strikes me as the way to go. The second thing I would say - and Deputy Tadier has alluded to it - I think the public and ourselves are all getting a bit confused about these various initiatives: the government reform and what precise role, as Deputy Tadier said, the Electoral Commission is playing in this. We do need a statement, perhaps from P.P.C. and the C.O.M. (Council of Ministers) jointly, precisely saying what these various inquiries are intended to achieve and how they are intended, if at all, to interact with each other; because I think we are all getting slightly confused. But my view is ... there are clearly very strong feelings as we heard this morning earlier obviously about the role of Scrutiny and it is quite possible given the kind of issues the Deputy wishes to be examined, that they will come out in this inquiry. I have no problem with that. I think that historically it may be a good time so this House can give its feelings. But I really, really despair if we are going to embark on a massive debate about the simple question of referral to P.P.C. I would hope they would say: "Cut. Unequivocally we accept this. These are excellent topics for inquiry. We need to get together Members' views because we are entering the final strait, so to speak - some of us more final than others. We are entering the final strait and these are matters that could really inform the next House."

5.1.2 Senator A. Breckon:

Just a few words. I think it is a reasonable request, because if Members look at it, it is requesting the Privileges and Procedures Committee and paragraph (i) starts "To review," paragraph (ii) starts "To consider," (iii) is "To review," (iv) is "To review," (v) is "To consider," (vi) is "To review" and (vii) is "To review" and (b) is "To request Privileges and Procedures Committee to report back to the States." So really it is not pretentious what it is doing, and I think in proposing this Deputy Tadier has done really well, because he has done it without any undue influence about what his own feelings may be on the things he has touched on. But I do not think we should rise to that bait today and have full debate. What we have been asked to do is to refer it to P.P.C. and it is a reasonable request, and I hope that the Chairman will accept it in that vein because it is for the work for them to be done and then there can be some discussion, a report would come forward and any Member from that could lodge a report and proposition. I think that is where we are and I hope the House will not make a meal of this today.

5.1.3 Senator T.A. Le Sueur:

I do not disagree with the analysis Deputy Tadier has put forward about the issues which are capable of further review and consideration, but I think we are in danger here of getting confused, as Deputy Le Hérisier says, by the variety of bodies and variety of propositions all looking at the same situation. It may well be that the proposition recently lodged by myself on behalf of the Council of Ministers reviewing Ministerial activities and related matters will simply add more confusion to that. But I do think we are in danger here of having so many different committees

trying to do the same thing at the same time. The proposition from the Deputy of St. Mary setting up an Electoral Commission to look at various aspects was in fact a very far and wide-ranging proposition, perhaps wider-ranging in retrospect than it would have been wise to achieve. I think if we are going to have that Committee looking at that and P.P.C. looking at this and a Committee of the States looking at related matters as well, we are going to get into a state of absolute confusion. So in summary, the issues which the Deputy raises are issues well worthy of consideration, but I believe that they are already or will be addressed and could be subsumed into the terms reference of other activities already taking part. That was the reason that as far as the Council of Ministers were concerned... our view was that the proposition was unnecessary. It was unnecessary; it was superfluous and liable to add to confusion. It is hard to oppose the actual details of what is to be looked at. It is to whether P.P.C. by themselves should be looking at this in isolation from other matters being carried out at the same time. I think what we need to do is to ensure that we use our time as States Members wisely and help the Electoral Commission also use their time wisely in addressing the issues which clearly need to be addressed.

5.1.4 Deputy M.R. Higgins:

Just very briefly. In fact, the Chief Minister has just come up with arguments for his particular purposes of review of the machinery of government. They came following Deputy Tadier's proposition. There is nothing wrong with Deputy Tadier's proposition. All the things he has identified are things that many of us have talked about in this Assembly many times, and all it is simply doing is asking P.P.C. to look at the issues. What is so wrong with that? As I say, I have not even had a chance to look at the paper that was circulated earlier this week about the changing machinery in government. This one is on the table. Let us deal with this one. Let us go with it. It is straightforward.

The Connétable of St. Mary:

Sorry. I thought you had seen me a long time ago. I have been waiting from the very beginning.

The Bailiff:

No. The sunlight must be masking your light. The Deputy of St. Martin and then the Connétable.

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

I very much follow on what Deputy Higgins is saying. I do not see why we are going to make such heavy weather of it. One also looks at this: the presumption by the Council of Minister that their proposition is going to be a vote. Again, it is almost jumping the gun. Why did the Council of Ministers not take into consideration what Deputy Tadier had put? His was lodged on 14th April. So why is the Council of Ministers including (i) to (iv) of Deputy Tadier's proposition and yet ignoring the other 3? Surely it would have made more sense to have included, if indeed it was intended to scupper what Deputy Tadier was trying to do; why did it not include the other 3? I could certainly see the review of voting by secret ballot. It is one of those issues that I have been thinking for some time whether to bring a private Member's Bill proposition to the House, asking that the thing be changed, because I think it is rather an anomaly that we do have a secret vote to elect people and yet we have an open vote for a vote of no confidence. In fact, I am pretty sure that had there been a secret vote for no confidence there may well be a much more honest vote. But anyway, I would certainly ask that P.P.C. look at this and accept it, and the thing will be, I do not know what the timescales are, because if we look at it now, before anything really gets underway it will be into June and who will be doing it? Again, I can fully appreciate P.P.C. being very busy. It may well be that it will have to be started and then completed after the election. But I think there is a point that Deputy Tadier did make at the early part of his speech, that he has not given a time; it is saying something which is on the table, let us look at this, and I would ask that P.P.C. accepts the whole 7 and let us debate the Council of Ministers' proposition when it comes to the House,

because I am not terribly sure I want to support what the Council of Ministers are saying anyway. But I would ask in the meantime let us support this and not spend too much time on it.

5.1.6 The Connétable of St. Mary:

I would just like to say a couple of things about this. Firstly, there are many ... as P.P.C. says, we see merit in carrying out an investigation into these matters. Deputy Tadier highlighted that in his speech. Many of these issues are already under consideration or have been considered. What I think is really fundamentally important here, and I think the Chief Minister was coming to the same point of view as me, is we were almost at danger of the death by a thousand cuts. We seem to be reviewing everything independently; we seem to be looking at different ... different things are being proposed which overlap. P.P.C. has put out an R. (Report) just in the last week, I think, about the Electoral Commission. As we have been required to do, we are consulting. There will be various issues about whether there are aspects of that that might need to be dovetailed with any further review. Members speak regularly in this Assembly to say they are not satisfied with the way the machinery of government is working; say they have concerns about Scrutiny. My point and the point the Committee discussed is that we need to make sure that we are looking at this holistically. The things Deputy Tadier says; probably the things the Council of Ministers are suggesting - we need a comprehensive review. We do not need to keep analysing different bits, because otherwise we will never draw them together. It is an easy thing to say: "My proposition was here first." But let us not look at whose proposition was anywhere first, but whose proposition may well get the best result and the most expeditious outcome. If Deputy Tadier is not happy with the composition suggested by the Council of Ministers, amend it. If Members want other things added, let us amend it. Instead of all these myriad little bits looking at little things, let us get one almighty review. Let us sort out where we want to go, and then for heaven's sake, let us stop talking about it; let us get there, because we have looked at many of these issues and since the Breckon proposals were defeated. Before that the Chief Minister, Senator Breckon and I, and Deputy Vallois, we worked very hard in looking at different areas; and since then I know independently we have been looking to see where we can go further to bring back the things that people wanted. I just say this is not the way to do it. We believe that this must be looked at, but it needs to be looked at as, exactly what we say, part of a coherent examination of processes. That is why P.P.C. cannot support this. The Assembly as a whole needs to find its direction. It needs to stop, let us say it: stop faffing around at the edges. It needs to see where we need to go and it needs to go there. I believe that this is not the way to finally lay those matters to rest.

Deputy R.G. Le Hérisier:

On a point of clarification, can I ask the Chairman whether she accepts that these are topics that are worthy of serious study and she would be prepared to sit down with Deputy Tadier in order to discuss the precise means by which this study would be undertaken?

[12:30]

The Connétable of St. Mary:

P.P.C.'s comments are quite clear. P.P.C. sees merit in carrying out an investigation into the matters covered by Deputy Tadier. As I have said, we have already looked at several of them and they have been brought before in other reviews. But I say let us not just look at Deputy Tadier; let us look in the debate for the whole committee; let us get all together; let us nominate the people we want to look at this as part of the proper larger review, and let us do it holistically all at once.

5.1.7 Deputy T.M. Pitman:

I thought you had missed me with the sunlight reflecting on my beautifully shaven head: the bald truth, www ... no, I must not go there. I would have to ask: "Why did the Council of Ministers not amend Deputy Tadier's proposition?" It was there first; what was wrong with that? I think it is absolutely appalling: you have 5 Senators here; lunchtime has come early. One Senator has been

gone since about 10.00 a.m., I think. To hear, it has to be said, another Member say: "I have got better things to do than listen to Deputy Tadier's propositions." Well, I hope the public start to come to these sittings and they can see what really goes on. I have got absolutely no faith in the make-up of the people who are going to look at the machinery of government proposed by the Council of Ministers. It is hardly inclusive of the House. I do not think anyone could argue contrary to that. Deputy Tadier has come up with some very reasonable suggestions. What is the problem with it? Again, it seems to me to be in the danger of voting not on the proposition's merits but because of who is bringing it; and we see that all the time, I am afraid, from certain sides of the House. I would like to encourage Members to go with this. It is no problem at all. It cannot keep coming back to this thing, like I said, the Sark example: democracy only as some people want democracy to be. Deputy Tadier has a good proposal. Let us support it and get on with it, and perhaps we can get to the lunch that many other people, Senators, seem to have gone to several hours ago.

5.1.8 Deputy G.P. Southern:

Yes, I think I will speak for half an hour and try and prevent you getting to lunch, and make sure you come back at 2.15 p.m., because there are already some people left the premises as if the States business is not their overriding priority, and that is absolutely shameful. But in many cases nowadays it is not, quite frankly, and here we are, and we are talking about who looks at what. The fact that a Back-Bencher should have lodged a proposition saying: "These issues need to be considered" is somehow inappropriate. He has said that that the body that should do this is P.P.C. because it is supposed to represent a balance of Ministerial, non-Executive and other groups within the Chamber. The fact is in its latest incarnation it is not balanced; it is completely unbalanced; does not matter. It is the body that we have got, that is supposed to be balanced. So, when I hear the Chief Minister saying the Ministers want to look at it, look at the machinery of government, do I trust the Ministers? I do not because I think they have got a particular point of view, and I know that they want efficiency and they do not want Scrutiny, for example. They might want to retain the ability to pick their Scrutiny chairmen; to be involved in that vote; and that is a spectacular conflict of interest: I will pick my mate. Of course, nobody ever does that, and they do not pick chairmen who have the same political persuasion as them; that would be somehow corrupt, and so of course they do not. But they must be seen not to. Nor, I think, the proposal to look at the Electoral Commission and how to take that forward; is that balanced? Come on; this Chamber is responsible for what we do and how we do it. The body we have is P.P.C., which is supposed to be balanced to look at those issues. Let us get on with it. It is not a question quite rightly of who got there first, but what do we want to do? There are issues on Deputy Tadier's proposition that, as he says, we have all pointed out and said this needs to be reviewed. Let us get on with it.

5.1.9 Senator P.F.C. Ozouf:

Very briefly. I think that the Chairman of P.P.C. was absolutely right that we are now heading towards a number of unco-ordinated reviews. We should have one review in relation to dealing with all of the issues and the P.P.C. Chairman has also been quite kind in her remarks that frankly, realistically, with the workload that P.P.C. has, these issues are not ... I know there is no timetable set out here, but there is no realistic prospect that these issues can be dealt with, all of them, in advance of the election. I think it is just unfair to pass a proposition requesting P.P.C. to do something when we do, as other Members have said, need to have one overall review with a realistic timetable which will not be also solved before the election. It is not maybe a massive issue, because of course maybe some of these issues could be welded into other reviews, but I am going to vote against the proposition because I think we should have P.P.C. and the Council of Ministers joint review with Members' involvement and we should deal with it rather than this piecemeal approach.

Deputy S. Pitman:

May I intervene in this debate? It has been talked of that there are several Senators who have been out for quite a long period of time, including Senator Shenton who has been out since 10.00 a.m. May I ask for the appel, please, because I think this is quite disgraceful, and it is a regular thing that occurs in this Chamber and nothing is done about it, and P.P.C. does not seem to do anything about it. So something does need to be done.

The Bailiff:

I am afraid there is no provision to ask for an appel when the House is quorate.

Deputy S. Pitman:

Sorry. Not an appel; the roll call.

Deputy M. Tadier:

Can I beg the indulgence of the last speaker? I appreciate her sentiments. I think there is no reason we cannot dispatch this before lunchtime. My summing up is going to be very short. We may need to stay 5 minutes longer, but I do not think that is necessary on this occasion.

5.1.10 Deputy J.M. Maçon of St. Saviour:

I think perhaps we are making rather heavy weather of this. There is absolutely nothing saying within the proposition that this review cannot be rolled into another review that P.P.C. or another body are doing. So I have absolutely no problem with the Chairman of P.P.C., if this were adopted, to be rolled into any other review that is being undertaken. There is nothing in the proposition saying that cannot be done. So I am quite happy to support this.

The Bailiff:

Does any other Member wish to speak? Very well. I call upon Deputy Tadier to reply.

5.1.11 Deputy M. Tadier:

Simply to say, first of all, I was accused of making this more complicated by setting up an extra body. I am not proposing that we set up an additional body to look at these issues which are well rehearsed. We have a body already called P.P.C. which represents the House. It is the Chief Minister making this more complicated; and I call for the appel.

The Bailiff:

Very well. The appel is called for then in relation to the proposition of Deputy Tadier and I invite Members to return to their seats.

Deputy M. Tadier:

I will take that *en bloc*.

The Bailiff:

You want them all taken together? Very well. I invite Members to return to their seats. The Greffier will open the voting.

POUR: 24		CONTRE: 19		ABSTAIN: 0
Senator A. Breckon		Senator T.A. Le Sueur		
Senator F. du H. Le Gresley		Senator P.F.C. Ozouf		
Connétable of St. Helier		Senator S.C. Ferguson		
Connétable of St. Martin		Senator B.I. Le Marquand		
Connétable of St. John		Connétable of St. Ouen		
Deputy R.C. Duhamel (S)		Connétable of Grouville		
Deputy of St. Martin		Connétable of St. Brelade		
Deputy R.G. Le Hérisier (S)		Connétable of St. Saviour		
Deputy G.P. Southern (H)		Connétable of St. Peter		

Deputy of Grouville		Connétable of St. Lawrence		
Deputy J.A. Hilton (H)		Connétable of St. Mary		
Deputy P.V.F. Le Claire (H)		Deputy J.B. Fox (H)		
Deputy S.S.P.A. Power (B)		Deputy of St. Ouen		
Deputy S. Pitman (H)		Deputy J.A.N. Le Fondré (L)		
Deputy of St. John		Deputy of Trinity		
Deputy M. Tadier (B)		Deputy K.C. Lewis (S)		
Deputy A.E. Jeune (B)		Deputy I.J. Gorst (C)		
Deputy of St. Mary		Deputy E.J. Noel (L)		
Deputy T.M. Pitman (H)		Deputy A.K.F. Green (H)		
Deputy A.T. Dupré (C)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

Deputy M. Tadier:

Can I thank everyone who contributed and say you can all go for lunch on time and it is not my fault if you are late?

6. Jersey Appointments Commission: re-appointment of member (P.63/2011)

The Bailiff:

We come next to Jersey Appointments Commission: re-appointment of member - Projet 63 - lodged by the Chief Minister, and I invite the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether opinion in accordance with Article 18(1) of the Employment of States of Jersey Employees (Jersey) Law 2005 to re-appoint Mr. Kenneth Soar as a Commissioner for a period of 4 years.

6.1 Senator T.A. Le Sueur (The Chief Minister):

Since its inception the Appointments Commission has proved its value and we have been fortunate to obtain members of that Commission who have had a variety of experience in a variety of ways. When one looks at the current membership of the Appointments Commission, there are some who have only been appointed in the last year or 2 and it is important that we have a mixture of members with experience and new ideas. One of those with experience is the person who I am nominating for re-appointment, Mr. Kenneth Soar, who I think is already well known to Members. His experience in the Commission has been invaluable. He is the second longest-serving member and I would be grateful for Members' support in re-appointing him as a member for a further 4 years. I make the proposition.

The Bailiff:

Is the proposition seconded? **[Seconded]** Does any Member wish to speak on the proposition? Very well. All those in favour of adopting the proposition kindly show. Those against? The proposition is adopted. So that completes Public Business. We then come to Arrangement of Public Business for future meetings and I invite the Chairman of P.P.C. to propose it.

ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

7. The Connétable of St. Mary:

I will try and keep this as uncomplicated as possible, but there are a number of amendments from the Consolidated Order Paper we have. Firstly, for the sitting on 7th June, there is the addition of the amendment in the name of the Minister for Treasury and Resources to P.32. There is also the addition of P.47 - Jersey Harbours and Airport Shadow Board: terms of reference - which was deferred from the current sitting; that is the name of the Minister for Economic Development Department; and P.60 and its second amendment - Parish Assemblies: Information Pack - in the name of Deputy Tadier which was also deferred from today's sitting. Deferred from that sitting is P.70 - Pensions Survivors Benefit - lodged in the name of Senator Le Gresley which moves to 5th July. We then go to 21st June sitting where we add P.71 which is currently shown on 5th July sitting. That comes forward to that current sitting which is - to get it correct - the Draft Health Insurance (Medical Benefit) (Amendment No. 4) (Jersey) Regulations, lodged in the name of the Minister for Social Security. We also add P.80 which is - Valerie Band House: therapeutic workshop - lodged in the name of Deputy Southern. There are a few amendments to the Island Plan to note, but they are already listed. So on 5th July sitting we as I said have P.70 deferred from 7th June, and we add the following: P.77 - Hand-held Devices in the States Chamber: trial - lodged in the name of P.P.C.; P.78 - Composition of the States: further debates before the outcome of the Electoral Commission - lodged in the name of Deputy T. Pitman; P.79 - Draft Income Tax (Amendment No. 38) (Jersey) Law 201- - in the name of the Minister for Treasury and Resources; and as I have said, P.71 has been moved from that sitting to 21st July. I would too, if I could at this point, make a suggestion for the business on 21st June sitting. It is a very heavy agenda as I am sure Members will appreciate. I would like to propose it starting on the Monday at 2.30 p.m. as we have done several times in the past, to deal with the organisational business and questions, so we can start the actual debates proper on the Tuesday morning, if that meets with approval. Thank you.

The Bailiff:

Very well. Does any other Member wish to say anything about the proposed programme?

Senator P.F.C. Ozouf:

Just 2 points, if I may. In relation to 21st June there are going to be 2 Ministers that are going to be absent on the Monday because of a longstanding issue. Of course Assistant Ministers can stand in for the matter but we have not received notice of that. They are going to be both the Minister for Planning and Environment and myself are going to be absent on States business. The other thing I just wanted to say, that as far as 7th June is concerned, P.32 - States of Jersey Development Company - there is an amendment: I propose to maintain it at the point of the agenda that it is. Scrutiny is going to come forward with their review, but if they are going to present their report which I understand they might do, quite late on, it might need to be moved down the agenda. But I maintain it at the current place in the agenda.

The Deputy of St. Martin:

I was just going to remind Members that that was the day when the *J.E.P.* were about to lose to the States at the cricket match. I would hope that we will not run on too late that afternoon, so we can get to Farmers in time to beat the *J.E.P.* at cricket.

Deputy D.J. De Sousa:

I do not know if Members are aware but that date is the date, morning and afternoon, for Rouge Bouillon's Assembly.

[12:45]

The Bailiff:

Is it 20th June? Does any other Member wish to say? Can we, first of all, perhaps approve the business and then come on to the issue as to whether the Assembly sits at 2.30 p.m. on the

Monday? So, first of all, does the Assembly agree to the list of business as set out in the Order Paper as amended by the Chairman? Very well. Then the question is whether the Assembly should agree now to sit at 2.30 p.m. on the Monday, 20th June.

The Connétable of St. Mary:

If I could just say, Deputy De Sousa raises a very good point. Of course the school assemblies are generally on the Monday. There will be time to accommodate it, because the school assembly is normally finished just at 2.30 p.m.; so we will probably with very minimal adjustment be able to accommodate both.

The Bailiff:

Does the Assembly agree to sit then on Monday, 20th June at 2.30 p.m.?

Senator P.F.C. Ozouf:

The other thing that matters - I am sorry to intervene, but I notice that the Minister for Planning and Environment has Questions without Notice. That may well need to be shifted. If he is not in the Island it would be perhaps appropriate to move them, but maybe that can be resolved.

The Bailiff:

Yes. Well certainly clearly with the Island Plan and its amendments that is a very long agenda, so it does seem sensible to start on the Monday at 2.30 p.m. Does everybody agree that then? Very well. That completes the planning of future business. So I declare the meeting closed and the Assembly will reconvene on 7th June.

ADJOURNMENT

[12:46]