

STATES OF JERSEY

OFFICIAL REPORT

THURSDAY, 3rd DECEMBER 2009

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

PUBLIC BUSINESS – resumption

The Greffier of the States (in the Chair):

Very well, the debate resumes. Deputy Gorst?

Deputy I.J. Gorst of St. Clement:

Sorry, I do try to be positive on these occasions but I am feeling a little bit pessimistic. I wonder if I could inquire of the chairman of Privileges and Procedures if she could give some thought to what might happen should we not finish business by the end of the day, as I know Members do have appointments tomorrow and we will need to rearrange them if we are going to run beyond the end of today.

The Greffier of the States (in the Chair):

It was my understanding the chairman had given some indication of a 4-day sitting but perhaps she will ...

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

Yes, that is correct but if I might just have perhaps another hour to review what is happening; there have been some withdrawals in the meantime, and I will come back to the House.

Deputy T.M. Pitman of St. Helier:

If I could just say to the House on that note, if it helps I am prepared to put off the BlackBerry debate until January as I have the quorum debate anyway.

The Greffier of the States (in the Chair):

Very well, thank you. Perhaps if other Members who have propositions wish to contact the chairman informally during the sitting, it may help her in her deliberations.

1. Young Offenders: naming by the media (P.148/2009) - amendment - resumption

The Greffier of the States (in the Chair):

Very well, now we resume the debate on the proposition of Deputy Trevor Pitman relating to young offenders and the Assembly will recall that we are currently considering the amendment to that proposition by Senator Shenton. Deputy Trevor Pitman, you were on the Bailiff's list to speak on the amendment yesterday, if you wish to.

1.1 Deputy T.M. Pitman:

Who says youth crime is not a problem? Overnight my big desk has been stolen. **[Laughter]** Or was it just to intimidate me and tell me my place? Sorry, my voice is a bit croaky, I have not had much sleep. Where did we get to yesterday? I have to say that after the speeches I heard - and I apologise for my own long speech... but I think the House would accept that it was necessary. It is a big issue, a very big issue. I think I have to begin by paraphrasing Sir Winston Churchill's: "Never was so much owed by so many to so few" speech because I am afraid that after listening to Deputies Le Hérissier, Reed, Noel and bits of Deputies Le Claire's and Martin's words, I just have to say never has so much tosh been spoken by so many.

The Greffier of the States (in the Chair):

Deputy, I do not think we would like "tosh" in here, please.

Deputy T.M. Pitman:

I do not think it is a rude word, it is in the dictionary, but I will always accept your instruction.

The Greffier of the States (in the Chair):

There are lots of words in the dictionary that we would not use in this place. **[Laughter]**
[Approbation]

Deputy T.M. Pitman:

“Commonsense” is clearly one of those. Start with a chuckle. I am sorry, but some of what I have heard does make me very angry because I really care passionately about this area. Everyone should have and give an opinion but I think it gets dangerous when people whose words clearly reveal that they know very little about a subject start to pretend that they are experts. While I cannot help but agree with most of what Senator Shenton said, the reason I am not supporting age of 16 is because of the absolutely crucial fact that to do so would mean that a full 4 years’ worth of turning young people away from possible offending, or from potential worse offending, would be lost and it is as simple as that and I will come back to it, of course. I do not think the Senator should have been criticised for it being emotive because it is an emotive issue, linking this proposition as the Senator has done to 16, but the Senator has drawn our attention to the right to vote. Well, in many ways it makes a lot of sense but I think the malaise that it puts us in is we are still not clear what is an adult; what is a child? I come to Deputy Reed because I find it very, very worrying that a Minister for Education, Sport and Culture does not seem to be able to recognise the difference between a child and a young person. Even in the U.K. (United Kingdom) you become a young person at 14. Let us move to Deputy Le Hérisier first because I believe he has to shoot-off somewhere and, I am afraid, a friend of mine or not, I find some of what he said in response to me quite insulting. He has the cheek to refer to the Martin Luther King quote about hard thinking and accused me of taking easy solutions. Well I am afraid that the Deputy really should leave some barbs alone because as we all know very well a hard decision for Deputy Le Hérisier is on most occasions what colour to paint the fence and then from there whether he should get up and sit on it while it is still wet. Indeed, more and more we hear talk of how little people understand the issue. The Deputy talked about the Kathy Bull Report and the work that was involved. If he only really knew what went on he would know that professional workers such as myself were denied the opportunity to talk to Dr. Bull and if we had been allowed there might have been a more informed report. There was a lot that was very good in it but all the time again, who do we talk to? We talk to managers; we do not talk to people at the sharp end. I think Deputy Le Hérisier - because he is a really, really clever person, a very good politician in many ways - should familiarise himself with some areas before he makes those comments. I say we tend to talk to managers and perhaps Deputy Reed thinks that those people are front-line staff while Deputy Fox often refers to them as “sergeants” but I am afraid they are not at the sharp end. The Deputy also spins us the fallacy that my proposition and Senator Shenton’s amendment are claiming to be all of the solution. Nothing could be further from the truth. Whether you accept my proposition or Senator Shenton’s amendment, it is just another tool at our disposal. I have not heard the Senator say he was bringing all the answers. I think it was Deputy S. Pitman, or it might have been the Constable of St. Saviour as well, that talked about the need for punitive and restorative and, I am sorry, but the other Members who have spoken have not recognised that at all. I think the Constable of St. Saviour did say - and I sometimes criticise the Constables because I think they do take the easy option by voting with the Ministers **[Interruption]** ... I am not saying I am right, but I often think that. Maybe I am wrong. **[Interruption]** Okay, I will agree to differ. But I think the Constable of St. Saviour took a very commonsense approach when he said he had reservations about what he was thinking about but he was going to support the amendment because he realised that something had to be done. I think that is a situation where we should all be. We might have reservations but something has to be done. I think the Constable there was saying that he has the backbone to stand up and take those decisions that obviously as a Constable of a Parish he needs to do. I am sorry if I credit him with other words he did not say; it must have been just Deputy Pitman. Deputy Martin and Deputy Noel talked about early interventions and our need to support this approach and it is something I fully endorse.

Deputy J.A. Martin of St. Helier:

I have not spoken yet.

Deputy T.M. Pitman:

You did; you stood up and asked questions.

The Greffier of the States (in the Chair):

Deputy, through the Chair.

Deputy T.M. Pitman:

Sorry, the Deputy did stand up. Sorry, perhaps I am very tired, but I seem to recall the Deputy asking whether people would be able to talk immixed to the amendment and the proposition. Maybe I am mistaken; if so I apologise.

The Greffier of the States (in the Chair):

That was a point of order asked of the Bailiff, yes.

Deputy T.M. Pitman:

Thank you. But we get back to early interventions and it is something I totally support. But we cannot keep having this throwing-up of what we are doing and what we are committed to when we are not doing it in many areas. I was obviously at the sharp end when Deputy Martin and others were on an Education Committee that did nothing to support early intervention at a time when we lost a third of professional youth workers through stress-related illness because they simply were not supported. Many were working twice the hours they were contracted for. We lost a third. That is a fact. What kind of support for early intervention was that at a time when people like my former colleagues were working, trying to do intervention work and restorative work with young people, working with up to 80 young people at a time and maybe with just one volunteer? Yet, the committee under the following Minister would not even put it into law to state quite clearly to protect those workers how many young people per worker could be on premises. It was left and hung entirely on the professionals, so if something had happened it would have been them who carried the can. That is no commitment to early intervention. So it really makes me angry when I hear this. We all say we believe in early intervention but I am afraid the reality is we are not doing it nearly enough. Deputy Noel, well I loved his speech only I must tell the listening public it was not his speech, he just read out the comments attributed to his Minister.

The Greffier of the States (in the Chair):

Well, Deputy, it was his speech, he read it out.

Deputy T.M. Pitman:

Well, sorry, but the Minister told me it was her speech, so we cannot have it both ways, Sir, can we?

The Greffier of the States (in the Chair):

It was the speech that he gave that we heard.

Deputy T.M. Pitman:

But in a way that makes it worse because the Deputy, and I respect everyone's right to their views, but he just repeated aspects - justifications - for why we should not support the proposition or the amendment of Senator Shenton even though I had already completely demonstrated that much of what was in there was complete and utter fallacy. The third parties' example is really the best one. The Deputy just repeated it. Now if he even talks to Senator Le Marquand later, the Senator will tell him about some of the realities of that situation and how young people are impacted upon when their mother, father, older brother, uncle, *et cetera*, is charged, convicted and then named to do with

serious crimes. But that gets back to my concern about people talking when they do not know the area that they are talking about. All of us have areas, normally one or 2, which we are quite strong on because that is our career background, our life experience. We will probably have a few more that we can talk about because we are really interested and we read up and we try and learn. Then if we are wise, we will have other areas which we do not know much at all so we really should just sit down and let the other people who are more experienced in that area talk. I do that with a lot of health issues because it is not my field. I would not challenge Deputy Noel on accountancy. **[Interruption] [Laughter]** I do not know who said that but ... and I could understand that because it is one accountant with another. Now, Deputy Reed, half the corporate parent. I listened to what the Deputy said and if I had to encapsulate my feelings when I listen to him - and I hope he takes this in humour - my thoughts were that this is what you get when you appoint a farmer to be Minister for Education, Sport and Culture instead of a professional educator. I am sorry, it comes back to that area of knowledge again.

Deputy R.G. Le Hérisier of St. Saviour:

As someone who opposed Deputy Reed at the time, can I object to that? Can I make the point, Deputy Pitman is talking about the fact that there are certain people and only they have access to “the truth”. In the criminal justice system there are people totally opposed to each other on this issue, so-called professionals.

Deputy T.M. Pitman:

I am glad the Deputy has finally recognised that so I am quite happy to accept that. Deputy Reed talks of children and I guess that he is entitled to that view, though I have to really challenge where he is coming from on that area. You are not a child at 12, you are certainly not one at 16. If you are, then many of our laws are completely nonsensical. But the thing that really made me angry about Deputy Reed’s speech - and again, we are not close friends; we might have a few barbs at each other but I think we respect each other generally - were his comments about experience. Now children, he said, needed to gain experience. Well, I am sorry, but in these serious crimes we are talking about, how much experience are you allowed to gain with a James Bulger-type case? How many children, toddlers, and babies really, 2 year-olds, are you allowed to batter with bricks, stones, iron bars and then drape across a railway track to try and disguise your crime? Now that is a terrible instance as we all know and we all hope it never happens in Jersey but how many visiting foreign students are you allowed to nearly kick an eye out of someone’s head before you face ownership of what you have done and you face accountability of what you have done? I know Deputy Reed will get to speak on the main proposition, so I hope he answers that because I had phone calls about that issue last night. There comes a time when you have to face up to what you have done. We all do in life and for serious crimes like this Senator Shenton disagrees on the age. I know part of his thinking was it was better to get something through than nothing, but whether we agree on 12, 14 or 16, there comes an age when you have to be accountable. You cannot be given the chance to gain experience when it is other people’s lives you are ruining. I hope you try and answer that question because I do not think there is an answer. Finally, what I wanted to say with Deputy Reed was he talked too about early intervention. I hope you will correct me if I am wrong but he seemed to be giving the impression that everything is rosy in the garden: we are doing this; we are doing that; we are moving to this. Now from my experience in Scrutiny recently, early intervention is an area where we are failing big time and I am going to have to give an example of that. I believe that we have an excellent education system in most ways. Our teachers are generally absolutely superb and I really applaud them for the job they do. But as we have seen in Scrutiny, early intervention, young people - and we have seen it time and time again already - with autistic syndrome, Asperger’s, being failed, being suspended from school and effectively abandoned, not just for a week or 2. If the Deputy wants to challenge me, I will really be pleased because the other members of the panel here can back me up on this. Abandoned, some of these cases have gone on for years; parents who are not failing parents, desperately good, hardworking

parents, articulate and intelligent parents who have been asking for help, seeing their children not getting early intervention. Not getting early intervention, just being failed because the teachers - and it is no fault of their own, because they are not being supported - cannot cope with the children whose behaviour ... it is not because they are bad kids, it is not because they are deliberately misbehaving, they are symptoms of an unfortunate condition that they have and they are being punished, they have been abandoned. It is a huge failing, we have the evidence, and if Deputy Reed wants to challenge me on that, good, because I have been, and the panel have been, horrified. Yet, he talks of early intervention as if we are all doing it. I am afraid the Deputy has only been the Minister for a year, so I do not hold him to blame for all of this but I do not think he realises some of the areas and the failings in his department and I think he needs to act on that. One young person we talked about at Scrutiny, the parents are really worried that he is going to end up the subject of what we are talking about today: incredibly violent. It is not because he is a bad kid - not because he is a bad kid - it is because he has been let down year after year after year and now the parents are at their wits' end. The Deputy knows I have already arranged meetings for him with some parents; I think I will have to do several others. So before he talks about early interventions and this lovely "everything is rosy in the garden", please face reality and that is what this is about. That is what Senator Shenton is saying; that is what I am saying: let us face reality. It is a difficult decision, it is not the easy option as Deputy Le Hérisier would say. Doing nothing is the easy option and that, I am afraid, is what we cannot do. I am not supporting Senator Shenton's amendment but I have explained the reasons for that. I still applaud him for bringing it. I wish someone had brought 14, we would have had a wider debate. If we support 16, we will lose that aspect. I am sorry, but some people do not understand that, the deterrent value, and that chance to turn people away and work with people on the restorative side. I will leave it there. Thank you.

1.1.1 Deputy P.J. Rondel of St. John:

As a youngster I was a bit of a Jack-the-lad, in court for motoring offences and even losing my licence on a couple of occasions. I even was a bit of a tearaway in other ways. I even had a sticker in my car denouncing the Magistrate and suggesting he should resign. **[Members: Oh!]** By the time 1969 came, I was busy helping the late Stan Le Breton and Phil Mourant to stand for the States as Deputies and I was obviously starting to feel certain responsibilities. They asked if I would allow my name to go forward as a member of the Honorary Police in St. Helier. I said: "With a record like mine it is not going to happen." They said: "Go to the interview with the Connétable and the Chef de Police and several other Centeniers in St. Helier and see." So next thing I know I am being sworn in at the Royal Court and I remember at that time that the States of Jersey Police had only been formed some 14 years previously and were a very young force with only some 72 to 75 members within that force. The Island had a major problem with the Beast of Jersey Inquiry and the riots of Snow Hill and the like. Within a short time I was co-opted to work alongside Corporal Turner who later became the Deputy Police Chief of States of Jersey Police on C.I.D. (Criminal Investigation Department) and spent many, many hundreds of hours with him calling on people's homes and interviewing and taking statements within the Beast of Jersey Inquiry. But by late 1972 I was put forward as a Centenier and had to deal with all sorts of incidents in the very early days. In fact, I can recall then a young spritely guy, who sits across the Chamber from me now, driving a milk float and upturning it in a back road in the Parish of St. Helier. His excuse was that, of course, a bee had got into the cab. **[Interruption] [Laughter]** Another occasion I can recall another Member of the Chamber - looking at me with a yellow tie on - having to stop him on Victoria Avenue for some other minor offence **[Members: Oh!]** that being, if he does not mind I will name him, Paul Routier at the time, now Senator Routier. I think at that time when I stopped him he did not have a shirt on or something, it was some minor offence. **[Laughter]** But anyway moving on from there, the more serious side of things really came to light pretty soon in my early career as a Centenier and that was the amount, the sheer number, of young people who were being taken to the Juvenile Court. Being in my mid-20s and not long from being in a similar position to a lot of these young people I remembered it well and I thought: "This cannot

happen in my tenure and I am going to do something about it.” I saw the late John Morris who was the Chef de Police and I said: “We have to do something.” So I had a word with the Probation Service and there was a Mrs. Copley-May who was a probation officer at the time and I said: “Can we work together to try and resolve the problem of these youngsters going to court?” because once a youngster had been to court they have a police record for life and that meant that they could not emigrate, they could not go to America, there was a whole host of places that would prevent them. What we did, we put in place a trial period where we put people on voluntary probation and this went on for approximately 12 months and then it was adopted across the Island as a way of dealing with young people, preventing them having to go to court and getting police records and, in fact, that is still operating today. It has been complimented by Kathy Bull, the Howard League for Penal Reform and many others in recent years when they have done reviews into ways of dealing with young people. The Centeniers - Parish Hall Inquiries - are a very good way of dealing with young people and putting them on voluntary probation but this has to go along obviously with the willingness of the family, the parents and the youngster to make it work, and this is working. I respect Deputy Pitman and the work he has done with children over many years and he has a background of some of that work having been done off-Island, and I think some of the youngsters off-Island have a far bigger problem than ours. I am not saying we do not have the problem here but the people he has seen over his life probably have come from a slightly different background. A lot of the perceived problems that have come about I would put down to political correctness over recent years whereby we are not seeing - we are not seeing - the discipline being permitted in the homes because of political correctness. People are frightened that they will have a finger pointed at them if they slap their child and the like or put other disciplinary measures in place. Therefore, a child has found that he can turn around to his parents and point a finger and say: “I will complain to the police or to the Social Services about the way you are treating me.” We have gone from one extreme to the other. Fifty years ago, 40 years ago when I first became involved, the discipline was quite severe, today there is not any discipline. We need a middle road and that middle road needs to be found. I believe a lot can be still done within the system we have without having to name and shame, because I am aware that the courts - the Juvenile Court - if they so wish, if you have an offender who continually offends, the Centenier could ask the Juvenile Panel to name the accused, whether the panel would wish to go down that road it would be up to the panel. But I am sure those laws are in place, if I recall, and I would hate to think that going down the road of naming and shaming so many of the youngsters who you will give a worldwide police record to ... because the media today in fact are not just the people we see in the gallery and printed on a newspaper which is held on-Island, today that newspaper is put on the internet. If I may just digress slightly ...

The Greffier of the States (in the Chair):

Well not too far.

The Deputy of St. John:

No, no, I will not but I have to say what happens with the internet. Three years, 4 years ago myself and the Constable of the day gave a reference to a person that was in court and the person we had known for some 40, 50 years, this person had been done for a sexual assault and we gave a character reference, this particular person had been a police officer. So you could only give a reference of what you knew of the person. Within 48 hours, myself and the Connétable - because this had been recorded in the newspaper that we had given a reference - were getting phone calls and threats from across the world as far as New Zealand because we had given somebody who had assaulted - his daughter in this case - a reference. Nobody knew, the reference was not read out in court, just that we had given somebody a reference. Now, we were getting threats and in the end I had to speak to the police about it - this went on for 6 weeks, 2 months - and it was terrible. So therefore if a young person today has their name put on a newspaper, it is not kept within Island, that goes worldwide. Now those young people, in 10, 20, 30 years' time, as we see now - I see 2

upright citizens sitting in the Chamber here as Senators of the Island - we all may have some little thing in the closet that you do not really want spoken about, but at the end of the day, we do not ... and I am not giving way **[Interruption]** **[Laughter]** At the end of the day we do not want to see our young people in 20, 30 years' time who have gone through this barrier of having been a bit of a Jack-the-lad in their youth, shall we say, wanting to take their own children or grandchildren to Disney World in America, finding that because of something that happened in Jersey 30 years before will be prevented from getting a visa to take their own children or go along with their grandchildren to Disney World in the U.S.A. (United States of America). That is the last thing we want to put in place. So by naming and shaming I think we have to be very, very careful how this would be done. I cannot go along with this because I think there are too many pitfalls. We have the Education and we have Health and we have Home Affairs and I think we need to leave them to carry out all their own investigations and see what can be brought forward. I do respect Deputy Pitman because I know how passionate he feels about this but we need a way of bringing something forward, not in this case firstly in the Chamber, something that should be tried as I did back in the 1970s to resolve a serious problem between the Juvenile Court and the authorities, with Probation and others, to see if we cannot make something work. I think both the proposer of the amendment and Deputy Pitman should really be talking to the Probation Service and the Minister for Home Affairs and see if something other than putting a law in place cannot happen as I did back in the 1970s. That needs reviewing obviously because we are getting all these youngsters coming to the fore, but I believe something needs to happen in between that does not need the force of this Chamber to make it happen. I think jaw, jaw and more jaw will work far better if you can get around the table and put something in place for a year or so as an experiment to see if we cannot help these young people, keep them out of the courts wherever possible. I think I have said sufficient but I hope that the proposers of the main proposition and the amendment would give that some serious thought. Thank you.

Deputy T.M. Pitman:

Could I ask for a point of clarification from the speaker?

The Greffier of the States (in the Chair):

Well, briefly.

Deputy T.M. Pitman:

Yes, of course. It is just that he referred to Jack-the-lad and I think I know what he meant but would he just make it clear that he is not referring to people who have committed murder and rape as Jack-the-lad? I think people listening to that might get the wrong impression of what he said.

The Deputy of St. John:

Absolutely, I do not endorse the murder and the rape and the like to be dealt with in this way. That is totally different and that would be for the Juvenile Court to decide whether or not to name the young people. I do not believe it should be for us here to be making that decision; it should be for the Juvenile Court after having received all the facts of the case. Thank you.

1.1.2 Deputy J.A. Martin:

Always a pleasure to follow the Deputy of St. John especially when he is speaking very well and a lot of commonsense, I would say. So what did we have yesterday, just going back to the amendment? Senator Shenton is basically basing his argument on: "Well, they have the vote now, they are accountable, they should be named at 16." He then read out some horrid accounts of something that had happened in Jersey, as did Deputy Pitman. I do not think some of the crimes he read out were in Jersey but they had happened and I have no doubt that they may well happen again. But the Deputy, and obviously the Senator, argues that naming kids will be a deterrent to this. He mentioned he could not produce evidence but it is what the public wanted and he, the Deputy, lived in the real world and the rest of us were of the "do nothing brigade" and he has made

quotes from a great man like Martin Luther King. I really do hope the Deputy is not putting himself in the same company. **[Interruption]** Well, he might even be Sir Winston Churchill today; we can go where we want with the Deputy because after listening to his second speech, I am still none the wiser where he is coming from. Let me clear up some confusion. In the media this morning it was quoted that the Deputy had produced evidence in naming in Australia and it had proved to be a deterrent. No, the Deputy did not. If there had been a trial carried out in Australia in any part over a certain amount of years and the Deputy could produce that evidence, the Deputy would have done. Had youth crime gone up or had it gone down? He was misquoted in the media; I am not misquoting the Deputy, I would make that clear before he puts his light on, but I need to get that cleared up in case anybody caught that. He has not proven his case, he admits that himself. What I did yesterday, and the Deputy quoted it, I put on the front page of a paper, chaired by Professor June Thoburn and it is for the Centre of Excellence and Outcomes and it was done on behalf of the Department of Children, Schools and Families in the U.K. and this is up-to-date. It is October 2009 and you can all see the parts I have underlined: "Children not to be stigmatised. Gaining the co-operation of complex families requires services to be dependable and professional. This includes providing assistance that is educative, supportive and timely from the start." If I had printed down this, you would have seen this has been compiled from 83 expert reports that have been done over the last 4 or 5 years. I will quote some of them: *Identifying Common Elements of Evidence-based Psychological Treatments for Children's Disruptive Behaviour, Intervention with Neglect and Families*. These are from the U.S.A.; some are from Sweden: *Engaging with Clients in Child Protection Work, Promoting Children's Rights through the use of Relationships* and there are a couple on youth justice. I cannot quite find them but they are there. These are all experts in their fields who have done a lot of research and I have gone into some of these on the net, and people who had the paper yesterday could have done the same and looked. Not one of them have used naming at any age as a deterrent because none of them can find out that it will work. Also, after the Scrutiny Report on vulnerable children I was given an excellent paper by Senator Breckon called: *Looked After Children* and this was from the House of Commons, again, Children, Schools and Families Committee. It tells us that children who are looked after for some reason or other - because they are already at a very vulnerable state in their life - are more likely to come into contact with the youth justice system. The Deputy also tells us we do not understand restorative justice; we had this debate on Sunday. Now restorative justice is getting the victim and the perpetrator together with the families in an environment where they can talk and they can understand. The perpetrator can understand exactly what they have done to the victim. It is never naming. If they want to go out and tell each other who they were talking to, that is entirely up to them. It is not naming in the paper; it is not naming on the worldwide web. Everyone must remember this: it is not today, like Deputy Pitman says, while everyone who knows you; it is not everyone who knows you. It would be 5 minutes, uploaded on to the web and it can go anywhere in the world and it will follow you everywhere in the world for the rest of your life. Unlike Deputy Pitman, I would like to thank the Deputy of St. Ouen, Deputy Le Hérissier and Deputy Fox. I thought they all made excellent points yesterday and they all asked: "What would naming achieve? Has anybody proven it?" Like them, I do not believe 12 or 16 year-olds or anywhere in between will be helped with youth crime. I do believe it would make all the people that work with the kids - kids, young people, children, whatever you believe they are - want to look at some of them. It does come home when they are sitting very cold up in Greenfields in a cell on their own; they look more like children to me then. But it will make the people who work with them, their jobs much harder. What I really would like to ask people to remember, sometimes the kids that we are dealing with in Children's Services, Probation or other services who work with the youth justice system, even youth workers, it is either because they had no one; they had no parents, or the parents or the guardians just cannot cope with them. They are then into Children's Services. This brings me to the point Deputy Pitman makes about Billy in his proposition: "Billy's mum was ashamed to tell anyone about Billy's offending." Well how does that work with the kids who have no one? There is no one to shock. All they have is the dependence on the care workers who are working with them and will

work and work and work with them again, whether they re-offend, whether they are a little Jack-the-lad if that is a better word for it, but they are the ones who are working with them and you will make their job a lot harder. Naming at 16: I say 16 is just as bad, if not worse. Dedicated people working with troubled children or kids are just maybe getting there and then they might make a mistake. Or another mistake, I am not saying it may be the first one. Where do people who are working with them go from there? What will the kids say: "Oh look, I would just give up. You know how it is in Jersey, your name was in the paper, you are no good. You are no good. You are not worth bothering with" and that is the message we are sending out to our kids. Many were firstly let down by the parents and sometimes, yes, by the system and we all know we have to improve. At 16 they are care leavers in Jersey. Senator Breckon and Deputy Pitman sat on the *Vulnerable Children's Scrutiny Report* and we know we are not doing enough. We are not supporting these vulnerable kids. Some are ending up living in hostels on their own. Totally wrong. Deputy Hilton has pointed this out; we know we have a big job of work to do: Home Affairs, Education and Children's Services and with the support of all the experts in the House. We know we have a problem but naming kids at 16 when they are sitting there, they have done something wrong, no it does not work with me, I am sorry. I must just comment here on Deputy S. Pitman and I am sure I am not misquoting her. She said yesterday, talking against the amendment of 16, that: "Even if they are vulnerable kids they must be punished" in the context of their name being put in the paper or on the web. Now, so is it a deterrent or a punishment? What surprises me most is that both the Deputies Pitman have worked closely with the kids I have just mentioned. Many of the kids, victims themselves from the day they were born, born into homes of extreme violence, excessive drinking and nowadays parents who have drug problems. In the past I would say both Deputies have worked very hard and closely with these families. I cannot believe deep down they believe in this proposition because they have absolutely done a U-turn in 12 months because I cannot see ... Deputy Pitman mentioned it was not on anybody's manifesto. Well it certainly was not on his that this is what he was going to bring forward as an ex-youth worker but there we are. He has not convinced me and if you listened to both his speeches - and he has had 2 very long speeches - he has produced not one shred of evidence. Deputy Shona Pitman knows this to be true as well and I would like her to defend what she said yesterday: "Even vulnerable children need punishing." She can read it on Hansard. I wrote it down as she said it. She may not have meant it that way but that is what the Deputy said. Deputy Pitman mentioned yesterday, not once, but many, many times, that naming was "popular" with the public so he had to do something about it. Do the public want to make the situation worse? Do they want to stigmatise kids even further so they become so disengaged with authority that we make the system work? Of course the public want it. They see the story of the hoody, they hear the terrible crime from Senator Shenton, and they want to know who these people are. Will that stop them doing it? No, I do not think so. They all want to know until it is one of their kids or one of their grandchildren or their close relatives and then no way do they want their names in the paper: "Little Johnny never did it, it is all because he got into bad company." **[Laughter]** How many times have we heard it: "It is not their fault"? But, no, we are going to name them. In Jersey we are going to take a step forward, no evidence worldwide except some old report the Deputy had to dig up after Sunday when I told him he had no evidence, from Australia. Was it before the Aborigines or after? I do not know. **[Laughter]** Just to return to Deputy Le Hérissier yesterday, in the past he may have been criticised for, in his words, "the mini prisons" but I think we have a new corporate parent, we are looking at this. I am banging on all the time, and so is Social Services, we need trained foster carers, professional, the reputed carers who will take on these 11, 12 to 16 year-olds in their own home; be paid for it. I am telling you this is a job that needs one-to-one. There may be a case for a halfway secure system. Heathfields and La Preference are not doing it. They are big old homes. We know we have a problem. Naming these kids does not do it, I am very sorry. Very sorry. Now, just to get on to, briefly, the mention of the Rights of the Child. Now in June the Deputy himself did not think it was such a flawed document. He and Deputy Pitman and the Constable of St. Saviour all signed up for it. Yesterday the Deputy Pitman did misquote the Constable of St. Saviour because I listened to

what he said. He did not agree with either but he would have to go for 16 just in case - and this is my words, not his - if this unthought-through, stupid proposition of naming at 12 went through. Well please do not be seduced into doing this. Sorry, I will give way.

Connétable P.F.M. Hanning of St. Saviour:

I do not think I used quite that description. I just said I [Laughter] had difficulty with the proposition.

Deputy J.A. Martin:

It was my description. I was using poetic licence. I said that was [Laughter] my description. That was my description of the main proposition. Now, we have heard: "Oh we are just signing a piece of paper like Rhodesia, China and India" I think Senator Shenton said. Are we? Are we? Do we believe that we are anywhere near these countries and if we did, would we be sitting here naming and shaming? They are still cutting off hands for stealing an apple. [Interruption] Yes, and the Deputy says they have signed up to it but I do think in the west we have a bit more that we do not sign and we would not be allowed to sign up. We have had the word from the Attorney General. We either decide that this is where we want to aim to, we know we have to change laws and we know we have to do better, a lot better. But this out of the blue naming children, naming young people, whatever you want to call them, the most vulnerable in our society ... because they do not do it for devilment. Some just do it because they are out there. They have been let down by Education, they have been let down by Children's Services, they are just out and about and they have nothing better to do. So what do we do? We give up, we name them and then we say: "You are on your own and for the rest of your life you might have done this." Let me just point out - and I do not know when we do come to the amendment - the Deputy has widened this down to robbery. This is a robbery of a can of coke out of the local supermarket. This is where it goes down to and he knows, he does know, how far this goes: very, very, as I say, popular. I just have to return to Senator Shenton and his trying to strengthen his argument yesterday by telling us - and this is another great man, the great Gordon Brown - saying he was thinking of naming kids in the media. Well at the moment what will the great Prime Minister not give? Last week it was free residential care for the elderly, pay rises to the lower paid. They would not be Labour voters, would they, and this morning - only this morning - paying grandparents to look after their grandchildren: all money coming from the great Gordon Brown, the man who is on the sinking ship. Well what would he not promise? Well I am not going to jump on his bandwagon. If anybody in here is foolish enough to think because Gordon Brown says it, it is coming and it must be right, the only thing that is certain about Gordon Brown is he is going [Laughter] and he will be going. I really, really have not a lot more to say. I think I have said enough on the 16 debate. We do not have it right; that is the only way I will agree with Deputy S. Pitman. Senator Shenton: no. Sixteen? Why 16? He has not made the case, as I have said. We, in Jersey, statutorily look after children up to 16, we care for them up to 21 but if you do something wrong you are going to be named in the paper and we are going to give up on you for ever. It does not work and, again, I do not even believe the Senator believes it works. We have the Deputy and the Senator who cannot even agree at which age they are responsible but one is supposedly more expert than the other. I do not know: one worked with children and one has children. Does that make either of them an expert? I do not think so. I rest my case. The case has not been made for 16 or 12 and I do have much more faith in my fellow States Members. I really hope the Constable of St. Saviour changes his mind. This age of 12 will not get through so do not vote for 16 just to stop the naming of a 12 year-old. It does not work, throw it out, both of them, that is where they should be: in the bin. No research, no evidence and go down the same way as Gordon Brown will be very shortly. Thank you. [Approbation]

Deputy T.M. Pitman:

Could I politely ask to be able to correct something which the Deputy has wrongly stated that I said as a point of order?

The Greffier of the States (in the Chair):

Well, briefly, yes, as a point of clarification.

Deputy T.M. Pitman:

I said, and it is written down here, that this arose from my own professional and personal experience over many years working with young people in the community, both here and in the city of Leicester, and indeed from a large number of contacts expressing concern since I have been a politician. I did not say because it is “popular” and I find that really unfortunate coming from Deputy Martin, it shows the lax argument.

Deputy J.A. Martin:

He can read Hansard back. If he mentioned “the public want it” once yesterday, I lost count after 12. Thank you.

The Greffier of the States (in the Chair):

Let us not get into an argument. [Laughter]

Deputy S. Pitman of St. Helier:

A point of clarification as well with the Deputy. What I did say yesterday is that no matter how much a vulnerable background a young person has had, if they have committed a serious crime they have to, at some point, take responsibility for their actions.

The Greffier of the States (in the Chair):

Thank you for that clarification. The Deputy of St. Mary.

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

I will be brief because I will stick to the amendment. [Laughter] In passing, firstly, I appreciate the previous speaker’s - Deputy Martin - insistence on evidence, and I hope that Members who loudly cheered this will take it to heart in all future debates that evidence is quite important and without it we are swimming in the dark. Now to go to back - it was a long time ago - to Senator Shenton’s proposal of this amendment, it was a fine speech for a distorted version of the original proposal. I think it derailed the whole debate on the amendment because ever since most Members have been talking about the original proposition and have been talking about whether it is the right thing to name and shame, whether there is evidence and whether it is a thing worth doing. Now I think that that is properly addressed when we debate the main proposal. The only change that the proposer of the amendment is saying is not 12; 16. That is what we are discussing with this amendment. I think the chair of P.P.C. (Privileges and Procedures Committee) if she was here - but hopefully she will have a look at it in Hansard - will take to heart that here is a case in point about the review of the efficiency of States business. The amendment is about 12 or 16. It is not about the entire principle, it is just should the principles apply to go up to 16 or whether they should apply to 12. I will have a look at that question on its own. Now in the report of Senator Shenton on page 4, the core of his argument in fact: “However I believe that the age of 12 is too young because you need the maturity to know the difference between right and wrong.” Now that is what we are talking about. If we believe that in these serious cases, and we are not talking about a little bit of shoplifting, we are not talking about Jack-the-lad, we are not talking about turning round road signs or cycle route signs - which seems to be a popular sport in St. Mary, or it was - or even tormenting an animal. Young children, even very young children, experiment with cruelty, they experiment with boundaries, and this is not what we are talking about. We are talking about serious crime and I think it is unfortunate that the proposer added robbery because that is a pretty vague term and he should have perhaps qualified that. But we know the intention: the intention is murder, manslaughter, rape, serious crime. So the question is if a 13 year-old commits murder, as we have been hearing, battering people, *et cetera*, if a 13 year-old does that sort of behaviour, do they know

that that is wrong? That is the only question with this amendment. If we say that a 13 year-old who batters somebody to death or knocks an old woman down, kicks them and then steals their handbag, whatever, really serious stuff, if we say that a 13 year-old knows perfectly well that that is wrong, then we vote against the amendment. If we think: “No, no, no, a 13 year-old who batters somebody or kills somebody or 15 year-olds [I think it was 15 year-olds] do a group attack on a foreign student at 15” if we think that they knew that was wrong, then we vote against the amendment and we stick with the original 12. Now I will carry on with what the Senator said in his report because it was better than his speech, I must say, in my opinion: “I know of many cases whereby youth have committed crime out of sheer stupidity or naivety rather than through malicious intent. In some instances they have fallen victim to peer pressure and not really understood what they were doing or the implications of it.” That is the point, is it not? They did not understand what they were doing, peer pressure, stupidity and naivety. Now if you believe that then you can go along with 16 and not with 12 but if you think, as I have said, that in the case of serious crime a 13 year-old or a 15 year-old does not know that it is right or wrong, then you vote with the amendment and that is all there is to it. When we come to the main debate and may have more to say about the general principle as Deputy Martin, for instance, and many others have commented on that, but at the moment we are talking about 12 or 16 and would this not have been shorter if we had all stuck to that?

1.1.4 Deputy A.K.F. Green of St. Helier:

I am pleased that we are getting back to the issues rather than insulting people that have a different view. Whether or not the Deputy should have brought this proposition is questionable but I think the one positive thing it has done is has us thinking about the problem of youth crime and there is a problem with youth crime. I did 7 years in the Youth Court, I would not ever claim to be an expert, but there is a problem and I think the Deputy’s proposition P.201 regarding the formation of a working party has considerable merit because we need to get to the problem. But the problem is today we are dealing with the symptoms; not the problem. I will get to 16 in a minute. If accepted this proposition would give the courts no more power than they have today. They already have the power to name, not at 16, but any time they think is appropriate, if they think it is in the public interest. They are the only people that can judge whether it is in the public interest, so they have that power already. So, is it right that we force the courts to name young people at 12, 13, 14, 15, 16, whatever age you like? Sixteen seems to be the popular view with some people and at first thought might seem to be the right age. After all, a young person can legally leave school, have sex, get married with permission and even vote for us. However, we are not talking about these behaviours, are we? We are not talking about behaviours that are legal, we are talking about behaviours that are antisocial that are often harmful to society and to themselves and are illegal. It is not the legal behaviours we are talking about at all. Therefore, any actions we take as an Assembly, any actions we take as the corporate parent - and I will talk about that in a minute - must be evidence-based, must be outcome-based and must be measurable and, above all, must bring about a permanent change in that young person’s behaviour. We have had a lot of rhetoric and a lot of clichés but so far we have had very little evidence that this would achieve a change in behaviour. Where is the evidence? It is not there; it does not exist. I hope I quote Deputy Pitman correctly, I think he said yesterday: “The Assembly needs to be looking like we are doing something and that in not adopting this proposition we would be woolly, namby-pamby people.” I think that is what he said. But naming and shaming does not help. It does not bring about that desired change in behaviour and that is what it is all about. It is like giving a pregnant teenager advice on contraception. It is all too late; earlier education and thus prevention is much better. We were told that we must listen to the Deputy because he knows what he is talking about. He is a professional youth worker, and I do respect the Deputy, but I have spoken to many youth workers over the last several weeks and again last night, and not the managers, the youth workers, the volunteers on the front line. Without exception - without exception - they are horrified and ask: “Where is the evidence that supports this?” Some Members might recall the excellent - and I have the file here if

anyone wants to have a look at it - the Dynamics of Disadvantage conference organised by Health and Social Services in January this year with its strapline: "The 3 Ds - drink, drugs and deprivation - investing in children pays dividends." Investing in children pays dividends. At that conference we were presented with evidence of effective strategies, strategies that bring about desired change in behaviour, strategies that support from birth in vulnerable families, strategies that are timely and do not wait until it has all gone wrong and name them as this proposition does. I spoke at length after the conference with the head of the Violence Reduction Unit for Scotland and the experienced detective chief superintendent, 34 years' experience in numerous roles. I am going to pick a couple of those roles out to show this guy knows what he is talking about. He is a Scottish Commissioner for Children and Young People's Advisory Group, a member of the World Health Organisation on violence prevention, a member of the Criminal Justice Research Advice Group and lead officer for the Scottish Strategic Tasking and Co-ordinating Group, and the list goes on. This man was awarded the Queen's Police Medal in 2007 in recognition of his work in working with young people and preventing youth crime. The gist of his message? I could keep you busy for hours but intervene as early as possible, and that is the message that fits clearly with all the local advice and is evidence-based. We heard about how some of our services are wanting and we do have a lot of work to do. I think the Deputy talked about young people with autistic spectrum that might get into trouble. Does naming them help to solve their problem? It does not. If Members want evidence that this proposition and amendment is doomed to failure, I would like to share with Members a discussion I had with one young person. If you would allow me I would like to read this because I would not like to accidentally identify the young person. This young person is well known to the court and has a record that would horrify all of the Members. They are lucky, lucky in as much as they have the support of a loving family. The young person is trying very hard to change and is making progress. As Deputy Noel said yesterday, he and I met with this young person and their family and our discussions were wide-ranging and confidential but at the end of the meeting we discussed naming and shaming. This is the bit that finally - if I needed convincing - convinced me. This young person said, and I quote with their permission: "Please do not label us. Our peers, both those that are known to the authorities and those that are not known to the authorities, those that are never in trouble, our peers will put us under pressure to live up to the label that you give us." This is a young person struggling to get their life back on line and naming them would not help. She said: "It would make matters worse and harder, harder for us to change." There is no doubt that we can do better in preventing youth crime. As I have already said, we need to tackle the problem, not the symptom. We need to intervene much earlier and I, for one, would welcome a working party that looks at this. The until now - and I have to say this - totally ineffective corporate parent - ineffective because until recently it had not even met for years - needs to start doing the work on effective strategies which they are working on. I know this is being led by the Minister for Home Affairs. We have Williamson and another raft of initiatives and it is time for action and it is time for evidence-based action. We owe it to the community and, above all, we owe it to the young people. Last night I had the privilege of attending the Prince's Trust presentation along with my Ministerial colleagues from E.S.C. (Education, Sport and Culture) and the Chief Minister. This presentation was made by 40 young people on the Prince's Trust course at the end of their 3-month course. Many of those youngsters, although not all, had troubled backgrounds, very troubled backgrounds. They had a general lack of confidence in themselves. Educationally, their skills varied from a degree holder to a young man that could not read. The change in these young people over the 3 months was amazing. We were proud to be with them. Many of them had gained employment in that 3 months, they were delightful, they were motivated and they were proud but, most importantly, they were proud of themselves for the first time. That is evidence-based action. I, like Deputy Martin, urge the Constable of St. Saviour not to vote for the 16, getting back to what we are really talking about at the moment, because I think it sends out the wrong message. Let us have the courage of our convictions and vote no to this. Before I finally close - and I think everybody would probably join with me on this - youth crime is a real problem but it is a problem of a few. It must be tackled, and we must tackle it soon, but in the context of

Jersey most of the young people I work with are decent, hardworking and delightful members of society and I am proud to be with them.

Deputy T.M. Pitman:

I know that the speaker will not have done it deliberately but could I ask him to correct what he referred to me because I did not advocate naming young people with Asperger's. I was pointing out they were being failed by lack of early intervention.

Deputy A.K.F. Green:

Yes, I probably put the wrong emphasis on that and I apologise.

Deputy T.M. Pitman:

Discretion does stay with the courts under the amendment and the proposition.

1.1.5 Senator J.L. Perchard:

I do not know if there is much more one can say after that speech but I can congratulate him on an excellent speech and I think he hit all the nails on the head at the same time in rebutting the amendment and the substantive proposition. I do not know if there is a lot more to say but I have a couple of little pieces which I will add. Deputy Pitman and Senator Shenton gave examples of heinous crimes undertaken by persons under the age of 18. Terrible, terrible crimes: violent assaults; murder even. They both said: "It is time that these young people took responsibility for their actions." Nobody would deny that. Nobody would deny that these violent, heinous crimes, those perpetrators must be held accountable. Nobody is suggesting they should not but the problem is how do you hold them accountable? At the moment the age of majority in Jersey and the U.K. is 18. That is the age the law chronologically recognises a person is changing to an adult, where they become completely responsible for their own actions and their parents or guardians are no longer held in any way accountable for the actions of this. Eighteen: it is a moment in time. The age of licence is slightly different, it is the age of which a law permits a person to do something, for example, marrying or voting, the age of licence is 16. Driving is 17. If Deputy Pitman and Senator Shenton feel that the age of majority is too high and a young person should be held accountable at 17, well perhaps that is a different argument. We all know that young people grow up quicker now than perhaps they did and they are more mature and perhaps the age of majority is not right, but we cannot - we cannot while the age of majority is at 18 - have a law that says they are legally accountable at 18 but they are accountable at another age. Well, what is it? The law is amiss. The law is amiss, we know that. It is confused, but by naming somebody who has committed a crime does not work, even if they are 18. When somebody is 18, 19, 20 and they are named, suddenly does all the crime stop? I have not noticed that. Of course it does not. So the evidence suggests that by naming somebody at 18, 19 or 20 it does not work. The U.N. (United Nations) Convention on the Rights of the Child has been perhaps unfortunately devalued by both the Senator and the Deputy as not important. It is important. We must sign up to the United Nations Convention on the Rights of the Child. The fact ... **[Interruption]** It is unfortunate that I think we only have 2 Ministers in the Chamber. On such an important subject I would have thought we could have had a couple more. They are the Minister for Education, Sport and Culture and the Chief Minister.

The Greffier of the States (in the Chair):

As well as the Minister for Transport and Technical Services .

Senator J.L. Perchard:

I beg your pardon, the Minister for Transport and Technical Services. The United Nations Convention on the Rights of the Child is something that the Howard League for Penal Reform said we should sign up to; it is something that Andrew Williamson who has been reviewing our Children's Services said we need to sign up to, it is something the States said that we should sign up to. We should sign up to the Convention on the Rights of the Child. The fact that we have some

problem children has nothing to do with the fact that we should sign up to the Convention. We need to deal with these problem children. If it is an intermediate school or an intermediate - not Greenfields - but not mainstream education, somewhere a bit like we have up at the Alternative Curriculum, but we need to beef-up that principle, we need something, where excluded children, problem children, can be worked with and assisted to turn their lives around. It is not by putting their names all over the press that we will be helping them. They need discipline and boundaries, I think we all agree with that, but naming them, what is it, appeasement to the mob? What is it? I do not understand, really, quite frankly. There is no doubt if Senator Shenton wants to be guided by public opinion, let him go and ask 100 people if they would like to bring back capital punishment. It has been mentioned and I want to reiterate, Article 73 of the Children (Jersey) Law 2002 currently permits the court to name young offenders. I have just checked with the Attorney General that my interpretation of Article 73 is correct. It currently permits the court to name young offenders if it is in the public interest and in the interest of that young person. There is no need for this legislative change. The case has not been made. I think I support Deputy Pitman's call for a committee to really look forward at how we can improve the opportunities for young offenders to turn their lives around and to correct them so that they do not become adult offenders and a problem for themselves and society. We need to focus on how we can turn around the lives of these difficult people. Deputy Green touched on the 3 Ds day that we had where it was concluded we needed to break the cycle of deprivation and its re-offending families. It is families that we know are already in the system that continually re-offend. We need to work closer, we need to work more sensitively and to try and give these young people a chance. It is not by naming them that we will change their habits. We need to and we must and it is not just a Jersey problem, it is a massive problem in the U.K. We need to invest in our young people. The nucleus of a family that would normally support a difficult child is perhaps not as influential over that child as they once were and so there is a role for government now, unfortunately. But there is and we must recognise that we must take on this challenge and we must do it quite quickly. I look to the corporate parent, who are, I hope, continuing to address this, now to come forward and to not just be elitist of others. Use the skills of Deputy Pitman and the passion of people like myself and let us come forward with a children's plan as the Deputy of St. Ouen said yesterday. But it recognises that times are changing and children do not have the support perhaps that the family used to give them and the States will need, for whatever reason, to pick up where the family once supported them. I think I am starting to drivel.

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

I shall try my best to stick with the amendment which talks about 16 and not the main proposition which talks about the age of 12. However, that is rather difficult to do because my starting point is that either step would be a retrograde step and is wrong. So, I repeat the warning given by Deputy Martin, do not be tempted by what appears to be a compromise position: let us lower the age to 16 rather than 12. It is a tactic I have used myself as a group in the past. Sometimes it works, sometimes it does not. But people tend to go for the middle position or the less extreme position in order to satisfy a particular feeling. I want to talk about that feeling. Now, Senator Perchard talked about are we appeasing the mob. No, I do not think we are in debating this issue. But the feeling that motivates people out there, people in this Chamber, often is very simple. It says: "We have a problem. We must do something." That is very close to: "Let us do anything," because the problem is such that we feel we must act. I believe that feeling, while appropriate in many cases to do something or anything, in this case it is not. I can appreciate that feelings run strong out there. Feelings ran very strong in Senator Shenton's speech and indeed in Deputy Pitman's speech that we must do something. However, the compromise position is not, for once, to act now. There is a proposition coming up that says: "Sit down. Let us, in a mature way, reflect on what we can do and what we ought to be doing to address this issue." In that sense, I believe that Deputy Pitman has succeeded in what he set out to do in bringing this proposition, the main proposition, because in my conversations with him I said: "I cannot understand why you are bringing this proposition. I do not

agree with it in principle. I do not agree with it in practicality. Why are you bringing it?" He said: "I wish to have this issue debated." Well, I think we have had that debated. I am glad to say that Deputy Pitman made it clear at the very beginning that this was not a J.D.A. (Jersey Democratic Alliance) sanctioned motion and that it was a Private Member's motion - a Back-Bencher's motion - because I do not want my name attached to it in any way whatsoever. To have, I feel, a member of the J.D.A. appear to be to the right of Deputy Noel for example, just to name one, in being accused of being a "wishy-washy, namby-pamby Liberal", a badge that I certainly wear with pride if anybody wants to label it on me, it is better than a "Red-in-the-bed" any day. But, yes, I am a Liberal and if one of my fellow travellers is Deputy Noel then all the better for it. Let us get back to the basic problems. We are talking here about serious crime. So what do we do with serious crime? We do many things and we heard yesterday about the principle of deterrence. In some way this will meet the need of deterrence. Let us look at the 4 aims of any form of what we do with criminal acts. We might try to deter people. We certainly try to punish people and that is sometimes attached to some element of retribution. We want to be seen to get our own back, as it were. We certainly want to prevent crime and ultimately we would like to reform criminals. With those 4 aims I ask Members to take a look whether, at 12 or at 16, by naming those criminals, whether for serious crime or other, is any one of those 4 aims met? Does it increase a sense of retribution or punishment; we have punished them? Well, possibly, but what does that do for the chances of reform? It sinks them beyond sight. Named in a small community like this at 12, 13, 14, 15 even 16, 17, it sinks reform. Is it about prevention? No. What the court does can be about prevention. Putting people in prison is primarily about prevention for a period of time that will not be repeated. People will feel safe. Is it then about deterrence? Let us examine how deterrence works. The key element in deterring anybody from doing a crime, and it is has been shown worldwide by many, many studies, is what do you assess when going for a crime. You assess the chances of being caught. If you think you are going to be caught, the likelihood is you do not do it and you do not look at the punishment because you are not going to get caught. In the case of murder and manslaughter and rape, are they premeditated? Are they spur of the moment, whatever? Are they rash acts? That motivation is questionable and naming certainly does not have a part to play in preventing those sorts of things. When I was addressing this issue I had my fingers crossed and I hoped that somewhere along the line this would prove to be completely implacably in opposition to the Convention on Human Rights and that somebody, for once, the cavalry on the left, would come up and rule this out of order. However, that is not the case and we could, if we chose to, go down this route. What I would say to Members is that there are issues involving the Convention of the Rights of the Child which we need to consider and we need to consider carefully. What we are doing here is making law, potentially, on the back of hard cases; the extremes, the rare events, the serious crimes in young people. Very, very rare. That is why it is so emotive. However, I remind Members that hard cases do not make good law and I advise Members to vote against both the main proposition and this amendment.

1.1.7 Deputy A.E. Jeune of St. Brelade:

Most of what I would have said has been said. So I will not to repeat it at all other than to say the Deputy of St. John gave a very good account of *temps passé* and the immense benefits of the honorary system and I believe too much of this has been lost. We have become so bureaucratic and already too P.C. (politically correct). But I did want to ask a question of clarification of the Attorney General. All Members have received his comments which have been immensely useful but I note that he has slipped out at the moment so perhaps I could ask them later. I have a concern in respect of any proceedings for an offence under Article 73 on page 2: "Privacy for children involved in certain proceedings." In (3): "In any proceedings for an offence under this Article it shall be a defence for the accused to prove that he or she did not know and had no reason to suspect", *et cetera*. Would that apply to blog sites? That is a query I have there. Other than that, I think it was extremely useful to have received these comments. But Deputy Le Claire also said that if we were to pass any of this we would have to repeal it when signing up to the U.N. Convention

on the Rights of the Child. Would that also apply to the fact that children can marry with parental consent at 16, that they can vote at 16 and that they can engage in sexual activity at 16, lawfully? Would that alter as well? Thank you.

The Greffier of the States (in the Chair):

Mr. Attorney, there were, I think, 2 questions. I do not know if you heard the first one or if you were in the ante-room.

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

No, I did not, I am afraid, hear the first question. The second question, though, I think I heard which is whether the adoption of the United Nation Convention on the Rights of the Child would require other alterations to specific statutes that permit people under the age of 18 to do things. I have not carried out an in-detail analysis yet of what alterations will be needed to domestic legislation to enable us to have the convention extended to Jersey via the United Kingdom. But my initial view would be that no, anything that permits and enlarges the rights of children would not need to be repealed before an adoption of that convention. Therefore, the right to marriage would not be affected nor would the right to vote, in my opinion. I am not sure what the first question was. I apologise.

The Greffier of the States (in the Chair):

Perhaps the Deputy could repeat the first question. It related, I think, to page 2 of your own comments and the quote from Article 79 of the Children Law there. Perhaps you could repeat the question.

Deputy A.E. Jeune:

Yes. Sorry, it was in relation to page 2 and I apologise for having stood up at the very moment that the Attorney General went out. But under page 2 it says, in relation to 73(3): “Privacy for children involved in certain proceedings. In any proceedings for an offence under this Article it shall be a defence for the accused to prove that he or she did not know and had no reason to suspect,” *et cetera*. Sorry, it was probably (4). It is to publish and it is to do with publishing on blog sites and things. If people were pushing out the information of a minor, for want of a better expression, on a blog site, can that be policed under the Law? Thank you.

The Attorney General:

I think, firstly, with regard to subparagraph (3) of Article 73 of the Law, this simply identifies what would be a defence in the event that someone caused material to be published which identified any particular child. Therefore, if they did it unknowingly or by mistake in some manner then they would probably not be criminally liable. The second question is to whether the word “published” includes publication on a blog. Again, I have to say I have not specifically researched that point but my view is that yes, it would, and that if there was any publication, which would include, to my mind, publication on a blog page accessible by members of the public over the internet, then that would constitute an offence under this Law.

Deputy A.E. Jeune:

I thank the Attorney General for his reply.

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

I do not want to add too much but I think we have had 2 well-intentioned motives here from 2 proposers but I believe they have lodged the wrong proposition. If I believed that naming and shaming would lead to the reduction of crime or be a deterrent then I would certainly be supporting it. As Members know, I do have a considerable amount of experience in dealing with young people and quite often you will find when they do fall foul of the law it is because they are angry young people. They are angry with themselves. They are feeling under-valued. There is a cry for

attention. That is when we should be trying to help them. Giving them a naming and shaming is not going help. We are all supposed to be experts in certain fields. I would like to feel that this was an area of expertise that I did have a lot of experience with. Again, we have heard no evidence at all to show what naming and shaming would do and indeed, very importantly, no evidence outside the Island either, in other jurisdictions, because if they did they would certainly have brought this before. The naming and shaming would have been reduced in other jurisdictions and they have not. As, quite rightly, the Attorney General has stated in his comments, there are human rights implications here and really should we be interfering with this? Both proposers, I think, have had an excellent debate. I do not think there is much more to add. I think we have exhausted it. It has been good to talk but I think the talking must end. What I would ask is that both proposers withdraw their propositions and come back to the House asking for a review to be carried out to see the merits of whether this should be used. I think both proposers have done well. They have brought a subject which needs airing but really I feel we have come to an end of this debate and just to prolong it when we know what the result is ... I cannot believe we are going to get more than 8 or 7. I will make sure I am going to vote this time. But I cannot really see either proposition going forward so could I just ask them either to withdraw now or for us to finish and take a vote.

1.1.9 Deputy A.T. Dupre of St. Clement:

Yesterday evening I too was privileged enough to attend the Prince's Trust Awards evening and to see how far these young people have come in 3 months is truly awe-inspiring. I must congratulate each and every one of them. However, many other young people do not get this chance and, for some reason, commit a crime. It may be peer pressure or problems at home. Now, they do get to get named. I know people will say: "Oh, it is only the local media." But these days with the internet it will be available for all to read. I spoke to many of our youth workers yesterday evening including a lady who works for the Prince's Trust in Plymouth and she attends many of these award presentations and they were all, without exception, horrified to think that young people under the age of 18 will be named. I am not as eloquent as my other Assistant Minister or Deputy Southern making this but I would say please do not go for either the proposition or the amendment. Thank you.

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

I will try not to repeat anything that anybody else has said. I agree that Deputy Green made an excellent speech, a lot of which I agree with. It was a very, very good speech. I have wondered quite a bit why Deputy Pitman brought this proposition because I had a difficulty trying to understand why a professional involved in the field of children would want to name children in such a way that it could dog their future for ever, especially in a small jurisdiction. Although I have been absent from the States Chamber for the last 2 days, I have listened to the whole 2 days from the comfort of my bed. So I know what was said yesterday. I may be wrong but I believe he has brought this proposition out of a sense of utter frustration with what is currently happening with a small group of individuals in the Island who are causing an enormous amount of stress and concern to their victims and to people who are aware of what is going on. I may be wrong but I think this is probably one of the reasons behind it. I understand that sense of frustration that Deputy Pitman probably feels because I feel utterly frustrated by what has been going on in the last 6 to 9 months with a particular group of young people. I will agree with many speakers before me who have praised our young people. The great majority of our young people are good decent people and so any criticism is not going to be aimed at them. Although I felt initially when this proposition ... well, not the proposition to name 12 year-olds because I think it is just far, far too young. I did give a lot of consideration to Senator Shenton's amendment about the 16 year-olds and I have spent a lot of time trying to think that through. But I have come to the conclusion, after listening to the debate and listening to all the speeches, that I will not be able to support the amendment at 16 because, like other speakers, I am not absolutely sure what it is going to achieve. It does not take rocket science. There are many speakers who have stood up and who have mentioned reports by certain experts

that say this, this, this and this. To me it makes commonsense that if you have a young teenage mother who was brought up in a dysfunctional household and then goes on to have a baby, is put into accommodation possibly by herself, the outcome for that child is probably going to be very, very poor. It is not rocket science. We do not need experts to tell us that. So I would agree with previous speakers that we need positive intervention from the day of birth for a lot of these children. I can almost guarantee you now that the group of individuals that I think probably sparked off this proposition, if you looked into the background of those individuals you will find that they will come from single-parent households. They will come from families where drink and drugs were a major and are a major problem. So for my own part I do not feel that I could go along with this proposition because I feel that we, the States of Jersey, have let down a lot of these individuals and we continue to let them down. Deputy Green made the point that the corporate parent have barely met and that is a fact. They have barely met. I personally feel that children have been too far down the agenda and we have not done enough about it. I just do not understand why that is. But until we, as a society, start valuing our young children more and start putting more resources where they are needed this problem will continue. So this States Assembly has to decide: are they going to put their money where their mouth is? Are we going to have a lot more positive intervention for those babies and young children who need it? I could quote you any one of a number of cases I know at the moment that are going on where I suspect very strongly they are not getting the intervention and the support that they require. So until we, as a society in the States of Jersey, start supporting these young people in a way that we should be I cannot possibly support any proposition that is going to name them and shame them; which is something that they are going to carry for the rest of their lives because this is Jersey and everybody knows everybody else. So I am going to leave it there but I will not be supporting the amendment and I will not be able to support the proposition. But I understand entirely where Deputy Pitman is coming from because I have the very same concerns and I am waiting for the Children's Service to take this problem and do something about it. Thank you.

The Greffier of the States (in the Chair):

I call on Senator Shenton to reply.

1.1.11 Senator B.E. Shenton:

I should point out that the amendment deals quite simply with changing the age from 12 to 16 and also the proposition deals with serious crimes, not driving milk floats or driving without a shirt or so on. I do feel that we did rather labour the point in debating this amendment because a lot of the speeches were not about the amendment at all but rather general comments on the proposition. I would rather hope, given that, that the debate will not last too much longer because I think, in debating the amendment, we have also debated the main proposition and I think it is probably about time that we moved on to other business. But I do not make any excuses or apologies for bringing this proposition because Deputy Pitman did ring me and ask me whether he should withdraw it because he felt that it would not get the support of the House. I think Deputy Hilton summed up why the proposition was brought. It was brought out of sheer frustration because we do not seem to be doing anything at all. We write reports but we do not do anything. That is the problem and the public are fed up with us talking about what we are going to do and signing conventions but we are not getting down to the crux of the matter. Deputy Le Claire was the first speaker. It seems quite a long time ago. Many of the speakers that spoke against naming at 16 ... **[Interruption]** Deputy Le Claire spoke against the proposition. Yet, of course, it was Deputy Le Claire who was all gung-ho for treating 16 year-olds as adults and giving them the vote and pointed out that you can join the army at 16 and you can vote at 16 but you cannot take responsibility for your actions at 16 because you are still a child. Deputy Le Hérissier did one of his "Let us have another report" speeches which he is very good at: "Let us just look at this once again." Yet he acknowledged within his speech that there is a group of society that is running out of control and that the current sanctions are not working. Deputy Lewis again spoke and said that there is a problem out there and that is

part of the problem. As an Assembly we seem to be sticking our heads in the sand. Deputy Le Hérisier mentioned the Kathy Bull Report. Within about half an hour of Senator Perchard and I taking over at Health we realised that the Kathy Bull Report was fundamentally flawed, that the corporate parent was a structure that could not work because there was no leadership and no accountability. Yet we have done very, very little over those years to change anything. There has to be an age where people have to start taking responsibility for their actions and if you are responsible enough at 16 to decide on who governs you, you are responsible enough at 16 to take that responsibility. Deputy Shona Pitman, I think rather unfortunately, asked me what experience I had to bring an amendment of this nature when Deputy Trevor Pitman has so many qualifications and I do not. Well, Deputy Pitman may have the theory through his examinations but I have the experience and the practical understanding through being a parent. Parents would like more done by Government because parents are concerned at the actions of some of the children out there and some of the young adults out there, and parents are concerned about their children mixing with the wrong crowd. Deputy Noel spoke about doing nothing today, let us do everything tomorrow. But tomorrow never seems to come when it comes to sorting out youth crime and sorting out the Children's Service. He talks about 16 year-olds wearing their crimes as a badge of honour. These are serious crimes we are talking about. They may wear it as a badge of honour but they will probably be wearing them in some detention centre. Do the public not have a right to know the names of the people that carry out these crimes? He said that the U.K. Government have got it wrong by moving towards a name and shame policy but Jersey has got it right. Yet what we are planning to do or what the proposition seeks to do is just name for serious crimes. In the U.K. they are moving towards a policy of naming and shaming for A.S.B.O.s (Anti-Social Behaviour Orders) and A.S.B.O.s can be fairly menial types of crimes. So we are not moving along the U.K. lines. We are just talking about serious crimes. He talks about ostracising vulnerable children. Well, I do not think there are many adults out there that have not encountered a youth that comes up to them and says: "I know my rights. You cannot do anything. You cannot touch me. I can do as I want. The law does not apply to me. It only applies to you." The Deputy of St. Ouen who did vote against giving the vote to 16 year-olds, so he is consistent at least, but he says that 16 year-olds are still children and maybe I do not necessarily disagree with him but this Chamber has decided that 16 year-olds can vote. They can take responsibility and they need to be held accountable for their actions. He is happy to discriminate between 16 and 18 year-olds. He is quite happy that 18 year-olds should be named, as if the naming and shaming process for an 18 year-old does work but the naming and shaming of a 17 year-old does not. I mean, how does that work? Maybe we should not name and shame anyone. It would not please the *Jersey Evening Post* but maybe we should not report when people have crimes because we might ostracise them. We might cause them to feel bad about themselves. The public might find out what they are doing. What about a 16 year-old that has left school and is working, that carries out a minor theft? If he is held in a position of trust, does the employer not have a right to know that that child or that young person has been convicted of theft? But, no, we have to protect them. But we do not have to protect the employer. Deputy Fox spoke of earlier intervention, that we must have earlier intervention, and I do not disagree with him there. We must have early intervention. But what if that early intervention does not work? We are talking, as I have reiterated time and time again, only about serious crimes. A lot of these people that commit serious crimes commit minor crimes before they commit the serious crimes. Where is the early intervention working there? We seem to concentrate too much on the rights of the young people and the rights of the child without bearing much thought for the rights of the victims who just seem to be cast to one side in this. Deputy Trevor Pitman reiterated that we do not have clear definitions of adulthood. Maybe this is something that needs to be looked at because when it comes to the age of majority we are totally confused. You are old enough at 16 to vote, to have children, to get married, to sign up for the army; but you are not responsible enough to be held responsible for your actions. He mentioned that we are losing youth workers. Well, I do not know much about this subject but it must be very difficult being a youth worker in this environment where the youth have all the rights and the youth workers do not seem to have any. Again, the

Deputy of St. John said that he did not think it was right that 17 year-olds should be named but he never gave any argument as to why 18, 19, 20, 21 year-olds should be named. He also failed to understand that this proposition is about serious offences only and it also ... **[Interruption]** But this is about serious offences only and it is about giving the public the confidence to know that, if someone has committed serious offences, they know who they are. Deputy Martin said that we should do nothing and spoke of restorative justice and spoke at length about the rights of the children and how we should, as a society, look after them. This brings me back to too often in society I feel that we ignore the rights of the victims and perhaps we spend too much time pussy-footing around in respect of the rights of the children. She spoke of 16 and troubled children and Deputy Martin spoke, in the voting debate, about how these 16 year-olds were not children, they were young adults. But they are back to children again in this debate. I wonder if she really believes that they are children, why on earth did she give children the vote. It should be pointed out that we can still sign up to the convention if that is what we want to do with a few changes with regard to the age of majority. Maybe it is a pity that there is not a U.N. convention on the rights of the victim and other members of society. She said that 16 year-olds who commit serious crime have been let down by Social Services in many cases and let down by the Government. But also, in many of those cases, ultimately they have been let down by their parents and they have been let down by themselves. You cannot blame Social Services and Government for the failures of all others. The Deputy of St. Mary brought it back to the amendment in asking does someone know the difference between right and wrong at 16. I believe they do and I do not believe that they do necessarily know the difference between right and wrong at the age of 12, and that is why I brought the amendment through. Deputy Green got us thinking about youth crime but all this does is it moves the default position. The courts can still choose not to name if they believe that is in the best interests of the person who has committed the serious crime. Also he gave an argument about how by naming you could ostracise someone, stop their rehabilitation into society and so on. But every single part of his argument you could use for every single age group. It does not just apply to 16 and 17 year-olds, which is what we are talking about today. He is right. He finished off by saying most youths are decent people and so on. Well, there was no need for that sort of comment because we all know most youths are decent. This deals with a tiny minority that do commit the serious crimes. Senator Perchard spoke that young people need to take responsibility but he also said that the law is a mess. He is right. The law is a mess. He says he agrees that the court should have some discretion. Now, at the moment the court does have the discretion to name. So all this does is turn the default round very, very slightly and gives them the discretion not to name. So in serious cases like this 9-month jail term for an out-of-control teenager, the default would be to name that teenager rather than not to name. That is all we are talking about. Deputy Southern said let us do nothing. But the trouble is, as I said before, the youths of today are untouchable and they know that they are untouchable and it makes it very difficult to deal with them. The U.K. has brought in naming and shaming for minor offences. They would not have brought in naming and shaming for minor offences without good reason. We are simply looking at changing the default position in this respect. This is, I believe, a debate that needed to be had because the public are getting fed up with Government doing nothing. If it leads to action, albeit Deputy Pitman and I lose the debate, then it has at least brought the matter to the attention. But it is not something that is going to be solved by more and more reports. It is something where we have got to start taking action and I simply cannot believe that this Assembly considers giving 16 year-olds the vote and saying that they are responsible enough to vote but they are not responsible enough to be named for serious offences, and I put forward the amendment. I call for the appel, please.

Deputy S. Pitman:

Sir, can I just have a clarification? I am slightly confused, especially by the summing up. Are we talking about serious offences or are we talking to the amendment? Because in the speech the Senator said is an employer not entitled to know if an employee has done a minor robbery, which is

the amendment of Deputy Pitman’s which includes robbery. What are we voting on, Sir, from the Chair?

The Greffier of the States (in the Chair):

You will recall the proposition was proposed as amended. Although it has not yet been voted on and accepted, the proposition before the Assembly refers to naming young offenders who are convicted of a serious assault, murder, manslaughter, rape or robbery.

The Deputy of St. John:

A point of clarification if I may, Sir, with the previous speaker. I was referred to as having referred to 17 year-olds, *et cetera*, towards the end of my speech and I did not. Possibly the speaker was referring to somebody else but I am sure he said: “The Deputy of St. John”.

The Attorney General:

If I may offer, I think, some legal assistance on the question of robbery and theft. There is a distinction and I have heard the expression being used which conflates the 2 as if they were examples of the same thing. A theft is obviously the dishonest taking of something from somebody and it could be like shoplifting. Robbery could also take place in a shop but it would involve violence or the threat of violence.

The Greffier of the States (in the Chair):

Thank you, Mr. Attorney. Very well, the vote at this stage is merely on the amendment of Senator Shenton which would change the age involved from 12 to 16. Members who are in their seats, the Greffier will open the voting on the amendment.

| POUR: 12 | | CONTRE: 33 | | ABSTAIN: 0 |
|---------------------------|--|----------------------------|--|-------------------|
| Senator P.F. Routier | | Senator T.A. Le Sueur | | |
| Senator B.E. Shenton | | Senator P.F.C. Ozouf | | |
| Senator B.I. Le Marquand | | Senator F.E. Cohen | | |
| Connétable of St. Martin | | Senator J.L. Perchard | | |
| Connétable of St. John | | Senator A. Breckon | | |
| Connétable of St. Saviour | | Senator S.C. Ferguson | | |
| Connétable of St. Mary | | Senator A.J.D. Maclean | | |
| Deputy of Grouville | | Connétable of St. Ouen | | |
| Deputy of St. Peter | | Connétable of St. Helier | | |
| Deputy K.C. Lewis (S) | | Connétable of Trinity | | |
| Deputy A.E. Jeune (B) | | Connétable of Grouville | | |
| Deputy J.M. Maçon (S) | | Connétable of St. Brelade | | |
| | | Connétable of St. Peter | | |
| | | Connétable of St. Lawrence | | |
| | | Deputy R.C. | | |

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|--|-----------------------------|--------------------------|--|--|
| | | Duhamel (S) | | |
| | | Deputy of St. Martin | | |
| | | Deputy J.B. Fox (H) | | |
| | | Deputy J.A. Martin (H) | | |
| | | Deputy G.P. Southern (H) | | |
| | | Deputy of St. Ouen | | |
| | | Deputy J.A. Hilton (H) | | |
| | Deputy P.V.F. Le Claire (H) | | | |
| | | Deputy of Trinity | | |
| | | Deputy S. Pitman (H) | | |
| | | Deputy I.J. Gorst (C) | | |
| | | Deputy of St. John | | |
| | | Deputy of St. Mary | | |
| | | Deputy T.M. Pitman (H) | | |
| | | Deputy A.T. Dupré (C) | | |
| | | Deputy E.J. Noel (L) | | |
| | | Deputy M.R. Higgins (H) | | |
| | | Deputy A.K.F. Green (H) | | |
| | | Deputy D. De Sousa (H) | | |

1.2 Young Offenders: naming by the media (P.148/2009) - resumption

The Greffier of the States (in the Chair):

Very well. Now, just before the debate resumes on the main proposition, the Bailiff was asked yesterday for a ruling from Deputy Martin about the scope of the debate on the amendment and Members will recall the Bailiff ruled that it was very difficult to discuss the age, 16 versus 12, without touching in some way on the whole principle of naming young offenders. Therefore, the Chair yesterday and again myself today have allowed greater latitude than usual on the amendment and I know some Members, particularly the Deputy of St. Mary, commented on this. I think the counterbalance to this must be that at this stage of the debate I must urge Members to keep their remarks brief so that we do not have a total re-run of the debate on the amendments and urge Members only to speak if they have not already spoken on the substance of the issues and they have something very new to add, otherwise we could repeat the entire thing again.

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

I did speak before that ruling but I will take your advice and the advice of the Bailiff, Sir, and be very brief. I was interested in who voted then to support that motion of Senator Shenton's and was quite surprised to see Senator Le Marquand had supported it. That really does make me wonder why he did that. I will speak with him later if he does not speak now. No, because I think it is important. I stated yesterday when having my speech that I had confidence in him and I think there is a body of work to do and I was wrongly interpreted by Deputy Shona Pitman as saying that youth workers are the be-all and end-all to everything. I did not suggest that for one moment.

What I said was there was a body of work to do and the States needed to tackle that in a strategic manner across the whole broad spectrum of Government and the best way of doing that is adopting the United Nations Convention on the Rights of the Child which we have been told by the Law Officers - by Her Majesty's Attorney General - that we would probably be unable to adopt unless we repealed this proposition if we approved it. That is it in a nutshell. I think there are, without doubt, concerns both in the public and in the States Assembly about the activities of certain elements within society. I think to add this as an additional form of punishment to a sentence is not the way to go about solving the problem. The way to go about solving the problem is to adopt the United Nations Convention on the Rights of the Child and to extend all of those rights and privileges across the broad spectrum to the child so that the child has the support and is steered away and nurtured away from being one of the very few that take part in these sort of activities and hopefully are, in the future, even smaller in number because of the fact that we have adopted that convention. So I am a bit amiss to understand why, with that knowledge, the Minister for Home Affairs would have supported the 16 vote. I do not know if he supports the introduction of the United Nations Convention on the Rights of the Child. I believe he does. But I think the police and the Home Affairs Department have a huge body of work to do and I did speak yesterday about having passed on some suggestions to the Assistant Minister for Home Affairs. I do not know if they reached the Minister for Home Affairs himself but I think there are some things that we can do to tackle the problem. I would like to ask, if I can, just before I finish, for some advice and guidance from Her Majesty's Attorney, if I could please, because I think it is important that we understand exactly what it is we have been looking at here. I would like to ask, in particular, what powers the courts have at the moment to deal with these issues and how they would be affected if we were to adopt such a proposition and then I would, with that advice, take a very short moment to conclude.

The Attorney General:

As I said out in the written comments that we filed, the primary position is contained within Article 73 of the Children's (Jersey) Law 2002 and, leaving aside Children's Law matters dealt with in those specific proceedings, Article 73(2) provides that it is an offence and, therefore, there is a prohibition on publishing any material which might lead to a child involved in any proceedings before any court being identified. So there is a default position and an offence is created on the basis that no child should be identified who has taken part in any proceedings. There is a qualification to that default position that indicates that a court hearing those proceedings can decide to direct that that child is identified or information is published which could give rise to the identification of that child and, in doing so, the court is required to have regard to the interests of justice and the welfare of the child concerned. If it is in the slightest way thinking that there may be a good reason to publish the information that might tend to identify a child, a court will consider those 2 factors; the interests of justice and the welfare of the child. But the default position is absolutely that such information would not be published and would be prohibited from publication. I think I can only recall one circumstance in which the court has moved to the publication of information that could have given rise to the identification of a child. That is the position, on my understanding, as it presently is. The position that we would move to were the proposition to be adopted would be to reverse that presumption entirely. It would presume that anyone convicted of the assaults set out in the proposition as amended - serious assault, robbery, murder, rape, *et cetera* - would be named if they were 12 or above. It would only be in certain restricted circumstances, as I read the proposition, that the court would retain a discretion to block such a naming. The way the proposition is put is that: "The court shall retain a discretion to order the offender shall not be named if" and there are 2 separate sets of circumstances which would cause the court to exercise that discretion. The first is that the individual has been identified as having learning difficulties impacting upon their action, so the reason that they did what they did was as a result of learning difficulties that have been identified; or that the court is satisfied - and that to my mind must be satisfied for cogent reasons, on some form of evidence - that there would be a serious

risk of physical or mental harm to the individual if he was named; or, further, the court must be satisfied that there are other wholly exceptional circumstances that are sufficient to justify overturning the normal presumption in favour of naming. So it is correct to say that the court would retain a discretion not to name the child. But that discretion would be exercised, it seems to me, in extremely limited circumstances and it would be vastly in the majority of cases, saving wholly exceptional circumstances, that the court would have no discretion to exercise and children from the age of 12 upwards would be named. That is how I read the interplay of the current law and the proposition.

The Greffier of the States (in the Chair):

Thank you, Mr. Attorney. Do you wish to conclude your remarks?

Deputy P.V.F. Le Claire:

That is very helpful. I will conclude my remarks. I think that this really is where the crux of the matter is. The courts have the right at the moment now, should they think it is in the interests of society and the interest of natural justice, to name or release information that might lead to the identification of an individual and we would be taking away the power of the courts in most circumstances, but only in limited means, for them to exercise that in concluding what the punishment should be. I just think that adds on another level of punishment that does not allow them to take into account the different sets of circumstances. There is a need for the States to do a lot more. This debate has brought the issue to the fore but supporting the proposition will harass, stymie or nullify the introduction of the United Nations Convention on the Rights of the Child. It is something that I believe we should be signing up to. It is something I believe we should sign up to and then ratify. We do not need to ratify it immediately. It is something we need to move towards and, in implementing it, we would do a whole lot more for society in general than just naming and shaming the ones we have failed and the ones that have failed themselves and society. We need to get to the heart of the problem and we need to cause, effect, to stop the problem, not treat the symptoms. To stop the problem, we need to invest in the younger people from birth in a much larger way. The only way I can see, having taken on board recently the Family X children and listening to the lawyers that have spoken to me about the various issues that children have had and have not had in Jersey, the only way we can tackle this responsibly and minimise the outcome and decrease the number of young people in trouble in Jersey is to adopt this convention. Supporting this proposition will not allow us to do that. So I cannot support this proposition and I urge Members not to also.

1.2.2 Senator S.C. Ferguson:

I was sorry to hear Deputy S. Pitman's comments decrying volunteer youth workers. The best one I ever came across was a World War 2 fighter pilot who, virtually single-handedly, ran a lads' club on Scotland Road in Liverpool which is arguably one of the toughest areas in the U.K. No training but loads of life experience. As Deputy Martin says, we have had no evidence that naming works. I can understand that people want to know for their own protection but let us just think carefully; to whom is the information most useful? The neighbours? I mean, frankly, if I read about someone living in Grouville, that does not necessarily mean something when I am living in St. Brelade. I would probably forget the name within the next couple of minutes, or St. Ouen. But, you know, speaking from my experience as a Centenier, we have cases that can be shocked into behaving by the court appearance because their parents do not know what little Johnny is up to and communication of the offence to them does help them bring the offender under control. But I think you have got to understand, we live in a large village and when you get an offender sentenced, for instance, to curfew ... I know this is only a minor offence but it is the same principle. If the offender is sentenced to curfew and the police are frequently calling at the house, you know, if the police car is outside a particular house 2 or 3 times a week, the neighbours will soon catch on that something is up and this does have quite a preventative effect. You also have neighbours who

know who the perpetrators of various crimes are, even before the police inquire. We had a case in St. Brelade and when the police went round to interview people, everyone knew the likely suspect. Everyone gave the same names. You know, we have problem parents who do not know and do not care and that is where we have got to start. The problem with all this corporate parenting, we are encouraging the parents who really do not know and do not care to abrogate their responsibilities to the State and to the school. My old maths mistress used to say that the child was formed by the time they were 7. It is the old Jesuit thing: "Give me a child until he is 7 and he is mine for life." By the time you get to 10 all a school can do is rub off the rough edges. It cannot get to the basics. We have heard a number of plaudits of the Bull Report. The one part of that which appalled me was the fact that children were being suspended from kindergarten. Really, this is the first level we should be attending to and everything else is palliative. It would also be helpful if the authorities could use their common sense. Members will recall the case some months ago at Snow Hill when a father was bundling his under-aged drunken son, who was resisting vocally and physically, into the car to take him home and what happened was that the father was arrested for assault. I have got another concern with this naming system. The Rehabilitation of Offenders Law must be applied correctly because there are too many instances where it has prevented people from being rehabilitated. We have discussed the power of the court to name itself. So where do I stand? We are considering name and shame and the question is: will it be effective? We have no evidence for that. The court has these powers. Those who need to know, the neighbours, usually do. I think really we are going over the top with this and I urge Members not to support this proposition.

1.2.3 Deputy K.C. Lewis of St. Saviour:

We do have a wealth of knowledge in this Assembly. Many Members here are formerly States Police, Honorary Police, youth workers; a great wealth of experience. I thought earlier on it was very unfortunate that certain Members were cited out for ridicule. To my knowledge there are at least 2 States Members that are foster parents and to take a stranger's children into your home and raise them as your own, in my book, the couples who do this are worthy of the utmost respect. As has just been said, people already know and the police know, who these individuals are. The courts know and the Children's Service knows and, likely as not, the neighbourhood knows. But I would like to repeat my appeal to the Minister for Home Affairs and the Minister for Economic Development because I believe that most of this anti-social behaviour is drink and drug-fuelled and that anyone caught selling alcohol to a juvenile should be punished to the full extent of the law. I think this proposition is going to fail, but I believe we should send out a message to the people in Jersey who are sick and tired of this anti-social behaviour that we are simply not going to put up with any more.

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

I am glad to follow the last speaker, because I can echo those sentiments as well. I will not speak at length, because a lot of what I want to say has already been said by Deputy Hilton, Deputy Green and Deputy Southern. What I will say is Government is a lot to blame for where we are today, because they have interfered. People in schools, people at home are scared to do anything in case they fall foul of the law by chastising and punishing people for what they do, so we need to take heed and not continue to interfere where we should not. A gentleman on the phone-in last week said that he was at one stage in Les Chenes and he also said that we need to consider why people do what they do. They have often been abused, and it does affect how you behave and what you do. When people are angry, they do behave in a way that they would not normally. Again, we need to think about this. Also, departments have failed our children and we need to now wake up and do something about it. The corporate parent needs to gain teeth and act in a way to improve this situation. I will be voting against this, because I do not think this is the way forward. I also think that Deputy Trevor Pitman has raised the issues that he would like to raise, and the public are fed up with what is happening, and quite rightly - and so are most of us as Members as well - but this is not the way to go about it.

1.2.5 Senator B.I. Le Marquand:

First of all, an explanation as to why I voted in favour of the change, and that is because it is the principle of a lesser of 2 evils. I am against naming and shaming both at the age of 12 and at the age of 16, but in case the Assembly went completely mad today and voted in favour of naming and shaming, I would prefer it was only for 16 year-olds and not for 12 year-olds, so that is the reason. I am firmly against this. I could have taken the Machiavellian view of voting in favour of it remaining at the age of 12 on the basis that that was more likely to fail, but I do not normally do that sort of Machiavellian thing, it is not part of my style. This has been an interesting debate, and I think a worthwhile debate, and I would thank the proposer and the amender for having instituted it, because it has given an opportunity to the Assembly on a matter of great public interest and concern, and that is the issue of youth crime generally. It has achieved that option and for that at least I am grateful. It has been an interesting debate because it has covered all sorts of wider areas. There were times yesterday when my sense of reality began to fade and the world grew dim around me, as I discovered that there were some in the Chamber who thought that I had joined one of my group of arch-enemies, namely the namby-pamby liberals. I did give some thought today as to whether I should come with flowers in my hair and wearing sandals, but decided that that might be unparliamentary. I do have another set of arch-enemies, and those are the hanging-and-flogging-is-too-good-for-them brigade. I have always tried to steer a middle course between both of those extreme groups. Concerns have been expressed, of course, in relation to various aspects of the current situation in relation to young people and the criminal justice system. I would remind the Members of the Assembly that from 2001 onwards, I was raising concerns as a magistrate in relation to the lack of enforceable sentencing powers for criminal courts in relation to the under-15s. I have been raising those concerns for 8 years. I am still raising those concerns, but I am being patient, and I am seeking to work together with my colleagues in ways that I will describe in a moment in order to achieve a better overall system. One of the oddities, if I may say so politely, of part of Senator Shenton's speech was that he was talking about the untouchables, but he was proposing an amendment which would only refer to 16s and over. Well, if there are untouchables in the system, they are the under-15s and not the 16 and above. The courts have powers of sentencing to the Young Offenders Institution for 16 year-olds of up to 12 months and for 17 year-olds of any length of sentence, so there is no issue of untouchables there. I must briefly explain what is now happening. Yes, there have been failures in the past in relation to what was oddly named the corporate parent. We are not going to call ourselves that any more; we are not quite sure what we are going to call ourselves, but we are a policy group, a Ministerial policy group in relation to issues relating to the young people. We met on Monday of this week, as it so happened, in order to receive presentations from the different agencies working in this area, and in order to try to agree for the first time some high-level policy statement. Believe it or not, there had never been an attempt to create policy statements even at a high level, let alone at the more detailed level. This should happen. We came up with 2 statements upon which the 3 Ministers were able to agree. The first was a commitment to the United Nations Convention on the Rights of the Child - I am sure Deputy Le Claire will be grateful for that - bearing in mind there are some practical difficulties which I have outlined before in relation to ...

Deputy P.V.F. Le Claire:

Could I ask the speaker to give way for one second, please?

Senator B.I. Le Marquand:

Yes, certainly.

Deputy P.V.F. Le Claire:

I would just like to say I am very, very pleased with his speech so far, and he has my continual and full support for his role.

The Greffier of the States (in the Chair):

Deputy, it is not really an appropriate intervention to interrupt the Minister in full flow.

Senator B.I. Le Marquand:

Thank you for that support, although it has slightly broken my flow, but there we are, these things happen. Back to my notes. Secondly, we realise that there had been a problem and an issue, because the 3 different major areas working in this are Home Affairs, coming from a policing and law and order and public protection side, as well as interests of the child; education, coming from a need to discipline within schools so that you can teach other children if there are children misbehaving - having a slightly different view - and the Children's Service of course being bound by statute, namely the Children (Jersey) Law 2002, which puts the welfare of the child as being paramount, in other words, a very high test. What we did was we came to a middle position which all 3 organisations could buy into, although we accepted that there would be slight differences in relation to each because of the necessity of the particular statutory frameworks, court frameworks and so on. That position was a central principle that the best interests of the child shall be the primary consideration; not the only consideration, but the primary consideration. That may appear to the Members of the Assembly to be a small step, but it is a big step, because we now have a central statement upon which we can start working, and work is going to be done. We also agreed that the way forward is the production of a children's plan. That will need to cover not just the areas of the Children's Service work, but a wider arrangement in relation to that. We want to come up with a coherent system, not just little bits here and little bits there which do not hold together. That is going to take some time and I am going to have to be patient. I have been patient since 2001, I am still being patient, although my colleagues know what I believe is necessary in relation to giving the courts powers of sentencing in relation to the small group of youngsters who repeatedly offend. Now, of course the context of this is massive. We have had all sorts of helpful contributions in relation to that. I think we all accept that there has to be more effort to have early intervention. That means identifying youngsters at very young ages who are being damaged within their family background and starting to work with them, or youngsters at older ages. I found that my work as a magistrate - and I do not know if Deputy Green will agree with this - but in a sense, we found that the Youth Court was a sort of dustbin where everything else had failed, people ended up there as a last resort and we somehow had to come up with some miraculous solution, although of course we did not have very many options at all in relation to the under-15s. It was not a satisfactory position to be in, but we worked hard and we did our best. There were also issues which have been highlighted by Deputy Lewis, quite rightly, of drink and drugs issues. There are issues in relation to the licensing; there are issues in relation to access of young people to alcohol. These are all areas that we are going to need to work on. There are issues - again, quite rightly highlighted by Senator Ferguson behind me, and I think by Deputy de Sousa - in the way in which we have are in a muddle in relation to parental rights and responsibilities, because on the one hand, we want to say that parents should be more responsible, bearing in mind of course what Deputy Martin said in relation to the difficulties of youngsters where parents simply cannot cope with them and they hand them over to a children's home and they still carry on offending and so on. But where children are at home, we are in a muddle in relation to this. On the one hand, we want parents to be responsible, and yet on the other hand, we have effectively taken away their ability to deal effectively with youngsters within the home environment, which is far more satisfactory of course than it coming in a court environment and into the public arena. There needs to be very careful thought in relation to this, that we get the balance right in relation to this area. I could go on. As this is one of my specialist topics, I could probably talk all day today and all day tomorrow on aspects, but I am not going to do that. I am going to now try and focus it. One other thing I wanted to say, apart from the work in relation to the renamed grouping formerly called the corporate parent, of course another initiative has been started jointly with the Parish of St. Helier and it has been jointly agreed between Home Affairs and the Connétable that we are going to set up a group to be known as the Parish of St. Helier Policing Policy Group, to look at some of the high-

level issues: alcohol, youth, where best to deploy officers and so on. We will be working together, and I am grateful to the Connétable of St. Helier for his willingness to work with Home Affairs on this particular area. At least one of the Deputies of St. Saviour's has already approached me and said: "Why only St. Helier?" Well, we have to make a start somewhere, and of course the sort of issues that exist in St. Helier are really concentrated because of the issue of licensed premises and so on being concentrated, nightclubs and so on. Now I am going to come at last to this proposition, and this proposition is a very narrow proposition, because it pits one small target, one small issue, the issue of naming and shaming. The proposition appears to overlook the existence of Article 73 of the Children (Jersey) Law 2000, the fact the court already have a power to deal with this. I am grateful for the advice of the Attorney General in relation to this, but I have to say that his view as to what the proposition meant was not quite the same as my view, but I am going to go with his, as he is the legal adviser. I thought the proposition was quite unclear as to what it meant. There is an attempt here to create some sort of presumption that there will be naming and shaming in relation to youngsters from 12 upwards. Now, there are a number of problems with this, some of which have been highlighted and some of which I am going to raise for the first time. Firstly, as highlighted in the Attorney General's advice, this is simply contrary - directly contrary - to Article 42(vi) of the United Nations Convention on the Rights of the Child. Now, there is an issue here as to whether we want to buy-in, ultimately, to the United Nations Convention or not. It provides a base level of provision to provide appropriate rights for children, and my view is yes, we should, as far as we can, buy into this. It is useful, we should be applying these principles, and that is the view of the group of Ministers. Clearly, this is inconsistent with this because it says: "Every child alleged as or accused of having infringed the penal law has at least the following guarantees: to have his or her privacy fully respected at all stages of the proceedings." Now, the fact is that in the U.K., they have tried to ignore that and they have started naming and shaming youngsters in the context of A.S.B.O.s simply for the technical reason that that is civil procedure and not criminal procedure. Well, that is a clear breach, in my view, of the spirit of the convention, because it mentions criminal, because civil is less, and yet that has been turned on its head by the U.K. in their practice. That is no precedent for us to follow in Jersey in a way in which to treat or to interact in relation to a convention right. Interestingly enough, the thinking behind the convention is earlier on, where it says this: "Bearing in mind that as indicated in the declaration of the rights of the child, the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection before as well as after birth." The fact is this: that young people sometimes act foolishly. They sometimes act very unwisely and they need special protection. That is what the convention is recognising, and in particular, they need special protection which will avoid them from being stigmatised or categorised in a particular way for life by virtue of something foolish which they may have done at some time. Now, I have never favoured naming and shaming and neither did any of the members of the Youth Court. I passed a note to my former colleague, Deputy Green, to check that I could fairly say that. We simply did not believe this was a sensible way forward. So here is a situation in which we are being asked as the States to pass a provision which would lead to a statute, and the courts at the lowest level, who deal with most children - namely the Youth Court - are against it. There has been no consultation with the courts in relation to this matter. We have no indication of opinion, but I can say that certainly when I was there - I have no reason to believe otherwise - the Youth Court did not believe this was the right way forward at all. I cannot speak for the Royal Court, but I would be surprised if they had a different opinion. The next issue is this, and is fundamental, I suppose, if one ignores the other issues, does naming and shaming work? In my view, it does not work. It hits the wrong targets. If I can put it in 2 simple sentences why it hits the wrong target, first, the youngsters who are regularly and persistently offending could not care less what anybody thought about them or knew about them. It has no effect on them whatsoever. They are locked into a situation of frustration or anger or rebelliousness or whatever you may wish to call it in which that is completely and utterly irrelevant. So what this would achieve is not to hit the objective of trying to turn away from a life of crime young people on the basis of them being worried that people are going to know about it, because

they could not care less in relation to that. It will hit others who might have slipped up once in a big way, and thereby the courts would have to look at the thing, and they would be stigmatised for life or typecasted or whatever you want to say. It simply does not work at the practical level. That is my view, and it was the view of the rest of my colleagues in relation to the Youth Court. A small technical point: the proposition calls upon the Minister for Home Affairs to make the necessary changes, but it is wrong Minister. It should be the Minister for Health and Social Services, because the amendments will have to take place effectively in the Children (Jersey) Law 2000, because that is where the existing statute is, so I merely point that out in passing. In conclusion, I accept that there is public concern in relation to youth crime. That is very much focused on the under-15s, because frankly, the courts do have appropriate penalties in relation to those from 15 and over. But there is public concern. We must now move forward. This is what the corporate parent - or formerly the corporate parent - is seeking to do, but we want to do it as part of an overall cogent plan which works and holds together and is logical and sensible. We will get there, but we need a little time to get the right package overall in relation to that. However, this is not the right way forward. It is contrary to the Convention; it is contrary to the principles adopted on Monday by the 3 Ministers; it is a populist but ineffective approach; the courts have not been consulted, and the lower courts would certainly be against; the wrong Minister is being asked to act. For those reasons, I cannot possibly support this well-meaning proposition, although I thank the proposer for having brought the general area into the House for debate.

1.2.6 Deputy G.P. Southern:

I am indeed grateful early on in this speech for finding the reason for the Minister voting for the 16 rule; that he only wanted to be thought of as: "A bit mad." All right, quite simply, this proposition is misguided, this proposition is wrong in principle. If it was wrong and the House agreed it was wrong at 16, it is worse at 12. Please vote against this proposition.

1.2.7 The Connétable of St. Mary:

I did not speak on the amendment. I will be as brief as I can. My initial feeling when I saw this proposition was to support it, and certainly it attracted a lot of positive comments from members of the public that I spoke to about it. However, we then spent time discussing - the members of the public I spoke to and I - what would happen if this came through. We came to the end question, after you have named, what happens next? Has the problem gone away? The answer is it has not. This tackles one aspect of the outcome. It does not tackle the root cause. So if I had not already had a change of heart before I came to the Chamber, I certainly would have been persuaded, I think, by the very strong points raised by Deputy Martin in what I consider to have been one of her best speeches on a number of different levels, and so I think certainly we need to reflect on what she said in the amendment. It applies equally, of course, to this substantive proposition. I am also extremely grateful to Senator Le Marquand for a very good illustration, I think, of the difference between steering the middle course and sitting on the fence, very different things altogether. But Senator Le Marquand touched on his reasons for having supported the amendment. I would like to just go a little bit further. I am not able to support this proposition at 12. I would not have been able to support it at 16, because it does not do anything different. I would have welcomed the opportunity to vote against it at 16 to show the strength of my feeling. I have been given some hope by Senator Le Marquand that more initiatives will be targeted at preventing our young people - the few young people - who do need assistance from falling foul of the justice system in the first place. That is where we need to be directing our attention, and the Attorney General has already explained that it is within the power of the court to publish information which might lead to the identification of a child. The court, in my humble estimation, has the ability to be more flexible and to be more responsive to the circumstances regarding any particular case at any particular time, and I believe with all the information that they have about the case, the court is the place where the decision to allow identification should be made, and I believe they should be given every assistance in maintaining that discretion. There were a few Members who spoke about what I picked up as

either their unease about the United Nations Convention on the Rights of the Child, or perhaps a lack of certainty about what it would mean for the Island. I am grateful again that Senator Le Marquand asked the question: "Is this really what we want to be signing up to?" He came round generally to saying broadly yes, he thought personally it was. I certainly am not making any comment on the rights or wrongs, but Deputy Pitman, when he addressed the amendment, gave quite a lot of information about what Scrutiny had found about where failings were to young people. I think it should be borne in mind that Scrutiny has looked at lots of issues in the past and we should keep going back to the valuable work that Scrutiny has done and is doing, because it often cross-meshes with things we are considering at the moment. When people were talking about the Convention, it brought me back to my first every Scrutiny report, S.R.1 of 2006, when I was on a sub-panel that looked at the age of consent debate, and I think just one or 2 sentences could be useful: "During the review, it became apparent to the panel that the Island is bound by a Convention made many years ago." This was of course relating to the European Convention on Human Rights: "The current implications of which could not have been foreseen in the social and moral climate prevailing at that time. "The panel acknowledges that it is impossible to accurately predict every future aspect of individual, national or international agreements, especially when new legislation and evolving case law will necessarily influence these over time. However, the panel recognises that great attention is now being paid to determining and considering the potential long-term implications and the consequences of international conventions and agreements prior to entering into them." I would just like to echo now, I think while I am not making any judgment on the rights or wrongs of that Convention, Members always must bear in mind that when we enter into an international convention, it will have implications. We may not understand what those implications are, and we need to give good, sober reflection before we agree to sign up.

1.2.8 Deputy A.E. Pryke of Trinity:

I shall try to be brief, because a great deal has been said, and I would especially like to congratulate the speech from Deputy Hilton, because I know she believes passionately about these very difficult children. But Members need to think of the child and ask a very important question: why do they commit crime in the first place? Every child is different and unique. Many of the children who commit crime may lack family support. The children in the care of my department are particularly vulnerable, as they are looked after. These children have, in some cases, in their very short lives - compared to us, anyhow - experienced disruption, many difficulties in their lives and all of which are of a highly complex nature. I ask Members to think of these problems, what they experience. These difficulties are rarely of their own making, and indeed, I am sure they contribute to their anti-social and offending behaviour. There is no evidence to support that using the media to publicise will reduce youth crime. For one minute, if this was the case, do you not think any other government would have done it already? Research is vital. We need to hear both sides, the pros and the cons of this action and that action to make sure that we have an informed decision which is notable and accountable. Youth crime is not only a Jersey problem, but a problem in most other countries. What has been mentioned in this House is that it goes against United Nations Convention on the Rights of the Child. This House agreed only in June in the debate about the strategic plan that we would sign up to the Convention. That proposition, brought by Deputy Le Claire, had overwhelming support, and I remember at that time making comments that it comes with a health warning, saying that there will be difficult decisions to make. Well, this could be the first one. I am grateful for the comments from the Attorney General to this proposition for setting out the legal advice and I would like to congratulate him, for it was easy to read, not too much legal jargon, and I thank him for that. As I stated in my comments, it would appear to be strange to approve this proposition while we know and have had the legal advice that is in direct conflict with the Convention, and it would undoubtedly draw criticism at the next review. We need to make sure that all the decisions we make are informed. We are dealing with a generation of children who post every detail, and sometimes photographs, of their lives on the internet for the whole world to see for all eternity. How do you argue that publishing their names will discourage them from

committing crime? Deputy Pitman refers to: “Shock of being held up to the entire world.” The personal details of that particular offender will be a permanent record for the whole world to see, and will stay with them for the rest of their lives. Wherever that individual goes, anybody can search for it; future employers. It would make no difference at all if that person had changed their life around at 17 or 18 as a great number, I am pleased to say, do. They just grow up. If anything, it will give them the fame and attention that so many of them crave, indeed, it can also be said that they now would have to live up to. I hope all of them in time will regret the actions that they do. The media moves on to the next young person. One forgets the last, but the damage is there, it has been done for all their lives and there is no going back. There was a comment, which I totally agree with the Deputy, if you put sufficient monies in these areas early enough, you can save an absolute fortune over the following years. This is fact, and an inarguable one. There is national and international evidence to support this. This is an approach I concur investment is and will be made in targeted areas for children and families with Williamson and the Children’s Plan. This has support, I am sure, from the Ministers for Education, Sport and Culture, and Home Affairs. But the proposition is at odds with this support for this early investment. Another comment made by the Deputy is a recognised tool, restorative justice. The perpetrator is made to see the damage that has been done to the victim. This happens already in a very good Parish Hall Inquiry, and if I remember rightly, in the Bull Report, it was praised. It has been going on for a long time. It takes place involving the victims of crime and other close associates who are important in their lives. Having recently been a victim of crime, which could easily have the potential to be a serious one, not only for me, but could be for the young person too, I can tell you that naming in the media would not achieve anything. As a victim, I would prefer restorative justice, being able to look at them straight in their eyes, whatever age, and ask them: “Why did you do it?” That for me, as a victim, would be far more powerful than naming them in the media. Looking at this proposition, I sought independent advice from a variety of professional people in this field. They include the chair of the J.C.P.C. (Judicial Committee of the Privy Council), Andrew Williamson, who Members know as the author of the Williamson Report, Law Officers, data protection and local experts in this field. I must make mention of the Corporate Family, who have met many times recently, and we as a group realise too that there are issues relating to youth crime and it does need addressing, and I am grateful to Senator Le Marquand to eloquently explain where we are as a Corporate Family. As was said, I went out with the police and the Youth Panel for over 6 hours the other evening. What I saw made me very sad, groups of young people hanging about, but also not being a problem to anybody, but I also saw there were small groups of children well-known to these services, and stress that they were a very small number. During the hours that I was out - and I would like to thank the police for giving up their time for me - they showed very little respect to the police. Would they be shamed if this proposition was approved? Seeing them last week, I can say certainly not. Do I think they would say: “I must not do it to anyone”? No, I do not think so: “Well, I just see it as a badge of honour and one which I will have to live up to” and that made me very sad. I consider that a comprehensive review of youth justice arrangements across the board is essential to understand and implement the many substantial changes, and as Senator Le Marquand said, current legislation administers procedures which need to be changed. I can understand the public’s concern. It is my concern; it is the department’s concern and very much the corporate parent concern, and I would like to say that the groundwork has started, a review will be completed. I would like to stress too that most young people are law-abiding, decent children and I am pleased to say come nowhere near my services, the Children’s Services or the police. As I say, there is a group of children who are the problem to us all and that needs to be addressed, but there is not one issue that we need to solve, and it is no easy solution, and there are already many agencies that work together to support vulnerable children, but they need our support, and more importantly now within the corporate parent, they need political direction. Children are complicated people - the pressures of life - and will test systems. They always have been, and always been testing. That is just part of growing up, but as we know, some of them just go too far. They need to know the boundaries and the consequence of their behaviour, but this is not the way. We need to look at

issues, and that is what we are, as a corporate parent, committed to doing, with the Youth Justice Review, including the sentence, being able to sentence at Greenfields. Let me reassure Members that there is a will and a commitment within this corporate parent family to do just that, with the Children's Plan and the Williamson Plan, and I urge Members to reject this proposition.

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

What I was going to ask for was a commitment from the Ministers, because that is the message which I think needs to go out today. As has been said several times, there is a complete frustration from the public about the whole issue of youth vandalism and crime, youth behaviour, and we have had that commitment and that is the message which I believe the media need to send out to the public that this House has recognised it and things are going to happen. There are a few things which of course should be considered. Deputy Hilton did comment on the importance of the child and what happens within their early years. I would argue that when thinking about this, it is not important just to think about the child, but very important to think about the parent; very important to think about what skills people have. Within our current education system, there is not as much as there could be, and I would argue that a lot more needs to be done, particularly in the areas of boundaries and discipline, and what can be used. Issues which will of course have to be considered are issues such as population density, because this does have an issue on these behaviours, and I know that there are some Members in this Assembly who are very gung-ho on increasing the population, but there are consequences and Members should be aware of that. Very much as has been said, self-esteem, self-confidence and self-worth are definitely something which we need to be better at. The question of course is always how, but that is something we need to do. As for the proposition itself, I will not be supporting it. I think that we are not an honour-based society, in that the family name perhaps was not such a big thing as when there was shame to the family name. Perhaps it did control people's behaviour more. I do not necessarily think that the individuals which this is trying to deal with have that, and for that reason, I will not be supporting it, but there are huge issues. I think this debate has been very useful, because it is one in which we have had to deal with the very foundations of society. We have really had to look at all the different components, and I know some Members do not like long debates, but this has been a very important debate and we do have commitments from the Ministers that looking at children, looking at parents, looking how we react to these things are very important. I think the one final thing I will add is there is criticism that the Ministers previously had failed in not giving as much support to the corporate parent as they should be. I think we have to remind ourselves that it is every Member of this Chamber's responsibility to push the Ministers to make sure that it happens. It is all of our responsibility, and we need to get behind them. They have given us a commitment, they are going to get on with it and we need to support them, not only for ourselves, but for everyone in this Island and for the future, and that message needs to go out.

1.2.10 The Connétable of St. Saviour:

Like the Minister for Home Affairs, I voted for the amendment because, to put it very simply, 16 was better than 12; it was damage limitation. My first reaction on reading the proposition would be to support, but the more I thought about it, the more worried I became. We have become - or we were yesterday - very emotional about this matter, and I think I would ask Members to stand back from the emotions and try and deal clearly and look at the problems. We have a long history of trying to do things for youngsters and not really achieving it. We are now in a muddle with the different ages of, shall we say, responsibility... of the different responsibilities. I am not going to go into that, because we all know that we are in a muddle with that. I am sure we all know youngsters, children, as we are now looking at 12, who are reasonably responsible and we also know lots of youngsters of the age of 12 who are not responsible and need more time to grow up. The change that this proposition would bring would be to change the default position for the courts and I think if this proposition was carried, we would have youngsters who are not really responsible being named, and I think that is wrong. I think as a society, we need to give our children better

protection than that. I will not say any more, because as I say, I think the Minister for Home Affairs has spoken very clearly on it, and I would ask people to leave the matter as it is, with the courts having the authority to name, should they think that is in society's interests.

Senator P.F.C. Ozouf:

I was going to propose the closure motion, but I do not know whether I am in time yet.

The Greffier of the States (in the Chair):

You are time to give notice. Very well, you have given notice, 30 minutes' notice.

Deputy S. Pitman:

Did the Minister just request a closure motion?

The Greffier of the States (in the Chair):

Well, he gave notice of 30 minutes, which he is required to do.

Deputy S. Pitman:

Sorry, I do think in this case it is abuse of privileges.

The Greffier of the States (in the Chair):

No. Deputy, are you speaking? He is fully entitled to give notice. Members will decide in due course whether to vote on it or not. It is a matter for the Assembly. Does any other Member wish to speak on the proposition?

1.2.11 The Deputy of St. Mary:

I am deliberately giving myself 6 minutes. I have done it before; not a problem. Now, I just wanted to pick up and expand on a point. It is very important. It is about the context, where Senator Shenton in, I think it was his summing up, pointed out that serious crimes follow on from minor crimes, that very often there is a history, a sequence. Now, he did not bring any particular evidence for that, but I suspect that it is true and I have certainly read newspaper reports where one thing leads to another, and you end up with a major crime in view. So I think that is the context. We are talking about... although the proposition is quite specific about serious crime, in fact, one thing probably does lead to another. So I think it is a shame that proposition 201 was not brought at the same time. I think it is a pity, and I know the proposer tried, because then we could have had the debate on these issues at the same time. I am concerned with the emotion that surrounds the naming issue in some quarters, and I think we must not slide over our responsibility and I want to pick up that point from Deputy Maçon. It is our responsibility to say clearly to the public that we are going to do something about this; we are going to follow through. I want to pick up some things that the proposer rightly put into his report and he mentioned there is a little list here of areas that we should be looking at if we are going to tackle youth crime effectively. They are, in effect, a sort of prospectus for his P.201, I suspect, of where we should be looking to reduce youth crime fundamentally into the future and I am just going to pick out 3 of the points he makes. One has been touched on by other people: "Ensuring we promote, support and where necessary enforce parental responsibility" and the whole aspect of early intervention of supporting parents in their job of bringing up children is so important. They do not need to labour the point; I think the Ministerial team have got it. Just to say that when I was in the specialist working group of the report brought together by Mike Romeril some years ago, that was the absolute consensus across all the professionals and the social issues group; early intervention. So, I do not think there is any doubt about that. The second point that I want to pick up from what Deputy Pitman said was: "Deliver adequate resourcing to ensure that our leisure facilities are adequate, stimulating and crucially affordable." Now, I have heard other people say that young people say: "Where can we go; we cannot afford it" and this is an issue. At the moment we know that the teenage football club really worked. It immediately had an impact on minor crime in certain areas, but that is now being

funded, as I understand it, by a bank because we simply ... I do not know whether we are unwilling or structurally it does not work that way and I just raise the question. Fort Regent; access to those facilities; access to football; access to activities that would obviously not be criminal because they were doing something else, there is an issue there. If you put those 2 together there is of course the big issue which is funding, and Deputy Maçon very politely did not use the word “funding” or “money” or “Treasury Minister” in what he said. He said: “We should get behind the Ministers in delivering proper facilities, proper support, proper analysis of what this issue is and what we need to do about it, but there will be a price tag.” I think it is important to say that and it is important to say to the public that we accept that and that this is the way to go. If we have a proper review of youth provision, what we are doing to protect our young people, including parenting, then there will be a price tag and it is one we should be willing to pay if it is a reasonable tag and it is going to be very difficult to argue that it is not. The third point I want to make is where the Deputy says in his proposition: “Ensuring school life recognises and promotes the value of all.” Now, this is the whole area of our schools and disaffection within schools and why children do not identify - some children, not all - but some children just do not identify with what is there. I will refer Members to the Strategic Plan and I remember making these comments then, but they are worth repeating. In the section on education it was dire - and I am sorry the poor Minister for Education, Sport and Culture has to hear this again, but it was dire. The heading was: “Maintain high quality education and skills” and then: “Why we must do this.” There were 4 bullet points and every single one was about the economy. We were treating our young people as inputs into the economy. There was not a word about values; there was not a word about integration in our society; there was not a word about what our society is about; what we are aiming to achieve with our lives collectively and as individuals and it was a very sad document. In the key indicators: “What are we going to measure? Examination results, higher education university participation rates, literacy rates, skills gap and employment levels of local residents.” Those are the key indicators in the Strategic Plan. We did not amend them. I just gave up. I did not try to amend this because it was so dire, but I just made some notes. Creativity, the amount of home grown music and sport that is available, crime rate, wellbeing, exit surveys, going longitudinally into the future so that we can look back and assess what our education service did for people and whether they were happy and how it could be improved; nothing. So, we are talking about the fundamental aims of our education system. They were inadequately expressed here and that is a collective failing about what we think we are doing for our young people when they go to school. It was very sad. We have to look at that again. We really have to grasp because this failure of understanding about what it is about being a child, what it is about growing up, what we are here to do is implicit in this failing around youth crime. It is connected; I am sure it is connected. Some Members may think this is a bit woolly and a bit too far. I do not think it is and I think it will have to be included in this forthcoming review. People have mentioned the Youth Justice Review. That is not enough. That is part of it. Youth Justice; find the issues around 15 and what you can do before and what you can do after are obviously very important, but that is in a way too late. As the Minister for Home Affairs pointed out when the child is in front of the Youth Court it is too late and what I am talking about is prevention. What we should be about is prevention and much more positively a good society where children feel that it is worthwhile being part of it and not being disaffected. So, please, can we go down the route of P.201 when we get there with a very short debate and just get on with reviewing provision, reviewing our attitudes to young people and really putting our money where our mouth is?

LUNCHEON ADJOURNMENT PROPOSED

The Greffier of the States (in the Chair):

Just before we adjourn the chairman of P.P.C. you were asked earlier in the day by Deputy Gorst to consider matters. Also there is a certain urgency to clarify the Public Business for this meeting and the next meeting as the Order Paper must go out this afternoon. Do you have anything?

The Connètable of St. Mary:

Thank you for the opportunity. There has indeed been some re-adjustment of business. Perhaps we could just run through my understanding. If I get anybody's notes wrong please let me know. Firstly, I am grateful to Deputy Trevor Pitman who has indicated the P.186 proposition would move to the 19th January - on "Blackberries." P.187 has been withdrawn so that shortens today's Order Paper. There is a request to move to the next sitting P.178, the Draft Tariff of Harbour Dues; and also to bring back at the next sitting the item that was moved over for continuation; that is P.141, the Draft Gambling Fees Regulations. Also for the next sitting to bring forward - although it cannot be heard until 9th December - P.200, the Jersey Appointments Commission: appointment of chairman and members lodged by the Chief Minister. So, that is, as I understand it, the Order Paper as it stands with amendments. On that basis and bearing in mind the propositions which are still to be debated in this session I would estimate that we will need the Friday sitting this week and that I think we will need the 4 days indicated next week. What I am considering is that we possibly do not need the Monday afternoon start because that was put in, if Members will remember, in anticipation of a potential large number of amendments to the Budget Statement and I believe that with only 3 we could probably do the business in the 4 days, Sir.

Deputy J.A. Martin:

Can I just ask for a point of clarification; did the Constable say that she does think we would need tomorrow to conclude? Could I make a proposition? I did know what had been pulled and I did not know that P.178 had been moved, but I do think if we concentrate our minds and make an effort to maybe sit late tonight we can get the work done today, otherwise we will be here all day tomorrow and I would like to make that a formal proposition that we do stay late and we finish the business on the Order Paper that is now down.

The Greffier of the States (in the Chair):

Well, I think from a practical point of view, Deputy, you are perfectly in order to make a proposition that the Assembly should sit late. I do not think you could tie it in with "finish the business" because that does depend on how long the debates take. When this was proposed on the last occasion it was suggested that there should be some finish time indicated rather than simply say: "Until 2.00 a.m. in the morning."

Deputy J.A. Martin:

Yes, well, I will test the mood of the House; I am prepared 6.30 p.m. or 7.00 p.m., but I would not expect anybody to go after that, but I would say 6.30 p.m. Being back at 2.15 p.m., given swift debates, we should be able to finish what is on the Order Paper. Tomorrow we will be back and we will be here all day. It is down to Members. An hour extra tonight or all day tomorrow; it is quite simple.

The Greffier of the States (in the Chair):

Well, there is quite a difference in timing, Deputy, but it is a matter for the rest. **[Laughter]** You are entitled to make that proposition. Is that proposition seconded? **[Seconded]** Those in favour, kindly show? Yes, those against? Very well, the Assembly will sit tonight until 6.30 p.m. Are there any other matters to raise on the arrangement of business?

Deputy I.J. Gorst:

I am rather loath to do it without the mover of the proposition being here, but I really do think that P.171 could be delayed until January. That is Parking and Lunches for Scrutiny. I am loath to ask the Assembly to make the decision without the mover being here to defend their position, so perhaps I should do it after lunch?

The Greffier of the States (in the Chair):

Yes, I do not think the Senator will mind me, in her absence, informing Members that she has given me notice she will withdraw paragraph (b) on parking, so the only part remaining are the lunches if she continues. So, perhaps you could raise it with her after lunch.

Senator P.F.C. Ozouf:

I suggest 2 other things. Does this mean that we are deciding not to sit tomorrow and if we did not complete any business then we would simply put these matters to the 8th? I know that is putting matters off, but I am conscious that we have been sitting a number of days this week and while a number of Members have said, this does mean that both Scrutiny and the Executive just cannot simply get on with their other duties and responsibilities [**Approbation**] and we are one meeting following the other. So, I would propose that we do not sit tomorrow. Secondly, Sir, I understand that the decision has been made, now perhaps it is too late to decide that we are going to start next week's sitting on Tuesday. The difficulty that the Minister for Treasury and Resources has is that he does normally do a reasonably good lengthy speech on financial matters and now with question time I am going to probably start what is effectively going to be probably a 50 minute speech and Members would expect me to address financial matters properly. I am going to be pushing up to the 1.00 p.m. barrier, so these are just practical issues. I thought we were going to have important debates that would start on the Tuesday morning, but can I move that we are not going to meet tomorrow and that we settle this issue now. I also think that Deputy Pitman should withdraw his proposition. It does not seem that it is going to get through and we are wasting time, if I may say.

Deputy J.A. Martin:

I am sorry if the Minister for Treasury and Resources was not listening. I did say until 6.30 p.m. and not tomorrow and that is what the House voted on and I was quite clear on that.

The Greffier of the States (in the Chair):

I am not sure it was entirely clear, but are Members content that we should not?

Deputy G.P. Southern:

If I may, I consider that P.19 - Jersey New Waterworks - my proposition on that, does contain an element of urgency in that the redundancies are due to be enacted by the end of this week. So, therefore I cannot wait until next week because that would become redundant.

The Greffier of the States (in the Chair):

Very well. Well, are Members content with that arrangement of business? I was going to ask you, Minister, whether you will be in a position to provide the additional information Members needed on P.141; it was slipped through by the chairman for next week - the Gambling Fees item. You will be in a position to provide some further reports to Members in time?

Senator A.J.H. Maclean:

Well, yes, Sir. In fact I was going to stand. Although I did speak to the chairman earlier on, I think in all fairness I would be more than happy to push that to the 19th January despite the fact I did say to her earlier on; the schedule is full and I think that would be helpful. While I am on my feet could I also just test with Members their understanding; there is proposition P.177 Draft Companies Amendment 4. It is some way down the agenda. It is always difficult to know exactly when it is going to come forward. It depends on the length of debates of the previous ones. I do have a family commitment immediately after lunch. I will be out of the Chamber for about an hour or so and I would just ask Members if it should come forward while in my absence whether they would be happy for it to drop down accordingly?

The Greffier of the States (in the Chair):

I am sure Members would be willing to do that, Deputy. Very well. Well, the Assembly stands adjourned until 2.15 p.m.

Senator P.F.C. Ozouf:

Have we decided not to sit tomorrow?

The Greffier of the States (in the Chair):

Yes, we have and the Assembly will sit until 6.30 p.m. this evening.

LUNCHEON ADJOURNMENT

PUBLIC BUSINESS -resumption

The Deputy Bailiff:

Now, the Assembly resumes debate on P.148 and I call on Deputy Shona Pitman.

1.2.12 Deputy S. Pitman:

I would first before I go into my speech just answer those Members who have said that they are surprised that Deputy Pitman and I have taken this stance on crime. Well, we both stood on a platform of social justice during our election campaigns and we both feel this is an issue of social justice. I am afraid I am going to have to make a long speech. Some respect, please; I listen to you.

The Deputy Bailiff:

Through the Chair and please continue.

Deputy S. Pitman:

Sorry, Sir, but I do suspect it is in vain because I have roughly estimated that this proposition will get around about 2 votes. But it is a long speech because I feel very strongly on this matter; a matter that is about justice for victims of serious crime; a matter I believe of great public importance. I feel that I can qualify all that I assert within this speech and without attempting to sound big-headed I will explain. I have worked, as many already know, as a youth worker, though not as a professional, for 4 years. I have studied the school citizenship and the youth service curriculums and researched the 2 methods of education, the result of which was a dissertation for a Masters Degree and a published report. I have worked with school children as a teaching assistant. I have studied human rights to a Masters Degree level, but I stress again I am not an expert and I have spoken to a large number of my St. Helier constituents during election canvassing about the subject of youth crime and facilities which was one of the 3 biggest issues that these people complained about during the 2 election campaigns. Of course my speech is long because it is a very serious subject that we are addressing; very serious issues like the failings of international conventions, crime prevention, justice and more money from the Treasury when departments are being pressurised to save and cut services. I would like firstly to touch on the subject of human rights as a number of Members have spoken about human rights and human rights conventions and how the States should and do adhere to them and use them as a guide to policy. Well, I would just like to outline our record on human rights in the last 6 weeks. This Government recently have allowed Jersey Water, of which we are a majority shareholder, to push on to the staff they are about to make redundant to aggregate their human rights. This Government took away from its employees the right to free collective bargaining; something that is practised throughout most modern democracies. This Government has just taken away the right for a significant number of the lowest paid people in Jersey to enjoy the traditional Christmas break. Members may ask that the last 2 issues are not human rights because they are not in the U.N. and E.U. (European Union) Conventions. Human rights are not just written in law, policies or conventions; they are also what we all determine through our values and morality as a society and individually. But what the U.N. and E.U. Conventions did include was the human rights of criminals, which is something I agree

with to some extent, and I say “some” as I bear in mind the many times that I have heard of the injustices delivered to the victims of crimes and criminals suing their victims because their rights have overridden that of their victim. I give 2 recent examples of this in Jersey. As was briefly mentioned by Deputy Pitman, 2 16 year-old women were recently taken to court accused of attacking a man on the head, while drunk, with their stiletto heels. They were acquitted because it was the first time they had been caught unlawfully intoxicated and it was a first offence. The young women, along with family members, left the court laughing while the victim was left with injuries to the head and no justice delivered. About a month ago a man was taken to court accused of sexual abuse against his partner’s 2 young girls. His punishment, he was ordered to attend an anger management course and Alcoholics Anonymous and because his partner suddenly decided that she wanted him back he went back to live with her and the girls he had abused. What rights did these girls have? What message are they hearing? Who do they go to? These cases are the sorts that the general public are sick of and it is the reason why people resort to vigilante action; that is when the law has failed to deliver justice. I am not one to purport to vigilantism, but I am not one to support that the threat of this for serious young criminals should cloud the decision to deliver an effective form of justice. Members have during this debate done this and I think it is a mistake. A balance has to be found as to how far the law goes to deliver justice and the risk of vigilantism. As much as I believe in the importance of establishing international human rights conventions to prevent human rights violations such as that of the Holocaust, which I believe led to the development and ratification of the U.N. Convention in 1948, I strongly believe that since the U.K.’s and Jersey’s introduction of the E.U. Convention, the rights of the perpetrators of crime have taken precedence in many cases over the rights of victims much more and before their implementation. Unfortunately it is the consequences - I believe, unintended - but I think that because it is a result of an international convention and the fact that most of us consider a 12 year-old to be a child, are reasons why Deputy Pitman’s proposition is so contentious. It is a very difficult subject to face and deal with and I commend the Deputy, not because he is my husband, but because he has brought the subject to open political fora and attempted to do something about it. But of course the corporate parents, Education, Home Affairs and Health and Social Services are doing something about it. However, they are undertaking review and we should wait for its publication next year to deal with the issue. Upon the recommendations of the Bull Report, published, I think it was about 6 years ago, the States formed a Youth Action Team. The team did not even have a single youth worker on it, but I admit departments have since learned that it was a necessity and there is now a professional youth worker on it. Yesterday I spoke of how this Assembly seriously lacks understanding and the value of youth work because it did not think it worthy of making it a statutory body in times of economic downturn because the law would have required the States to meet certain standards of service meaning more money. I add here that Deputy Green has said today that we need to invest more in our young people. Well, he voted against my proposition. If the States do not start resourcing the Youth Service to ensure it has a sufficient number of professionally trained youth workers to work with young offenders and vulnerable young people to ensure that such workers are allowed time to work with these offenders by employing and training staff to release them of more trivial tasks, and if the States continue to rely heavily on the Citizenship Programme to deliver every sort of education that relates to crime prevention then this review by the corporate parent is not going to deal with the serious crime that the Minister for Education, Sport and Culture and Assistant Minister for Health and Social Services think it will. As I have said before, the citizenship curriculum is already overburdened with subjects which leads to very little time being allocated to what teachers view as the important issues such as health, empowerment, self-esteem, bullying. Furthermore, young people tend to be able to work through and respond to such issues far more through informal education rather than formal education. This is a well documented fact. In acknowledging that the current Minister for Education, Sport and Culture’s more in-depth consideration for the Youth Service than the last Minister’s and the wealth of knowledge and commonsense that the Assistant Minister for Health and Social Services, Deputy Martin, applies to social issues, I say this. If this Assembly do not

tackle these problems and start taking the Youth Service seriously, which will cost money, the corporate parent's review will, in my opinion, significantly lack the strategies that should be formed through a multi-agency approach with an holistic view. The Youth Service has to take a prominent role in crime prevention strategies. In that holistic view I would include the naming of young people from 12 upwards for the serious crimes as prescribed by Deputy Pitman in his proposition. I would just like to add here that the proposition stipulates that the seriousness of crimes of robbery and assault would be determined by the courts and I know that most States Members regard the judiciary very highly. I have heard from several States Members that the public naming of serious criminals does not work. It is a well known fact both globally and historically that small communities have considerably lower crime levels than more populated areas. One of the main reasons for this is that those who have committed a crime are known by every member of the community so the criminal knows if they do it again there is a greater likelihood that they will be caught or they have been shamed into what they have done. Both scenarios tend to prevent further crime. I will now go over the crimes Deputy Pitman's proposition covers. Serious robbery and assault - the level of which I say again is determined by the courts - rape, manslaughter, murder. Not shoplifting, drunk and disorderly behaviour, harassment, vandalism or illegal drug supply. Let us just consider for a moment these serious crimes and the consequential human rights violations, and I do not just mean those that are written in the E.U. Convention on the victims because Members have not really gone through in depth about the victims and the consequences they have to suffer. The serious assault of an innocent person subsequently left with long term mental health issues or possible brain damage or permanent physical disability. Serious robbery; as we know elderly people and their homes are often targets for robbery. Such people often keep their lifesavings in their homes; they have sentimental family heirlooms such as wedding rings, *et cetera*, and they will have suffered a physical violent attack during that robbery. They will be left with feeling a loss of safety and some end up selling their homes to go into care or are put into care by their local authorities because they simply cannot cope with the trauma and insecurity. The rape of a young woman, a crime that was recently committed by a 15 year-old Jersey boy. That woman will have suffered humiliation, loss of dignity and self-confidence and long-term, if not permanent, mental health issues. Murder and manslaughter, the Bulger case, the boy perpetrators were sent to a youth prison unit and given the opportunity to study for their G.C.S.E.s (General Certificate of Secondary Education). The U.K. released them a few years ago with new identities. The parents of Jamie Bulger have since split because of the stress of loss and guilt they feel after these 2 boys tortured and then murdered their 2 year-old son. I recall watching a programme about the family in the aftermath of their loss and the father saying that these boys were rewarded for their crime. I think most people would agree with him. There are certainly criminals which do not deserve, and are beyond, education but because the crime is committed by a 12, 13, 14, 15 year-old sweet faced boy or girl they do not deserve punitive justice. Just asking such criminals why they did it and applying restorative justice is not always enough. Some simply do not care about the consequences of their crimes. In closing I ask this Assembly, when does a young offender take responsibility for their actions, for committing very serious crimes? When do we, the Government, force them to be accountable for their actions and prevent them from further crime? After all, was it not partly why last year the States voted for a 20 hours a week early years education for all, that part of the ethos behind that was to catch these young people while they are young. People in Jersey are calling for this Government and the judicial system to be tougher on crime. Let us do this. Deliver the justice to the people who deserve it because it is clear to me too many times it is not being delivered, and too many times young offenders are re-offending. While Deputy Martin has rightly pointed out that there are many reports saying that this kind of punitive measure does not work, she says this while our current approach to living justice is in many cases not working. Something drastic needs to happen. More punitive measures need to be taken alongside more restorative justice methods. Tough justice is what we need more of.

Deputy J.A. Hilton:

I have a point of order I believe. The Deputy referred to a case during her speech and I believe it is one of 3 cases that I am tracking through the courts. I believe she is talking about an assault that took place in August. From what I know, and I have quite a good knowledge of the 3 cases that I am following, she made reference to the case, that the perpetrators of the crime had got off scot-free. As far as I am aware, the only incident where 2 16 year-old girls attacked somebody with stiletto heels is yet to be sentenced and that sentencing is taking place next Thursday in the Royal Court.

The Deputy Bailiff:

What is the ruling you asked me to make on that point of order, Deputy?

Deputy J.A. Hilton:

Well I was concerned that the Deputy had made a comment about something, a serious crime, and the public might believe, because I think she has ... I do not know, I am just concerned that the message going out to the public was, this crime was committed and they had got off scot-free whereas they have not.

Deputy S. Pitman:

May I respond, the information that I have received has come from a very reliable source?

The Connétable of St. Mary:

I am wondering whether the point of order might be it has been a reference to a matter, which is *sub judice*?

The Deputy Bailiff:

Well if that is so it should have been raised rather earlier before the Deputy was speaking about it but on this occasion I am quite sure the courts will be able to manage to mete justice without paying attention to the States today. Deputy Higgins, I understand you wish to speak.

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

I will state from the beginning that I am totally opposed to this proposition for the same reasons that I voted against Senator Shenton's amendment. Why? Well, for many of the reasons that other speakers have put forward. Firstly, the lack of evidence that it works. Secondly, there is the fact that the courts already have the power to name and shame offenders if they think it necessary. I think rather than make generalisations about offences, as some Members have done, the courts know the specific facts of the cases they are trying and can obtain full background information on the offenders, and they are best placed to make a determination as to whether the convicted person should be named. Thirdly, because I do not believe for one minute that it is a solution to the deep-seated problems we face and indeed I believe it may exacerbate some of the problems we face. Fourthly, because I feel very strongly about the need for rehabilitation of offenders. I do not think anyone in the House or in the Island as a whole disputes the fact that those who commit crimes should be punished and that violent and unruly behaviour should be dealt with harshly. However, I would like to think that most people would agree that rehabilitation is also important, so that those who are convicted of crimes do not repeat their criminal behaviour and are integrated back into society. But how can anyone ever be rehabilitated back into society if their, possibly single, action is for ever known to all on the internet, and thrown back into their faces for ever and used against them. I am also opposed to naming and shaming because of the ostracism. Children may get into trouble and then other parents and other children will say: "Do not associate with them; do not play with them." They are going to become further isolated and they may then repeat their actions. There is also the danger of vigilantism as we talked about. There was a case in the United Kingdom where a mob attacked a person who was believed to be a paedophile. He was a

paediatrician but they could not spell. They did not know the difference. So there is a tremendous amount of ignorance out there and it can lead to wrong people being targeted or even people who have committed offences being targeted and attacked, and I think it is totally wrong. I believe that many of the problems that we face in the Island are down to the nature of our society, and therefore that anything that we do should not be a little sticking plaster or just to deal with one aspect of it. We need to take a holistic approach to the problem, a multi-agency approach. It is for that reason that I applaud what the Ministry for Home Affairs is doing and, I might also say, I also applaud Deputy T. Pitman for his proposition that we do have a working party that embraces everybody from within this House. Not just the Ministers but also Members and Scrutiny Panels who feel very, very strongly about trying to find some solutions to the problems we have. What are the problems we have? We have a society where, as one Member said: "There is a total abrogation on the part of some parents, of their responsibility to their children." We have high levels of divorce and marriage breakdown, which results in many children being brought up by single parent families. We have a high cost of living in Jersey, which means that parents, both parents, may have to go out to work, and if they are working to earn sufficient money to find reasonable accommodation for their family, that they are not there to look after their family and therefore the children may get into problems. We have high incidences of drug and alcohol abuse, of even physical and sexual abuse. We have situations where, for example ... Well you look at some of the problems we have. We get girls getting pregnant, so what do we do? We house them and we pay income support. I am not against that but the point is we end up with a dependency culture. We have again, children growing up in single parent families and we know that it could again lead to further problems. Now, unlike some Members here, I did study criminology at college and I can remember some of the things that I learnt. One of them was about the dramatisation of evil. The court... if anyone who has been into a court - hopefully on the right side looking at what goes on - you have imposing court buildings. You have procedures and a particular sort of process that is followed. The whole purpose is to dramatise the evil that you have done in a sense, to impress upon you that you have done wrong, do not do it again. But if we start naming and shaming, that dramatisation of evil is out there in the whole of society and they are constantly being reminded of what they have done, and I believe it is wrong. Therefore I believe we should oppose this proposition. We should get down to dealing with the problems on a multi-agency, totally bipartisan approach in this House. That is all I really want to say on the topic.

The Deputy Bailiff:

If no other Member wishes to speak then I will call on Deputy Trevor Pitman to reply.

1.2.14 Deputy T.M. Pitman:

I will not need half as long as I did when I started. I have no intention to go over all the points raised by Senator Shenton because he has obviously touched on many that I would have. I begin by thanking the last 2 speakers, Deputy Shona Pitman and Deputy Higgins because they have really reiterated what I believe at heart. We do need an holistic response; an holistic approach to tackling this and they both put it across very, very well indeed. So from there I would really like to thank everyone who spoke, even if they were wholly opposed to the proposition and the amendment. Even if I feel that some of those views were hugely detrimental to our ability to actively tackle serious youth offending, I am really pleased that they did raise these issues. I say this because as Deputy Southern highlighted, and 16 or 17 other Members knew because I copied them in at the very beginning back in August or September, I wanted to force this debate and I have achieved that so whether I get one vote, 2 votes, it has not been a waste and I am glad that other Members have noticed that. It has made us talk about this issue. So, in that respect I make no apologies for setting such a provocative proposition at age 12. I do have to flag up the issue that quite a number of speakers have inadvertently I suppose, or deliberately, I do not know, pitched much of their opposition to the proposition by giving the impression that the proposition or amendment would force the courts to name young people for serious crimes, all crimes as some people seemed to put

across. The proposition as it was set out keeps discretion with the courts. The proposition merely puts this on a more focused footing. Now we have heard much emotive talk, and understandably, about labelling and about being ostracised yet no recognition, and particularly I am sad about that with the corporate parent, about setting that against the realities of accountability, about ownership because these are serious crimes we are talking about. We are not talking about trivial issues. We are not talking about littering and the like. You know, murder, rape, serious assaults, *et cetera*. How much talk have we heard from the corporate parent about reviews and a commitment to services and early intervention? How much of these I wonder voted against Deputy Pitman's proposition to put their Youth Service on a much needed statutory footing. Now, before P.201/2009 in January, I am going to look that up because I think it is important that people who say these things as justifications, and I hope they mean them, I am sure perhaps they do, but they should be held to account. I have already ensured that we have had a good debate and I really hope that my proposition on forming a strategy group to explore the issues that Deputy Higgins has just talked about - the underlying issues - will be supported by the Council of Ministers and I look forward to seeing how they vote on that day, particularly the members of the corporate parent, who have talked so stridently about their commitment to early intervention. Without, I am afraid displaying any evidence regularly, any evidence that they are delivering or are even committed to deliver in a lot of areas. So I give those members of the corporate parent the assurance and the people listening, that I will not be letting this issue gather dust like so many issues do once we have debated them. I think it is the easy approach to do nothing, certainly coming from the background I do, to be suggestive that I was doing something to be populist I think is quite laughable, because it has hardly been easy for me to do this. This was brought after long and deep consideration. People can disagree with that as they may but please do not take the cheap shots at that because one thing I cannot be accused of is populism. You will certainly see that at the elections I have tried to follow through what it said in my manifesto, not said things to get elected perhaps, or that is the way it seems, and then they are forgotten very conveniently. I respect those Members who have spoken against the proposition or amendment due to a reasoned argument or moral perspective. Unfortunately many Members, and sadly a number of the key players who should be at the centre of putting this holistic programme forward, talked all too often from a position of not even understanding many of the issues. A glaring one, as I say, was the impact on third parties. There was no understanding there and I ask Deputies Reed, Martin, Noel and the Senator himself, please explain the difference of the impact on young people when a parent, a mother, father, uncle, a brother, an older brother are named for very serious crimes, murder, rape, robbery, *et cetera*. Explain the difference, as they have tried to use that as evidence against this proposition, saying it is somehow different with what we might do as a result of this. They have not responded because they cannot because it is an absurd argument, I am afraid. It really should not have been in that document of theirs, the comments. It seems I am afraid, that evidence as we have heard a lot, particularly from Deputy Martin, only counts sometimes. Again, we heard from Deputy Pryke about the Parish Hall Inquiry system, which I so praised in my speech because it is an excellent system and I do not think anyone in this House would dispute that. Unfortunately again, Deputy Pryke appears completely unaware of the realities of what the Parish Hall Inquiry system could do. They could not be dealing with murders and rapes and nor would they even attempt to do so. It is a false comparison, as the 2 simply do not fit. To close I would make quite clear the proposition has not been brought as a claimed panacea for all ills and it really gets me quite angry to hear that from some Members. This would be another tool among many. As Deputy Higgins touched on and the speaker before, we do need that much wider approach. Senator Le Marquand is quite right, that for a small hard core of offenders this would not have any impact. He is quite right and for them we obviously need much firmer measures. However, that is no justification to vote against the proposition because it will have an impact on many other young people who are not those hardened core of habitual serial offenders. I am nearly there. So we have heard that the corporate parents are committed to a serious review of the underlying causes of youth crime as I outlined in my request for P.201/2009. Although I may doubt the strength of that commitment I certainly welcome it and I

will be interested, as I say, to see which way they vote when I bring P.201/2009. I thank everyone again that has spoken. I do appreciate it and I do appreciate it is an emotive subject. The last thing I would like to say in asking Members to support this, we do need a mixed approach of the punitive and the restorative. I do understand both, and they are both essential. I would like Members, when they vote, to set that need against some of the unbalanced opposition that we have heard. We need to look at accountability and ownership because if you start young people out on that route in life, that road where there are no consequences for their actions, then that will definitely lead to more problems. Finally, as it seems I may need to reclaim my lefty-ism, in asking Members to take seriously P.201/2009 when it comes, and how they have all talked about holistic approach and early intervention and supporting it. I will end with a quote from Ernesto Guevara, and I may remind Members of this come the debate of P.201/2009. That is Che, for people who do not know: “Words without actions are meaningless.” I make the proposition.

The Deputy Bailiff:

The appel is called for. Members are invited to return to their seats to vote on the proposition in Projet 148/2009, as amended. The Greffier will open the voting.

| POUR: 2 | CONTRE: 39 | ABSTAIN: 0 |
|------------------------|-----------------------------|-------------------|
| Deputy S. Pitman (H) | Senator P.F. Routier | |
| Deputy T.M. Pitman (H) | Senator P.F.C. Ozouf | |
| | Senator F.E. Cohen | |
| | Senator J.L. Perchard | |
| | Senator A. Breckon | |
| | Senator S.C. Ferguson | |
| | Senator B.I. Le Marquand | |
| | Connétable of St. Ouen | |
| | 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 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 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 E.J. Noel (L) | |
| | Deputy M.R. Higgins (H) | |

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

The Deputy of St. Mary:

Can I raise a point of order under Standing Order 87 about the arrangement of the rest of today's business? I just heard what Deputy Southern said about the urgency of P.195/2009. Now, I know that in theory we should quite comfortably manage to get to P.195/2009 today but theory does not always translate into practice and I just think it would be wise if we were to be sure that we got to that before, for example, lunches at Scrutiny Panel meetings, and just made sure that we did debate P.195/2009 as I think it is only right. Well it is meaningless if we do not debate it today. So I would just like to propose that we take it either now or after P.168/2009 but I think I might as well propose to take it now.

The Deputy Bailiff:

The proposition is made to take P.195/2009 now. Is that seconded? **[Seconded]**

Deputy J.A. Martin:

Sir?

The Deputy Bailiff:

It is a pretty straightforward matter.

Deputy J.A. Martin:

Yes, I do not want a debate on it I just wanted to know ... Senator Ferguson was not in the House previous to lunch. Did we make a decision on P.171/2009, whether it could be held over? It might affect the way people vote, to bring this one forward.

Senator S.C. Ferguson:

I think that P.171, the second paragraph I am withdrawing at this point in time. All we are talking about is, in effect, sandwiches for working lunches during which States Members, Scrutiny Panels are there, which I think it should be very quick.

The Deputy Bailiff:

So you are not intending to withdraw the whole of P.171/2009?

Senator S.C. Ferguson:

I am withdrawing paragraph (b).

The Deputy Bailiff:

You are withdrawing paragraph (b)?

Senator S.C. Ferguson:

Which I think is the contentious part.

Deputy J.A. Martin:

But does that leave it open to any other Member to move it to the next...? It is because the Senator and myself will not agree that it is going to be a short debate. So I want to know if it is an urgent debate whether we have sandwiches at the Scrutiny or not?

The Deputy Bailiff:

As far as I understood it, the Senator is not withdrawing that part of her proposition.

Senator P.F.C. Ozouf:

There is a real issue with business. There is an important issue for States funding for pandemic flu. I realise that it is a Back-Bencher proposition and Back-Benchers have equal time of others but we must I think, continue with the order of business. I know that people are going to want to grandstand about Jersey Water, *et cetera*, but we have other government business that needs to be carried out.

Deputy I.J. Gorst:

Sorry, before lunch Members agreed that it was appropriate to delay a piece of Economic Development business so the Minister could attend a family function, as I understand it. This proposition of Deputy Southern calls upon the Minister for Economic Development and he will not be here for this if we take it now. I think it is only appropriate that we stay with our original decision, which can only mean that this stays in its place on the agenda.

The Deputy Bailiff:

If it is possible to avoid a debate on the order, I think that would be desirable. Can we move straight to a vote on it?

Connétable D.J. Murphy of Grouville:

I am sorry, Sir, can I just tell the House that, in fact, the Corporate Affairs Scrutiny Committee have called for a report on the Jersey Telecom and water company situation with regards to the members' workers being fired. So we are calling it in for Scrutiny. I do not know if that will make any difference to the P.195/2009 proposition.

The Deputy Bailiff:

I am not clear, Connétable, what you are calling in. The Greffier advised me that Scrutiny are going to be examining the issues of redundancy.

The Connétable of Grouville:

That's right, Sir, yes, the redundancy issues.

The Deputy Bailiff:

Now, the proposition is that we take next P.195/2009, the Jersey New Waterworks Company Limited report of Jersey Competition Regulatory Authority on outsourcing, in the name of Deputy Southern. Will all those Members in favour of taking that proposition next kindly show; all those against. Then, the proposition is defeated in a standing vote.

2. Planning and Building By-laws: provision of disabled toilets/changing rooms (P.158/2009)

The Deputy Bailiff:

We now move to P.168/2009, the Planning and Building By-laws: provision of disabled toilets and changing rooms. There is an amendment in the name of the Minister for Planning and Environment. The proposition is in the name of Deputy Green and I ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion to request the Minister for Planning and Environment to amend the Building Bye-laws and Planning policies as appropriate to prepare: planning guidance and regulations to ensure all new large or significant renovation projects of commercial, public buildings or new public toilets include a "Changing Places" disabled toilet facility.

2.1 Deputy A.K.F. Green:

I will keep this brief because so many Members have indicated their support that I will just cover the bare essentials. I would like to start by thanking the members of the Speak Out group at Jersey Employment Trust and the local branch of Mencap, for their support and help and for reminding me how difficult it is for them as carers of disabled people to manage to look after people and to toilet them, if I can put it that way. I say remind me because I am in a fortunate position in as much as a few years ago my son had a really bad accident and was one of these people that would have benefited from changing places, but has made such a good recovery that we do not need to use that. But from personal experience I know what it is like to have to plan your trips around where there might be a suitable toilet or if you are handling a large child or small adult, having to change them in the boot of the car, on the park bench, in the corner of cafés and so on and it is totally unacceptable. So I say they did remind me what it was like. Before I move into the proposition properly I would also like to ask the Minister for Health and Social Services, just to review the position of accessible toilets at the General Hospital, which are inadequate because when a disabled person goes into the toilet in a wheelchair, they cannot lock the toilet. Now that is not the fault of the Minister, indeed it is not the fault of any of us. We do not need to use these facilities but it just demonstrates how carers and disabled people just put up and make do, and it is these people that this proposition is about. It is about improving the quality of life for people who, as I say, just make do. People with physical or profound and/or multiple learning difficulties who cannot use standard disabled toilets, or accessible toilets as we really should call them. Some, although not all often need the support of one or 2 carers to use the toilet or to have their incontinence pads changed. Others just need the appropriate equipment to facilitate their own toileting. Standard accessible toilets do not provide the right facilities. They do not provide facilities such as changing benches or hoists, they are often or mostly too small to accommodate more than one person and the person with disabilities is put at risk and the families are forced to risk their own health and safety by changing their son, their grown up son or daughter, on the toilet floor. This is dangerous, unhygienic and undignified. Imagine how it must feel to lie on a cold, dirty floor that often other people have urinated over. To make matters worse, the existing inadequate accessible toilets are not available, or many of them are not, on the evenings or Sundays. For example, the central market toilets are closed on Thursday afternoons, closed on Sundays, closed in the evenings. Because of the inadequate provision outings are often limited to a few short hours or simply do not happen at all. Some profoundly disabled people have to suffer the indignity of asking others to assist them, as I say, because of the absence of adequate facilities. Changing places is a concept developed by Mencap, they are accessible toilets which have height adjustable changing benches, a hoist, plenty of space and are in fact about twice the size of a normal disabled or accessible toilet. They are approximately 7 square metres and the extra cost of a new-build for the space and the equipment, the extra cost of providing this facility, is about £4,000. I urge Members to support the changing places concept, the concept of changing places being installed in all new public buildings and new public toilets. We should eventually aim to include shopping centres, sports and arts venues, the bus station, the airport and the harbour. If the Assembly agrees, the Minister for Planning and Environment will develop Regulations to ensure that the renovation projects or new builds of public buildings and new toilets will be provided for under regulation. These Regulations are not retrospective. We have tried to be very sensible about this so they only apply to new-builds or significant renovations. Members have it within their powers today to improve the quality of life for many of the disabled people and their carers. Let us give these disadvantaged people an early Christmas present, something to look forward to in the New Year. I make the proposition.

The Deputy Bailiff:

Is the proposition seconded? [**Seconded**] There is an amendment in the name of the Minister for Planning and Environment and I ask the Greffier to read the amendment.

2.2 Planning and Building By-laws: provision of disabled toilets/changing rooms (P.168/2009) – amendment (P.168/2009 (Amd.))

The Greffier of the States:

Page 2 (a) delete the word “commercial”; (b) for the words “or new” substitute the words “with a ground floor of at least 700 square metres and all new.”

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

I have brought this amendment in response to the important issues highlighted in Deputy Green’s proposition. In my amendment it is my intention to require a changing places facility in all buildings of a certain size that are open to the public. My amendment suggests removing the word “commercial” from the proposition as I do not think it is equitable to require all commercial buildings to provide such facilities when they are not accessible to the general public. I also feel it would be helpful to define the size of building to which this would apply so that certainty is provided to the development industry. I am suggesting that this change should apply to major developments open to the public with a ground floor area of at least 700 square metres and to all new public lavatories. This would avoid unreasonable demands being placed on smaller scale schemes and would mean that larger schemes are being asked to set aside only 1 per cent or less of their ground floor to provide such a facility. As is clear in my amendment, I accept the main principle of the proposition brought by Deputy Green and commend it, but I feel that further clarity is required as to when such a facility would be required. I am supportive of the view that people, regardless of disability, age or gender, should be able to gain access to buildings and use the facilities provided in buildings both as visitors and as people who live or work in them. To this end the current building by-laws are quite prescriptive with regard to the design of buildings to ensure all new buildings and those undergoing renovation make reasonable provision for disabled persons. The main proposition is seeking to require a changing places facility which comprises a room of some 7 square metres in floor area which has a centrally placed lavatory suitable for use by disabled people, a height adjustable adult size changing bench and a tracking hoist system to be provided in all large buildings which are newly erected or renovated. As I have said, I have chosen the 700 square metre floor area as a threshold as I believe that the floor area recommended for a changing places facility is such that it would impose unreasonable demands in terms of lost floor space if such a facility was to be required in all new commercial buildings. For example, many shops have a relatively small floor area, the proposition calls for the facility to be installed in large buildings. I also believe that privately-owned and run commercial buildings cannot be forced to make their facilities available to the general public, for instance a new office development for a private company. I agree that the examples the Deputy uses in his proposition, such as the harbour, the airport, the bus station and shopping centres are developments best suited to this sort of facility. I therefore suggest that public developments, i.e. those open to the public, should be the focus and the amendment clarifies this. I hope the House agrees that this amendment provides clarity to the development industry on when such facilities would be required and I therefore propose the amendment.

The Deputy Bailiff:

Is the amendment seconded? [**Seconded**] Deputy Green.

2.2.2 Deputy A.K.F. Green:

If it helps the Assembly, I am quite happy with the amendment because the Minister has brought skills to it that I could not bring. I was not able to say what size building it would be. I am quite happy that it meets the criteria that I am trying to achieve and I hope that helps.

2.2.3 Senator P.F. Routier:

I would firstly like to thank Deputy Green for progressing this. As he said in his opening comments this is part of a national campaign from Mencap. Members will be aware that I am the

president of the local branch of Mencap. It is a piece of work which has been progressed by Speak Out, which is a group of people with disabilities who are making sure that their voice is being heard and it is being heard effectively right now, and that has been reflected within this Chamber. The amendments which the Minister for Planning and Environment has brought forward, I would just ask ... I did not pick it up in his comments about whether it would ... the amendment itself talks about all new, it does not go on to talk about refurbished places. I know in the report it does but I was just a little bit concerned the wording of the amendment itself does not go on to mention refurbished places. So I would like him just to confirm that for avoidance of doubt, that that would also be included, any major refurbishments. I urge Members to support this. If anybody would just put themselves in the place of somebody who has a disability who does need to have a reasonable sized toilet in town, in public places, to think about that and it is vitally important that we do provide this facility for people with disabilities.

2.2.4 Deputy A.T. Dupre:

I am supporting Deputy Green's proposition. I was one of the very few Members who attended his presentation last week and having seen just how difficult it is for carers or families to assist their patients to facilitate toilets on the Island, I can only hope that we will all support this proposition wholeheartedly. Thank you.

The Deputy Bailiff:

Can I remind Members we are talking on the amendment at the moment? Deputy De Sousa.

2.2.5 Deputy D.J. De Sousa:

I, like Senator Routier, would like to commend the Minister for clarifying on size of this. I will be backing the main proposition and the amendment. I commend Deputy Green for bringing this to the House in the first place. Everybody has a right to dignity whether we have a disability or not. I have many, many years experience in care work and have had to endeavour to try and carry out this on several occasions, so it is a vital piece of work that needs to be done. I have also been contacted by several members of the public on this issue asking if I would support this. Deputy Green also raised the issue at a recent Parish Assembly and I hope that Members will both support the amendment and the proposition.

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

I welcome this amendment, I welcome the original proposition. I just want to state that, with reference to the previous speaker talking about a recent Parish Assembly where the Parish of St. Helier brought a property adjoining the existing toilets in Conway Street, I could not get ratification or confirmation that the new proposed toilets that will be built there will be on the ground floor as there was a possibility that they might be considering putting the toilets in the basement so they could have extra retail or other form of commercial to offset some of the cost. I think that this is a bad option and I just wanted to bring it up today to make sure that the Minister for Planning and Environment is fully aware, and the Constable of St. Helier, that I totally oppose any such suggestion and I hope that the Constable would reaffirm today that any new development on this new site will be for all the toilets on the ground floor and not on any subsequent floors, even with this one going through being a disabled on the ground floor. Thank you.

2.2.7 The Deputy of St. John:

Given my background in fitting these units I could never understand when we were fitting units in so-called disabled spaces that had been designed by the architects how tight they were, and on many occasions obviously I could realise that a wheelchair was not going to fit alongside and the added space that would be required if somebody is having to be laid on the floor was just not appropriate. I am so pleased that yet again we are moving forward in the right direction but unfortunately these things are taking forever. I can recall some years ago when we renovated this building to put the wheelchair ramps in through the main door to get people into this building. We

seem to have an uphill struggle continually and I sincerely hope that the area being proposed is adequate, is really adequate, because sometimes if you have got a wheelchair in there as well as a person laying on the floor, it is ... and clothes that have to come off if it is in the middle of winter, it is an area that you need ... you need quite a big area. So I sincerely hope the area being proposed is really adequate. On top of that I hope that we will see these facilities open 24/7 in as many places as possible because historically we have been seeing - because of vandalism - not so much the disabled units but the general toilet facilities around the town and over all the Island, in fact, close earlier, say, 10.00 p.m., 11.00 p.m. when there is still many, many people around. So I do have ... I do commend Deputy Green in bringing this forward but I sincerely hope that we will see renovated properties, and I think I did see the Minister nodding his head that that would be the case, fall into the frame. I sincerely hope all Members support this.

The Deputy Bailiff:

Can I just remind Members we are talking about the amendment. I only say that because Members will have the opportunity to say all the same things again when we talk about the proposition when we come back to it, and I hope that would be something to be avoided. I call on the Deputy of St. Mary.

2.2.8 The Deputy of St. Mary:

I will confine my remarks to the amendment. On the same lines as Senator Routier, I also seek clarification with the wording of the amendment. It is to delete the word “commercial” and in commenting on that the Minister for Planning and Environment said that his intention was that buildings open to the public over 700 square metres ground floor would have a changing places toilet. But there is still an ambiguity there and I would like him to clear this up. He says that privately owned buildings that are not open to the public would not be required to have this kind of toilet. Under his wording will a new supermarket, stand-alone - not a shopping centre as he mentioned, but a stand-alone large building - which is effectively open to the public, would it be obligated to have one of these facilities? He has not made it clear. People are shaking but it was not clear, it was ambiguous. I just want it cleared up.

2.2.9 The Deputy of St. Martin:

I will speak and only speak once. I just want to get in to compliment Deputy Green and also the Minister but I hope that this will be a kick-start for other areas where there are disabled entrances like ramps and hand rails. I can remember the difficulty - and by pure coincidence I can see a gentleman up in the gallery - that we had to ensure that we had hand rails and a ramp at the other side of the entrance. It should have been part and parcel of planning. I would ask the Minister to bear this in mind every time any public building goes up that there are sufficient ramps and hand rails for the general public, just not toilets. Certainly toilets are welcome but there are other issues which affect people who have difficulty in getting up stairs and ramps. So, again, I commend everybody and hope we will not spend too much time on this proposition.

The Deputy Bailiff:

I call on the Minister to reply.

2.2.10 Senator F.E. Cohen:

I thank all those Members who have spoken. With regard to the point raised by Senator Routier, I can confirm that refurbishment is included in the intention of my amendment so any building that meets the test of size and public access, whether it is new or refurbished, would be expected to include a changing places facility. I note the comments made by Deputy Fox in relation to Conway Street and we will consider them should an application be forthcoming in relation to that particular site. I thank the Deputy of St. John for his plumbing expertise and it was an important point that he makes because it does make clear to us that the facilities presently are inadequate. However, as far as I understand it, the 7 square metre size recommended in the Deputy’s proposition is the standard

so I presume that is an adequate standard. The Deputy of St. Mary raised a particular point in relation to privately or publicly owned buildings and I can confirm that this applies whether the building is privately or publicly owned. It is just that the test is whether it is open to the public. So that means a supermarket, assuming it is over 700 square metres, would be expected to include a changing places facility. With regard to the point made by the Deputy of St. Martin, we are not specifically dealing here with ramps and hand rails but I do take the point, they are already covered by the building regulations but if there is any specific area in relation to hand rails and ramps that he would like me to review, I am more than happy to do so. I hope that has covered all the points and I propose the amendment.

The Deputy Bailiff:

The amendment is proposed. All Members in favour, kindly show? Those against? The amendment is adopted. We now return to the main proposition as amended. Does any Member wish to speak?

2.3 Planning and Building By-laws: provision of disabled toilets/changing rooms (P.168/2009) - as amended

2.3.1 Connétable A.S. Crowcroft of St. Helier:

I need to respond to Deputy Fox who asked this particular query about whether these facilities could be located anywhere else but on the ground floor of a facility. I would suggest that the answer is probably no. I think disabled toilets must be on the ground floor if they are to be accessible by their users. I would certainly not want to be a party for any scheme proposed by St. Helier in the town which did not meet the most exacting standards of disabled access. For that reason I am very grateful to Deputy Green for bringing this matter forward so quickly. I was at the presentation he arranged last week or the week before. States Members were outnumbered, I think, 3 or 4 to one by the members of Mencap and Speak Out who attended. I hope that any concern they had on the day that they were not going to get the support of States Members will be very quickly removed by a unanimous vote by this House. I think it is an excellent initiative. For my part I hope that St. Helier, possibly in a refurbishment at the back of the Town Hall will be able to provide the first changing places toilet in the Island. I would certainly be very proud if that was the case. Thank you.

2.3.2 Deputy E.J. Noel of St. Lawrence:

I would just like to reply on behalf of the Health and Social Services Ministerial team to Deputy Green's request that we look into providing such facilities at Health and Social Services properties. We are more than willing to do so.

The Deputy Bailiff:

Does any other Member wish to speak? I call upon Deputy Green to reply.

2.3.3 Deputy A.K.F. Green:

I do not think there is much more to say, except to thank everyone who has spoken and to thank Speak Out again for bringing this matter to my attention. While I do not think it will be the solution to our tourism problems, once we have got our first changing places of course we will be able to use the logo on our tourism site, and that will attract some people. I will tell you a story. Nottingham has already adopted the changing places in a big way and they have a number of them. This is a true story from Nottingham where a restaurateur received a phone call asking him if he had a changing place in his establishment to which he replied: "Yes." With that became an immediate booking for 90 people. When the 90 people turned up, 89 were abled people - if I can put it that way - one required the use of the changing place but the other 89 would not have gone to that restaurant unless there were facilities for that one person. That is inclusion, that is what we are after. Please vote for this. I call for the appel, Sir.

The Deputy Bailiff:

The appel is called for on the projet in relation to the provision of disabled toilets and changing rooms as amended. All those Members wishing to vote are invited to return to the Chamber, and I invite the Greffier to open the voting.

| POUR: 40 | | CONTRE: 0 | | ABSTAIN: 0 |
|-----------------------------|--|------------------|--|-------------------|
| Senator P.F. Routier | | | | |
| Senator P.F.C. Ozouf | | | | |
| Senator B.E. Shenton | | | | |
| Senator F.E. Cohen | | | | |
| Senator J.L. Perchard | | | | |
| Senator A. Breckon | | | | |
| Senator S.C. Ferguson | | | | |
| Senator B.I. Le Marquand | | | | |
| 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. John | | | | |
| Connétable of St. Saviour | | | | |
| Connétable of St. Clement | | | | |
| Connétable of St. Lawrence | | | | |
| Deputy R.C. Duhamel (S) | | | | |
| Deputy of St. Martin | | | | |
| 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 S. Pitman (H) | | | | |
| Deputy K.C. Lewis (S) | | | | |
| Deputy I.J. Gorst (C) | | | | |
| Deputy of St. John | | | | |
| Deputy A.E. Jeune (B) | | | | |
| Deputy T.M. Pitman (H) | | | | |
| Deputy A.T. Dupré (C) | | | | |
| Deputy E.J. Noel (L) | | | | |
| Deputy M.R. Higgins (H) | | | | |
| Deputy A.K.F. Green (H) | | | | |
| Deputy D. De Sousa (H) | | | | |
| Deputy J.M. Maçon (S) | | | | |

3. Provision of States Members' lunches at certain meetings and car parking (P.171/2009)**The Deputy Bailiff:**

We come next to projet 171, provision of States Members' lunches at certain meetings and car parking, in the name of Senator Ferguson. I ask the Greffier to read paragraph (a) of the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion (a) to refer to their Act dated 24th September 2009 in which they agreed that the provision of free lunches for Members on States meeting days and during scrutiny panel, P.A.C. (Public Accounts Committee) and P.P.C. meetings should be ceased from 1st January 2010, and to vary that decision and agree that the provision of free lunches should continue for scrutiny panels, P.A.C. and P.P.C. with the cost being met from the budget of the States Assembly and its services as agreed in the Annual Business Plan 2010.

3.1 Senator S.C. Ferguson:

Thank you ...

Deputy C.F. Labey of Grouville:

I am very, very sorry to interrupt Senator Ferguson but I really do feel that debating items such as this with such a huge agenda does this Assembly absolutely not good whatsoever. I would ask the Senator if she would consider waiting until the New Year until we have less on the Order Paper or withdrawing it or putting it to the last item.

The Deputy Bailiff:

The Senator has already been asked to do that and said she did not wish to do so but we will ask you again, Senator. Do you wish to proceed?

Senator S.C. Ferguson:

Well, this has been sort of bumbling around in the background for some sittings. It should not take probably 5 minutes. It is a small matter of housekeeping for ...

The Deputy Bailiff:

The question is whether you wish to withdraw it. You do not, you wish to continue. If you do then please propose it.

Senator S.C. Ferguson:

Fine, I will withdraw it, Sir, but I would like it the first item of business the first sitting in January. **[Approbation]** Then I can take as long as I like.

The Deputy Bailiff:

Very well, the item is withdrawn until the first sitting in January. Members may be aware from recent publicity that there is a case pending in the court over which I am presiding in relation to the substance of the next matter so I will now withdraw and the Greffier will take over the seat.

4. H1N1 Influenza Pandemic Funding: expenditure approval (P.174/2009)

The Greffier of the States (in the Chair):

Very well, the next matter is the proposition from the Minister for Treasury and Resources relating to H1N1 influenza. Minister, there is an amendment in your name. Did you wish to ask the Assembly if Members are content for the Greffier to read the proposition as amended?

Senator P.F.C. Ozouf:

With Members' leave, yes.

The Greffier of the States (in the Chair):

Are Members content that the proposition should be read as amended by the Minister's own amendment which changes the figures? Very well, I will ask the Greffier to read the proposition as amended.

The Assistant Greffier of the States:

The States are asked to decide whether they are of opinion, in accordance with Articles 16(3) and 11(8) of the Public Finances (Jersey) Law 2005, to amend the expenditure approval for 2009 approved by the States on 23rd September 2008 in respect of the Treasury and Resources Department (a) to permit the withdrawal of up to an additional £1,725,000, from the consolidated fund in accordance with Article 16(3), to be reallocated for the net revenue expenditure of a number of departments in order to fund costs associated with preparation and containment of a H1N1 influenza pandemic and that the funding should only be made available to departments from the allocation to the Treasury and Resources Department by public Ministerial Decision of the Minister for Treasury and Resources based on evidence of the need to incur these additional costs in order to prepare for and contain H1N1 influenza; (b) to permit the withdrawal of up to an additional £3,822,000 from the consolidated fund in accordance with Article 11(8), to be reallocated for the net revenue expenditure of a number of departments in order to fund costs associated with managing the consequences of a wave of illness caused by H1N1 influenza and that the funding should only be made available to departments from the allocation to the Treasury and Resources Department by public ministerial decision of the Minister for Treasury and Resources based on evidence of the need to incur these costs to manage the consequences of an H1N1 pandemic influenza.

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

I am grateful for the Assistant Greffier's long explanation of the proposition because I think it really explains what the matter is before Members, so I will be brief in my proposal. I should say that I think this is the first time that the Assembly has ever considered a matter under Article 16(3) of the Public Finances (Jersey) Law. Members will be familiar with Article 11(8) but they might not have been familiar with Article 16(3), which is the provision that the Minister for Treasury and Resources has when satisfied that there is an immediate threat to the safety of all or any inhabitants of the Island and immediate expenditure is required and it cannot be met from existing expenditure approval. Therefore, where there is insufficient time for the Assembly, with a 6-week lodging period, to do an Article 11(8) the only option where the Treasury is convinced or is persuaded that there is no alternative form of revenue under Ministerial decision an immediate allocation can be made. That is important because no department can spend any money unless it has the budget to do so and unless I was to be given persuasive reasons to do an allocation under Article 16, which this Assembly still has to ratify, then the department would effectively be acting outside the Law by spending money that they did not have. I should say, as every proposition under Article 11(8), or indeed 16, that Ministers for Treasury and Resources do not tend to like these kind of propositions and they happen because at the moment there is no contingency held by the Treasury or within most departments that can deal with unforeseen matters. I hope that we are going to be able to deal with this issue because there are always contingencies that arise when we review the whole arrangements for public finances and move to a 3-year cash limit system and a contingency. I hope that I would not have to bring such propositions in future. But having been persuaded that the department requesting funds does not have them, and there is an immediate need and that the money should be spent, that is why the Assembly is considering this proposition today. I think that all Members would understand that the Health and Social Services Department, with all of the existing debates that we have had on Health expenditure, does not simply have the additional money in order to pay for what is effectively an emergency. In September 2009 Members will recall that I advised the Assembly that the pandemic flu co-ordinating group had advised me that they expected a major wave of illness due to pandemic influenza or what is currently known as swine flu was expected this autumn or, indeed, over winter. They advised, moreover, that immediate action was required to reduce the impact on Islanders and that preparations need to be made in order to allow the general hospital to be ready for an expanded and expected intake of potential patients. The group advised me that robust escalation plans for community and hospital care were essential to manage a major pandemic flu wave and particularly the hospital needed to be equipped to deal with patients that were in the greatest need. At the time the group estimated the

total costs of managing the pandemic, excluding the figures already discussed by the Assembly from Social Security, from the Health Insurance Fund of approximately £1.7 million, that those additional costs over and above that could reach £5.5 million. They are split in 2 ways now by the amended proposition, as has been explained; the 2 figures that the Assistant Greffier read out. The first figure is the total of the figures that have already been approved under the emergency provisions. They were clearly set out in the proposition and if Members want to see the breakdown of that first item of part (a) it is set out in Appendix 1 of the original proposition, and there has been the addition of £378,000 that has become necessary since the proposition was originally lodged in order to deal with the vaccination programme. The second amount of money is set out in Appendix 1 which is effectively the contingency amount of money which may be required in the event that there is an escalation of the wave and additional hospital visits, additional hospital beds and other arrangements for recovering from a surge of activity in the hospital will be required. I am advised - this is the Minister for Health and Social Services - by a flu pandemic co-ordinating group which is chaired by the Chief Executive of the States and which is served by the Medical Officer of Health and the Health and Social Services Acting Chief Officer. I have to say to Members that it is too early to say definitively whether or not that additional part (b) proposition is required. It seems that the preventative arrangements that have been made possible under the first part of the proposition have certainly reduced the likelihood of a wave. However, I have no alternative option but to ask the Assembly to set the contingency monies aside in the event that the expenditure is required. There will be a further amendment by the P.A.C. on the issue of dealing with whether or not this is Health trying to use money for other areas or whether or not the money is just simply being used for Health and Social Services pandemic flu costs. I, for my part, can assure Members that the Treasury is difficult about releasing money. It is a contingency and I will be strict and tough on the Health and Social Services Department and require financial officers to warrant and to prove that this money is simply being used for pandemic flu. Part (a) has been spent and has been required. I have to say that to Members. If they do not approve it then Health are going to have to absorb it and I do not know how they would. Part (b) is a contingency that will only be released in the event that the costs are actually required, of which, as we stand here today, certainly I do not think the total costs will be required if Health continue to be successful in preventing a major wave or a major outbreak or indeed that the actual outbreak itself is far less serious in terms of its seriousness. This proposition ... normally propositions of Article 11(8) are supported by the Minister requesting and I know that the Assistant Minister for Health and Social Services, who jointly is an Assistant Minister for Treasury and Resources, is ready to spring into action for any Members questions in terms of the detail of the figures. I move the proposition.

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

4.2 H1N1 Influenza Pandemic Funding: expenditure approval (P.174/2009) – amendment (P.174/2009 (Amd.))

The Greffier of the States (in the Chair):

Very well, there is, as the Minister has alluded to, an amendment in the name of the Public Accounts Committee and I will ask the Greffier to read the amendment.

The Assistant Greffier of the States:

Page 2, after paragraph (b), insert the following new paragraphs “(c) to request the Minister for Treasury and Resources to forward a detailed and comprehensive breakdown to the Public Accounts Committee (P.A.C.) as soon as practicable detailing exactly how the funds were spent in order to confirm that funds were used only for pandemic-specific costs, and to provide written confirmation to the P.A.C. that the States Treasurer will monitor and verify all spending; (d) to agree that the ability to withdraw funds under paragraph (b) will expire on 31st December 2009 and shall not be carried forward.”

4.2.1 Senator B.E. Shenton (Chairman, Public Accounts Committee):

I think it is fair to say that the Public Accounts Committee has grave concerns about the level of spending on the pandemic. I very much doubt there is anywhere else in the whole world that has spent as much money on a per person basis than we have in Jersey. When I took over as Health Minister I asked to review the pandemic proposal and review the purchase of 100,000 batches of Tamiflu so that we could cover the whole Island. Unfortunately the Tamiflu had already been bought so I ended up bringing a proposition to get the money for the Tamiflu simply because it had already been purchased. I then brought proposition P.67/2008, which was money to pay for the vaccine and all other associated costs to do with the pandemic. This proposition was passed by the House. So Tamiflu has all been paid for, the vaccine has already been paid for by this House and associated costs as well. The States voted under this proposition for £1,230,000 which has been given to the department for the vaccine and to agree an additional allocation of £590,000 should a pandemic break out. May I just ask the Minister for Treasury and Resources, when he speaks on this, in that proposition for the £1,230,000 it was for the purchase of the vaccine, protective clothing for staff and 11 non-invasive ventilators; in the breakdown he has given us for the additional money we are paying for additional protective clothing for staff, which we have already voted funds for, and 10 non-invasive ventilators. So I would like to know whether we now have 21 non-invasive ventilators at the hospital or whether there is a little bit of double-counting going on here. Also the breakdown for the £1.7 million is given in some detail. There is no breakdown at all - it is the back of a fag packet calculation - for the additional monies. Dr. Jones in today's paper - there is a court case going on with regard to a mother who does not want to give her child the vaccine and a father who does - says that there is no urgency because the flu pandemic seems to be dying down. Certainly the response in Jersey or the number of cases in Jersey compares with elsewhere in the world and I think it is fairly certain to say that the incidence of swine flu is dying down. But if you read the proposition carefully it is in accordance with Articles 16(3) and 11(8) of the Public Finances (Jersey) Law to amend the expenditure approval for 2009. For 2009. They want an additional - I cannot remember the exact amount - about £4 million, £3.8 million, in case it escalates over the next 3 weeks because then we are into 2010. That is why the Public Accounts Committee has brought an amendment to say that the funds under this proposition will be drawn down on 31st December 2009 and not carried forward. One of the reasons the Public Accounts Committee is so concerned is because the money has already been voted by this House. One of the weaknesses of the Public Finances (Jersey) Law is once money is allocated to the department they can spend it wherever they wish. Certainly over the years at Health, if you look back, Social Services suffered because they were used as a balancing pot when medical costs got too high. So firstly I would ask the Minister for Treasury and Resources whether he is willing to take the 2 amounts in separate votes and, secondly, I would ask the whole House to support the Public Accounts Committee on this. I would also mention to the House that we have asked the Comptroller and Auditor General to look into the pandemic funding because compared to other jurisdictions it is completely and utterly out of hand. I ask for the House's support. Thank you.

The Greffier of the States (in the Chair):

Is the amendment seconded? **[Seconded]** Does any Member wish to speak on the amendment?
Deputy Noel.

4.2.2 Deputy E.J. Noel:

I welcome P.A.C.'s interest in reviewing all subsequent expenditure relating to this proposition and I am confident that all allocations to the Health and Social Services Department will be appropriate and represent good value for money. Therefore the Ministerial team at H.S.S.D. (Health and Social Services Department) accept P.A.C.'s additional (c) paragraph. With regard to the amendment to cease funding availability at the end of this current year, which is paragraph (d), I would express a note of caution. To date we have done well. We can be proud of the achievements but pandemics are unpredictable and we must plan for the worst and hope for the best. No one can guarantee that a further outbreak will not occur in the New Year. These funds are needed and the way the

technicalities are they are needed into these 2009 monies and they will be carried forward. You have my personal undertaking, and I know the Minister for Treasury and Resources is of the same view, that no monies will be released from Treasury to H.S.S. without adequate proof being presented to us that the funds are required for the specific purpose that we have been given. I also welcome the fact that we will have the C.A.G. (Comptroller and Auditor General) reviewing this and I can say, with some confidence, being involved in the ground work that has taken place over the last few months. I support P.A.C.'s paragraph (c) but urge Members to vote against paragraph (d).

4.2.3 Deputy D.J. De Sousa:

The minute I heard about this proposition alarm bells began to ring for me and I have just spoken to a previous Minister for Health and Social Services outside in the coffee room and said: "But I understand this money has already been put in place for this year's funding for the pandemic." It also says in the proposition to amend the expenditure for 2009. We have less than a month left of 2009. I do not see where this amount of money comes into the space of about 3 weeks left of this year. If we are talking about next year then next year's funding needs to be dealt with but it needs to be dealt with under 2010 not 2009. I will be supporting the amendment and I have real concerns about this, and I hope everybody else can see what is happening.

4.2.4 Senator P.F.C. Ozouf:

First of all, can I echo the words of Deputy Noel by saying that we welcome the challenge and the scrutiny by the Public Accounts Committee on implementation of officer advice. Certainly I welcome the Comptroller and Auditor General's oversight. The fact that it is known that he will be reviewing this will certainly act as an important control; that is an important thing. I know that Senator Shenton has personal views on Tamiflu and vaccination and I am sure that has got nothing to do with his proposition here. From a Ministerial point of view, Ministers have to act upon advice of our professional experts and I personally think... and I take the opportunity of congratulating the work of the Medical Officer of Health and her team who have done a great deal of work in order to prevent on a precautionary basis an outbreak, and all the staff that have done so much work to vaccinate our young people and all the work in the community with elderly and vulnerable patients having the benefit of a vaccination, which would only have been possible if the emergency funding would have been released. I am perfectly happy with part (c). I have got no difficulty at all with that, as I say it acts as a control and, indeed, I hope that the P.A.C. when they review this will see that the Treasury has been extremely hard to convince in terms of the money that has already been allocated under part (a) of the underlying proposition. The difficulty that we have is that if Members do not approve part (b) and indeed just simply have the closure of the funds as the P.A.C. is proposing, I will be simply in a position in January, in the event of an outbreak to simply make a further Ministerial decision under Article 16(3) in order to give Health money which will have to come back to the Assembly for urgent and unforeseen health matters. That is the reality. We cannot allow a department to break the law. I personally do not like the use of Article 16(3). I think it is an extremist proposal. I think that we should generally put a contingency aside and ensure that there is an appropriate draw down. This money is not being held by Health, it is being held by the Treasury and will only be released by the Treasury when we are convinced that it is money that is (a) necessary and (b) is being properly spent. Indeed, if it is the case that there has been some double-counting in terms of ventilator machines or protective uniform then simply the money will not be given to Health and Social Services. It is as simple as that. I am fully aware of the political accountability I have. I know that I will be rightly called to task to explain my decisions if I have not been given a proper audit trail and proper justification for expenditure. It is just reasonable, I think, for the Assembly to signal the fact that in the event of a pandemic outbreak - which may well happen in the early months of 2010, if it does happen - the hospital should be given the appropriate amount of resources to do that. If Members are not clear ... and I have to say I am surprised really to hear Senator Shenton on the other side of the argument having

been Minister for Health and Social Services and certainly as Minister for Treasury and Resources in the last 9 months or 10 months I have spent more time having to understand the challenges of the Health Department, frankly a lot of which are new and there is a lot of improvement that has had to be made over the last 12 months and Health has been in a very difficult position for a long time. I am sure he knows that as a previous Minister for Health and Social Services. They have been under enormous pressure and there are enormous scales of issues and they have dealt with the pandemic flu issues alongside all of the other issues that they have been dealing with, including the business plan, including difficulties at Social Services and everything else. It has to be said that it is a team under pressure and I do not need to remind Members that also there is an Acting Chief Officer. There is a department under a great deal of strain and I will certainly do all I can to assist them but hold them to task in terms of the money that they have spent. If the Assembly votes this proposition down or accepts the amendment by the Public Accounts Committee, in the event of an outbreak I will simply have to give the money in any event. It would be unconscionable to not allow funding to be made ... I hear ex-Ministers for Health and Social Services in the back row having something to say on the matter. But it would be unconscionable not to allow the Health Department to have the additional money to pay for the nursing care - and it is nurses who are the large amount of money in the additional staff costs that is the reason why the breakdown is there - I am sorry that Members think that there should be a breakdown but most of the breakdown is shown under Appendix 1. The hospital escalation: most of that figure of £2.276 million is employing additional staff to look after people in the event that they are in hospital, in the event that there is a number of people that are needing to be looked after because their respiratory systems are under difficulty. The recovery money is going to be needed as a result of the hospital having to catch up for cancelled operations. I am sure that I am not the only Member of this Assembly that already is aware of family and friends that have had operations cancelled as a result of the hospital needing to prepare for pandemic flu. I do not believe any Member of this Assembly believes that other urgent operations - people needing whatever sort of operation - should be delayed because of a pandemic flu. That is why the recovery money is there in order to ensure that the staff are there to deal with a catch up operation. I do not think that Senator Shenton is an unreasonable individual. I think that he knows that in the event of a pandemic outbreak money is going to have to be spent. I think the more appropriate proposal is to allow for the contingency, for the draw down to be held by Treasury to be given to Health, that will be subject to intense scrutiny by this Assembly, by the P.A.C., no doubt by scrutiny, the accounting officials in the Treasury, I would have thought that is the appropriate oversight that is required. I urge Members to enthusiastically support (c) but not (d). It is unworkable, unpractical and frankly unfair to Health.

4.2.5 Deputy A.E. Jeune:

I have to say on this amendment I share the proposers concerns in respect of spending within the Health Department. I am aware of how monies which are allocated to specific ventures such as healthcare within the prisons, are being redirected away and moved to other areas, and I think, in fact, that was probably during the proposer's time as Minister so I can understand his concerns and I share them. But we are going to be going into recess and we are not back until 19th January. We do not have a crystal ball. We do not know what might happen come 1st, 2nd or 3rd January. I believe we need to put our faith in the Minister for Treasury and Resources and his Assistant Minister, who is also the Assistant Minister for Health and Social Services, that they will ensure that the monies are only used where the Minister for Treasury and Resources says they should be. I would be grateful if the proposer would take these 2 items separately when he takes them to the vote. Thank you.

4.2.6 Senator J.L. Perchard:

Effectively the proposition from the Public Accounts Committee would, if approved in total, effectively eliminate part (b) from the substantive proposition of the Minister for Treasury and Resources. So part (b), page 2 as amended would be: "To permit the withdrawal of up to

£3.8 million.” Now, that is to withdraw before the year end. We already know part (a), from the information provided, has been spent. The £1.7 million is to play catch up on money spent. So the precedent that Deputy Jeune has just spoken of has already happened in the sense that money has been spent before the States have awarded the funds from the centre. If we accept the whole of the Public Accounts Committee’s proposition (c) and (d), effectively we eliminate paragraph (b) of the substantive proposition. I think it would be prudent for the States to do just that. If there is a pandemic in the interim before the next sitting of the States, the Department of Health will continue to treat, as they normally do, and come back for emergency funding. Why vote money in case there is a pandemic? We have already, may I remind Members ... in May Senator Shenton lodged a proposition for £1.82 million which was granted. We will probably, almost certainly, today grant another £1.7 million. That is £2.5 million towards pandemic flu and we are being asked in part (b) of the proposition, in case, another £3.8 million. Well, let us get this in proportion. If there is a pandemic let the Minister for Treasury and Resources come back with some urgency for funding a pandemic, until then £2.5 million for some Tamiflu and vaccines and a little bit of overtime, yes, seems sufficient. I think someone is pulling our leg here and I believe the Minister and her Assistant Ministers should have challenged the accountancy at Health before bringing this forward. This is a huge sum of money... completely disproportionate. Some levels of money that would break any other country proportionately. I urge Members to support the whole of the Public Accounts Committee amendment, which effectively will mean part (b) can come back to the States when and if necessary.

4.2.7 Deputy K.C. Lewis:

If Members think that swine flu has gone away I think they are sadly mistaken. One has only to google problems happening in Eastern Europe, the far eastern states, I think they are bordering on the pandemic. This is a very wise precaution to put this money in place. The only question I have for the Public Accounts Committee Chairman is would he be more than willing to have (c) and (d) taken separately?

4.2.8 Deputy A.K.F. Green:

I was not sure which way I was going to go on this because it is a lot of money. I am sure the Minister for Treasury and Resources agrees it is a lot of money and he is not known to give out money lightly. I know that to my own cost. But we are between a rock and hard place here. I think we have to congratulate the Medical Officer of Health [**Approbation**] and we will not know whether she was 100 per cent right or whether she was only 60 per cent right until all this is behind us, probably this time next year. We will not know. It seems prudent because what we have been asked to do is to put a sum of money ready if we need it. It seems prudent to have it there. I do not know if the Minister for Treasury and Resources or somebody could explain what controls they will have over releasing it but it seems prudent to have the money there if we need it. I would just like to talk quickly about recovery because when operations get cancelled, non-urgent operations, recovery takes a considerable length of time. The only way you are going to recover from that is to run extra theatre shifts, run extra staffing, get beds turning over much quicker, but the point is we are in danger here of knowing the cost of everything and the value of nothing because the point is it is not just the cost. For many people non-urgent surgery will be cancelled. Surgery that eases pain and suffering for many, many people. This money is about trying to speed this up, if we need it. For example, a knee replacement may not be urgent, and that is the sort of thing that would be cancelled but many of our old folk out there are desperately waiting for that knee replacement to be able to walk pain free. If we do not put this money in place ... hopefully we will not need it but if we do need then at least we can get on with the job, come back and account for every penny - I will ask that every penny is accounted for - make sure we have not duplicated it but let us let Health get on with the job if they need to.

4.2.9 Senator S.C. Ferguson:

I am surprised at the Minister for Treasury and Resources, as has been said, it is money for 2010, it is quite simple to bring back an urgent proposition on 19th January. It is the beginning of the year so there are not the same spending pressures that are in December. I think the problem is that if you have got a large sum of money available you tend to go out and spend it. Frankly, some of the expenditure which I know Senator Shenton scotched when he took over as Minister for Health and Social Services, like the bariatric bed ... they wanted one bed for very large people. Now, we have got an awful lot of very large people in this Island so I do not know who was going to win the lottery for that one, but there is quite a lot of this spending which comes under “nice to have”. It would have been a great deal more helpful if we could have had the same sort of ... we have Appendix 1, which talks about the £1.347 million. Well, where is the same one for the £3.8 million? I am sorry, I agree with the Public Accounts Committee and I shall be supporting both parts of their amendment.

Senator P.F.C. Ozouf:

May I make a point of clarification?

The Greffier of the States (in the Chair):

Briefly.

Senator P.F.C. Ozouf:

It is sort of simply on the mechanics of, if I have to do an Article 16.3, I have to do another Article but lodge a proposition straight away. So, we are in the same place. I do not just have the ability to put forward an Article 16.3 and allocate the money, it has got to be put in another proposition and we are here back in the same place again.

Senator S.C. Ferguson:

But can I just conclude with that, or comment on that that, by 19th January, you will in fact know whether there is a pandemic.

4.2.10 The Connétable of Grouville:

I think that following on from Deputy Green, and really echoing his words, I think it is very important we do have this money in place, even if it is not needed. We know it is going to be under control, we know the C.A.G. is going to be looking after it so I think, as a matter of a trust and obligation to this House, are carried out completely. I would just like to mention that I think Senator Perchard was a little bit forward in criticising the Accounts Department when he thought that 1.7 and 1.5 added up to 2.5, it is 3.5 but, thank you.

4.2.11 Senator P.F. Routier:

Well, I really do not know what this debate is about. The reason I say that is because it seems to me that it is more about a power struggle between the Minister for Treasury and Resources and the P.A.C. It is not about whether we are going to fund what is needed for the flu, we know we are going to do it. If the money is needed for supporting the Health Department in fighting this influenza, we know we are going to have to pay for it one way or the other. The Minister for Treasury and Resources has come forward with putting in place some necessary funds if the money is needed, there will be controls in place, it will only be called down if it is needed. To me, the P.A.C and the Minister for Treasury and Resources - they need to have their heads banged together. **[Laughter]** I am sorry but to me this is just about a power struggle between the Treasury and the P.A.C. The States, as a whole, are going to spend the money if it is needed and only if it is needed. I think we should support the Minister for Treasury and Resources' proposition and reject the P.A.C.

4.2.12 Deputy J.A. Martin:

Just briefly, because Senator Routier has basically said most of what I wanted to say. It is just to be clear that I think the Minister for Treasury and Resources has basically summed it up, we are - and Deputy De Sousa says - we are in the first week of December. Do we need this money? Are we experts? Is there going to be another outbreak? Some people say we are not in a pandemic. Well, Health ... and again, where do you think all the staff who managed to vaccinate 16,000 children in 6 working days came from? Do you think other things at Health did not suffer? But, no, we have got a lot of healthy kids on Jersey and this has not been done ... young people, children, whatever they are - another debate - but they are all now immunised. **[Laughter]** Sorry, I thought the Deputy of St. Mary was trying to get in again. I will just finish, we know that the Minister for Treasury and Resources is no easy target and if you think anyone at Health is going to get this money past him, there may be something that is going on. Deputy Jeune said this, we will all be probably kicking our legs up at some Christmas party. We are not going to be called back, we have to lodge these things for 6 weeks and ... well, I intend to be kicking my legs up at some Christmas party **[Laughter]** and if anybody else wants to join me that is entirely up to them. Just keeping it short, Senator Ferguson said it all in the last debate on the pandemic, while I would normally say no, you cannot spend it, I would agree with this because this is insurance and that is all that this is, it is money that the professionals can decide to spend if we get another big wave. It is also to put back things that have obviously been lacking in the last few weeks and dedicated work done from the staff at Health and Social Services. We cannot get our grubby little fingers on it unless it is for the specific that is here and I hope, as an Assistant Minister for Health and Social Services, that we do not have to touch it, I hope it is all behind us and that we can get on and that the hospital can return to normal and the threat of a pandemic is over. But drawing it down, bring back another proposition - I suppose, at the end of the day, we can all live with it either way. Personally I would rather have it in the bank knowing that the professionals can go there and will not be breaking any laws and can make quick decisions. By the way, making the quick decisions and getting in ahead of the other people who wanted the vaccine is where we are today. Lots of people do not believe we needed ... that is another debate. We have done what we did, we do not have much sickness in Jersey due to that and I think it basically says it all. So, as I say, it is an insurance policy and anyone here who thinks they can get past the Minister for Treasury and Resources, and this will not be accounted for... it is going to be looked at by P.A.C. We are not saying it cannot be looked at P.A.C., we are just saying we do not agree with it being cut off on 31st December when we are all kicking our legs up at some hogmanay party. So, it is really an insurance policy and I agree with Senator Routier, I have probably spoken too much because he has said most of what I wanted to say, I did just add a few bits. It is very easy. We would probably be able to live with it, but could we live with it if something went wrong and there was not the money there to spend? I do not know.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on the amendment?

4.2.13 The Deputy of St. John:

This looks like one of those you are damned if you do, you are damned if you do not. All I will say is, that if the money is not needed, could the Minister for Treasury and Resources please hand it over to T.T.S. (Transport and Technical Services) so we can do something about **[Laughter]** extending main drains into the countryside and repair to our roads?

4.2.14 The Deputy of St. Mary:

Just briefly following on from what Senator Routier said about a power struggle between P.A.C. and the Minister for Treasury and Resources, I do not think it is about that. I was troubled by the figures he gave and on the back page of the original proposition we have the breakdown of the £1.347 million which has now gone up by £400,000-odd of the first phase which we are asked to approve. There is no indication of where the original £1,230,590 went from the original vote and

that is the question, is it not? Now, I do not have any doubt that we will vote this through, we have to do this and it is a bit damned if you do and damned if you do not; it is an insurance policy, it is a drawdown figure. It is not an expenditure it is a stockpile, if you like, to be drawn on by the Minister for Treasury and Resources and handed over to Health and Social Services. But, I think it is useful that a shot has been fired across the bows, the P.A.C. will be on it, the C.A.G. will be on it; because I know very well from my own researches with the incinerator that money does disappear and I am glad that this shot has been fired across the bows. We will have full accountability and we will know where that original vote went as well as the present vote which we are surely going to put through today.

4.2.15 Connétable J.M. Refault of St. Peter:

Obviously as a member of P.A.C. I will be supporting the amendment. I think one thing that Members need to be aware of that the 2 previous Ministers for Health and Social Services have had good and first hand experience of the way that funds are sometimes moved around within departments and I think this really forms their grave concern that a significant some of money, like £7 million which equates to the similar sum that was spent on the Haut de la Garenne investigations - almost a town park - is a really substantial sum of money and, therefore, there needs to be some significant controls on how that money is spent. I think at the end of the day the mood of the House seems to suggest that the Members are concerned that the money is put in place rather than supporting the need of the P.A.C.'s concern for prudence on how it is spent. But I think the P.A.C. will inevitably look very very closely at how the money is apportioned and picking up the point of the Deputy of St. Mary, we will be looking much closer at the whole figures that have been point forward as part of the H1N1 outbreak.

The Greffier of the States (in the Chair):

I call on the chairman of the P.A.C. to reply.

4.2.16 Senator B.E. Shenton:

We are talking, if this money is spent, as the Connétable of St. Peter said, about spending over £7 million on pandemic which is significantly higher than Guernsey, or I would think just about any other jurisdiction. Deputy Noel said that his department is willing to accept (c), but he will not accept (d) and this is where I think the Council of Ministers let themselves down. The proposition they brought to the States clearly says that the money is to be added to the expenditure approval for 2009. It says nothing about making the money available for 2010. That was only brought to your attention by this proposition from the P.A.C. It is asking for £1.7 million, which has already been spent, yet it says that if there is another pandemic it cannot ask for money that has already been spent. It is saying it cannot do what it is doing today. Surely, if there is a pandemic next year, and certainly if it is at the beginning of the year, they will have plenty of money in the budget and if they come back to this House and say: "There is another pandemic" this House will vote through additional funds. So goodness gracious, do not give them £4 million just in case knowing that under the Public Finances Law they can spend that money more or less how they wish. The proposition states that it is adding money to the expenditure approval for 2009 as approved by the States. I should add that we will ask for it to be voted on separate paragraphs and I would hope that (a) and (b) is also voted on separately because I am sure some Members will not be happy in allocating the £4 million at all. Deputy De Sousa said that it rang alarm bells. Well, it certainly rang alarm bells with the P.A.C. when they saw that the money was being asked for, especially when they knew of rumours that Health were showing a £4 million shortfall for this year and it just happened to be a little bit of a coincidence. Senator Ozouf said he welcomes P.A.C.'s part (c) but he does not welcome part (d) because he may want to spend the money in 2010. That is not, on the face of it, what the proposition was asking for and, as I said before, we have already allocated money and some of the expenditure that they say they have used the money for has already been duplicated. So we do not really know where we are and Deputy Jeune is right to have concerns re

Health Department spending. Senator Perchard and myself had concerns about Health Department spending when we were in position. Unfortunately we were not long enough in the job to sort it out but there was a big level of work to do there. Deputy Lewis asked whether the (c) and (d) could be taken separately and I have already said that it can be. Deputy Green said it is prudent to do this; well it is not prudent, it is wasteful. Because you are allocating funds that may not be required, yet if they are required, there are mechanisms in place to get those funds and prove that they are to be spent in the right area. We spend hours debating smaller amounts but when it comes to £4 million we chuck it around like confetti. It is utterly ridiculous that this House is willing to just pass over £4 million on the nod of the Minister for Treasury and Resources and, as Senator Ferguson pointed out, if there is severe pandemic early in 2010, there are very few budgetary constraints because your budgetary constraints only come to pass towards the end of your financial year. The £4 million calculation we do not even have any detail of. We are just meant to be taking that as: “Well, if it breaks out that is roughly how much we will need, let us just spend £4 million.” Is that what the taxpayers want? Is that what the people who elected us want us to do? Just vote £4 million? Senator Routier also contradicted himself by saying we cannot allocate after the pandemic has broken out and yet that is what we are doing today with the £1.7 million. We are allocating after the money has been spent. So of course we can. He also intimated that it does not matter how much we spend on a pandemic, because it is a pandemic, cost control and proper accounting can go out the window. This is taxpayer’s money we are talking about here, £7.36 million on a pandemic, that is how much we will have allocated if this goes through today. I ask Members to support (c) and (d); (c) so the Public Accounts Committee can examine where the money has been spent and make sure it is spent in the right area, and (d) to bring a bit of honesty to the proposition, because (d) forces the proposition to have it as it was described, i.e. the money added to the expenditure approval for 2009. It stops the carry forward. If the Minister for Treasury and Resources really wanted this money for expenditure approval for 2009 he would have no problem with paragraph (d). By having a problem with paragraph (d) he is also almost intimating that he was trying to pull the wool over our eyes and bring the resources forward into 2010. As the Constable of St. Peter said, funds can be moved within a department and you can use a lot of little tricks in accountancy and you have to be very very wary at any proposition like this that passes across your desk. This is not about some sort of power struggle between the Treasury and the P.A.C., the P.A.C. as the Public Accounts Committee is there to make sure the money is spent in the way it should be spent and that the public of this Island get value for money. An Island of this size that is looking to spend £7.3 million must ask the Comptroller and Auditor General to look at why pandemic funding is at such a high level. It also must hold to account, not only the Ministers but also the chief officers of the departments, because under the Law they have certain obligations. Now, this P.A.C. has perhaps been a little soft in the past but I can assure you in the future we will be looking at this in a very hard headed way and I ask Members to support (c) and I ask them also to support (d) because (d) actually makes the proposition stand as it was originally put forward. Thank you.

The Greffier of the States (in the Chair):

Very well. The chairman has indicated that separate votes will be taken on (c) and (d). Do you wish for the appel or standing vote on this? The appel is called for on both paragraphs, I will ask Members to return to their designated seats. The first vote therefore is on the new paragraph (c), proposed by the Public Accounts Committee and the Greffier will open the voting.

| POUR: 40 | | CONTRE: 0 | | ABSTAIN: 0 |
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| Senator T.A. Le Sueur | | | | |
| Senator P.F. Routier | | | | |
| Senator P.F.C. Ozouf | | | | |
| Senator T.J. Le Main | | | | |
| Senator B.E. Shenton | | | | |
| Senator F.E. Cohen | | | | |

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| Senator J.L. Perchard | | | | |
| Senator A. Breckon | | | | |
| Senator S.C. Ferguson | | | | |
| Senator A.J.D. Maclean | | | | |
| Senator B.I. Le Marquand | | | | |
| 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. Saviour | | | | |
| 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 J.A. Hilton (H) | | | | |
| 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 E.J. Noel (L) | | | | |
| Deputy M.R. Higgins (H) | | | | |
| Deputy A.K.F. Green (H) | | | | |
| Deputy D. De Sousa (H) | | | | |
| Deputy J.M. Maçon (S) | | | | |

The Greffier of the States (in the Chair):

Accordingly, the Greffier will reset the voting system and the Assembly will vote on paragraph (d) which is to agree that the ability to withdraw funds under paragraph (b) will expire on the 31st of December 2009 and shall not be carried forward and the Greffier will open the voting.

| POUR: 12 | | CONTRE: 28 | | ABSTAIN: 0 |
|----------------------------|--|---------------------------|--|-------------------|
| Senator B.E. Shenton | | Senator T.A. Le Sueur | | |
| Senator J.L. Perchard | | Senator P.F. Routier | | |
| Senator A. Breckon | | Senator P.F.C. Ozouf | | |
| Senator S.C. Ferguson | | Senator T.J. Le Main | | |
| Connétable of St. Clement | | Senator F.E. Cohen | | |
| Connétable of St. Peter | | Senator A.J.D. Maclean | | |
| Connétable of St. Lawrence | | Senator B.I. Le Marquand | | |
| Deputy R.C. Duhamel (S) | | Connétable of St. Ouen | | |
| Deputy of St. Martin | | Connétable of St. Helier | | |
| Deputy of St. Mary | | Connétable of Trinity | | |
| Deputy M.R. Higgins (H) | | Connétable of Grouville | | |
| Deputy D. De Sousa (H) | | Connétable of St. Brelade | | |
| | | Connétable of St. Martin | | |

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| | | Connétable of St. Saviour | | |
| | | Connétable of St. Mary | | |
| | | Deputy J.B. Fox (H) | | |
| | | Deputy J.A. Martin (H) | | |
| | | Deputy of St. Ouen | | |
| | | Deputy of Grouville | | |
| | | Deputy J.A. Hilton (H) | | |
| | | 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 E.J. Noel (L) | | |
| | | Deputy A.K.F. Green (H) | | |
| | | Deputy J.M. Maçon (S) | | |

4.3 H1N1 Influenza Pandemic Funding: expenditure approval (P.174/2009) - as amended

The Greffier of the States (in the Chair):

Very well. The debate resumes on the proposition as amended. Does any Member wish to speak on the proposition as amended?

4.3.1 The Connétable of St. Helier:

I think it is important that, returning to the main debate, due credit is given to the Minister for Health and Social Services, the Ministerial team and the staff for the way they have tackled the swine flu epidemic to date. **[Approbation]** I know that some Members have expressed concerns about ... the word “disproportionate” was used during the previous debate but certainly, as a parent of young children, I know I am not alone in being enormously relieved to see the statistics, the graph in today’s paper, and as a States Member, perhaps to get privileged early release of the media yesterday evening that our children, in particular, are so well protected. Possibly better protected and earlier protected than any other children exposed to this pandemic. While questions may be asked and figures will be examined in due course, as is proper, I am very pleased that Jersey appears to be ahead of the game in vaccinating and preparing the community for the onset of the pandemic and not simply in medical terms, but when one thinks, particularly the Constables who have been working with the emergency planning teams, community groups have been set up, weekly meetings, weekly briefings have taken place and as the Assistant Minister mentioned in her speech previously, enormous numbers of frontline staff have delivered medical procedures in an extraordinarily short period of time. The logistical effort that has been made by the health professionals is probably unprecedented, certainly since I have been in the States. I was just concerned because of some of the speeches that were being made by politicians who in some cases appeared to think they could do the job better than the medical professionals, I was just concerned that the morale of the staff who have been involved might have suffered and I want to send the message out that we are enormously grateful and we are impressed. **[Approbation]** We are impressed at the way in which the Island has been able to really hit the ground running, to come in very fast, to come in well prepared, and now to be in a position that we may well be the best protected community in the world from swine flu. It may be, and we do not know yet, but it may be that the Jersey model will be held up in future as an example of excellence in how to combat future pandemics. So, I think before people reach for their criticisms, let us remember that our team have done extremely well so far, we applaud their efforts and we hope that they will continue to do so despite the sneezes that are going on around me. **[Laughter]** So, I do hope that those comments will restore the morale of any members of the team that have been somewhat deflated to hear some of the remarks earlier in this debate.

The Greffier of the States (in the Chair):

Just to remind Members that this is a debate about funding, we do not want to turn it into a full swine flu debate, because that is for Monday.

4.3.2 Senator S.C. Ferguson;

With reference to the comment of the Connétable of St. Helier regarding staff morale, I do not think it will arrive from this debate. It already exists because politicians have not been giving all staff, particularly the middle and lower grades, the proper support. Yesterday we castigated the Minister for Economic Development for bringing a report to this House which, frankly, nobody could quite understand and the reference is cross-referenced and it got so convoluted nobody knew what they were voting for. I regret that with not including a proper appendix regarding the now £3.8 million with the propositions of the Minister for Treasury and Resources, we are in the same position. The majority of this House are engaged in voting on allowing this £3.8 million. Well, I am sorry, where is the breakdown of the money? There must be an estimate of how they are going to spend it. I am really very exercised on this whole proposition.

4.3.3 Deputy E.J. Noel:

Wearing my Health and Social Services hat, I am grateful to the Minister for Treasury and Resources for bringing this proposition today. The States have asked to amend the expenditure approval for the 2009, which was agreed back in September 2008, in doing so this will allow the following actions to occur. Firstly, with a total of up to an £1.7 million in order to fund the costs associated with the preparation and containment of the H1N1 influenza virus. This is what has already happened. Secondly, there was total of an additional £3.8 million in order to fund the costs associated with managing the consequences of a wave, should one occur in the near future. By way of background, Members will recall that we had our first confirmed case of swine flu in Jersey in June 2009 and an outbreak declared in November with significant numbers of schoolchildren testing positive for the illness. Although numbers in children falling ill, the escalation has escalated quickly in November, the combined effort of an intensive and unpleasant vaccination program and a target use of antiviral, such as a Tamiflu, have had a significant, positive impact upon this outbreak. There are now encouraging signs that these actions have dampened the effect of the wave upon schoolchildren and the number of new cases is beginning to fall. It is too early to say definitely that the worst is over, but the signs are encouraging. The predictive wave for Jersey should extend from a 4 to 6 week period. The use of antivirals and the mass vaccination may have stopped this wave dead in its tracks and halved that length of that outbreak, and I sincerely hope that this is indeed the case and that the figures to come out in the weeks to come will reflect this. If we can continue to vaccinate 50 per cent of our general population in the run up to Christmas then we stand a good chance of avoiding a major outbreak in the New Year with the intended impact that will have on the health of the population and the ability for our hospital to operate during the winter months. The number of adults and children requiring hospitalisation to date as a result of the swine flu has been small and I intend to keep it that way. While the majority of swine flu continues to be a mild illness, in a small number of cases, particularly among the young, adults and children - and this has been borne out in the U.K. and in Australia and other places across the world - it has caused serious complications and in some tragic circumstances, even death. I am proud that the preparedness of the hospital to deal with such eventualities, particularly as the paediatric intensive care beds in the U.K. have become so scarce as a result of this pandemic outbreak. Here in Jersey we rely on those beds being made available to us because we do not have those types of beds in the Island. I must congratulate the Chief Executive of the Chief Minister's Department for his leadership of the States pandemic flu co-ordination group to Dr. Geller, Dr. Muscat, and the teams that delivered a supremely efficient vaccination program. As Deputy Martin said, we vaccinated 16,000 school children in a little over 6 days. We now have approximately 80 to 85 per cent of our children immunised against this potentially serious illness. That is a fantastic feat and I wish to thank all the nurses of the Health and Social Services Department, Family

Nursing and Home Care, and along with the Minister for Education, Sport and Culture's team, for such a splendid job. All this hard work has paid off and I am growing confident that the monies required to escalate and mobilise the hospital will not be required as there are encouraging signs that a major outbreak has been averted. Having said this, like all insurance policies, these monies are still a necessary contingent in the case of a second major wave of illness striking in the New Year and further community and hospital escalation is required to manage such an outbreak. The costs associated with the pandemic management and recovery will only be incurred in the event of a major wave of illness. This expenditure, therefore, is not required immediately, only in the event of a further pandemic wave materialising. There is, as I have said, a good chance that if it is required it will be to a much smaller extent as the population immunity increases. Members can be reassured to the robust process put in place to ensure that monies are only drawn upon in relation to the pandemic and provide value for money. Both the Minister for Treasury and Resources and myself - and in particular with my dual roles - will ensure that this is the case. These funds cannot be moved within the Health and Social Services budget, they can only be withdrawn from Treasury on a specific needs basis. Yes, we have allocated, or we will have allocated if this policy is accepted, some £7 million but we have not spent £7 million and hopefully we will not have to do so. This proposition today ensures that as far as possible we have taken every reasonable and practical precaution to protect the people of Jersey. That is what we are doing. I urge Members to support the proposition.

4.3.4 Senator T.A. Le Sueur:

There was a suggestion earlier that Ministers were happy to spend money like confetti. Anyone who knows a Minister for Treasury and Resources, past or present, will know that that is not the case. This money being voted is not so that it can be spent but so that what needs to be spent can be spent wisely and at the right time. As well as the officer group who have been mentioned, there is also a political steering group chaired by me which meets every week and reviews a policy and reviews the claims of the department. The objective has been and will continue to be one of prevention rather than cure and a little bit of money spent up front in prevention is far better than having to spend all that we have earmarked here for a cure. So, I am optimistic that in fact we shall not need all this £3.8 million and I am also reassured and gratified at the way at which all officers have been looking at this policy and reviewing it, not on a weekly basis as we do, but on a daily basis, to ensure that what we do spend is spent wisely in the right way. Although it is not strictly to do with the proposition, I would like to thank the Constable of St. Helier and echo his comments. I have already expressed my thanks to all the health staff and education staff for the work they have done, but it is far better to have that praise coming from an independent third party and I hope indeed from every Member of this House. **[Approbation]**

4.3.5 Senator J.L. Perchard:

I certainly would echo the words of praise that are made by the Chief Minister and the Constable of St. Helier; nothing but praise for our frontline professionals in the way that they have handled this swine flu epidemic. I do have a problem and it is a similar type of argument to that made earlier, but with the proposition. The proposition quite clearly says that it wants funds in 2 parts for 2009, £1.75 million to pay bills that have already been acquired and to clear the debt on bills to date, that is all the inoculations and the Tamiflu, and £3.8 million on unknowns. Unknowns. So, let us have all the Ministers coming forward and why does the Minister for Transport and Technical Services not say: "We might get some storms next September, let us have some money for unknowns in case I have to repair sea walls" or Home Affairs: "We might get a disaster next year, God forbid, an airplane into the fuel farm, let us have some money for some unknowns." We do not know how much we need to spend in 2010. We are proposing to carry over money now, if we support this proposition. We have set the precedent that we can come to the House and ask for money that we have already spent. We are approving that in part (a) of the proposition. So let us see how the excellent treatment and the excellent professional care, that we are offering our population, rolls out

during 2010 and if indeed we need more funds the Minister for Treasury and Resources knows exactly what to do. All he has to do is change the date to 2010 on his proposition. The very same proposition. We are asking for money in case, there is no need. We have set the precedent that we can come back retrospectively, I suggest this is opening a can of worms that would and could and probably will come back to bite the Minister for Treasury and Resources.

4.3.6 Deputy J.M. Maçon:

Very briefly, as I understand it we are transferring money to the Treasury Department from the Consolidated Fund. That is correct, good. In which case I am very much interested in the return mechanism and if the Minister for Treasury and Resources could explain how and when money would be transferred back to the Consolidated Fund from the Treasury Department, as I am sure Members are concerned that they do not want it to go into the Treasury and for it just to remain there.

4.3.7 Senator B.E. Shenton:

I think one of the main problems is the lack of information that is coming forward on propositions these days. We saw the amendment increasing the figure from the main proposition, the only bit of detail was this where some of the items on it had already been funded out of previous allocations of this Assembly. Furthermore, there are things like 65 additional beds and stuff like that, which they have been out and bought so I am not quite sure what they are doing with those now. But his amendment adds another £378,000 to this schedule yet we get no detail. It is just £378,000. It seems to me that Members have a very easy way of spending taxpayers' money in this Chamber because if it is brought from the Council of Ministers we will just spend it because they must be right and so on. I would ask Members to vote against (b) on the basis that there is nothing to stop the Minister for Treasury and Resources coming for additional funds if they are required. Let him come to the House if they are required. Do not try and dress it up into the 2009 expenditure and then use it as a carry forward, because that is treating all of us as complete fools and I believe it is a slightly less than honest way of doing things and slightly less than honest way of doing business. But I reiterate what I said before, the P.A.C. will be crawling all over this because although the health workers should be commended on all the work they have done, I believe that Guernsey have had a very similar outcome in terms of how many healthy people, how many sick people and so on, and they have spent a fraction of the money that Jersey has.

The Greffier of the States (in the Chair):

I call on the Minister to reply.

4.3.8 Senator P.F.C. Ozouf:

Firstly, I will respond to Senator Shenton's remarks. I am given to understand that firstly, Guernsey has a far bigger hospital that is capable of dealing with an escalation of admittances with people with respiratory illnesses. That is one of the reasons why Guernsey does not have to make the additional allocations in preparedness for a wave of admissions. I am not going to make any comments about whether or not Guernsey or Jersey or any other country have got it right; I, as a Minister, act upon advice. I have full confidence in the Medical Officer of Health. She knows that her advice will be implemented and scrutinised in turn and I think that we owe it to her and her position to give her the necessary resources in order that she can do her job and get her staff at the hospital to do their job. I will come back to Constable Crowcroft's comments in one moment. Senator Shenton has asked me whether or not I should take the proposition in 2 halves and I am afraid that I am not going to do so because we know that this money may well be required and I am not prepared, knowing the likelihood that this money could be required, I am not prepared to simply rely upon the emergency provisions that I think should be used in exceptional circumstances under Article 16(3). I am not prepared to simply rely upon an urgent public health provision when this Assembly has the opportunity of signalling the fact that this expenditure may well be required.

It may not be drawn down but we know enough to know that this expenditure, in terms of dealing with a wave, is required. I have to say that I agree with the sentiments expressed by the Connétable of St. Helier, and endorsed by the Chief Minister and the Assistant Minister for Health and Social Services, that we should be sending a signal to our Health staff that we will underwrite the significant efforts and expenses and time that they will be asked in the event of an outbreak. It would be wrong for this Assembly, or for me, to rely upon these emergency provisions. In fact, I was only aware of these emergency provisions because we had to find a legal mechanism in order to give Health the funds in order to roll out a vaccination program and it was examination and discussion with my officials at the Treasury, that we identified Article 16(3) in order to allow the money. Because not doing so would effectively put the Accounting Officer - the Chief Officer of Health and Social Services - in an illegal position of spending money that they do not have. I have to say I am really quite surprised that Senator Shenton's understanding of the Public Finances Law is so poor. I think that he does realise that departments, after the Business Plan debate, are allocating money for specific purposes during a year and it is simply not possible for a department, which every Member knows is under such pressure, to simply switch expenditure from one area of health expenditure to the other. I think it would be sending a very poor signal to Health that we are not willing to underwrite and to put in place a provision ... I am not giving way, Sir

Senator B.E. Shenton:

The Minister is lying to the House.

The Greffier of the States (in the Chair):

Senator Shenton, I understand you say the Minister is lying to the House?

Senator B.E. Shenton:

Sorry, Sir, misleading the House.

The Greffier of the States (in the Chair):

Could you please withdraw the allegation he was lying to the House.

Senator B.E. Shenton:

He is not lying, he is misleading the House.

Senator A. Breckon:

I wonder, if I may, on a point of order from the Chair, seek clarification that the amounts voted for in business plans are the bottom line, and departments are free to move the money around however they so wish. **[Approbation]**

Senator P.F.C. Ozouf:

That is absolutely correct, but Members will be aware that Health and Social Services is a department under, and has been under, extreme strain in terms of allocating their money. We have had debates about Health spending and if any Member believes that Health has somehow spare money in order to allocate and to remove money from other areas then I think they are kidding themselves. Deputy Green spoke wisely in the debate earlier that there are consequences of additional work which are required as a result of dealing with a pandemic flu and there are people that have been, and will be, affected by cancellation of surgery, elective surgery, *et cetera*. I am sorry, I just wonder, if the former Ministers for Health and Social Services were to be the current Ministers for Health and Social Services, whether they would be taking this position today. They know their department is under stress, they know their department has got financial difficulties and I would have thought that they would be on their feet in this Assembly giving confidence to their staff that they will be supported. They also know that there will be an oversight of expenditure that will be scrutinised, and I will be speaking about the issue, and where I will agree with Senator Perchard about contingencies, my view is that this Assembly does need to put in revised

arrangements for contingencies so that every single unknown expenditure does not have to come to the floor of the Assembly in this way. There will be issues every year which need to be dealt with and that is why we will be proposing, and I will be discussing next week, arrangements to hopefully put in place a contingency plan that does not require this level of uncertainty. If I did not make a proposition under Article 11(8) then the department would not be able to spend the money lawfully and that is the reason why I will not break the proposition and I ask Members for support on that. To Deputy Maçon, who had a very good question in relation to drawdown, yes, the money is held by the Treasury and if it cannot be used then clearly ... the proposition is very clear it can only be used for pandemic funding. If it does not go across to Health and Social Services after the extensive challenge that will happen, it will be returned to the ... it will never have been drawn down from the Consolidated Fund and there is an inability to draw it down for any other purpose. So, it stays in the Consolidated Fund but it is ring-fenced there, it can be drawn down, it is only held over to Health but effectively, after a period of time, it can no longer be drawn down. I am certainly prepared to inform the Assembly by report or a statement at some future time of any amounts that have been withdrawn, because we know that they will be scrutinised. I think that I have answered all Members' questions. I certainly will just simply say thank you to the staff of Health and Social Services for all the efforts that they have made. Thousands of school children have been vaccinated, thousands of other Islanders have been vaccinated and I think that our Island is in a better position because of it. I move the proposition and ask for the appel, and urge Member's for their support.

Senator S.C. Ferguson:

Sorry, the Senator did not answer my question.

The Greffier of the States (in the Chair):

What was your question Senator?

Senator S.C. Ferguson:

The fact that we have not had a breakdown of the £3.8 million. Will he undertake to supply it to Members?

Senator P.F.C. Ozouf:

I will show it but I have to say that there is a breakdown and it is on appendix 1 and it shows the breakdown of the different areas of expenditure. I have explained that most of the figures of the £2.27 million is due to staff costs looking after people, the additional recovery phase is staff cost to catch up on dealing with more surgeries for patients and if the chairman wishes any further information I am more than happy to give it to them. But I do not know the total numbers because we are not drawing them down, when they are drawn down I will let Members know.

The Greffier of the States (in the Chair):

Very well, the vote is ...

Senator J.L. Perchard:

Sir, can I ask our esteemed Minister for Treasury and Resources a point of clarification?

The Greffier of the States (in the Chair):

A point of clarification of something he has missed on a speech you made or?

Senator J.L. Perchard:

Well, I will tell you, Sir, if I may. It is to clarify something he said. I do feel that the Minister who has said quite clearly that he would refuse us to take the proposition in 2 parts is effectively blackmailing the House. **[Members: Oh!]** I want to ask him ...

The Greffier of the States (in the Chair):

Excuse me Senator, I must ask you to withdraw the allegation that a Member is blackmailing the House. It is quite an improper allegation. The Senator is perfectly entitled to take the proposition as one if he wants.

Senator J.L. Perchard:

Sir, I feel that I am bound to support part (a) and therefore, the whole of the proposition. You can call it what you like, Sir, but we I want to ask the ...

The Greffier of the States (in the Chair):

Senator, I am sorry this is the second speech. The vote has been called for, the vote is for or against the proposition and the Greffier will open the voting.

Senator J.L. Perchard:

This is unreasonable, Sir. I want to ask a question ...

The Deputy of St. Mary:

Can I ask for a ruling on the ...

The Greffier of the States (in the Chair):

Well, I am sorry but the debate is finished. We must carry on and vote.

The Deputy of St. Mary:

Sir, I do want to ask for a ruling on the vote on the (a) and (b). We are being put in the position ... I just want to know whether it is legitimate for the Minister to take the 2 together when the first one is, in effect, a ratification of a previous expenditure which we have no choice but to approve, otherwise H.S.S. have acted illegally. We have to approve (a), therefore we have to approve (b) and therefore we are put in an impossible position. I just want to know what the position is, whether we ...

The Greffier of the States (in the Chair):

Yes, that is a valid point Deputy, but you are not being put, I think, in an impossible position because the Public Finances Law is quite clear. Clearly it would be quite impossible to suggest that Members had to vote for anything and the Article which follows the Article under which the proposition is brought which allows the Minister to bring propositions to effectively get retrospective approval, states very clearly that should the approval not be given the expenditure must be met from an existing head of expenditure as determined by the Minister. So, if you were to vote against the proposition the Minister would have to look for the money elsewhere in the cash limits. Very well, the Greffier will open the voting.

| POUR: 35 | | CONTRE: 2 | | ABSTAIN: 5 |
|---------------------------|--|-----------------------|--|-------------------------|
| Senator T.A. Le Sueur | | Senator A. Breckon | | Senator B.E. Shenton |
| Senator P.F. Routier | | Senator S.C. Ferguson | | Senator J.L. Perchard |
| Senator P.F.C. Ozouf | | | | Deputy R.C. Duhamel (S) |
| Senator T.J. Le Main | | | | Deputy of St. Mary |
| Senator F.E. Cohen | | | | Deputy M.R. Higgins (H) |
| Senator A.J.D. Maclean | | | | |
| Senator B.I. Le Marquand | | | | |
| Connétable of St. Ouen | | | | |
| Connétable of St. Helier | | | | |
| Connétable of Trinity | | | | |
| Connétable of Grouville | | | | |
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| Connétable of St. Saviour | | | | |
| Connétable of St. Peter | | | | |
| Connétable of St. Lawrence | | | | |
| Connétable of St. Mary | | | | |
| Deputy of St. Martin | | | | |
| Deputy J.B. Fox (H) | | | | |
| Deputy J.A. Martin (H) | | | | |
| Deputy of St. Ouen | | | | |
| Deputy of Grouville | | | | |
| Deputy J.A. Hilton (H) | | | | |
| Deputy S. Pitman (H) | | | | |
| Deputy K.C. Lewis (S) | | | | |
| Deputy I.J. Gorst (C) | | | | |
| Deputy of St. John | | | | |
| Deputy A.E. Jeune (B) | | | | |
| Deputy T.M. Pitman (H) | | | | |
| Deputy A.T. Dupré (C) | | | | |
| Deputy E.J. Noel (L) | | | | |
| Deputy A.K.F. Green (H) | | | | |
| Deputy D. De Sousa (H) | | | | |
| Deputy J.M. Maçon (S) | | | | |

The Connétable of Grouville:

Can I make a point of order here referring to the last debate? You allowed a Member to use the expression “misleading the House” and if I can say that 2 years ago, when I used that expression to the then E.D.D. (Economic Development Department) Minister, who is now the Minister for Treasury and Resources, I was told I could not use it but I was allowed to use misinforming and I wonder if we could have then a constant judgment on this.

5. Draft Companies (Amendment No. 4) (Jersey) Regulations 200- (P.177/2009)

The Greffier of the States (in the Chair):

Thank you for the comment, Constable. Coincidentally I was discussing the same matter in the robing room with the Deputy Bailiff yesterday and the conclusion we reached was that the allegation of deliberately misleading the House is clearly inappropriate but if Members feel politically someone is misleading the House they are normally entitled to make that comment. We come now to the Draft Companies (Amendment No. 4) (Jersey) Regulations 200-, P.177. I will ask the Greffier to read the citation.

The Deputy Greffier of the States:

Draft Companies (Amendment No. 4) (Jersey) Regulations 200-. The States, in pursuance of Articles 108 and 220 of the Companies (Jersey) Law 1991, have made the following Regulations.

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

These draft Regulations are needed to respond to the impact of the European Union’s statutory audit directive. They establish for Jersey a system that has E.U. equivalence for auditor oversight, quality assurance, investigations, and penalties. They will allow Jersey auditors, both individuals or firms of auditors, to take advantage of an exemption in the E.U. Directive that would otherwise place them under onerous and expensive requirements in multiple E.U. member states. The opportunity is also being taken to make amendments to improve Jersey’s compliance with international standards relating to accounting and auditing matters. The statutory audit directive harmonises the registration and oversight of auditors across the European Union. It creates

requirements for the auditors of all non-E.U. companies with shares traded on an E.U. stock exchange. They become subject to the auditor registration and oversight provisions in each member state where the company shares are traded. However, an exemption exists where an E.U. member state considers that the auditor of a non-E.U. company is subject to an E.U. equivalent system. Each member state will have the power to determine the extent to which it recognises the equivalence of non-E.U. regimes. The draft Regulations will insert a new part 16 which relates to accounts and audits, into the Companies (Jersey) Law 1991. This enables Jersey to establish an auditor oversight regime that is equivalent to the requirements of the directive. Many aspects of the existing part 16 are not being changed by the draft Regulations. However, due to the number of amendments being made to this part, the draftsman advised that it is more practical to replace part 16 in entirety. The introduction of an equivalent auditor oversight regime will assist Jersey auditors by avoiding requirements to apply for registration in each member state if they audit a Jersey company whose shares are admitted to trade on a regulated market in a number of member states, and be subject to the systems of oversight, quality assurance, investigation, and penalties in each member state in which the shares are registered. If the amendments are not made to part 16 of the Companies Law, Jersey auditors will be subjected to onerous and expensive requirements. For example, let us consider a Jersey audit firm auditing a Jersey company with shares traded on stock exchanges in London, Frankfurt, Dublin and Luxembourg. It would be required to register with the following rules set by the competent authorities in 4 different member states. I understand that the big 4 Jersey audit firms currently audit approximately 70 such market traded companies. The proposed auditor oversight regime meets the equivalence requirements of the directive. The draft Regulations provide that the auditor of a Jersey company, whose shares are traded on an E.U. stock exchange, would have to meet the following requirements. First, the auditor would have to be entered into a register of recognised auditors. Secondly, the auditor would have to comply with audit rules issued by a recognised professional body - for example, one of the Chartered Institutes of Accountants in the U.K. governing the conduct of audit and market traded companies. Thirdly, the auditor would have to be monitored for compliance with those audit rules by the recognised professional body that issued them, and be liable to disciplinary action where breaches occur. Finally, the auditor monitoring system of a recognised professional body would itself be subject to oversight by an independent body. In developing the draft Regulations, the Financial Services Commission in Jersey has worked in partnership with bodies in Guernsey and the Isle of Man. We have worked together to implement a common form of auditor oversight regime in the Crown Dependencies. All the Crown Dependencies agree that on practical and economic grounds it would be preferable to use the expertise of an existing recognised professional body, an independent body in the United Kingdom, rather than attempt to set up new bodies in each of the independent Crown Dependencies. Consequently, the Crown Dependencies have come to a 5-way agreement with the 2 existing U.K. bodies if this legislation is approved. The Institute of Chartered Accountants in England and Wales, who I shall refer to as I.C.A.E.W., will issue the audit rules, monitor the compliance of recognised auditors and take disciplinary action when necessary. The Professional Oversight Body, who I shall refer to as P.O.B., will fulfil the role of independent body overseeing the monitoring of the work the I.C.A.E.W., as it does in the U.K. auditor oversight regime. The I.C.A.E.W. has been chosen because the audit firms that are most likely to be affected are already subject to practice assurance reviews by this particular institute. In the unlikely event that either of these bodies were unable, in the future, to undertake their roles in Jersey's auditor oversight regime, the draft Regulations have a fallback position. This enables the Jersey Financial Services Commission to take their place. The cost of running the auditor oversight regime will be paid for by those firms that register as recognised auditors and who benefit from these Regulations. The draft Regulations will make amendments to enable Jersey to demonstrate more readily that it complies with international standards relating to accounting and auditing matters in respect of market traded companies. Principle 16 of the International Organisation of Securities Commissions, I.O.S.Co., states that a jurisdiction should apply accounting and auditing standards that are of a high and internationally acceptable quality. To enable Jersey to demonstrate

compliance with I.O.S.Co, principle 16, the draft Regulations will amend the Companies Law. Firstly, the changes provide for accounting standards to be set out in secondary legislation that must be adopted by the Jersey companies with shares traded in E.U. stock exchanges. Secondly, it will provide a mechanism for enforcing compliance with the relevant accounting and auditing standards. The draft Regulations have undergone extensive consultation. In January this year the Jersey Financial Services Commission carried out a 3-month public consultation and received 4 responses supporting the general principles proposed. They also specifically consulted with the big 4 audit firms, the Jersey Society of Chartered and Certified Accountants, and Jersey Finance, all of whom are content with the draft Regulations. The Commission's feedback noted the general support of respondents for the proposed auditor oversight regime. It stated that the feedback gave the Commission comfort that the decision to engage with the I.C.A.E.W. for it to provide the practical oversight of auditors, was indeed the correct one. The Law Officers' Department has reviewed the draft Regulations and have stated that they do not raise any human rights issues and that all tariffs for new offences created a commensurate with similar existing offences. Sir, I propose the principles to the Regulations.

The Deputy Bailiff:

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

5.1.1 Senator S.C. Ferguson:

I can see the necessity for these Regulations to enable us to retain our high reputation. I would be interested in the Minister's comments, and I question the fact that the E.U. is imposing such a directive when the E.U.'s own accounts have been qualified so frequently and for so long.

5.1.2 Deputy M.R. Higgins:

While on the whole I have no objections to any of the proposals that are being put forward, like Senator Ferguson, I was going to raise the question of the E.U. What we are seeing increasingly in all our legislation is the influence of the European Union which is imposing its will on the laws of Jersey. Obviously it is a market situation. Yes, we have got to get Jersey companies given access to these things but whether its influence on U.K. law which then involves our law, we are increasingly adopting European legislation. What I would say to people is we do not have some of the benefits of being in the European Union but we are certainly getting some of the disadvantages of it and we need to be very, very wary and monitor all these developments.

The Deputy Bailiff:

Does any other Member wish to speak? I call upon the Minister to reply.

5.1.3 Senator A.J.H. Maclean:

I understand the comments raised by both Members, Senator Ferguson and Deputy Higgins. I would just simply say that it is not a question that this is being imposed upon us. It is quite simply that for local firms that are auditing companies that are registered on Stock Exchanges in Europe, it would make it far more onerous and expensive and it is a practical step forward in order to keep the costs down for local firms. I accept the points that they both made in that respect and I maintain the principles.

The Deputy Bailiff:

The principles are proposed. Those Members in favour kindly show? The appel is called for. All Members wishing to vote are invited to return to the Chamber. The vote is on whether to adopt the principles of the Draft Companies (Amendment No. 4) (Jersey) Regulations and I ask the Greffier to open the voting.

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|-----------------------|--|--------------------|--|----------------------|
| POUR: 35 | | CONTRE: 2 | | ABSTAIN: 5 |
| Senator T.A. Le Sueur | | Senator A. Breckon | | Senator B.E. Shenton |

| | | | | |
|----------------------------|--|-----------------------|--|-------------------------|
| Senator P.F. Routier | | Senator S.C. Ferguson | | Senator J.L. Perchard |
| Senator P.F.C. Ozouf | | | | Deputy R.C. Duhamel (S) |
| Senator T.J. Le Main | | | | Deputy of St. Mary |
| Senator F.E. Cohen | | | | Deputy M.R. Higgins (H) |
| Senator A.J.D. Maclean | | | | |
| Senator B.I. Le Marquand | | | | |
| 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. John | | | | |
| Connétable of St. Saviour | | | | |
| Connétable of St. Peter | | | | |
| Connétable of St. Lawrence | | | | |
| Connétable of St. Mary | | | | |
| Deputy of St. Martin | | | | |
| Deputy J.B. Fox (H) | | | | |
| Deputy J.A. Martin (H) | | | | |
| Deputy of St. Ouen | | | | |
| Deputy of Grouville | | | | |
| Deputy J.A. Hilton (H) | | | | |
| Deputy S. Pitman (H) | | | | |
| Deputy K.C. Lewis (S) | | | | |
| Deputy I.J. Gorst (C) | | | | |
| Deputy of St. John | | | | |
| Deputy A.E. Jeune (B) | | | | |
| Deputy T.M. Pitman (H) | | | | |
| Deputy A.T. Dupré (C) | | | | |
| Deputy E.J. Noel (L) | | | | |
| Deputy A.K.F. Green (H) | | | | |
| Deputy D. De Sousa (H) | | | | |
| Deputy J.M. Maçon (S) | | | | |

The Deputy Bailiff:

Now, chairman, do you wish to scrutinise this particular piece of legislation?

Deputy M.R. Higgins (Chairman, Economic Affairs Scrutiny Panel):

No, we do not.

The Deputy Bailiff:

Very well. Minister, do you wish to move the individual Regulations?

5.2 Senator A.J.H. Maclean:

There are 8 Regulations. However, Regulation 4 substitutes the whole of Part 16 of the Companies Law. It is fairly lengthy. As other Regulations effectively make amendments that are consequential to Regulation 4, I propose to take Regulation 4 first followed by all the remaining Regulations together if I may.

The Deputy Bailiff:

Very well.

Senator A.J.H. Maclean:

Regulation 4 makes the necessary amendments to Part 16 of the Companies (Jersey) Law 1991 to enable Jersey to establish an E.U. equivalent system. That is a system of auditor oversight, quality assurance, investigations and penalties as well as enabling Jersey to demonstrate compliance with international standards. As it might be difficult for Members to see from Regulation 4 alone what changes are being proposed to the Companies Law, I asked the Greffier to circulate a summary of the changes which were put on Members' desks this morning. That summary, which I hope Members have found useful, was also sent by email a couple of weeks ago. Members should be able to see from it that each of the changes are being made to achieve E.U. equivalents under the statutory audit directive or to more easily demonstrate compliance with international standards. I do not intend, therefore, to repeat the detailed information set out in this document. However, I would just briefly, if I may, draw Members' attention to new Articles 112 to 113 which are the main E.U. equivalent changes that will enable the Commission to request the Institute of Chartered Accountants in England and Wales and the professional oversight body to carry out their intended roles in the auditor oversight regime. I propose Regulation 4.

The Deputy Bailiff:

Is Regulation 4 seconded? **[Seconded]** Does any Member wish to speak on Regulation 4? If no Member wishes to speak, I invite Members to show if they are in favour of adopting Regulation 4. All those in favour, please show? All those against? The Regulation is adopted. Minister?

5.3 Senator A.J.H. Maclean:

Regulations 1 to 3 and 5 to 8. Regulation 1 is an interpretation provision. Regulations 2, 3 and 5 make changes to the Companies Law but are needed as a consequence of the amendments that have been made by Regulation 4. Regulation 6 provides for a transitional period for companies and auditors who will be affected by the proposed auditor oversight regime. Regulations 7 and 8 contain the customary citation of commencement provisions. I propose all the remaining Regulations.

The Deputy Bailiff:

Are Regulations 1 to 3 and 5 to 8 seconded? **[Seconded]** Does any Member wish to speak on those Regulations?

5.3.1 Senator B.E. Shenton:

It is just a very minor point and a bit light-hearted really. There are people that look for the application of good English and I notice that we have used American spelling throughout this document for words like "recognised" and "authorised". Is there any particular reason for this or is it just sloppiness?

5.3.2 Senator P.F.C. Ozouf:

If it assists Senator Shenton, I am surprised that he does not know that because effectively this Assembly regularly considers legislation using the letter "z" which is not the Americanisation but is the standard legal British Jersey use of the language for all matters such as authorization, *et cetera*, and I am surprised that that is the first time that the Senator has read a proposition because all the words that we are using always have the "z" in legislation. Perhaps he has not been reading them.

Senator B.E. Shenton:

I thought I better clarify rather than mislead the House.

The Deputy Bailiff:

Does any other Member wish to speak? Minister, do you wish to reply? Regulations 1 to 3 and 5 to 8 are proposed. Members in favour, kindly show? Those against? The Regulations are adopted. Do you wish to move the Regulations in Third Reading? **[Seconded]** Does any Member wish to speak? The appel is called for. Those Members who are outside the Chamber who wish to vote are

invited to return. The vote is on whether to adopt the Companies Amendment (No. 4) (Jersey) Regulations in Third Reading and the Greffier will open the voting.

| POUR: 35 | CONTRE: 2 | ABSTAIN: 5 |
|----------------------------|-----------------------|-------------------------|
| Senator T.A. Le Sueur | Senator A. Breckon | Senator B.E. Shenton |
| Senator P.F. Routier | Senator S.C. Ferguson | Senator J.L. Perchard |
| Senator P.F.C. Ozouf | | Deputy R.C. Duhamel (S) |
| Senator T.J. Le Main | | Deputy of St. Mary |
| Senator F.E. Cohen | | Deputy M.R. Higgins (H) |
| Senator A.J.D. Maclean | | |
| Senator B.I. Le Marquand | | |
| 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. John | | |
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| Deputy of St. Martin | | |
| Deputy J.B. Fox (H) | | |
| Deputy J.A. Martin (H) | | |
| Deputy of St. Ouen | | |
| Deputy of Grouville | | |
| Deputy J.A. Hilton (H) | | |
| Deputy S. Pitman (H) | | |
| Deputy K.C. Lewis (S) | | |
| Deputy I.J. Gorst (C) | | |
| Deputy of St. John | | |
| Deputy A.E. Jeune (B) | | |
| Deputy T.M. Pitman (H) | | |
| Deputy A.T. Dupré (C) | | |
| Deputy E.J. Noel (L) | | |
| Deputy A.K.F. Green (H) | | |
| Deputy D. De Sousa (H) | | |
| Deputy J.M. Maçon (S) | | |

The Deputy Bailiff:

Greffier, I understand that P.178 has been deferred to 8th December.

6. Jersey New Waterworks Company Limited: report of Jersey Competition Regulatory Authority on outsourcing (P.195/2009)

The Deputy Bailiff:

Very well, we now come on to P.195, the Jersey New Waterworks Company Limited: report of Jersey Competition Regulatory Authority on outsourcing in the name of Deputy Southern. I ask the Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion to request the Minister for Economic Development, in accordance with Article 6 of the Competition Regulatory Authority (Jersey) Law 2001, to request the Jersey Competition Regulatory Authority to prepare for him, for immediate presentation to the States, a report providing information and advice in relation to the activity of the Jersey New Waterworks Company Limited ('the utility'), being a monopoly, on the reasons for and consequences of outsourcing all main laying and service connection civil engineering works activity.

6.1 Deputy G.P. Southern:

It is 5.10 p.m. My, we are progressing, and my tea is due to be ready at 6.00 p.m. so I will try not to keep people too long. What we have got before us, I believe, is a very serious matter. We have seen that Jersey New Waterworks Company, despite being a profit-making organisation, has decided to reorganise and make redundant effectively up to 20 of its workers. It does so at a time when it is making profit, as I said, and I refer to the Annual Report and accounts which states: "Your company generated profits before tax of £4,034,000, an increase of 14 per cent on the previous year in 2008." That, I draw Members' attention to, is a profit of over £4 million on a turnover of approximately £14 million, a rate of something like 32 per cent. That is a significant return. On a previous occasion, I had asked the Chief Minister to say if he was aware of companies where that sort of return was produced elsewhere in the economy. He said: "Yes, I know of several companies that can produce that sort of return." I suspect, though, that they are not public utilities owned by the States of Jersey. I suspect they may be in the finance sector. If we look across the board, and Members have received some time in the year the report on accounts of all the utilities, we see Jersey Telecom's profit of approximately £11 million on a turnover of £90 million or something like 12 per cent, the J.E.C. (Jersey Electric Company), similar figures, something like 12 per cent, Jersey Post coming in with something like 10 per cent. So we have a monopoly States-owned utility ... **[Interruption]** The Chief Minister has just returned to the Chamber so in case he was not listening, while he finishes his biscuit, I will repeat the question about how come a States-owned monopoly utility can make a return of something like 32 per cent on its revenue whereas the other monopolies or utilities are producing something like 12 or 10 per cent? When I see figures like that, I think something is amiss and we have all seen in the last month, 3 weeks, Ofwat in the U.K. making its ruling - its regulations - about profit levels and reinvestment levels for the various water companies on the mainland and hearing the water companies, not surprisingly, squeal and say: "Oh, that is too tight" and consumers saying: "Well, hang on, it is not tight enough because our bills are going up through the roof." So there is a serious question to be asked there and, of course, the issue is with profits like that, how come this company, which we own, is laying off people and making them redundant and increasing the burden of the recession despite doing relatively well? That is the fundamental question at the heart of my proposition. We are told that this is a company decision and we cannot possibly interfere with it. We must let the company just run itself. I refer Members to some statements from the retiring chairman's final statement on the year. He says: "As this is my last Chairman's statement, I am taking the opportunity to put on record my view that Jersey Water is a tremendous asset to the Island focusing, as it does, on the provision of high quality treated mains water. It has an infrastructure in extremely good condition with detailed plans for the continued maintenance and enhancement of its processing and distribution capability for the future." It has an infrastructure in extremely good condition so let us not pretend that it has got enormous infrastructure bills coming up, as is the case on the mainland, and therefore needs to be driving a hard bargain and whatever in order to enable it to do so because that is not the case. If we, just by way of example, look at what is happening, mains renewals by year... and these are the people, mains layers, who are being laid off. In 2004, 2,500 metres of new drains, renewals; 2005, 2,500; 2006, 2,100; 2007, just under 2,000 metres of renewed drains; 2008, last year, 2,700 metres of renewed drains. They are highly active, they are working, and they are busy. This is a company that has its own employees as part of the mains laying team, some 20 workers, and takes on some 10 or so employed by a subcontractor, Jayen. It is so busy getting on with re-laying its drains,

making sure things are hunky-dory in a fairly good infrastructure and it has got 2 teams but next year, it has decided it only needs one and it is going to subcontract. I ask you at this stage whether there is any protection as to what the terms and conditions of the new Jayen team will be compared to the old Jersey New Waterworks team. I suspect they are substantially less than current. That brings me to a question of what efficiencies are being produced by the use of Jayen and whether those efficiencies are worth it. The retiring chairman last year said: "While the shareholders - the company - continues to provide a good return and strong dividend growth, the future will inevitably hold challenges and changes for Jersey Water. However, it is, in my view, important that external distractions and pressure for short-term gains are not pursued at the expense of the company's ability to provide for the needs of all its stakeholders." So he eschews short-term gains and notes that the company is producing an extremely good return for shareholders, the major and controlling shareholder of which is the States of Jersey. However, it has chosen to reorganise, lay off its workforce, presumably in order ... and, indeed, the new chairman says: "Maintain and improve those dividends", a statement added. "Jersey Water, while financially secure, faces persistent cost pressures and has a duty to continually review its operations and find ways to operate more efficiently to keep prices for customers at a reasonable level while maintaining acceptable returns for shareholders." Last year, shareholder return went up by 14 per cent. Some of that came our way to the States. I do not know what the figure is. Perhaps the Minister for Treasury and Resources can fill me in. I understand it is something like £1.4 million which we got in dividend from this company, 14 per cent up on the year. At a time when we are dealing or attempting to deal with the effects of recession, with all the redundancies attached to that, from companies in the private sector not doing so very well and we are pumping some £40-odd million into the economy to maintain the economy as best we can, here we are, a company that is making a profit that we own laying people off. I ask Members, does that make sense to you because it certainly does not make any sense to me. Finally, from the chairman's statement last year: "I continue to be impressed with the very positive attitude of our staff to their work throughout the company and on behalf of my colleagues on the board, as well as shareholders [that is us] I take this opportunity to thank all of them for their continued support and commitment to the company." It is a big commitment. A lot of these workers have been employed for 20 or more years and in the Annual Report, I come across another statement on page 12 from the company staff and management: "The company recognises the valuable contribution made by Jersey Water staff and invest heavily in the training and education of its workforce. During 2008, the programme of funding training for national vocational qualifications in leadership and management continued in addition to the funding of other more specialised qualification training for other staff." So this is a company that we own that is committed to the quality and training of its staff. Is Jayen equally committed to the training and qualifications of its local staff? I do not know. I do know that some of the candidates for the posts now advertised at Jayen were asked very clearly whether they spoke Polish. I will leave that statement with you to work out to what extent the workforce is equivalent between the company and Jayen. I also point out to Members that in emergency work, which we saw just last week or the week before up at Trinity Hill, a great big hole in the ground. Who gets called out on emergency? It is not the Jayen workers; that is not their contract. It is these workers employed by Jersey New Waterworks who come out at all hours of the day and night in order to do that emergency work. That is how committed they are and that is the way in which they are treated. So the second issue we come to is can we, as the chief shareholder, do anything about what goes on at Jersey New Waterworks and the answer is: "Well, yes, we can." It is a utility and it is a monopoly and in Article 6 of the Competition Regulatory Authority (Jersey) Law 2001 it says under functions: "The Authority may recognise or establish or assist or encourage the establishment of bodies that have expertise in or represent persons having interests in any matter concerning competition, monopolies, utilities or any matter connected with the provision of goods or services to which the Authority's function relates." Then in 4.6.4: "The Authority may, on request of the Minister, provide the Minister with reports, advice, assistance and information in relation to any matter referred to in paragraph 2" which I just read. The employer, Jersey New Waterworks, stated

very clearly that it was reviewing its operations with up to 20 redundancies, now we understand of the order of 10, with a view to maintaining acceptable returns for its shareholders. The majority shareholder is us. I believe that the Minister for Economic Development has almost a duty to ask J.C.R.A. (Jersey Competition Regulatory Authority), in the light of its profit margins and in the light of its behaviour in order to maintain dividends and profits, what is going on at Jersey New Waterworks. I think it is absolutely an issue that falls within the remit of the J.C.R.A. and that the Minister should move ahead and ask them to produce a report. I list in my proposition 7 potential areas that may be of concern; so firstly, is the States conflicted? Many would consider that it is acting against its own interests and against its policies in allowing redundancies which will further depress the economy at a time when the economic stimulus policy attempts to maintain and stimulate the economy through recession. The fundamental question is a profit of over £4 million on a turnover of only £14.3 million an appropriate return for a monopoly position and could it be excessive? Is the decision to outsource and privatise the mains engineering activity with a loss of up to 20 jobs solely to further increase profits and dividends and is that in the best interests of the economy overall? I doubt it. Then is the States fundamentally conflicted as the majority and controlling shareholder in balancing its interest in pursuing higher dividends against its interest in reducing prices to residents? Big questions that need answering. I think we ought to set J.C.R.A. off answering some of them and we ought to do that now. Turning to the comments of the Minister for Economic Development - he is not having a good week this week but let us hope that his luck changes or not - it says here in the second paragraph: "This does not give the States any influence or right to sanction over the Board of Jersey New Waterworks Company" - the company - unless under Article 23, it says: "Where it is necessary to do so in the public interest, it may determine water rates." That is an interesting power. Company making a profit and sacking people at the same time, paying us dividends. It could determine water rates but I am not asking that. I am asking that we investigate what is going on and whether profit levels are correct. It says later on: "The J.C.R.A. is an independent body and can professionally draw from its own conclusions without political interference" and yet Article 6.4, that I have just quoted, says the Authority may: "On request from the Minister." It is not interference, it is saying: "The Minister may ask for reports, advice, assistance, what is happening at Jersey New Waterworks Company." Is a monopoly supplier making excessive profits as a basic question. J.C.R.A., it says, under its own initiative could open an investigation on the Competition Law and take appropriate action to remedy abuse. However, again, point 6.4 which says: "On request from the Minister." Why does the Minister take a side and a half to justify what appears to be his inaction when he could act about this monopoly supplier? Finally they end up with the usual: "Deputy Southern's report and proposition makes 2 flawed assumptions when it states: 'Investigation could be completed and paid for in the 2009 budget'." Well, I am terribly sorry for suggesting that. Apparently it has all been spent but the budget is there for 2010. It has been reduced quite substantially because the E.D. say that it is much more efficient at what it does and can do things cheaper than it used to be able to do. So it has been reduced from something like £500,000 a year down to £400 and something a year but nonetheless it has funding in place. This is the sort of thing it expects to do. I think we ought to be asking it to do so now. I urge Members to support this proposition and I will take notes.

The Deputy Bailiff:

Is the proposition seconded? **[Seconded]** Very well. It is now open for debate. I call on Senator Ozouf.

6.1.1 Senator P.F.C. Ozouf:

Deputy Southern is clearly against the board's decision to consider outsourcing effectively, as I understand it, the pipe-laying and pipe roadwork department. I think that is a fair assumption to say because he has obviously asked a number of questions to both myself and the Minister for Economic Development and, indeed, the Chief Minister in relation to this. He has asked for the States to intervene on numerous occasions. I think every Member will understand that Deputy

Southern does not believe that this is the right decision for the company. Before I say anything about this, I just want to restate the fact that I believe that all redundancies of any individual are, of course, a personal tragedy for the individual and any individual, whether an employee of a State-owned entity or a private sector entity, should be treated properly and fairly and that is exactly what is happening with the way in which Jersey Water is going about that. The number of Ministers that have responded to questions, including the Minister for Social Security, knows and has been informed about some of it because it has been subject to questions in this Assembly about what the process is for the employees. If the decision is to go ahead, then they will be treated above the statutory minimum. That is important because there is appropriate challenge and oversight and scrutiny of the company's activities under a number of different statutes and arrangements. This proposition is attempting now, if I may say to Deputy Southern, having not persuaded the Minister for Treasury and Resources to intervene, in my view it would be inappropriate to intervene in the company arrangements. He is now attempting to convince the Assembly to use the Competition Law. I think that the key argument with a very well constructed answer that has been submitted by the Minister for Economic Development can be shown and if I ask Members to turn to the Minister's comments. Simply the case why I encourage the Assembly not to go down this road is summarised in the sentence as follows at the bottom of page 2: "Competition law is not designed to deal with labour relations and the dominant company's position *vis-à-vis* its own employees." This is not what competition authorities and regulatory authorities deal with. If the entity was a monopoly in terms of road opening and road labouring and there was some sort of competition issue about the only provider of road opening facilities, then that would be an absolutely right use for the Competition Law, but this is absolutely a misuse. Deputy Southern is gesticulating and saying all sorts of things. Well, I have to remind him that some Members of this Assembly know very well what the Competition Law is and what the J.C.R.A. was. I brought the proposition that set up the J.C.R.A. Law and I sponsored the Competition Law and I know exactly what it is there for. It is not there for intervening in employee relations. There is not a competition issue in relation to this particular matter. He would be perfectly entitled to ask the J.C.R.A. to look at the issue of water rates and water charges where that is the monopoly issue. Indeed, it is the subject of an ongoing discussion and has been for some time as to whether or not in time there does need to be, just as we have had a discussion about the J.E.C., a regulation brought in relation to water rates and water charges. That is a perfectly legitimate issue. If I may just urge a note of caution to Deputy Southern, he needs to be quite careful because sometimes the question you ask might not get the answer that you want. What the Competition Authority will do is they will be looking very carefully at Jersey Water and they will be wanting to see whether or not, because their job is very much to look at consumers, their remit is absolutely consumers, and they will be looking for any regulated entity in order to drive the maximum efficiency in order to deliver that to their customers. They are not interested even in the shareholder unless there is a statute that provides for them by having a requirement to fund the operations and there are provisions in both the J.C.R.A. and the Competition Law that the Competition Authority needs to have regard to the ability of the company to fund the operations and the ongoing investments of the entities. They cannot make a competition decision on prices if it effectively means that the company cannot provide for its expenses and its long-term capital expenditure. So they are likely, if anything, to be pushing the entity to be efficient. I am afraid it would be a completely inappropriate use of the Competition Law to intervene in the arrangements that the company is making with its staff. That is a misuse of the Competition Authority and it would be wrong to do so. What I can say to Members is that I am, as the shareholder representative, doing work on Jersey Water and, indeed, the other part-owned or wholly-owned entities. In terms of appropriate shareholder return, signing-off of business plans, standardised procedures in relation to annual reports, communications with the shareholders, shareholders' notes, is all being looked at by work that is going on by Deloitte at the moment where I am looking at all of the owned entities. I will be looking at Jersey Water and am indeed looking at Jersey Water to ensure that the public interest is preserved and that there is an appropriate balance of shareholder interests and the companies are run appropriately because it is

fair to say that Jersey Water has been an inherited position when we have strengthened the arrangement substantially in previous years in relation to Jersey Telecom and Jersey Post and we have not done so in relation to Jersey Water. I have to say that everything I have seen from Jersey Water gives me confidence in the management and in what they are doing and I think that they are making the right decisions in the interests of their consumers, the long-term interests of their staff and the shareholder in relation to looking at their cost base. I do not think that anything that I say is going to convince Deputy Southern that they are making the right decision. He clearly wants to try and block the decision that is being made by management. All I would say to him is he has tried to convince and he is trying to access that information and get that influence in a number of different ways. He has tried the Minister for Treasury and Resources. I have said that that is an inappropriate use. It would be even more inappropriate to use the Competition Law. Having said that, there is oversight of Jersey Water. There is going to be more scrutiny of the activities of Jersey Water from the shareholder going forward after this review and I will be publishing the conclusions of the Deloitte report in the first quarter of next year, and the Corporate Affairs Scrutiny Panel, I understand that they are going to be doing some work in relation to the utilities which will include Jersey Water, then that is the appropriate way to do it. To misuse the Competition Law like this would be entirely wrong and I urge Members to reject the proposition.

6.1.2 Deputy J.A. Martin:

It always amazes me how people can read something that is not in the proposition because I am reading, and we know where Deputy Southern's sympathies lie. His sympathies lie with the workers like many other people. What he says and I will just read what he is asking to do: "A report providing information and advice in relation to the activities of Jersey New Waterworks Company Limited, the utility, being a monopoly, on the reasons for and consequences of outsourcing all main laying and service connections civil engineering works activity." Exactly what he is asking for is to let people know. It is funny that I seem to have done a full circle and seem to have gathered some supporters along with Deputy Southern, because I am sure - and with Deputy Breckon - one of our first Scrutiny Panels was the incorporation of Jersey Post and we said: "Do not do it" and we did do it and now Jersey Post is in competition with Jersey Telecom which we said: "Do not privatise" and they did it and we did say: "Do not sell it off" and they did not do that. I am sure with the way most companies and bank loans have gone at the moment, we are lucky we kept hold of that. A report I would like ... I do not know what the report would say but the Minister for Treasury and Resources just hit on the purpose of the J.C.R.A. is to protect the consumer. I could not for one minute over think what Jersey Waterworks want to do but let us look at it this way. Jersey Waterworks want to cut their costs so they will up their profits. Now, if the J.C.R.A. go in next year and say: "Hang on a minute, boys, you have got too much profit here, you have got to give back some to the consumer so you are going to lose some of your money. You have already laid off X amount of people." Who is the winner? Who is the winner? The consumer will not be the winner, the consumer is probably the same person they laid off or a family member. What I am saying is, if that is the logic at the end of when they decide to come in ... and I totally disagree with the Senator. He did have a hand in setting up the J.C.R.A., and what have they made of that for the first 2 years? Of course it is acting much more efficiently now because the whole board and their wives are not out to very expensive lunches every week and they were all sacked because that is what they were doing. But to tell me the J.C.R.A. have not got £30,000 to do a report when only in the last few weeks they have been giving out more and more licences for telecoms, and charging a great deal for this privilege, I might add, I do not believe you and if I did believe you, I think they are not running themselves very well if they have not got a spare £30,000, so they are going to go to the wall on this? I do not believe it. According to the comments, all that aside, the Minister for Treasury and Resources says: "Accordingly, the States have no power to interfere in the general running of the company, nor to force the board to change decisions that it has made regarding levels of staffing, remuneration or any other issue that is rightly governed by the law. In the board's view, the best commercial interests [it does not say "consumer interests"]

there, it says “commercial interests”] for the company and its shareholders” which we are the main shareholders. So it is quite clear what the J.C.R.A. can do. I do not know the answer but I do want to know before we go down this line again and find out and what another fine mess we are into, Stanley, because nothing is cheaper for anybody. People are doing the same work with fewer skills for a lot less money and the company, and as to the shareholders, are no better off in the profits. Does it really add up? We have a body that was brought to this House to look at monopolies, dominance and competition. We have not got competition in the water market. We have a dominant monopoly that is owned by us. It is exactly when you can find all different articles to do this, and please read Deputy Southern’s proposition. He is not asking Jersey Waterworks and the States to instruct them to do anything. It is asking the J.C.R.A. to bring back the consequences of all their proposed actions, on us, the shareholders, on the larger consumer and obviously the commercial aspect and probably there will be other issues that they will take into account. So do not mess with words when they are in black and white. Read what they say and I think it is an easy no-win. As I say, if the J.C.R.A. have not got the money, I am sure the Economic Development Department can come up with £30,000 to the end of the year. They are getting it back next year when they get all their licence money in from another 6 telecoms outfits that are trying to muscle in on J.T. (Jersey Telecom).

6.1.3 Deputy A.E. Jeune:

I would just like to thank the Minister for Economic Development for his comments on this proposition because it confirmed my understanding that the J.C.R.A. is an independent body. I recall a few months back attending a presentation that they did in which the J.C.R.A.’s counterpart from France, as well as the U K., were present. If I understood one thing very clearly from attending that is just how much their independence is important to them. My feeling is if the Minister for Economic Development was to request that they did certain things, I would expect they would probably tell him to take a walk. I will not be supporting this proposition.

6.1.4 Senator S.C. Ferguson:

As a shareholder, we do have to be careful that we do not micro-manage and act as a shadow director. We are not the sole shareholders of this company and therefore we could be in problems doing this. Perhaps if the proposition had restrained itself to the monopoly aspects, it might have been perhaps better. It is for these general reasons that there is a sub-panel of the Corporate Affairs Scrutiny Panel under the chairmanship of the Connétable of Grouville which will be looking at the general relationship between the Minister for Treasury and Resources and the utilities which will be starting in the New Year, all being well. I am unhappy about the particular way this proposition has come but I share the concerns of Deputy Southern because it seems an odd change in policy between the Annual General Meeting in, I think it was, April or May, and November and I do wonder if there is some connection between the change of chairmanship of the board. That obviously is something that may well come out in the wash. I am not at all certain about this but I am concerned that we do not start acting as a shadow director and getting ourselves into a real legal tangle.

6.1.5 Deputy D.J. De Sousa:

I do feel most of what I want to be said has been said by Deputy Martin and I also feel that the Minister for Treasury and Resources has tried to muddy the water here and imply an ulterior motive. We know Deputy Southern and many of us are concerned about redundancies. This is not to do with that. This is asking purely for the Minister for E.D.D. to ask the J.C.R.A. to have a look at what is going on within Jersey Water and just report back to the States. I do feel that this is a monopoly and it does need looking at. Please, when you are making up your mind on how you are going to vote on this, look at the wording of the proposition. It says: “To request the Minister for E.D.D., in accordance with Article 6 of the Competition Regulatory Authority law 2001, to request Jersey Competition Regulatory Authority to prepare for him a report and present it to the States, a

report providing information and advice in relation to the activity of Jersey New Waterworks Company Limited, being a monopoly, on the reason for and consequences of outsourcing all main laying services in connection with civil engineering works.” It is quite clear what we are asking for. That is what you are being asked to vote on today. Please be clear when you do vote why you are voting one way or the other.

6.1.6 The Deputy of St. Mary:

Just to pick up on what Senator Ferguson said, she said that there was a risk of us going into micro-management. That is not at all what this is about and, in fact, in the next sentence, she said if the proposition had confined itself to the monopoly aspects, then ... and, in fact, that is what this proposition does do. It is about the fact that Jersey Water is a monopoly. I think what this proposition does is it does remind us that monopolies are an issue in themselves, particularly, obviously, in a small jurisdiction but in any jurisdiction where you have a monopoly, there is always the risk of feather-bedding, of people simply saying to themselves: “Well, we are a monopoly so we do not have to try very hard.” Now, I came across this issue because in my days as chairman of Christian Aid, I read reports about the privatising of water companies throughout the world and the effects this had on the social obligation of water companies. What the findings are, of course, is that when you privatise the water company in some poor country, what happens is that the very poor do not get any water and that the whole system is skewed to the needs of people who can pay. Now that is fairly obvious. The Christian Aid’s view was of course, in conjunction with many other N.G.O.’s (non-governmental organisations), that in principle water should be kept in public ownership for the very good reason that you get better delivery of the service if you do, but they added the rider: “Then how do you control the risk of inefficiency when you have a monopoly because let us all sit back, we do not have to try very hard, we are a monopoly.” Their suggestion was that you had to have independent supervision of some kind. You had to have a regulator of some kind to, first of all, protect against inefficiency and, secondly, to protect the social obligation and to put the 2 in balance. I think that is what we are faced with here. I heard the Minister for Treasury and Resources say that if there was to be this investigation it might come out with something that the proposer might not like to hear. Well, that may be so and maybe the proposer will comment on that, I am sure he will because I think that is a very important issue but to call for a look at a monopoly, because it is a monopoly, and acting in this way which does ring alarm bells, it does raise serious questions of the rightness of outsourcing 20 peoples’ jobs, in the light of the praise the very same workers received in an annual report and the loyalty that they are said to have and the aspect of training which the proposer mentioned. There are issues of: “Oh, and then we just suddenly turn around in November and announce the decision that we will outsource.” It was not being considered, as the Minister for Treasury and Resources said, it was announced. There are issues there. I do not want to go too far into the labour relations side. I do want to come back to the monopoly thing. The issue is that we have a monopoly. We are a small island. We have, somehow, to get the balance right and it is appropriate that the J.C.R.A. which is our tool for doing this job, it is written into their terms of engagement - as I understand it from the proposer - is there, that one of their roles is to consider, supervise, regulate, whatever you want to say, monopolies and that is what we are talking about here. I just wanted to add those comments to the debate because I think they are hopefully useful and I will look forward to hearing the comments of the proposer when he sums up.

6.1.7 Senator A.J.H. Maclean:

Despite what Deputy Southern might think I have had a jolly good week. **[Laughter]** I am very satisfied with the progress that has been made this week and I do not know what benchmark the Deputy himself uses **[Laughter]** but I think I will leave that particular comment at that. I have to say that Deputy Southern has confused a number of issues in his report and proposition. He thinks that the States, perhaps, should be interfering with matters with regard to a commercial and independently operated board and I think that is not an appropriate way for the States to act. The

only power the States would have would be under the 1972 Water Law - under Article 23 - that is in relation to water rates and water charges, similar perhaps to the recent discussions and debates we have had with J.E.C. Under that particular Law it says: "Where it is necessary to do so in the public interest, the States could choose to look at matters relating to water rates and water charges." But just at a high level, I would comment that the water charges in Jersey are equivalent or indeed lower than relevant jurisdictions, nearby jurisdictions. It does not appear, certainly to me at face value, that there is an issue with regard to water charges and rates. The board of Jersey Water have had to make some difficult decisions. They have had to make a very difficult decision with regard to staff redundancies, although I have to say that I would hope that the indications that we have that the contractor that has been used for many years by Jersey Waterworks will be able to take up a number of the former Jersey Waterworks employees and give them work, that is something I am sure all Members would join me in hoping that that outcome occurs. I understand where Deputy Southern is coming from with regard to this proposition. I understand his interest and I would suggest that the interests of all Members of this Assembly in employees and the difficult circumstances that more than a thousand people in Jersey have already found themselves in by losing their jobs in this current economic downturn, and there will probably be more, although I am loathe to say so. It is right that we have the interests of employees at heart. I know the Minister for Social Security has done a lot of work in his department and my own department in trying to get people back into work as quickly as possible with skills training and trying to stimulate the economy as best as we possibly can. But what Deputy Southern is asking for in this proposition is not a role for the J.C.R.A. I really feel that although he highlights the profitability that the Jersey New Waterworks Company have made, what he describes as significant profits I believe we should be thankful for, we need to have an entity like this that is profitable that does not need to have States support and does not need taxpayers to support it and employs people. I think that is absolutely right and it is also right that the board of the Jersey New Waterworks Company should ensure that the company is profitable and that it has a long-term sustainable future. To do that it needs to invest in its infrastructure and we have to bear in mind that the infrastructure of the Waterworks Company is old. A lot of it dates back 100 years or so and it will need significant investment over the coming years. Consequently, they need the profits in order to be able to invest in infrastructure and have a sustainable long-term future. The report states several areas which fall within my remit but in reality there is only one and that is regarding the profits and what would come under an abuse of a monopoly position, as far as the J.C.R.A. are concerned, but I have to say that I have seen no evidence with regard to an abuse of their monopoly position. I have answered a question or 2 with Deputy Southern at the last sitting with regard to his desire for me to intervene and request the J.C.R.A. under 6(4) to investigate the monopoly position with Jersey New Waterworks. Deputy Southern has written to me and I have forwarded that letter to the J.C.R.A. so that they can make a decision as to whether, on the basis of Deputy Southern's complaint, they may choose to investigate. I am not going to make a direct request because I have not got the evidence to justify doing it. I do not believe there is an abuse of a monopoly position as far as the Jersey New Waterworks Company is concerned. The J.C.R.A., outside of any complaints, can indeed themselves decide to issue an investigation and clearly and rightly so that is a matter for them to decide upon. I would also comment, if I may, about Deputy Martin. She made a comment about the J.C.R.A. not being short of funds and indeed if they were short of funds that they should just issue a few more licences, Telecom licenses or some other licence but of course funds that they get from the issue of licences - I am sure Members would appreciate - are ring-fenced and indeed we could not have a position where there was any form of cross-subsidy of funds, so that is not an appropriate position. Costs do matter, they matter to the J.C.R.A. but I would suggest that they matter as much to my department, they matter to me and they matter to the taxpayer. We have a responsibility to ensure that when we ask the J.C.R.A. to investigate under a 6(4) request that there are reasonable grounds to do so. As I have said, I do not believe there are reasonable grounds and I would urge Members to reject this proposition.

6.1.8 Deputy S. Pitman:

I just have a couple of comments to make. Firstly, the Minister for Treasury and Resources made a categorical statement that the employees at Jersey Water facing these redundancies have been treated well by their employers. At the same time he has only listened to one side. He has not spoken to these employees and I say to the Minister for Treasury and Resources that actions speak louder than words. The second point I wanted to make was that the Minister for Treasury and Resources has stated in the House before that he does want to follow a policy of incorporation and I think there is a great interest that he has in not voting for this investigation by the J.C.R.A. but also we know there are many examples in the U.K. when government has followed the policy of incorporation and privatisation of services that, more often than not, services have gone down while prices have risen phenomenally. I really, really urge that we do not want to go down that road because life is getting more and more difficult already for the people of this Island. I know some Members cannot possibly imagine that or even care for that but that is a fact and I ask Members to consider that please when they vote for this proposition.

The Deputy Bailiff:

Does any other Member wish to speak? If not I call on Deputy Southern to reply.

6.1.9 Deputy G.P. Southern:

The Treasury and Resources Minister stated clearly that every individual redundancy is a personal tragedy. It is a double tragedy when you are laid off and the company is making profit. It is vaguely understandable when the company is not and going into the red. You can understand that, well fair dues, but not when the company is making - and I will say this figure again - £4 million on a turnover of £14 million, a profit ratio of 32 per cent, unheard of I would have said. He then said those workers have been well treated. Well they have not been as well treated as the Jersey Telecoms' workers who have been given something like up to a year's notice that we are reorganising, and that we will be making some redundancies, and we are doing our best to make them voluntary, and we are looking at early retirement, *et cetera*. You have got time to plan how you do this and what you go for and here is the package. They were given 30 days' notice. That is the minimum statutory about to come in, very generous of them. It was not a notice that we are considering restructuring, it was 30 days starting now, 30 days from now some of you will be out of work just before Christmas, thank you. So not well treated at all. Remember that ultimately we are the controlling and majority shareholder. We are then told that the J.C.R.A. is only about competition and there is no competition here so how can the J.C.R.A. get involved? I have heard some arguments in my time, mostly they involved Noddy and Big Ears, when I heard this sort of level of definition of the J.C.R.A. Jersey Competition and - wait for it, a big surprise - the Treasury and Resources Minister, although he was involved in its creation, and Regulatory Authority, again I keep coming back, in a small island, while competition may or may not be a good thing, what we need is effective and efficient regulation, especially where we have a monopoly and especially where we have a utility. But we need not worry about anything because the Treasury and Resources Minister is looking at all sorts of aspects to do with our utilities so everything is hunky-dory because he always sees things through to a fine end. I thank again Deputy Martin for her contribution and Deputy Jeune said: "Well because the J.C.R.A. is an independent body", and it is, that what she expects them to do is to tell the Minister for Economic Development to take a walk. Gosh, if only I could do the same, I would refrain. Senator Ferguson said she was surprised and I agree with her, that between 22nd May - which was the time that the annual report and accounts were discussed - and November, a decision as significant as this was made and I remind her that, effectively, what we had was a change in the chairman and I believe that was a significant factor. Deputy De Sousa reminded us that what I say here is not that the Minister for E.D. and the Treasury and Resources Minister interfere with the running of this company. I do not say that, I say: "Hang on, one of the issues is £4 million profit on £14 million turnover and us, as the major shareholder, taking a dividend from that of something like £1.4 million, what is that about?" That is exactly

why the J.C.R.A. was set up to investigate. If they have not investigated it yet I will be asking: “Why not, why not?” Have they been so inundated with issues around Jersey Post, with issues around Jersey Telecom? Perhaps, but they seem to have ignored Jersey Waterworks and yet they are making profit levels 3 times what occur in the other utilities. There has to be a question that needs answering there and, at the same time, in order to boost profits and dividends they are laying off workers in a time of recession. I do not believe that can be right and certainly the fundamental issue of profitability and what that means is something that J.C.R.A. should be investigating. As the Deputy of St. Mary reminded us, the Treasury and Resources Minister says: “I might be shocked by what the J.C.R.A. come back with.” Well, can I inform the Treasury and Resources Minister I am quite content to be shocked by whatever it finds because what it will do is come back with some evidence about profit levels and about efficiency that we could probably all do with finding that information. It is back to the old scrutiny adage about where is the evidence? What is going on? Let us find out, all I am asking for is an investigation. Then we come to the Minister for Economic Development, the Minister - no, I will not obviously start saying that he is a Minister for total inaction, it is just partial inaction - makes a case to say that he is not convinced that he needs to ask the J.C.R.A. for a report. He does not see a reason. I point him to over 4 million individual pounds worth of reason why he might consider lifting his pen and signing the letter that says: “Please, J.C.R.A., will you take a look at this?” He ought to be concerned. He also said: “The company had to make many difficult decisions, including this lay off”; “had to make”, wrong word - “chose to make”. Despite a healthy profit situation, up 14 per cent on last year, the company has decided to lay off its basic core workforce and rely on outsourced supply. Despite the fact that it is laying more metres of pipe work than ever before, it is working its own workforce and the J.N.W.W. (Jersey New Waterworks) workforce to do so. It is inundated with work but no, we are going to lay off the workforce on which we rely. It makes no sense to me but they “chose” to do this. They did not have to, profits were healthy. As the retiring chairman says: “The infrastructure is [it is obviously a relative statement compared to many places] in a good condition.” Yet the Minister for Economic Development knows better than the chairman of the Jersey New Waterworks and says: “The infrastructure is old, there is a massive bill coming up.” He then repeats: “I have no grounds to intervene.” I believe he has grounds to intervene. The independence of the J.C.R.A. is not compromised. The powers are contained in Article 6 of the Competition Regulatory Authority (Jersey) Law 2001: “The Authority may, on request by the Minister, provide the Minister with reports, advice, assistance and information in relation to any matter referred to in paragraph (2)”, and paragraph (2) says: “... having interests in any matter concerning competition, monopolies [this is one], utilities [this is one] or any matter connected with the provision of goods and services.” There it is, the powers are there, it is not interfering, it is doing what is right about a situation which certainly, from the outside to a lay man’s eye, looks very confused. Let us have some clarity, let us get the J.C.R.A. in there and let us have a report and if I am shocked I will live with it. I urge Members to support this proposition and I call for the appel.

The Greffier of the States (in the Chair):

Very well, the appel is called for on the proposition of Deputy Southern. If Members are in their designated seats the Greffier will open the voting.

| POUR: 35 | | CONTRE: 2 | | ABSTAIN: 5 |
|--------------------------|--|-----------------------|--|-------------------------|
| Senator T.A. Le Sueur | | Senator A. Breckon | | Senator B.E. Shenton |
| Senator P.F. Routier | | Senator S.C. Ferguson | | Senator J.L. Perchard |
| Senator P.F.C. Ozouf | | | | Deputy R.C. Duhamel (S) |
| Senator T.J. Le Main | | | | Deputy of St. Mary |
| Senator F.E. Cohen | | | | Deputy M.R. Higgins (H) |
| Senator A.J.D. Maclean | | | | |
| Senator B.I. Le Marquand | | | | |
| Connétable of St. Ouen | | | | |

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| Connétable of St. Helier | | | | |
| Connétable of Trinity | | | | |
| Connétable of Grouville | | | | |
| Connétable of St. Brelade | | | | |
| Connétable of St. Martin | | | | |
| Connétable of St. John | | | | |
| Connétable of St. Saviour | | | | |
| Connétable of St. Peter | | | | |
| Connétable of St. Lawrence | | | | |
| Connétable of St. Mary | | | | |
| Deputy of St. Martin | | | | |
| Deputy J.B. Fox (H) | | | | |
| Deputy J.A. Martin (H) | | | | |
| Deputy of St. Ouen | | | | |
| Deputy of Grouville | | | | |
| Deputy J.A. Hilton (H) | | | | |
| Deputy S. Pitman (H) | | | | |
| Deputy K.C. Lewis (S) | | | | |
| Deputy I.J. Gorst (C) | | | | |
| Deputy of St. John | | | | |
| Deputy A.E. Jeune (B) | | | | |
| Deputy T.M. Pitman (H) | | | | |
| Deputy A.T. Dupré (C) | | | | |
| Deputy E.J. Noel (L) | | | | |
| Deputy A.K.F. Green (H) | | | | |
| Deputy D. De Sousa (H) | | | | |
| Deputy J.M. Maçon (S) | | | | |

7. Review of the Roles of the Bailiff, Attorney General and Solicitor General: appointment of Chairman and Members of the Review Panel (P.196/2009 (Re-issue))

The Greffier of the States (in the Chair):

Very well. We come finally to the proposition of the Council of Ministers on the Review of the Roles of the Bailiff, Attorney General and Solicitor General: appointment of Chairman and Members and I will ask the Deputy Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion to refer to their Act dated 4th February 2009 in which they agreed that an independent review be conducted into the current roles of the following unelected members of the States, namely the Bailiff, the Attorney General and the Solicitor General; and that the Council of Ministers, after consultation with the Privileges and Procedures Committee, be requested to submit to the States for approval the names of the proposed Chairman and members of the Panel to conduct the review and to appoint the following as Chairman and members of the Review Panel for the duration of the review; The Rt. Hon. The Lord Carswell, Chairman, Mrs. Marie-Louise Backhurst, Dr. Sandra Mountford, Mr. Ian Strang and Mr. Geoffrey Crill.

Senator T.A. Le Sueur:

Yes, Sir, because I have another appointment pretty shortly I will ask the Deputy Chief Minister to act as rapporteur for this matter which I hope is not contentious and should not take long anyway.

The Greffier of the States (in the Chair):

Very well. Deputy Chief Minister?

7.1 Senator P.F.C. Ozouf (Deputy Chief Minister):

Members will recall that the proposition has already been approved by the Assembly to perform a review of the Crown Officers. The Chief Minister, together with the chairman of Privileges and Procedures, formed the selection panel. We are fortunate to have secured the services of Lord Carswell, together with a number of eminent Islanders who are set out in the report and proposition. I will endeavour to answer any questions Members may have and I make the proposition.

The Greffier of the States (in the Chair):

Is the proposition seconded? **[Seconded]** Does any Member wish to speak on the proposition?
The Deputy of St. Martin.

7.1.1 The Deputy of St. Martin:

As the person who lodged the original proposition way back in January, and one can see it was approved in February, and I think we will remember that this was supposed to come back by the end of March for the inquiry to be completed within 12 months, I must say how disappointed I am - I am sure other Members are as well - at the tardy way in which this has been approached by the Council of Ministers, to wait almost 12 months really is not the thing. The impetus has been lost. I would only hope that when the review board gets underway they will be able to complete the work within the 12 months, I assume from now as they are starting but really, I must say, I am very disappointed it has taken so long. Maybe we could have an explanation.

7.1.2 Deputy D.J. De Sousa:

Yes, I too would like to reiterate the last person's comments. Why has it taken so long to get this board set up? Also, I do not want to cast any aspersions on anybody's character but the thing we are looking at here and the people that have been chosen to look at it, I do feel there is not a broad enough spectrum of people being elected on to this board to do this review.

7.1.3 Deputy M.R. Higgins:

I would like to echo the comments of Deputy De Sousa. On this panel, as far as Lord Carswell is concerned I have no real problem. However, we have 2 lawyers, Mr. Ian Strang and Mr. Geoffrey Crill, so 2 members of the legal profession. We have got one person who is involved in a number of inquiries before and is also on one of the Tribunals, that is Mrs. Backhurst but she is also a former president of Société Jersiaise. We have a historical perspective, people looking at Jersey history and tradition. We have 2 lawyers. We have one person who works for, I think, the Education Department, he is a current civil servant, is that correct? I would like to see worthy independent members so I am not convinced that this particular makeup gives a broad enough sort of spectrum of people looking at this issue and I fear that I think I know the outcome of the thing already.

7.1.4 Senator T.A. Le Sueur:

I understand the concerns of the Deputy of St. Martin and others. This has taken rather longer than we might have liked but I was anxious, as was the chairman of the Privileges and Procedures Committee, to ensure that we had a robust board, particularly that we had a very good chairman, which I am sure we now have, and that we have a balanced team of people to form part of this panel. That is clearly a matter of individual judgment but all I can say is that we have advertised for the post. We have received applications from a number of people. We have short-listed 6 of those and from that short list we selected these 4. We selected them because of their range of abilities and the fact that they did form not only, in our view, a balanced panel but also an informed panel, one able to deal with some quite tricky terms of reference. To give a more positive note to the Deputy of St. Martin, although we have perhaps been a little bit late in starting, the chairman advises me that he hopes this review can be completed by the summer next year which will be well within the 12 months of the proposition being brought forward. Although the Act of the States was

the 4th February it was only back in May that we agreed the terms of reference for the general procedures. I accept that is still a long time and that is why I am anxious to deal with it as soon as possible so that the panel can get started before Christmas and get their work underway and can really catch up some of the time that has been lost. I accept the comments of the Deputy of St. Martin but I think it is now the time to get on with this. Lord Carswell is anxious to start and he has got this time available and I urge Members to endorse this membership and to let the panel get on with their work as soon as possible.

The Greffier of the States (in the Chair):

I call on Senator Ozouf to reply.

7.1.5 Senator P.F.C. Ozouf:

I think the Chief Minister has said everything that needed to be said. There is a wide spread of experience on this panel. They have extremely important work to do and I move the proposition and ask for the appel.

The Greffier of the States (in the Chair):

Very well, the appel is called for on the proposition. If Members are in their designated seats I will ask the Greffier to open the voting.

| POUR: 36 | | CONTRE: 3 | | ABSTAIN: 1 |
|----------------------------|--|-------------------------|--|------------------------|
| Senator T.A. Le Sueur | | Deputy of St. Mary | | Deputy D. De Sousa (H) |
| Senator P.F. Routier | | Deputy M.R. Higgins (H) | | |
| Senator P.F.C. Ozouf | | Deputy J.M. Maçon (S) | | |
| Senator T.J. Le Main | | | | |
| Senator B.E. Shenton | | | | |
| Senator F.E. Cohen | | | | |
| Senator J.L. Perchard | | | | |
| Senator A. Breckon | | | | |
| Senator S.C. Ferguson | | | | |
| Senator A.J.D. Maclean | | | | |
| Senator B.I. Le Marquand | | | | |
| Connétable of St. Helier | | | | |
| Connétable of Trinity | | | | |
| Connétable of Grouville | | | | |
| Connétable of St. Brelade | | | | |
| Connétable of St. John | | | | |
| Connétable of St. Saviour | | | | |
| 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 J.A. Hilton (H) | | | | |
| Deputy S. Pitman (H) | | | | |
| Deputy K.C. Lewis (S) | | | | |
| Deputy I.J. Gorst (C) | | | | |
| Deputy of St. John | | | | |
| Deputy A.E. Jeune (B) | | | | |

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|-------------------------|--|--|--|--|
| Deputy A.T. Dupré (C) | | | | |
| Deputy E.J. Noel (L) | | | | |
| Deputy A.K.F. Green (H) | | | | |

ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

The Greffier of the States (in the Chair):

Very well. That concludes the Public Business. The Chairman of P.P.C. I think, effectively, the arrangement of the future business was arranged before lunch ...

The Connétable of St. Mary (Chairman, Privileges and Procedures Committee):

Yes, Sir. I am not aware of any changes.

The Greffier of the States (in the Chair):

Simply, I think to add the proposition of Senator Ferguson that was deferred this afternoon. Very well. Deputy Martin's optimism was justified this morning. **[Approbation]** The Assembly has completed its business. I would urge Members to find in their pigeonholes outside the Chamber something to look forward to, the Order Paper for next week. I would ask Members please to take it as to save postage. It was put in pigeonholes rather than being posted to Members who are present in the Assembly. Very well, the Assembly stands adjourned until next week.

ADJOURNMENT