STATES OF JERSEY

OFFICIAL REPORT

TUESDAY, 20th MARCH 2018

[9:30]

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

COMMUNICATIONS BY THE PRESIDING OFFICER

1. Welcome to His Excellency The Lieutenant Governor

The Greffier of the States (in the Chair):
On behalf of the Assembly I would like to welcome His Excellent Lieutenant Governor to the Chamber. **[Approbation]**

PUBLIC BUSINESS

2. Draft Criminal Procedure (Jersey) Law 201- (P.118/2018) - resumption

The Greffier of the States (in the Chair):

The first item of Public Business is the Draft Criminal Procedure (Jersey) Law 201-. It is the resumption of a debate because the principles were adopted on 16th January. There are 2 amendments that have been lodged, packages of amendments really; one from the Education and Home Affairs Scrutiny Panel and the other is from the Minister for Home Affairs. There is a running order document and essentially the amendments will be taken when we hit Article 36 in the case of the Minister's amendment and Article 75 in the case of the panel amendment. Minister for Home Affairs, are you ready to start us off?

Deputy K. L. Moore of St. Peter (The Minister for Home Affairs):

Yes.

The Greffier of the States (in the Chair):

Which Articles are you going to propose to commence?

2.1 The Deputy of St. Peter:

I move Articles 1 to 35. I would like to start by just a brief word of introduction. It has been just a few weeks since we debated the principles of this law and in the intervening time the Criminal Justice Sub-Panel has conducted a comprehensive review of the legislation and the underlying policy. The Attorney General and I have had meetings with the sub-panel and after considerable discussion we have agreed a number of changes which we believe will improve the legislation. I have brought those agreed amendments forward as amendment number 2, and I will address the changes to the draft law as I work through the Articles. As I said in my speech on the principles, the overriding objectives of the draft law are to acquit the innocent and convict the guilty, to deal fairly with both prosecution and defence, and to respect the interests and rights of witnesses, victims and jurors. It also means running an efficient and effective criminal justice system, as efficiency and justice are intrinsically linked. To turn now to the Articles. Part 1 of the law contains only one Article which is the interpretation of the application provision. This is longer than usual as the law is highly technical, and it cross-references a number of other laws. Article 2 declares that the overriding objective of the Criminal Procedure Law is to ensure that criminal cases are dealt with justly. The effect of this statement will be to require the courts to apply the legislation in a way that gives effect to that intention. Article 3 describes some of the things that would constitute dealing with a case justly for the purposes of meeting the overriding objective. These include getting the right result, respecting the rights of all participants in a case, and being as efficient as possible. Article 4 requires that the defence and prosecution must progress the case in accordance with the overriding objective, follow

the rules and keep the court informed if things go wrong. Article 5 requires the Magistrates', Youth and Royal Courts to consider the overriding objective and how it might best be met whenever they use their powers. Article 6 simply allows the States to amend part 2 by regulations. In part 3 we introduce the concept of active case management by the court. This obliges the judge to identify key issues early in the case, understand the needs of witnesses, and establish what must be done to progress the case on a set timetable and who is responsible for doing so. For the first time the parties are placed under a duty to help the court manage the case. Article 7 creates the requirement for active case management and sets out a non-exhaustive list of what this means, including monitoring progress, encouraging participant co-operation, and making use of technology where it is efficient and just to do so. Article 8 places a duty on the parties to help the court. The parties are required to talk to each other well before any trial on subjects such as the likely plea of the defendant, what facts are in dispute, what material has been requested from each party, *et cetera*. This process of communication between the parties and with the court is intended to ensure that all live issues are known early on what should ultimately produce shorter and possibly fewer trials. Article 9 will allow the Bailiff and Magistrate to issue wide-ranging directions about case management to both the prosecution and defence for the purpose of fulfilling its active case management duty. Directions hearings and communication for the purpose of giving directions may take place by email or by telephone. This should save legal costs and speed up the trial process. For the first time the Magistrates' Court will be able to give directions that are binding in the Royal Court and *vice versa*. This is quite important as currently there is no power for the Magistrates' Court to give any directions that will apply to the Royal Court, and there can be a gap between the case leaving the Magistrates' Court and being heard in the Royal Court, with no directions affecting the parties applying in that interim period. In order to ensure that cases are completed in a reasonable time rules are laid down in Article 10 about how long hearings can be adjourned for. It allows the Magistrates' Court to adjourn for up to 30 days where necessary; when the Royal Court adjourns it cannot do so for longer than 60 days if the defendant is on bail and 42 days if the defendant is in custody. These are maximum periods and the courts will not adjourn for longer than is necessary to allow further work to be done or material gathered. Article 11 allows the part to be amended by regulations. Article 12 restates the current position that the prosecution of criminal proceedings may only be conducted by or on behalf of the Attorney General. This does not affect the powers of a Centenier to charge, grant bail, conduct a Parish Hall Inquiry, or present a defendant before the Magistrates' Court. Following a discussion with the Comité and the Honorary Police, all parties appear to be satisfied with the protection the draft law provides for the role of the Centenier. Article 13 deals with the circumstances where the consent of the Attorney General is required before criminal proceedings can begin. It sets practical rules to avoid a case collapsing through some technical defect in consent. It also allows the States to remove the consent requirement from any legislation by regulations. Article 14 reserves the power of the Attorney General to initiate cases directly in the Royal Court where this is appropriate. It also sets out how a person is summoned to court in that event. It allows the Attorney General to apply to the Bailiff for an order to arrest a person who it appears will fail to comply with the summons. In part 5 it describes the functions and jurisdiction of the Magistrate, so Article 15 outlines the powers of the Magistrate and is, for the most part, a restatement of the current position, although it also clarifies the scope of the Magistrate's functions in relation to the Young Offenders Law. Article 16 restates the current maximum penalties that the Magistrate may impose. It does not change the maximum fine or sentence which remain at £10,000 and 12 months' imprisonment respectively. This replaces the 1914 Magistrates' Court Law which makes various procedural changes and abolishes committal proceedings to the Royal Court, which will save time and money.

[9:45]

In Article 17 it explains that the provisions here deal with criminal proceedings before the Magistrates' Court, and appeals to the Royal Court from the Magistrates' Court. Article 18 sets out

the definition of words and expressions used specifically in part 6. Article 19 allows a person charged with an offence to be summoned to the Magistrates' Court and sets out the information which must be contained in that summons. Article 20 provides that the Magistrate may order the arrest of a person who fails without reasonable excuse to answer a summons, and Article 21 provides that a person who fails without reasonable excuse to answer a summons is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding 12 months, and a fine limited to £10,000. Article 22 is intended to avoid problems arising from technicalities and means that a summons is not defective simply because the content of that summons varies from the evidence adduced, unless that variation has misled the summonsed person. In that case the Magistrate must take corrective action which may include adjourning the case or giving directions. Article 23 explains what will happen when a defendant first appears in the Magistrates' Court. They will be identified, the charges against them will be read out, and they will be expected to enter a plea unless the Magistrate directs that they need not do so. The Centenier will read the charge or, with his or her agreement, a prosecutor on behalf of the Attorney General. Article 24 allows the prosecution to amend the particulars of the offence, substitute the offence with another, or add new alternative offences. This must be done with the full knowledge of the defendant, who will be asked to enter a plea in respect of them. If a defendant in the Magistrates' Court pleads guilty Article 25 sets out the procedure to be followed. The Magistrate may sentence the defendant if within the scope of the court, or may send the matter to the Royal Court if more serious or if it is in the interests of justice to do so. This is a new provision and means that the defendant will be treated as being convicted in the Magistrates' Court, even if being sentenced before the Royal Court. This should ensure that the defendant is sentenced more quickly and the probation report can be prepared before the first Royal Court appearance. Accordingly, on the first Royal Court appearance the defendant can be sentenced as opposed to, in accordance with current practice, indicted and the case being adjourned for trial or for sentence. If a defendant pleads not guilty Article 26 applies. The Magistrate must decide whether or not the defendant should be tried in the Magistrates' Court or the Royal Court, based on the gravity of the offence. This removes the current arrangements for what are known as committal proceedings. Committal proceedings were created in 1864 in order to sift out cases that had no merit before they reached the Royal Court. Now that the Attorney General is responsible for all prosecutions in the Royal Court and a comprehensive bail system is in place, committals serve no purpose. The down side of committal proceedings is the fact that they cause delay. They increase costs by requiring additional hearings, and have a potential to increase the burden on witnesses who may end up giving evidence twice in relation to the same issue. In order to avoid committal proceedings the Attorney General frequently uses his power to initiate cases - such as those involving allegations of sexual offences - directly to the Royal Court to spare the victim from giving evidence twice. This will no longer be necessary under the new law. Article 27 sets out the procedure to be followed for the sentencing of a defendant following his or her trial in the Magistrates' Court. If the offence is sufficiently serious that the Magistrate's powers are insufficient, or if it is in the interests of justice to do so, it will be sent to the Royal Court for sentencing. Article 28 is intended to create better connectivity between the courts by allowing the Magistrate to issue case management directions, including setting a date for the first hearing before the Royal Court if possible. This is a new provision. Article 29 also allows the Magistrate for the first time to change his or her mind and decide in appropriate circumstances - perhaps arising from information about the effect of the offence on the victim, or a change in circumstances for the offender - that the case can be dealt with in the Magistrates' Court after all. This is not possible under the current system. Article 29 deals with defendants who are charged with more than one offence which are unconnected. This provides that the Magistrate can send all of the cases to the Royal Court for sentence or trial in order that they be kept together, even if some of the offences are not serious enough to warrant doing so. This is to ensure that one court has dealt with all outstanding matters in relation to any particular defendant. Article 30 deals with defendants who are charged together with connected offences, where at least

one party's offence is sufficient to warrant sending the case to the Royal Court and others are not. The general principle is that defendants charged with connected offences should be tried together in the same court. It also deals with venue determination where a child or young person is to be tried alongside an adult. The starting point is that children and young persons should be tried in the Youth Court and not the Royal Court. Article 31 allows the Magistrate to replace or rescind a sentence or order within 28 days if it would be in the interests of justice to do so. The provision will avoid any unnecessary appeals or judicial reviews to the Royal Court arising from errors made in the Magistrates' Court. Article 32 creates a rule that if the Royal Court remits a case to the Magistrates' Court it must proceed as if it had never been sent to the Royal Court in the first place. Articles 33 and 34 set out a defendant's right to appeal to the Royal Court against a conviction sentence or order, and restates the current position that a notice of appeal must be given within 7 days of conviction, sentencing, or an order being made. Article 33 also remedies a defect in the current law which does not allow a defendant in the Magistrates' Court to appeal a community service or probation, and he or she may now do so. Article 35 restates the current position for abandoning an appeal. I move Articles 1 to 35.

The Greffier of the States (in the Chair):

Are the Articles seconded? **[Seconded]**. If no Member wishes to speak on the Articles those in favour of Articles 1 to 35 kindly show. Those against? The Articles are adopted. We now come to Article 36.

2.2 The Deputy of St. Peter:

I will now deal with my amendments to the law as a package and take them *en bloc*.

The Greffier of the States (in the Chair):

Well, if you can propose Article 36 first, tell us what that is about, then once that is seconded we will deal with the amendment.

The Deputy of St. Peter:

Article 36 deals with the powers of the Royal Court in determining an appeal. It may confirm, reverse or vary the decision, remit the matter to the Magistrates' Court, or make other orders as it thinks just. As drafted, the Article provides that the Royal Court may impose any penalty whether more or less severe than that imposable by the Magistrate. As amended, the Royal Court will not have the power to impose a more severe sentence and will be limited to sanctions that the Magistrate could have applied. This amendment was the first of those suggested by the Scrutiny Panel, it is not intended to change the current position in such that the Royal Court's powers on appeal would be the same as that of the Magistrates' Court, and I am grateful to Scrutiny for pointing out this error in the draft law.

The Greffier of the States (in the Chair):

Is Article 36 seconded? **[Seconded]**

2.3 Draft Criminal Procedure (Jersey) Law 201- (P.118/2017): second amendment (P.118/2017.Amd.(2))

There is an amendment which starts with Article 36 and it covers a number of other parts of the draft law. I ask the Greffier to read the amendment.

The Assistant Greffier of the States:

Amendments 1 to 15 as set out in the second amendment lodged by the Minister for Home Affairs.

The Greffier of the States (in the Chair):

Minister, if you want to propose the whole amendment?

2.3.1 The Deputy of St. Peter:

Yes, I would like to propose the amendments *en bloc*. If I can beg the patience of the Assembly to work through each Article as they would be intended as amended. I have explained the amended version of Article 36. If we go on to Article 39, this continues the current regime for bail in the case of appeals. In this case the presumption in favour of bail, contained in the Bail Law, does not apply as the defendant has now been found guilty of an offence. Defendants on bail who fail to surrender to the Viscount or a police officer when required are guilty of an offence and liable to imprisonment for a term not exceeding 12 months, and to a fine of an unlimited amount. The amendment is to correct a minor error where the word "he" was missed from the phrase "he or she". Normally this would be corrected by the normal process of publishing revised editions of legislation but, as an amendment was being made, this correction was included. Article 50 is the next, which applies where a defendant found guilty is to be sentenced but the defence disputes the facts which give rise to the conviction. In this situation the court must decide what actually happened if the disputed facts are relevant to sentence. As it is possible to be tried by one court and sentenced by another the trial court's view of the facts may need to be communicated to the sentencing court and may take into account the opinion on the facts received from the trial court for the purpose of sentence. This was considered to be implicit in the drafting already but this amendment will avoid any argument. Article 63 sets out the eligibility for jury service. This expands the age range from 25 to 65 as it is now, to 18 to 71 years of age. The minimum age of 18 was chosen to link to the age of majority, and the maximum age of 71 was chosen to synchronise with the retirement age of Jurats. The old law exempted all sorts of people including all civil servants, doctors, dentists, lighthouse keepers and the like. Originally the law exempted all railway employees too. Now the number of exemptions is much more tightly drawn as shown in Article 63(2). In summary, it is restricted to those with an intimate involvement in the criminal process such as the judiciary and lawyers who have participated in criminal proceedings in the 12 months prior to be summoned for jury service. The Scrutiny Panel felt that there was a risk that any Jersey qualified lawyer sitting on a jury might or would unduly influence other jury members, and although there are arguments either way it was decided to accept this proposal and make it part of the amendment. Accordingly now, if this amendment is accepted, all Jersey lawyers, so not only Jersey qualified advocates and solicitors, will remain exempt from jury service. The effect of the amendment is to render ineligible for jury service all advocates, solicitors and Centeniers, together with lawyers from other jurisdictions employed by the Law Officers' Department as prosecutors. Article 66 describes a jury. As now, a jury will be made up of 12 people. In a change to the current provisions where a trial is expected to last for more than 5 days, 2 additional people will be selected as reserve jurors. Those reserves will be called to serve on the jury if the number of jurors is reduced, but they will be discharged from jury service if not required. As drafted, these additional people would be discharged when the Bailiff is about to sum up the case. As amended, they may be retained for the summing up if there is a risk that for such a long case a juror might be lost during the course of the summing up. Article 68 re-enacts the provisions of the old 1864 Law which prevents those who are closely related from serving on a jury together, such as those who are married, in a civil partnership or are siblings. The amendment replaces the term "husband and wife" with "2 persons married to each other" as the law was drafted prior to the new marriage legislation being considered by the Assembly. Article 75 had required that the judicial Greffier ask the chair of the jury whether a defendant is guilty of a lesser offence than the one charged; for example, common assault where the charge was grave and criminal assault. Concerns were raised that this would be unnecessary in some cases where a lesser charge would be nonsensical, leading to confusion amongst the jury. The amendment will provide that the Bailiff may ask the judicial Greffier to inquire about a verdict for a lesser or alternative offence. This discretion will ensure the inquiry is only made of the jury where it is appropriate to do so. Members should note that the

proposed amendment from the panel to this Article would not affect this part, so this amendment can be accepted without affecting the later debate on the panel's amendment. Article 81 allows the Attorney General to discontinue proceedings for an offence at a preliminary stage of the proceedings. Where proceedings are discontinued the prosecution must give notice of their reasons. The defendant is given the right to require that proceedings continue, should they wish to clear their name. As highlighted by submissions made to the Scrutiny Panel, as drafted in paragraphs 4, 5 and 6 of Article 81, it might be read as limiting the right of a defendant to require that proceedings continue so that it can only be exercised for proceedings in the Magistrates' Court. Paragraph 9 of the amendment responds to this concern by removing this potential distinction between the Magistrates' Court and the Royal Court so that the defendant can give notice to either court within 14 days that he or she wishes the proceedings to continue.

[10:00]

Article 81 also provides that the Attorney General has the discretion to institute fresh proceedings where proceedings were disconnected, and provided that is justified. One of the comments made by the panel was that this provision might be said to draw an unnecessary distinction between halted and withdrawn proceedings. Having considered this issue, I agree that it is appropriate that provision should be made in Article 82 only for proceedings to be halted. That proceedings may be halted reflects the current practice that with leave of the court charges may sometimes be left on the file if it is not considered appropriate to prosecute at the time but where it may be appropriate at a later date. An example of this might be in a case of domestic violence where some charges might be left on file to be prosecuted if a witness is unable to testify at a particular time, and if further criminal acts take place in the future. Paragraph 10 of the second amendment replaces Article 82 with a simplified version reflecting this approach. Article 83 deals with the prosecution disclosure of unused material. This provision reflects and codifies the approach to the disclosure of unused material reflected in the Attorney General's guidelines. Unused material is material that is in the prosecution's possession but on which the prosecution does not intend to rely to prove its case. In some instances this material may undermine the prosecution case or support the defence case, and it is important that where this is the case the existence of the material is disclosed to the defence so it can decide whether to make use of it. Following Article 83, the prosecution will have a statutory duty to disclose the existence of any unused prosecution material to the defence where it may undermine the prosecution case or assist the defence. This duty to disclose is limited by a public interest exemption to protect informants or to ensure that other prosecutions are not compromised. For example, as drafted there was doubt as to whether the prosecution would be able to rely on the public interest exemption without seeking an order from the court. In response to comments from the panel on this point paragraph 11 of my amendment substituted a new Article 83(3), into the draft law to make it clear that the prosecution will only be able to rely on the public interest exemption from the duty to disclose unused material where the court has made an order. This ensures that the court will be the arbiter as to how the public interest exemption can be relied upon. Article 84 deals with the duty of a defendant to provide a defence case statement. As I understand some Members wish to make comment on these statements I will deal with them more fully as we go through the Articles to avoid repetition. Suffice to say here that as drafted the court could waive the requirement for an unrepresented defendant to submit such a statement in exceptional circumstances, but paragraph 12 of the amendment responds to a comment of the Scrutiny Panel that it should be more appropriate to leave the court a more open discretion to dispense with the requirement for a defence case statement where a defendant is unrepresented. As amended, the draft law would allow the court to dispense with this requirement wherever it sees fit to do so. In addition, the amendment responds to a comment of the Scrutiny Panel that it should make clearer that the prosecution costs that the defence may be ordered to pay should be limited to those attributable to a failure to file a defence case statement. Lastly, paragraph 12 makes a minor amendment to reflect the amendment to

Article 82 by removing reference to "withdrawal". A small typographical error is also corrected. Article 98 provides that when a person has made a written statement they may be warned to attend court at a specified day and time. If they fail to attend without reasonable excuse they are liable to a fine of up to £10,000. Concerns were raised that, as drafted, Article 98 did not permit a witness who had been warned to attend court but failed to do so to be arrested so that they could be brought to court to give evidence. Paragraph 13 of my amendment addresses this issue by providing a power of arrest for warned witnesses. Article 108 makes it an offence for a person to intimidate, harm or threaten a member of the jury or a witness with a penalty of up to 10 years' imprisonment and an unlimited fine. The amendment has deleted paragraph 10, clause (b)(ii) as a technical change as the concept of withdrawal has been removed from the law. In schedule 3 the new Articles are inserted into the Police Procedure and Criminal Evidence Law, or P.P.C.E. as it is known, new Article 82G allows evidence to be admitted as a result of a defendant attacking another person's character. There is a syntax error in this provision that results in the reference losing some of its meaning and by amendment we will remove that. I move my second amendment to the draft law.

The Greffier of the States (in the Chair):

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

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

I chaired the sub-panel which looked into the Draft Criminal Procedure Law, alongside the Deputy of St. Ouen and the Deputy of St. John. It is clear that this is obviously a very comprehensive piece of legislation and we set to work to go through it to see what could be done to enhance it, and in the course of doing that work we found just a few areas where some clarification was required in some of the sections here where there may have been inadvertent mistakes or where just a bit of different phrasing could help make it clear. We are very grateful to the Minister for Home Affairs and her team who we felt we worked with very well throughout the course of this review. I think the report and the comments made by the Minister in her remarks just now were fairly self-explanatory to see what each different amendment achieves, but on the whole the sub-panel is supportive of this and we are grateful to the Minister for bringing these amendments forward.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on the amendment? If not, Minister, do you wish to reply?

2.3.3 The Deputy of St. Peter:

Just briefly, I am very grateful to the Deputy for his kind remarks. I think Members will have gained a flavour if they have been patient enough to listen to the points raised and the nuanced differences that the amendments bring. I think it has been an excellent process of legislative scrutiny.

The Greffier of the States (in the Chair):

All those in favour of the second amendment kindly show. Those against? The amendment is adopted.

2.4 Draft Criminal Procedure (Jersey) Law 201- (P.118/2017) - resumption - as amended

We now come back to Article 36 as amended. Does any Member wish to speak on Article 36 as amended? If not, Minister, do you wish to say anything at this point?

2.4.1 The Deputy of St. Peter:

No, I just move Article 36.

The Greffier of the States (in the Chair):

All those in favour of Article 36 as amended kindly show? Those against? The Article is adopted.

2.5 The Deputy of St. Peter:

Articles 37 and 38 follow established practice and provide that any party who is aggrieved by a proceeding of the Magistrates' Court may apply to the Magistrate to state a case for the opinion of the Royal Court on the grounds that it is wrong in law or is in excess of the court's jurisdiction. The Royal Court may reverse, affirm or amend the Magistrate's determination, remit the matter to the Magistrates' Court, or make such order in relation to the matter. I have addressed Article 39 which is now amended, thank you to the Assembly. This simply continues the current regime for bail in the case of appeals. Article 40 maintains the current position that in the event of an appeal in relation to the suspension or withdrawal of a licence or the confiscation of goods the Magistrate may direct that the court will not take effect until the appeal is determined. Article 41 makes miscellaneous procedural provisions about appeals, the effect of judgments or orders of the Royal Court, and costs. We move now to Part 7 which is concerned with cases in the Royal Court. Article 42 explains the scope of the part. Article 43 sets out the procedure for lodging indictments in the Royal Court. Article 44 provides that the court may order the arrest of any person who fails without reasonable excuse to attend his or her first appearance in the Royal Court. Article 45 explains what will happen when a defendant first appears in the Royal Court; they will be identified, the charges against them will be read out, and they will be expected to enter a plea unless directed that they need not do so. If they have been sent to the Royal Court for sentence then they will merely be identified and the contents of the indictment read out. Article 46 gives the court wide powers to amend the indictment if the amendments can be made without injustice. Article 47 is an important new power. Currently there are circumstances when it is clear that a case which is being committed to the Royal Court is in fact less serious than first envisaged. Article 47 gives the power to the Royal Court to send the case back to the Magistrates' Court for sentence or for trial. This is an administrative improvement which will allow cases to be better managed. At the current time cases that appear in the Royal Court cannot be returned to the Magistrates' Court. To use an example I gave in an earlier debate, when an individual is charged with breaking and entering and being drunk in charge of a bicycle, if the facts reveal that no breaking or entering took place then the Royal Court would be forced to deal with the prosecution solely for being drunk in charge of a bicycle. Article 48 deals with Jurat and jury trials. A defendant may be tried either by the Royal Court sitting with a jury or by the inferior number of the Royal Court sitting without a jury. For a statutory offence the defendant will be tried by the inferior number. For a customary law offence or a statutory offence that specifically allows it, the defendant may elect to be tried with or without a jury. What about the situation where it is appropriate to try a customary law offence together with a statutory offence, for example fraud and money laundering? Well, currently that is not possible. However, this difficulty is resolved by Article 48. This will allow the Royal Court to try what is called mixed indictments, having regard to the nature and gravity of the offence and having heard submissions by the parties. Article 49 deals with various administrative provisions in relation to jury trials. I move Articles 37 to 49.

The Greffier of the States (in the Chair):

Are those Articles seconded? **[Seconded]** Does any Member wish to speak on Articles 37 to 49? Those Members in favour of Articles 37 to 49 kindly show. Those against? The Articles are adopted. Minister, can you just say at this point which Articles you are going to propose?

2.6 The Deputy of St. Peter:

I was just about to do that, Sir, thank you. I propose Articles 50 through to 74. Article 50, now amended, applies where a defendant found guilty is to be sentenced but the defence disputes the facts which give rise to the conviction. Article 51 simply provides that if the inferior number is not fully constituted because of the indisposition of the second Jurat then the Bailiff must determine the verdict. Article 52 outlines the scope of Part 8 which mostly re-enacts Part 10 of the Police Procedures and Criminal Evidence Law, which is repealed by paragraph 11 of schedule 3. Article 53

allows the Bailiff to order a preparatory hearing where this would have substantial benefits by identifying issues material to the verdict, assisting comprehension of those issues, expediting the proceedings, or assisting the management of the trial. Article 54 provides that the trial is treated as having begun at the commencement of the preparatory hearing. In Articles 55 and 56 they provide that the Bailiff may adjourn a preparatory hearing and make rulings on admissibility of evidence and questions of law. The Bailiff may also order the prosecution and the defence to make certain disclosures as to the nature of the prosecution and defence case respectively. Article 57 permits the Bailiff, or any other party to the proceedings with the Bailiff's permission, to make a comment where a party departs from any facts disclosed at a preliminary hearing later in the trial. The court or jury may take note of the fact that a defendant appears to be changing their position during the trial and may draw such an inference from that fact as appears proper. This, as I will return to in due course, is a provision in existing law relating to the effect of departing of a defence case statement. Article 58 permits an appeal to the Court of Appeal against the ruling of the Bailiff. Articles 59 and 60 define a pre-trial hearing and permit the Bailiff to make pre-trial binding rules on questions as to the admissibility of evidence and other questions of law. Articles 61 and 62 deal with the reporting of preliminary hearings in order to restrict and avoid prejudice to any trial. These can be lifted by the court as appropriate. Article 63 refers to the expansion of jury eligibility, which I have addressed previously during the debate on the amendment, and which now, as amended, excludes all lawyers and Centeniers from jury service. Article 64 allows regulations to be made for compiling lists of potential jurors.

[10:15]

Article 65 empowers the Viscount to exempt persons summonsed for jury service. This is the retention of the Viscount's wide discretion to exempt those otherwise ineligible for jury service. This could include, for example, a doctor in A. and E. (Accident and Emergency) who is due to be on duty or on call during the week in question. I have addressed Article 66 as now amended which concerns reserved jurors, and Article 67 creates an offence punishable with a fine if a person fails to attend or to serve on a jury without reasonable excuse. I have addressed Article 68 which provides that closely related people cannot sit on a jury together. That is now amended with more modern terminology to reflect equal marriage. Article 69 enables the defence or prosecution to challenge the inclusion of any juror if they have good reason. The challenge will be upheld if there is a risk of prejudice, if the juror is manifestly unsuitable, or in the interests of justice generally. Article 70 requires every juror to take an oath or, if they prefer, to make a solemn affirmation before becoming a full jury member. This is a change from the current position where the oath is simply read to the jury as a whole by the Bailiff. Article 71 provides that if the number of jurors falls below 10 during a trial and no more reserve jurors are available the Bailiff must discharge the jury. The Attorney General must advise the Bailiff whether or not there is to be a retrial within 7 days. Article 72 controls the communication with the jury. It prohibits members from communicating with anyone except each other or staff of the Royal Court or Viscount while they are in custody of the Viscount. The Bailiff may permit the jurors to leave the custody of Viscount in which case they cannot discuss the case with anyone. This Article also changes the current position regarding selection of the jury's chair. Currently the chair is selected by the court. Under the new law the jury will select their own chairperson, as in most other jurisdictions which retain jury trials. Article 73 provides that the Bailiff may order the members of the jury to give their phones or any kind of communications device on pain of contempt of court. This is a wholly new provision. It is designed to ensure that jurors, where the court thinks is appropriate, focus on the evidence and not their mobile phones while in retirement. Article 74 is also new and another provision designed to deal with the age of the internet and instant electronic mobile communications. It deals with research on the internet. It is currently the case that the Bailiff will warn jurors of the dangers of searching for information relevant to the case on the internet. This will

enable the Bailiff to tell the jury that to do so may amount to a criminal offence. I move Articles 50 to 74.

The Greffier of the States (in the Chair):

Are those Articles seconded? **[Seconded]**

2.6.1 Connétable C.H. Taylor of St. John:

Just an interesting question: currently I understand that States Members could be requested to serve jury service, and in view of the fact that we make the laws is there not some form of conflict there?

2.6.2 The Deputy of St. Peter:

I am happy to address that question. So as lay members of the community in whole, it was decided that for States Members it would be appropriate. Although if there were some conflicting aspects then of course the States Member would be able to apply to the Viscount for a discretionary permission to not sit on that jury.

The Greffier of the States (in the Chair):

All those Members in favour of Articles 50 to 74 kindly show. Those against? The Articles are adopted. Article 75, Minister?

2.7 The Deputy of St. Peter:

Article 75 of the draft law makes new provision in relation to the delivery of a verdict by a jury. Under Articles 43 and 46 of the 1864 Law, where a panel of 12 jurors cannot reach a unanimous or majority verdict of 10 jurors in favour of finding the defendant guilty then the jury will deliver a verdict of not guilty. Article 75 of the draft law changes the position so that a jury of 12 jurors will only be able to deliver a verdict or of not guilty if the members are unanimous or 10 jurors are agreed on that verdict. If the members of the jury are unable to deliver a verdict on which a sufficient number of jurors are agreed then the jury will be discharged from the proceedings. In the event of a jury which cannot agree on a verdict then, pursuant to paragraph 9 of Article 75 of the draft law, the Attorney General will have the right to seek a retrial for the offence within 7 days. The intention is that there should be as few hung juries as possible and that the jury must deliver a unanimous verdict unless the Bailiff directs that the jury may deliver a majority verdict. A majority verdict is delivered if at least 10 out of 12 jurors agree or at least 9 jurors agree if there are less than 12 of them. When the jury is ready to deliver its verdict the Judicial Greffier must ask the jury chairperson whether the defendant is guilty or not guilty of the offence charged in indictment, and in the case of a majority verdict how many jurors were in favour of acquitting and how many jurors were in favour of convicting the defendant. If following such period for deliberation as the Bailiff thinks reasonable the jury is unable to deliver a majority verdict, the Bailiff must discharge the jury from the proceedings and from the custody of the Viscount. Where no verdict is reached the Attorney General must, not more than 7 days after the day the jury is discharged, notify the defendant and the Bailiff whether or not there is to be a retrial of the proceedings.

2.8 Draft Criminal Procedure (Jersey) Law 201- (P.118/2017): amendment (P.118/2017.Amd)

The Greffier of the States (in the Chair):

Is the Article seconded? **[Seconded]** There is an amendment at this point which affects Articles 75 and 76, which has been lodged by the Education and Home Affairs Scrutiny Panel and I ask the Greffier to read the amendment.

The Assistant Greffier of the States:

Pages 83 to 84, Article 75 - (1) For paragraphs (8) and (9) substitute the following paragraphs - (8) If, following such period of time for deliberation as the Bailiff things reasonable having regard to the

nature and complexity of the case, the jury is unable to deliver a verdict upon which the majority of jurors are agreed, the Bailiff shall discharge - (a) the jury from the proceedings and from the custody of the Viscount; and (b) the defendant from the proceedings provided he or she is not convicted of another offence charged in the indictment. (9) The Bailiff may, upon formally discharging the defendant from the proceedings, make such other orders or directions as may be required in relation to the discharged proceedings, or in relation to any other criminal proceedings pending before the Royal Court in respect of that defendant. (2) Delete paragraphs (10) and (11) and renumber paragraph (12) as paragraph (10). Pages 84 to 85, Article 76 - Delete Article 76 and renumber the subsequent Articles and any cross-references to those Articles.

Deputy J.M. Maçon of St. Saviour:

Sir, Deputy Mézec will be acting as rapporteur for these amendments.

2.8.1 Deputy S.Y. Mézec (Vice-Chairman, Education and Home Affairs Scrutiny Panel - rapporteur):

I just want to say from the very outset here that on the whole this Draft Criminal Procedures Law is an excellent piece of legislation. It is very much needed, given the length of time since the previous law was enacted, and all of those who worked to put this draft law together ought to be commended for the work that they have done. That sentiment was echoed by everybody we consulted with, including those who may have had reservations about some particular Articles in the law. They all said that on the whole this was a good piece of legislation. The Scrutiny Sub-Panel which examined this law, as I said previously, felt like the Minister for Home Affairs and her team took our concerns seriously and we were very glad that they chose to take up amendments when we highlighted their issues with particular clauses, and the Attorney General, in particular, and his team gave up a considerable amount of time to answer the questions from the sub-panel, which we were grateful for. We would also like to thank all of those who submitted evidence to our review whose comments were absolutely invaluable; in particular we received submissions from the Bailiff, Commissioners Birt and Clyde-Smith, former Commissioner Pitcher, the Magistrate and Assistant Magistrate and the Law Society, all of whom were incredibly helpful. As our comments on the draft law indicate there were several areas where there was no consensus on whether appropriate changes were being suggested. In fact there were several areas that those who work in the justice system felt very strongly that the right thing was not being done. This amendment focuses on Articles 75 and 76, which concern the introduction of retrials. Under the current system for a guilty verdict the jury must be unanimous in the first instance and if that is not possible at least 10 to agree, if that is what the judge instructs them, so anything less than that is an acquittal. The draft law unamended will change this to require at least 10 jurors in favour of either convicting or acquitting, with anything in between that being classed as a hung jury with no verdict. In the event of a hung jury the Attorney General will be able to call for a retrial, which is the provision that currently does not exist. Those who we spoke to as part of this review expressed very deep reservations and concerns about this change. There were broadly 3 arguments expressed to us, 2 which were based on the practicalities and one on the principle. The first argument was about the publicity that exists for trials in Jersey, and I think this follows from the unavoidable fact that because we are a small Island, running a justice system here is inevitably going to pose challenges which large jurisdictions can more easily find a way around. If a retrial is to take place in accordance with the principles of justice, which are outlined in the beginning of this draft law, then it makes sense that it must occur very soon after the initial trial so the defendant does not have a shadow hanging over him or her and can have the matter resolved one way or the other. When we have a significant criminal case in Jersey there does tend to be a lot of publicity surrounding it, and we often see headlines on the front page of the paper regularly halfway through a trial with quote marks surrounding a statement made in court, even when that statement later goes on to be dismissed in the final verdict. This point I really hate to make, given that there is

an election coming up soon, but from time to time the media does sensationalise things. That is not a unique criticism about them but that is just a fact of life that that happens at times. So what we could have happen here, we could have a situation where you have ordinary people going about their daily lives completely unaware of the fact that they may be imminently called to serve on a jury for a retrial of this case, who might be paying a little bit of attention to the publicity - but not all of it - and may end up with a strongly held view based on half of what they have read and not having read all of the coverage. That is right before they may end up taking part in that case. But I think the most persuasive point that was made was made by Commissioners Birt and Clyde-Smith who made I think the important point in their submission about how before a trial takes place in Jersey on the current system there are strict rules of the court about what the media can and cannot do in reporting it before it comes to court, and pretty much they cannot report anything apart from the fact that the defendant has been charged; that mere fact. They do this intentionally to protect the integrity of the trial process and ensure that members of the jury consider the matters solely on the basis of the evidence which is tested in court before them. With a retrial this will simply be impossible. It will not be possible unless you are to ban the media from reporting on trials until they are over, which I think is a pretty drastic step, which I think most would find unwelcome. So the environment in which a retrial will take place will be drastically different from the environment where the original trial took place. This obviously is not a problem in larger countries because they can simply go 50 miles down the road where it has not been reported in the local paper and where people will be unaware of the coverage and they will be more detached from it. So I think that was a concern that was made to us about the very nature of being an Island, as we are, and the difficulty there will be in holding a retrial. The second argument was about resources. Commissioner Birt was concerned that if all trials which did not result in at least a 10 to 2 split either way were retried then we could have an extra 2 or 3 trials a year which would impose pressures on the courts, and he said that already some cases are being put off for longer than some would like and that this could make it worse.

[10:30]

The Bailiff pointed out to us that holding more than one jury trial at a time would be problematic because of the mechanics there are in looking after a jury while a trial is going on so that they can fulfil that role properly; and that though it would not be insurmountable if there were more trials going on, it would be difficult and it was their view that they may need to employ more people to look after juries while more than one trial is going on. But ultimately, we do not know how many retrials there will be, and that is a problem I think in anticipating exactly how much resource this will require. Also, do not forget that it will not just be the extra jurors but also the witnesses and everybody else who will have to go through this process again. But the last argument is the one I found most interesting and it is the argument behind the principle behind this. In a criminal case the standard of proof required to determine if a defendant is guilty is that it must be proven beyond reasonable doubt. Commissioners Birt and Clyde-Smith said in their submission: "It is the prosecution that has brought the case and, in our view, there is nothing inherently unfair or wrong in a system which says if the prosecution, having given it their best shot, fails to convince 10 out of 12 people that they can convict then it has lost and an acquittal can be recorded." So we are saying if you cannot convince 10 people of your case then you obviously have not met that standard of proof that is beyond reasonable doubt. The question you then have to ask is: why do you get a second bite at the cherry? What purpose would a retrial serve in those instances? Is that not wrong on principle? But even if you disregard that point I think how likely is it that if you got a hung jury first time around that anything would be different in the second time around if you somehow managed to put on a trial which has the right conditions compared to the first one. Why would they reach a different verdict if the first court was unable to do that? So the view that was put to us in the submissions we received is that there is nothing unfair about the current system, that it does not breach any wider issues of principle on justice, and that there are implications that need to be considered based on the resources

and based on the practicalities of having a second trial in a short period of time after the initial one. It was after hearing that evidence from those who work at the coal face of the justice system that we decided to bring this amendment to offer the States to consider those points. On those bases I make the amendment.

The Greffier of the States (in the Chair):

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

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

I am not sure whether this is the correct place to ask the question that I have but it is around the issues around retrials. My question is, and I do not know whether the Minister will be able to answer me or whether the Attorney General will, Members will be very well aware that there have been a large number of high profile cases in the U.K. (United Kingdom) that have been brought back to retrial. In particular the Stephen Lawrence case where a young black man was murdered, and consequently 2 of the defendants went on 18 years' later to be convicted of that murder. There have been numerous other murder cases where D.N.A. (deoxyribonucleic acid) evidence has improved to the extent that the accused has been identified and then has gone on to be convicted of murder. So what I want to try and understand around the question of retrials is that if a defendant is acquitted but the police later come into evidence, whether it is D.N.A. evidence or whatever evidence it is, that proves beyond doubt that that defendant was connected to that crime, is it possible under our system - whether this Article 75 is amended or not - is it possible under our current system for the defendant to be brought back to court and for a new trial to be held.

The Greffier of the States (in the Chair):

I think that is perhaps a slightly separate issue but the Attorney General and the Minister will have heard it and will be able to answer at some point.

2.8.3 The Connétable of St. John:

I think it is important that one realises the onus is on the prosecution to get a guilty verdict. So it raises the question: without this amendment how many times does someone have to prove themselves innocent? There is of course a more practical side and that is if it goes to retrial can the defendant afford the costs and how will those costs be reimbursed to that person; because if a defendant has effectively won his case in that he has not been found guilty and it goes to retrial and has the enormous costs of defending himself again, that in itself is an injustice. I would urge Members to support this amendment and I congratulate the Scrutiny Panel for their work.

2.8.4 Deputy R. Labey of St. Helier:

Could I ask the proposer if the retrial is automatically triggered by the numbers and how the jury has voted; or is there a built in the discretion of the judge to order a retrial or not?

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

Hopefully the proposer of the amendment can answer this but if not the Minister is behind me. In the comments from the Minister - and this is why I rise - I am slightly confused. Again I thank the Scrutiny Panel for the work they have done on this law that is long, long overdue; but I am sorry I am still sitting here today feeling pressured to pass something that is massive, massive change. I just put that out there because we are all sitting here nodding some absolutely fundamental changes to our Criminal Procedures Law. In the Minister's comments on page 2, paragraph 4, the Minister says: "However, the panel's amendment would remove H.M. Attorney General's right to require that retrial takes place where the jury is unable to agree." Now, are we removing a right that was in the 1864 Law or are we removing a right that the Minister is now introducing? I think I am reading it as that... yes, the Attorney General is nodding. That is fine, so as the case has been made that we introduce

this and that was my question. So I am absolutely not convinced that we should ... the 7 days, determining after 7 days, and I think what Deputy Mézec said as rapporteur was literally if you cannot convince 10 out of 12 or 12 out of 12 jurors - and it is the prosecution, to me it has always been you are innocent until proven guilty - and then: "Well, we did not do a good job, can we just now ask if we can have a retrial?" I do not know how many times this would happen but I feel very uncomfortable. But I look forward to the Minister confirming that it is a change in the new law that would give this right to Her Majesty's Attorney General, and if it is then obviously if the Minister or the Attorney General want to explain why they think I should not support the amendment I look forward to hearing. But at the moment I am very nervous about which way to go on this one.

2.8.6 Senator P.M. Bailhache:

I am slightly disappointed that this debate is taking place because when the totality of our judiciary gives advice to a Minister in relation to criminal justice that a particular thing is desirable or undesirable, I would have expected the Minister to accept the advice of the judiciary unless there were very compelling reasons to the contrary. Members will perhaps not be surprised to know that my own views are very much aligned with the views of the judges as expressed to the Scrutiny Panel and to the Minister. I think it is important to recall that for at least 150 years in this Island if a jury by a majority cannot agree that a defendant is guilty then that defendant is entitled to be acquitted. I have really heard no compelling rationale for changing this rule except that it is thought desirable by some to give the Attorney General a second opportunity to persuade a jury of a defendant's guilt; a second bite of the cherry. That does not seem to me to be fair. Article 2 of the law, which we have just adopted in Second Reading, imposes a requirement to deal justly in criminal proceedings. Article 3B says that "justly" means dealing fairly with both prosecution and defence. I ask Members to imagine a trial which has lasted 2 or 3 weeks where a defendant is accused of a serious crime, perhaps one they had allegedly committed long ago, and the jury divides and cannot agree. If there is an insufficient majority for guilt at the moment that defendant will be acquitted. So for more than a century, so far as the defendant is concerned, that would have been the end of the matter. But now we are invited to agree that the prosecution should have the right to put the defendant through the same process all over again and, it seems to me, again and again. It is possible, it seems to me on my reading of the law - and I hope that the Attorney General will correct me if I am wrong and point Members attention to the relevant statutory provision - the prosecution is not limited to a second bite of the cherry. The second point is that at the stage where the Attorney General makes a decision as to whether or not to order a retrial of a particular defendant, it seems to me that he will not know how many jurors in the previous trial were inclined to acquit. Again, I hope the Attorney will correct me if I am wrong on this. If, for example, 9 jurors would have found the defendant not guilty and only 3 would have found him guilty, the prosecution will still be entitled to have their second bite of the cherry. I am left with the slightly uncomfortable feeling that the underlying purpose of this is to secure a larger number of convictions. I hope I am wrong but if that were even a part of the rationale it would be a highly undesirable state of affairs, as I think the proposer of this amendment said, or perhaps it was Deputy Martin, I forget. The rule in our Island is that a defendant is innocent until presumed guilty and it seems to me that if the prosecution cannot prove their case the first time around that ought to be the end of the matter. **[Approbation]**

[10:45]

2.8.7 Deputy R.J. Renouf of St. Ouen:

I was very pleased to sit on the sub-panel with the Deputy of St. John and Deputy Mézec that considered this draft law. We were very pleased to receive the commissioners and the Bailiff before us in public hearings, and to receive their insights as members of the judiciary, and very valuable they were. All of them were very clear and their comments have been set out in our amendment. But they are left in no doubt that in a small jurisdiction - the difficulty is us being a small jurisdiction -

empanelling a second jury so soon after a first has been unable to reach a verdict, would be something that could well result in a miscarriage of justice because it is necessary to act quickly if the Attorney General was to ask for a retrial. Here you have an accused who has gone through the court process but no decision has been made at the end of it, the jury is hung. Well, the court would not want to leave the matter weeks so that all that publicity just fades into the background. It needs to be dealt with quickly for the sake of witnesses, for the sake of the accused, for the sake of all concerned. So the court is left trying to empanel a second jury, who of course would recently have surely heard ... very unlikely that members of a second jury would be completely ignorant of all the media reporting of a high profile trial. The Minister of course responded to these concerns when she came before us as a sub-panel, and she told us that: "If the media are doing their job properly they should be at that point in the trial reporting the facts, so I do not really see that that would in any way taint anyone's perspective on the case that would make it so that they were not able to assist as members of a jury if there was a retrial." So the Minister said that the media would be reporting the facts but the difficulty is that they were not the facts because they had not been proven, there had been no finding as to fact; the jury is hung. So the media has been putting evidence out there but is it the whole evidence? No, the media cannot do that. Is it the most important evidence? How can we tell? It is bound to be selective evidence. It is bound to be, as the proposer has said, something that is sensational, that is going to sell papers, that is going to make people listen. That is going to stick in somebody's mind who might be called to serve on the second jury. They are going to hold that in their mind, it is going to be recent, and the difficulty is when they serve on a second jury, if that ever were to happen, how can they resolve that issue. They have something fixed in their mind of what they recently heard and they are now expected to put that out of their mind and listen to the whole evidence. I think the Minister was only referring to the regulated media but what about social media which is completely unregulated and very intemperate sometimes, with distorted views of evidence that could be put forward. So this is extremely dangerous if a second jury were to be impanelled, with all the risks inherent, and those risks have been recognised in this law. In Articles we have just passed, we have just passed Article 61 which imposed media restrictions on any preparatory hearings that take place prior to a trial. The Minister said the reason is so that it does not cause prejudice. So the first jury is being protected in that case, the first jury needs to be protected, and the Article 61 has been passed. Then we have also passed Article 74, which creates an offence if jurors go and use their phones, use their devices, to research facts which are extraneous to the evidence at trial. That is there because it is recognised that there are people commenting, which is not germane to the trial, which the jury should put out of their minds, should not even see. So we in the one sense are trying to build in protections for the first jury, common sense, quite proper protections, but we are creating - if this amendment is not carried and the Minister's proposals go forward - a great risk of a miscarriage of justice for an accused person here. I trust that the Assembly will accept the very strong views of the judiciary who have set out their fears, and more so the general principle also that why is it the prosecution authorities cannot accept that if they cannot prove their case to 10 out of 12 persons then that person should be acquitted, rather than having that second bite of the cherry. I would ask Members to support the amendment.

2.8.8 The Deputy of St. Peter:

As Deputy Martin said, Members are right to take this decision very seriously because it is a fundamental question of justice and how we as an Assembly feel it is within our culture for the judiciary to administer justice. However, the Scrutiny Panel's amendment does rightly accept that juries in Jersey should in future be required to reach a verdict upon which at least 10 of them are agreed. As the panel's comments reflect, this will help to ensure that the verdict reached by the jury is one that has been thoroughly deliberated by its members. As can be seen in the table, which is included in the comments to the panel's amendment, this is also the approach taken in other countries surveyed that retain the right to a jury trial. However, the panel's amendment would remove the

Attorney General's right to require that a retrial takes place where the jury is unable to agree on a verdict. The defendant would be discharged from the proceeding and could not be subject to a retrial. Members should reject this amendment for the reasons I will now address, where I rely on figures, the sources for these are cited in my comments and I urge Members to please look again at these comments as I speak. It is anticipated that a retrial will only be required in exceptional cases. In England and Wales in 2008, which is a year in which there was a high number of juries that were unable to reach a verdict, there were only 116 cases out of a total of 16,718 that came to court where the jury was unable to reach a verdict. This amounted to just 0.7 per cent of the cases; the average is closer to 0.6 per cent. In the Isle of Man, where a unanimous verdict is required from a jury there were only 3 cases between 2009 and 2016 where a jury was unable to deliver a verdict. So we are talking about very small numbers here. Further, even in the small minority of cases where the jury is unable to deliver a verdict, a retrial is likely to be the exception rather than the rule. In England and Wales a retrial is only sought by the Crown after consideration of the merits of the case, which a verdict was ... the public interest is seeking a verdict, the views of the victim, of the trial judge, the prosecuting advocate and the police. I draw Members to some information shared within our comments that states in 2010 a U.K. Ministry of Justice study found that only one-third of jurors fully understand the judge's directions. Further, there was the example of the widely reported English case in which a jury failed to reach a verdict after suffering what the judge described as an absolutely fundamental deficit in understanding. While the jury system remains valid, as with any other system, a particular jury may not be able to reach an informed, reasoned and collective view of the evidence in a particular case for a variety of reasons. That describes one of the reasons why it is helpful to the judicial process to offer this alternative if it is found that for one reason or another, a jury decision was not achieving that unanimity or majority for particular reasons. I repeat that this would be on very rare occasions when it was in the interests of justice to do so. Similar grounds would be applied when considering whether to bring a retrial in Jersey so that one would only take place where it was appropriate. The evidence to the panel has suggested that a retrial may not be fair to a defendant in a small jurisdiction where the jury may be aware from media coverage of the evidence presented by the defendant and the prosecution. However, it is not clear what, if any, prejudice would in fact be caused to a defendant by a member of the jury being aware in advance of some of the evidence that will be presented at trial. At worst a jury member might be presented with evidence that they may have heard from an earlier media report. That should not prevent a juror from reaching an impartial view based on the evidence at trial. Contrary to some of the evidence presented to the panel, it is not the case that where a retrial takes place in England it will usually be held in a different town or indeed a different court, and there is no evidence to suggest that prior media reporting of the evidence is prejudicial to the defendant. Retrials can already take place in Jersey if, for example, the jury size falls below 10 or an appellant succeeds on an appeal to the Court of Appeal, which can order a retrial. That happened in the case of the *A.G.* v *Holley*, a case that I as a young reporter reported on. The defendant was tried twice for murder after his original conviction was quashed by the Court of Appeal. The Jersey courts have accepted that juries can follow directions to ignore the publicity surrounding a case and that courts can manage their proceedings to ensure that a trial following earlier publicity is fair. This was reflected in the judgment in the case of *A.G.* v *Obin* concerning historic sexual abuse, and all the cases tried by the jury in relation to the Haut de la Garenne investigation. By not requiring unanimous or majority verdicts of guilt or innocence and not having a means for the prosecution to require a retrial, Jersey is unusual when compared with other countries that have retained the right to a jury trial. The table in my comments sets out the main Commonwealth countries in which juries are still used and shows where unanimity or a majority verdict is required for guilt or innocence, and whether there is a right to a retrial in the event of a hung jury. It is clear that retrials are available in every instance except in Jersey. Much reference has been made to the opportunity that this is a second bite at the cherry for the prosecution, but it may simply be a question of dynamics and how would the Assembly Members feel if they were to learn that perhaps an

acquittal was passed when a jury simply was split 9 to 3 out of 12? How would they feel then? Do Members consider that it would be appropriate for a retrial if it was an important matter of justice to occur? In summary, the amendment would remove the possibility of a retrial in the rare event that a jury could not agree a verdict. This may lead to an anomalous outcome whereby the proceedings conclude without a verdict being reached. The number of retrials is likely to be very limited; retrials are not inherently unfair in small jurisdictions or elsewhere, and the vast majority of common law jurisdictions permit retrials as an intrinsic part of the operation of the jury system. The purpose of this law, and the second amendment of the Sexual Offences Law also, is to improve the efficiency and effectiveness of the court procedures, so any suggestions that this may impose an additional burden on the court process must be taken in the balance of what we are trying to achieve in the whole by agreeing and bringing forward these major changes to the administration of our justice system. Deputy Hilton was absolutely right in her reference to the Stephen Lawrence case, but I can reassure the Deputy - although this perhaps may speak against my opposition to this amendment - that there is another clause later on in Article 115, schedule 2, for new and compelling evidence to be brought to cause a retrial in the interests of justice. For these reasons stated I cannot support this amendment and I do ask Members to seriously consider rejecting it.

[11:00]

Deputy R. Labey:

Could I ask the Minister for Home Affairs to address the question I raised, which is at whose discretion is the retrial ordered: is it the trial judge or is it the Attorney General?

The Deputy of St. Peter:

That is a matter for the Attorney General who can make the decision within 7 days.

Mr. R.J. MacRae, H.M. Attorney General:

To deal, as has been mentioned, with Deputy Hilton's, we are coming later on in the law to look at the circumstances in which the Court of Appeal can quash a person's acquittal upon the grounds of fresh evidence coming to light. Of course there will be another circumstance in which retrials will be permitted. Retrials are possible now where the number of a jury fall below 10 and also if the conviction is quashed by the Court of Appeal. In the case of *Holley*, which involved the defendant killing his partner with 7 blows to the head and neck with an axe, there was a retrial in the Royal Court in front of a jury without any difficulty. We have retrials already. If I can make a few comments on this amendment. In relation to publicity, the Royal Court said in the case of *Obin* that jurors are capable of understanding that allegations which have been made may be true and may not be, and they, the jury, have had the opportunity and the responsibility of hearing all the evidence, which commentators in the media have not, in deciding whether in fact the allegations are true or not. They, the jury, are not surprised to be warned not to take at face value what appears in the media. Nor are they likely these days to be so differential to politicians, as is the example in his case, and are capable of understanding that they should make no assumptions about whether the statements made are justified or not. It is the experience of all of us involved in criminal justice, in my case including retrials, that jurors are well able to follow the direction to focus on the evidence. Of course this is not the case, is it, where a defendant will have been charged with one set of allegations and then a wholly unconnected set of further allegations? In those circumstances, of course, sometimes there is no publicity about the first trial for fear of affecting the second. This is simply a defendant who is tried again on the same facts. When we looked at the jury system, the first review for over 100 years, we noticed that in all other significant jury systems where the jury could not agree there was the chance for a retrial, normally at the election of the prosecution. To answer the question of Senator Bailhache, on my reading it would be one retrial only and certainly that would be my understanding and undertaking in relation to any retrials that might take place in the future when the

jury could not agree. To answer the question of Deputy Labey as to how retrials would arise, the amendment only affects part of Article 75, so Article 75 as it currently stands will affect a change in the procedure. Currently when the jury retire they are simply told to attempt to reach a verdict upon which at least 10 of them are agreed. If they fail to do so then an acquittal will follow. In relation to Article 75 as amended, even if it is amended by the Scrutiny amendments, the position will be that henceforth the jury must be required to deliver a unanimous verdict, unless the Bailiff directs thereafter that they may deliver a majority verdict of guilty or not guilty. The jury in Jersey will henceforth be required to, in the first instance, reach a verdict in which they are all agreed and after a certain time has elapsed they will be able to return a verdict upon which 10 of them agreed either guilty or not guilty, a change to the current position. We will have juries who are discharged from giving a verdict. We will have, for the first time, hung juries. We will have juries who have not agreed and will be discharged without having reached a verdict. That is how the law is going to be amended. But unlike all the other jurisdictions in the world - Canada, Australia, New Zealand, America - there will be no facility for a retrial where the jury have not agreed. It is not someone being acquitted and tried again, it is simply where the jury have not agreed. Why might not they agree? There are lots of reasons. You have heard the example of a perverse jury. Of course we do in our system, unlike many others, choose to place our trust in juries in quite complex cases. This is not 1864. We have fraud trials lasting weeks and sometimes months, costing millions of pounds to put on, but 3 jurors might not understand the evidence, sometimes there may be one or 2 jurors who do not like the idea of returning verdict in relation to a fellow citizen, that happens sometimes. This simply would allow, in limited circumstances, in accordance with guidelines along the lines of the ones you see in the comment, for there to be a retrial in what would, of course, by definition, be a serious and significant case. One of the factors that the Crown will take into account when considering whether to ask for a retrial is the likely reasons for the jury's failure to reach a verdict, including was the failure to reach a verdict perverse. If so, a retrial is likely to be appropriate. Is there a suggestion the jury is influenced by factors other than the evidence that may bear investigation and so on? Indeed, that is proved as well, I suppose, if there was an instance of jury tampering over here and 3 jurors were got at and could not agree, and did not agree for that reason, again, that could be investigated but there would not be, if the concern was accepted, any chance of a retrial before 12 additional jurors. I have made my remarks in relation to publicity. We have had retrials. This is not really on analysis, I would suggest, a second bite at the cherry, it is simply a circumstance where a jury has been unable to agree. There would not be lots of retrials. The Isle of Man, where they do not have major verdicts like we do, have had 3 in 10 years, one would expect we would have rather less. Those are the points that I was going to make. One should also bear in mind that the main purpose of these provisions is not to ensure that there are retrials - and I think Scrutiny very helpfully accepted this - the main purpose of these provisions require the jury in the first instance to be unanimous and thereafter to come to a verdict upon which 10 are agreed. Either way for the first time is to ensure that juries are left for long enough to reach a verdict to ensure that they have time to reach a verdict upon which 10 are agreed. Of course in these days of separation anxiety from one's mobile phone and so on, and on any view shorter attention spans, sometimes things are difficult for juries. So the main purpose of this amendment is to ensure that juries do reach verdicts unhurried in their own time. In some circumstances, they will be unable to agree and in limited circumstances, if the law is passed unamended, there would be a retrial.

Senator P.F.C. Ozouf:

May I ask the Attorney General 2 questions. First of all, I notice in the report that the decision on a retrial in Canada is made by the judge and in other jurisdictions it is made by the prosecuting service. Could he address why he thinks that it is right that the prosecution should decide? Secondly, does he have any evidence of the outcome of a second trial when there has been a hung … in other words,

is there evidence that the second trial, if it is permitted, succeeds in a result and in which case do they normally go on to make a decision to find guilt or not guilty?

The Attorney General:

Dealing with the first question in relation to whose power it is to require a retrial. The position is that we, at first instance, thought we should follow England and Wales where it is the Crown. The advantage to the Crown having the decision is, of course, they are able to take into account things like the position of the witnesses, the victim in particular, and any effect on the evidence as a consequence of the trial and so on, when making an assessment.

Senator P.F.C. Ozouf:

The Crown means the prosecution service, does it?

The Attorney General:

The prosecution, yes. The Attorney General or the Crown Prosecution Service. Also I should add that before we carried out the research that indicated that in all other big jurisdictions again a jury that could not agree would lead to a retrial. We were unaware of the fact that, as you say, in one of the jurisdictions the decision was for the court and not for the Crown. Although, frankly, so far as I am concerned, I do not think it matters if it is the court or the Crown, either would be adequate. The second question … remind me, Senator?

Senator P.F.C. Ozouf:

Sorry, what is the evidence of the actual result of a retrial? Is it that they go on to successfully prosecute or do they acquit?

The Attorney General:

I am not aware of any studies in relation to the outcomes of retrials.

Deputy J.A. Martin:

Can I ask the Attorney General just for a point of clarification, and it is just because of that last question? Does this limit the prosecution or the Crown to ask for a retrial, then if they are not successful another retrial if we do not use this amendment?

The Attorney General:

Yes, so as I said earlier on, my reading of the law is that one retrial only is permitted and that is the practice in England and Wales.

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

May I pick up a point from the Attorney General? That was going to be my question, where does the law say that?

The Attorney General:

That was my interpretation of 75(9) unamended, which speaks of a retrial of the proceedings. My reading of that was only one retrial would be permitted.

Deputy J.A.N. Le Fondré:

As a question, could the proceedings be a previous retrial?

The Attorney General:

In theory, but my reading is that only one retrial would be permitted and that is how I advise. In relation to the question of Senator Ozouf, I do not know whether the Minister, when she was speaking

about a jury that was criticised for not understanding the directions, was referring to a rather notorious case a few years ago in relation to the wife of a Member of Parliament in relation to driving points, which was heavily publicised. That was a case where certainly the jury could not agree and were criticised by the judge subsequently because the evidence was overwhelming and the second jury certainly did convict her of that offence.

Deputy R. Labey:

Could I ask the Attorney General a question? I listened very interestingly to what the Attorney General had to say and he mentioned very, very interesting powerful points, but the Attorney General in Jersey as opposed to the Attorney General in the U.K. are 2 very different beings, are they not? Is there are danger with our Attorney General being chief prosecutor, being the one at whose discretion a retrial is ordered, might be perceived as the Attorney General giving his prosecution team another go?

The Attorney General:

Yes, of course, I fully accept that. That is the position in other jurisdictions. The prosecution decides, the prosecution should be relied upon to act in accordance with its published criteria so that people know that the criteria, for example those referred to in page 3, of the ministerial comment are being considered properly in every case. Indeed the evidence in every case, I hope Members will be assured, will be looked at dispassionately and in accordance with the code, the guidance, to which the Attorney General will be subject.

Deputy J.A. Hilton:

This amendment obviously is hugely important and I want to completely understand what I am voting on. I would like to ask the Attorney General, currently there is not in the legislation a chance for a retrial so my understanding is in the case of where 9 jurors are convinced of the evidence and would find guilty and if 3 are not convinced by the evidence my understanding is that the person is acquitted, is that correct?

[11:15]

The Attorney General:

Yes, that is right. As things currently stand, if 9 are sure of guilt and 3 are unsure of guilt the defendant is acquitted. Under the new law, even as amended, in those circumstances the jury will be simply discharged without reaching a verdict and the question is whether or not in those circumstances the Crown should be entitled to one retrial or not.

Deputy J.A. Hilton:

Just a supplementary question to that. I thank the Attorney General for that clarification. It does greatly concern me obviously because we could have rape cases, child abuse cases where 9 jurors are convinced of the guilt on the prosecution case as put forward but 3 believe that the person is innocent, so that does concern me. Can the Attorney General tell Members whether there have been any cases where defendants have been acquitted in the past on the basis of the 9 plus 3 or the 8 plus 4?

The Attorney General:

Yes, I am aware of 3. One fraud and 2 serious sex cases, including a rape.

2.8.9 Deputy S.M. Brée of St. Clement:

We have heard some very interesting arguments on both sides of this debate, however I think we need to look at this sensibly and the Minister for Home Affairs made a statement that concerned me. The purpose of this law is to improve the efficiency and effectiveness of the court system. Perhaps that may be true but what about the question of your innocence until proven guilty? What about the

basis of our law that you can only be found guilty beyond all reasonable doubt? Now, if the prosecution service cannot convince the jury of somebody's guilt then they have not proven their case. They have not proved beyond all reasonable doubt because otherwise they would get a majority or unanimous verdict of the jury. So is it right to allow our prosecution service to say, basically: "We do not agree with the findings of the jury. We want a retrial to try and prove guilt once and again." At the end of the day, the fundamental building block of our law system is that you have the right to be tried by a jury of your peers. If that jury cannot find you guilty then why should a retrial be allowed to be called by the prosecution service itself? We then get to the issue of fairness. Despite all that has been said, for those of us who have lived on Jersey long enough, we know that once a possibly sensational or possibly quite sad case becomes public knowledge it is very, very difficult to then find a completely impartial and uninfluenced jury to retry that case. To go back to the concept, you are innocent until proven guilty, it is the job of the prosecution service to do so. If they can prove beyond all reasonable doubt to a jury that jury will find the defendant guilty or not guilty, depending which way they go. Therefore, I am concerned that this concept of retrial starts to find its way into our legal system. I would urge all Members to support the amendment.

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

I was not going to speak in this debate but my views on the forthcoming debates later on have led me to stand up now. The fact that we are here this morning spending time debating these laws, writing these laws, making and amending these new laws is important. We are understanding what we are doing and we know the outcome that we want to achieve. When we get there we will have it. How do we then feel when jurors, maybe one or 2, maybe 3 or 4 - that is the important thing 3 or 4 - on a particular case do not understand what we are trying to put in the law? How do we then feel if we say to ourselves: "But this is what we meant. This is what we meant to do. This is what we meant this law to do for us. These people have not fully understood it." It then means that either we need to educate people more, we need to change the laws. I find myself uneasy because I know where I am going to be very clearly in the rape cases we are going to talk about in the forthcoming debate. What I am saying to myself now is we set the laws, if we feel jurors do not understand exactly what we are trying to do and what we are trying to achieve then maybe in that case we should have more opportunity to have jurors who do understand, so I will be supporting the Minister.

2.8.11 Senator I.J. Gorst:

This is, I think, quite a finely balanced argument as the Minister, Senator Bailhache and the Attorney General indicated in their comments, and even the rapporteur for the Scrutiny Panel. We could think that we are so different here that they would not be able to be a fair trial if there was a retrial because jurors would have seen publicity in the media. I think the Attorney General very helpfully set that concern to rest and we know that other small places with similar population sizes, like the Isle of Man, managed to do that. For some Members I recognise still that is a concern. The other major concern that was raised by the judiciary before the panel, and influenced them in their amendment, was this idea of 2 bites of the cherry and innocent until proven guilty. They are fair and reasonable points. We are living in a world where that burden, sadly, in public discourse is changing. The assumption has started to be in public discourse about all sorts of matters that we will make our comment of guilt before we find the facts and we will be critical of individuals or organisations before we know the detail. So it is not just the media, as the rapporteur suggested, but that sometimes happen in this Assembly, in political discourse. We will say that somebody is guilty before we have seen or heard or investigated all the facts. It is absolutely important that we maintain the principle of innocent until proven guilty. The problem that we face here is the instance where there has been no decision or no verdict, in effect, and Deputy Hilton very eloquently asked questions of the Attorney General in that regard and in a number of cases that she just asked about there would be no verdict, but one could argue that no verdict is unfair on either side of the argument. I think that is something that

Members need to consider in reaching their decision. As I look down the changes that we are making, we are making changes to the 1835 Law, the 1853 Law, the 1862 Law, the 1864 Law, and a colleague has just said to me that they are supporting the Scrutiny Panel and not the Minister because it has been like that for 150 years. That, of course, is a legitimate argument, that it has been like this for 150 years so we will not change it. But the change that is portrayed as so gigantic, is it actually when we consider what the Attorney General said? On the one hand of course it is because it will give the Crown the ability to consider for 7 days and then say, yes, there should be a retrial because there has been no verdict. On the other, if we look at the numbers from elsewhere, they are relatively small and there is reason to do so. So it is finely balanced. For my part, I think that the arguments that the Minister has made are the ones … and that change is a positive change. I recognise that some Members are finding it difficult but this is about improving our criminal procedures and I can see that the proposal that the Minister is making is an improvement rather than just remaining where we are and where we have been for the last 150 years or so. Thank you.

2.8.12 Connétable J. Gallichan of St. Mary:

It is just a very brief observation because I came to this amendment fairly sure that I was going to support it, and then I have heard what the Attorney General has had to say and, of course, I have heard from him previously, and I have swung right round again because I can see, in certain cases, why it would absolutely be necessary. However, I still cannot get over the observations made by the representatives to the Scrutiny Panel who have such experience, such a depth of knowledge in all of this, and have absolutely no side to them in what they would present because their job obviously continues. I just wondered, one of the comments - I think I heard it from the Attorney General - was that in some cases jurors failed to be able to make a decision because of a reluctance, when it comes to that determining moment, to act as they see it in judgment, to come down on one side or another. I do not know how this would get over that with the retrial or whatever. My concern now is would having the option for a retrial take some of the pressure off the jurors to come to a decision one way or another? It is almost like a get-out clause. I have never been on jury but we make decisions here every day and often we are weighing up things - and obviously a different criteria for a jury member - sometimes the ability to abstain or to seek some sort parliamentary device to move on from that point of decision-making seems incredibly attractive for a time. I just wonder if this does not open up that option to not make a decision more. Because of what was said about the reasons why jurors might not be able to come to a decision, maybe it is the selection and appointment of the jury, and any induction of the jury that needs more attention rather than the ability to retrial.

[11:30]

I can honestly say I am so swayed by what the Attorney General has restated today but there is a part of me that says that if you are unsure about making the change you should not make the change at this stage but wait until you are sure about it. We can always do that. This could come as separate legislation. We are incredibly rushed in this, I think, and that is the worry. This is one of a number of very weighty pieces of legislation we are being asked to consider at this time. It may well be that we have had this on the table and we have had lots of briefings, *et cetera*, but at the same time we are dealing with it in the context of all the other things we are having to weigh up on. I really do not know how to overcome this uncertainty when we have such learned people and such respected people giving opinions which show that there is only a very fine balance in this.

2.8.13 Senator P.F.C. Ozouf:

I came also to this Assembly this morning believing that I would support the Scrutiny Panel, because I had not, probably like many Members, really thought about or understood some of the subtlety and of the at-the-margin arguments about this. On the one side I think: how could I possibly argue against such eminent commissioners such as I know the previous Bailiff, Sir Phillip, who has spoken in his

capacity as former Bailiff, and Commissioner Birt. At the same time I now understand what the observations of the Attorney General are. To me, like the Deputy of St. Martin, this is inextricably linked with the issues of sexual offences and the way that those are tried. It is important that there is justice done for both sides of the arguments. I think the thing that means that I will not support the Scrutiny Panel are as follows. It is linked to the issues of the sexual offences debate that we are going to be having later. I think the points that have been made about the rule that a jury … I am trying to weigh-up the evidence. I am being a juror in relation to the arguments. But, there is a rule that effectively 10 jurors can find somebody guilty. If it is less than 10 then they are automatically acquitted. So, in the event of a serious sexual assault, something that is undoubtedly … potentially some member of the jury might be influenced by something in the media. If it is 9 then it is an acquittal. Now, that is 9 out of 12. That is a very uncomfortable situation to be in. It is important to point out, I was almost goading the Attorney General by asking him whether or not it was the judge or the prosecution service or the Crown. The prosecution is making a decision in the public interests on the basis of evidence as to whether or not something should be brought to trial. They are not the police, who are providing the evidence. They are looking at the evidence and the chance of a successful trial, *et cetera*. I can fully imagine that in the case of a serious assault, a rape, a serious sexual offence, when there is evidence that is known to the prosecution and they see a trial and they then see a result of 9 jurors effectively saying guilty and 3 not guilty, I can see the unfairness for the victim in a retrial. A retrial does not mean a prosecution. It means a retrial. It means rehearing the evidence. So, it is not about securing successful prosecution. It is about hearing the evidence. You have to be fair to both parties. We all know, as we will come on to discuss with the Sexual Offences Law that there are real challenges and difficulties in securing convictions for sexual offences. We have had debates in this Assembly about the child abuse issues and the lack of successful trials, the lack of successful evidence that has been brought forward. It seems to me that there are a number of issues, and while holding our judiciary in the highest esteem, we must also reflect on the history that this Island has had in not perhaps dealing with issues as they should be. If this is a subtle modernising, improving justice arrangement that is given an option in the most exceptional of circumstances, as the Attorney General has carefully said. I am afraid I do not read the amendment as an unlimited amount of retrials, as Senator Bailhache said. I do read the amendment as of a retrial. That is my plain English reading of the amendment as before us. I am afraid to say that I am now, having come to this debate, wanting to support … because the nightmare for the person convicted of having a retrial, that is something that weighed heavily on my consideration. Also, I think it is about being fair to both parties in exceptional circumstances and in an Island, which without doubt there will be jurors that will be influenced by those aspects that will be known and reported on. Deputy Mézec when he made the case for the amendment said that the media does not get it wrong. The media sometimes gets it wrong in the way that they report things. Well, politicians do as well. We all do. Sometimes a retrial must be in exceptional cases. Just think of that situation. I ask Members to think about that trial when they vote. Think about that trial of 9 members of a jury finding somebody guilty and 3 members finding them not guilty and that individual acquitted. There are circumstances I can see where a retrial is in the interest of justice. I therefore will be rejecting the amendment by the Scrutiny Panel.

2.8.14 Deputy J.A.N. Le Fondré:

It is quite a challenging debate this one. I must admit I listened with interest to the Connétable of St. Mary. I think she has made a few salient points. I want to start by saying a few years ago I was chairman of the Legislation Advisory Panel and we ended up in a slightly interesting scenario which is similar to the one I find myself in today. Where on the one side we had the Royal Court with a particular view and on the other side we had the Attorney General. At that point we went with the Royal Court. Now I find myself looking at a view from the former Attorney General that I have just referred to now in the position of the Royal Court, and our present Attorney General. I think at the

moment I am going to make the same decision, even though I have the highest respect for the Attorney General and I take his views very seriously. But, I am swayed a little bit by what the Connétable of St. Mary said as well. I think the point is here we have to go back to the fundamentals - obviously I speak as a layman - of innocent until proven guilty. That is why I have always understood that the bar is set so high. It does not matter how nasty it is or what you think it is that is the bar that has been set, because the consequence of being found guilty are so severe. Therefore, I am slightly concerned around the terminology that has been used in some of the arguments. We have had the observations and comments from the Minister for Home Affairs: "However, the Panel's amendment would remove H.M. Attorney General's right to require a retrial takes place." That is removed from the new legislation. It does not, as I have understood it, remove it because it … right now the old legislation is placed and that right is not there, as I have understood matters. I am slightly concerned about the reference to efficiency and effectiveness. But, it must not compromise fairness. It must not compromise that very fundamental route for me of the innocent versus guilty. Again, jury is about being heard by one's peers. I think really there are 2 other points. One is, which particular the Connétable of St. Mary has referred to, we have been under and we are today under a huge amount of pressure on the volume of work that we are considering. You can tell from the nature of this debate, the debate is very balanced. There is no clear view here. That to an extent is where … and I suppose I should say that as president of Scrutiny, I do have to place reliance on the work that has been done by Scrutiny. They have taken the time to look at this. That is the point. They have taken the time to look at this and they have come to a judgment call, having considered and weighed-up all of the evidence in front of them. That does sway me as well. Then the final one really is … and I am going to take a moment just to remind Members of what was said in the comments from the commissions and these are obviously repeated in the Scrutiny comments. They start off about publicity. They talk about there is often a front page headline followed by a brief and therefore partial review of the evidence. If a retrial takes place, particularly if the defendant is in custody, it will have to take place promptly. Thus the jury in the retrial are likely to be aware of the earlier reports and it is a retrial. They make the point that Commissioner Birt is attributed to: "I think the great difference of a retrial is that first there could be evidence given in court reported in much more detail." In other words: "He did this to me. He did that to me." It will have been reported recently. So, I think it is the quality of the matter which will be in the paper which is much greater than in the police investigation in the short time comparatively which will elapse in such a report compared with a police investigation. That, again, is all about the publicity and influence. I think in these days as well the influence of social media is a factor. We know that quite a lot of social media is emotionally driven. I think, again, to just re-summarise there. Commissioner Birt: "The prosecution have brought the case. I am not sure there is anything inherently wrong in saying if you cannot convince 10 out of 12 of the defendant's guilt the first time around, well so be it. Certainly, when balanced against the cost and the prejudice to my way of thinking our present system is satisfactory." Commissioner Clive Smith: "I agree. All I would add, it seems to come down to the balance of fairness." That I think has struck a chord. I do make the point the Connétable of St. Mary says is that if we go with the amendment and there is a further change required one can make that change. That means then you have 95 per cent of what we know, we fully accept that the work has been done and that this is a massive improvement in the legislation we have. That is a lightly precautionary approach, because the issue of fairness, I think, is a fundamental one. That is the foundation of what the legal system is based on, said as a layman. I think that is my concern: what happens if we go down the retrial basis? Yes, it is done elsewhere, but we are a very small jurisdiction and there will be a lot more focus. There is therefore a greater risk of influence. I think on that basis I will go with the amendment for the time being. Thank you.

Deputy M.R. Higgins of St. Helier:

Unfortunately, I was out of the Chamber on a comfort break when the Attorney General was speaking. But, I was told by some Members in the coffee room that the Attorney General gave information regarding jury trials where 9 of the jurors would have convicted but they could not get the 10 majority. Could I ask the Attorney General where that information came from, because to my knowledge jury trials and the decisions of juries were supposed to be totally confidential and no information should be given out as to how jurors voted? So, could I ask the Attorney General where his information comes from and I will go from there?

The Attorney General:

In one particular case owing to the system that we currently have where the jury cannot agree they need to go up one by one and whisper their verdict to the judge. That will be ended by this new law. In that case, when the judge announced the verdict the jury foreman said: "Well, that is not our verdict." They went up twice. Because of the difficulty each juror then had to declare their verdict one by one in open court. That was a sex case. The other 2 cases, of course, as we all know, the ushers know everything and I am not going to say any more than that. But, I do know of other cases.

[11:45]

2.8.15 Deputy M.R. Higgins:

Just hearing about ushers giving out the information as to how juries have reached their decision I find unacceptable to be used as an excuse within this Chamber as an argument for retrials. Equally, if the judge is being told the results by the jury, why is that suddenly available for everybody else? One of the basic tenets of English law is the fact that people should be tried by their peers. Again, it is another tenet that it is for the prosecution to prove the case beyond all reasonable doubt. In fact, I was just looking a few moments ago, and in fact I will be using these arguments probably when we come to the Sexual Offences Law about supporting juries, is the argument that juries do not convict in rape cases. Well, the evidence in the U.K. that I have been looking at shows that they do. So, what I would like to say is that I will make my position clear. I am not in favour of retrials. I think it is wrong. It is for the prosecution to prove first time round; produce the evidence and convince people that the person is guilty beyond all reasonable doubt. The idea of a second bite of the cherry I find quite frightening. I wonder how many times it would be used. So, I shall be supporting the sub-panel's amendment against the idea of retrials.

2.8.16 Deputy T.A. Vallois of St. John:

I will be brief. Two Members have already mentioned the issue of efficiency and effectiveness, which I hope I can help in their considerations. It is defined under Article 3 of the law which we have already agreed in terms of the overriding objective in terms of innocent until proven guilty. On the actual amendment … I am a member of the panel with Deputy Mézec and the Deputy of St. Ouen. The Minister mentioned certain reasons why retrials were brought in and mentioned Stephen Lawrence, for example, as one of the reasons. I think it is appropriate for me to explain how the U.K. ended up there from the Stephen Lawrence case. There was the Macpherson Inquiry into the investigation. Then following that the Home Affairs Select Committee reviewed the law on double jeopardy and considered arguments for and against statutory medication of the principle. It concluded that there was a strong case for reform that would make provision for a retrial where there is new evidence rendering the acquittal unsafe and the offence is very serious carrying a life sentence on conviction. There was a further paper done by the Law Commission, a consultation paper, which provisionally recommended that the prohibition on double jeopardy should be abrogated where new evidence is discovered following an acquittal. Following that there was the old report, which went further than the Law Commission's recommendations at the time, which stated that it was unduly conservative and recommended that the proposed exception to the double jeopardy principle should not be limited to murder, but applicable also to other very serious offences, punishable either by life

or other long terms of imprisonment. So far, what I have heard from Members, is how significant the burden is on juries to consider the types of evidence in these criminal cases and how difficult it may be for them. On the basis of what I have just stated and how the U.K. came to the consideration in terms of double jeopardy, I think we need to consider where we are in terms of the Criminal Procedure Law. This is the first time we are changing our criminal justice system in over 150 years. This is a huge change for us. We are a very small community. We are not the U.K. We are not other jurisdictions. We are here to represent the people who live here and may be brought before a court of law. All I would ask Members is that … recognising the Connétable of St. Mary's comments, about supporting this amendment and then it may be considered appropriate later on. I would suggest Members read the comments to our amendment from the Minister for Home Affairs. I specifically point them to the paragraph on page 2 going on to page 3, which refers to the frequency and process of retrials. In England and Wales a retrial is only sought by the Crown after applying the following considerations and then it lists a number of considerations. I think from my point of view, I would ask Members to consider whether they think that those considerations are appropriate, because it states there that similar grounds would be applied when considering whether to bring a retrial in Jersey so that one would only take place where it was appropriate. So, I ask Members whether they believe that test is appropriate. Of course, it flags-up: is there a suggestion that the jury was influenced by factors other than the evidence? This might bear investigation for an offence of jury interference. We are going to come on to the sexual offences, which other Members have spoken about during this debate, which I am lead member for the amendments on. I think there has been a great deal of discussion, research and investigation about juries, how juries work, how they are directed, how they understand the rule of law, and how they understand what the burden is upon them in order to reach decisions. I think it is absolutely imperative that we, as States Members, when making legislation not only consider what may be best practice elsewhere, but how that is applied within the jurisdiction in which we currently sit. I believe that having this amendment, agreeing this amendment, will give us due time, due process, to consider alongside the changes that are coming in with the Criminal Procedure Law and if in 5, 10, whenever, years' time that it is considered that it is absolutely necessary for Jersey to have retrials. I think it would be appropriate then for us to consider that argument based on what needs to be more sufficient evidence to do so.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on the amendment? If not, I call on Deputy Mézec.

2.8.17 Deputy S.Y. Mézec:

Can I thank every Member who has contributed to this debate? I think the contributions have been very valuable on both sides of the argument. I think it is testament to the fact that this is an important issue. This is about our justice system at the end of the day, which is something I think we all value. We want a justice system which sees the guilty convicted, the innocent acquitted and for every citizen to have faith in it that it will reach the right decisions.

The Greffier of the States (in the Chair):

The usual fine, Deputy Labey.

Deputy S.Y. Mézec:

A fine is a just punishment for such a thing. **[Laughter]**

The Greffier of the States (in the Chair):

No retrial.

Deputy S.Y. Mézec:

No retrial indeed. This amendment will be to remove provisions from the law to enable a retrial when there is a hung jury. It is not to stop retrials from happening on other grounds. Deputy Hilton referred to the Stephen Lawrence case, which is obviously a case that many of us will be very familiar with, where there was an appalling miscarriage of justice. That is quite different from what this law proposes, because that, I think the Deputy said, was retried 18 years later. This is about having a retrial when a jury cannot agree. That is the basis for it; not other bases. The Attorney General will have the right to call for that retrial within 7 days. So, this is not about finding extra D.N.A. evidence or a new witness coming forward years in advance. It is about the immediate aftermath on the grounds that the jury could not agree. Deputy Labey asked the question: would it be the Attorney General or would it be the judge? The answer to that is very clear; it would be Jersey's chief prosecutor who would be making that decision. So, I think there are 2 questions that ought to be answered here. The first question is: what problem is the law trying to fix here? Is there a problem? Are there miscarriages of justice occurring in Jersey because we do not have this provision? The second question is: will these changes make our system better? From the evidence that we have been shown as a panel I do not think there are satisfactory answers to those questions. I do not think that there is a clear problem with the system as it is. I do not think that this is necessarily going to make the system better. In fact, we have received evidence that suggests it could be worse. I think Senator Bailhache's comments were very helpful. He reiterated that it is the totality of the judiciary and the contributions they have made to our review that have explained the reasons why they are opposing it. The Attorney General in his speech tried to explain what the reasons would be why a jury would not be able to reach a verdict. I have to say, I thought they were a little bit strange, to be honest; some people do not like convicting, some people might have misunderstood things. The question that has to be asked there is: why would it be any different the second time round? The jury selection is random. We select people completely at random from the public. We will do that first time round. We will do that second time round. It will be exactly the same. What reason would there be for the second jury to come up with a different verdict to the first one unless there is some sort of material difference in how the trial is conducted? In those circumstances, I think, if there has been a problem with how a trial is conducted then surely that is the basis for calling a retrial. It would be to appeal the decision that was made by that court and say there was a problem with how that trial was conducted and that is why it needs to be redone, not on the basis that the jury just simply could not agree. That, I think, is not really a clear justification for having a retrial. The Attorney General said that it was important for there to be retrials because Jersey does have some very difficult and complex cases that are held in our court here. I would make the point that Jersey's court is not like some ordinary Crown Court in the U.K. It is essentially a national court in Jersey and it does see very complex cases. The Attorney General pointed out that some of these cases cost millions of pounds. So, I then say: if you have a retrial and we get the same verdict as last time or a hung jury, well that is even more millions of pounds wasted on it without any actual clear procedure that would suggest we would get a better outcome second time round. When that is the only basis for calling for a retrial, that the jury could not agree, then that does seem to be saying that this would be a second bite of the cherry. That just does not feel right. That does not sit right with what is meant to be the principle of justice, that you are innocent until proven guilty and that guilt is determined by proving beyond reasonable doubt. That is the key here. If you have not proven it beyond reasonable doubt then the case has not been made and that is it, the defendant does not get convicted on that basis. This is a personal point of disagreement here, but the Attorney General said in response to questions that his reading of Article 75(9) was that there could only be one retrial. This is just a difference of opinion here, but when I read that Article, that is not how I personally read it. The Article says: "Where paragraph 8 applies the Attorney General shall not more than 7 days after the day the jury is discharged notify the defendant and the Bailiff whether or not there is to be a retrial of the proceedings." The key part there is: "Where paragraph 8 applies." So, you then go to paragraph 8 above it: "If following such a period of time for deliberation as the Bailiff thinks reasonable, having

regard to the nature and complexity of the case, the jury is unable to deliver a verdict upon which the majority of jurors are agreed, the Bailiff shall discharge the jury from the proceedings and from the custody of the Viscount." Well, that applies to a retrial as much as it would to an initial trial. So, that is just my reading; I do not think it is clear cut that it limits it to simply one retrial. I think it looks like it does open it to further retrials. But that is just how I read it there. So, returning to those questions I asked: what is the problem they are trying to fix and will this make it better? From the evidence we have been shown, I do not think that there are answers to those questions. I think this potentially raises more problems than it solves with how expensive retrials will be with no guarantee that there will be a different verdict. I do not think we have been shown evidence of miscarriages of justice where an incorrect verdict has been reached on these grounds.

[12:00]

To use the analogy of a criminal trial where the Minister would be representing the prosecution side here and Scrutiny representing the defence side, I would submit, your Honour, that the case has not been made here. I do not think it has been made beyond reasonable doubt that this would improve our justice system. I do not see where the problem is with the current system. The overwhelming opinion of those who serve in the judiciary is that this current system is fine on this particular aspect and that change is not necessary to enhance our justice system. I thank all those Members who have contributed to the debate. Though the Scrutiny Panel disagrees with the Minister on this specific point, we have been very grateful to work with her and her team in the constructive manner otherwise.

The Greffier of the States (in the Chair):

The appel has been called for and I ask Members to return to their seats. The appel is on the amendment lodged by the Scrutiny Panel and it affects Articles 75 and 76 of the draft law and I ask the Greffier to open the voting.

POUR: 26		**CONTRE: 19**		**ABSTAIN: 0**
Senator P.M. Bailhache		Senator P.F. Routier		
Senator S.C. Ferguson		Senator P.F.C. Ozouf		
Connétable of St. Mary		Senator A.J.H. Maclean		
Connétable of St. Ouen		Senator I.J. Gorst		
Connétable of St. Saviour		Senator L.J. Farnham		
Connétable of Grouville		Senator A.K.F. Green		
Connétable of St. John		Connétable of St. Helier		
Connétable of Trinity		Connétable of St. Peter		
Deputy J.A. Martin (H)		Connétable of St. Lawrence		
Deputy G.P. Southern (H)		Connétable of St. Brelade		
Deputy of Grouville		Connétable of St. Martin		
Deputy J.A.N. Le Fondré (L)		Deputy J.A. Hilton (H)		
Deputy K.C. Lewis (S)		Deputy of Trinity		
Deputy E.J. Noel (L)		Deputy S.J. Pinel (C)		
Deputy of St. John		Deputy of St. Martin		
Deputy M.R. Higgins (H)		Deputy of St. Peter		
Deputy J.M. Maçon (S)		Deputy R.J. Rondel (H)		
Deputy S.Y. Mézec (H)		Deputy A.D. Lewis (H)		
Deputy of St. Ouen		Deputy M.J. Norton (B)		
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				

Deputy P.D. McLinton (S)				

The Greffier of the States (in the Chair):

This is a good moment, following Deputy Labey's telephone interruption and given that Deputy Rondel is here, to say that the Bailiff has agreed that the money from all of your various devices beeping during the Assembly's proceedings will go this year to Friends of Jersey Oncology. **[Approbation]** Please, do keep them on silent however. **[Laughter]** That is not an encouragement.

2.9 Draft Criminal Procedure (Jersey) Law 201- resumption - as amended

The Greffier of the States (in the Chair):

We now move back to Article 75 as amended. Does anybody wish to speak on the Article as amended? If not, Minister, do you wish to speak at this point on the Article as amended? You are not obliged to.

2.9.1 The Deputy of St. Peter:

In somewhat deflated tones I guess it is for me just to move the Assembly. Obviously, it has been a very good debate. It is an important matter because it is important that we encourage that justice is seen to be done in the correct way. I will leave it at that and I thank all Members who did contribute to the debate and to the panel for expressing the views that they have and I move the Article.

The Greffier of the States (in the Chair):

The appel has been called for on Article 75 as amended. I ask Members to return to their seats and I ask the Greffier to open the voting.

POUR: 37		**CONTRE: 2**		**ABSTAIN: 1**
Senator P.F. Routier		Connétable of St. Martin		Senator P.F.C. Ozouf
Senator A.J.H. Maclean		Deputy J.A. Hilton (H)		
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Saviour				
Connétable of Grouville				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				

Deputy of St. Peter				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

The Greffier of the States (in the Chair):

Moving on, Article 76 has been deleted, so we start again on Article 77. Minister, if you want to tell us which block are being proposed.

2.10 The Deputy of St. Peter:

Yes, I would like to speak to you now on Articles 77 to 120, as they stand in the draft law, although, of course, these will all be now amended, given the loss of Article 76. If I may continue, I will just speak to each of the Articles very briefly, if I may, for the Assembly and I look forward to any Members' thoughts. Article 77 explains the scope of the part, that is part 10, and sets out definitions of words used in relation to the procedures for trials in the Magistrates' and the Royal Court. Article 78 allows the court to grant bail to the person it has ordered to be arrested. The grant of bail may be subject to the payment of security, which is lost if a person fails to attend court, as instructed. Failing to appear is also an offence punishable by up to 12 months' imprisonment and an unlimited fine. Article 79 makes provision for what are currently known in Jersey as Newton Hearings. A Newton Hearing will take place, both at present and under the draft law, where a defendant pleads guilty but disputes the facts alleged by the prosecution. In these circumstances a Newton Hearing may be used to determine the facts that the court should rely on for the purposes of sentencing the defendant. Article 80 enables the defendant to withdraw a guilty plea at any time with the court's permission. I have addressed Articles 81 and 82 concerning the discontinuance of proceedings, which are now amended. Article 82, as amended, allows criminal proceedings to be withdrawn with the leave of the court. The provision could, with the court's permission, be used at any stage of the proceedings and is, therefore, distinct from the provision of the discontinuance. As I mentioned before, under Article 83, the prosecution will have a statutory duty to disclose the existence of any unused prosecution material to the defence where it may undermine the prosecution case or assist the defence. As now amended, the decision to withhold any information on the grounds of public interest will fall to the court, not the prosecutor. Article 84 now is amended to 86, require a defendant to submit a defence case statement, which a written statement is outlining the nature of the defendant's defence, as well as highlighting the prosecution facts that the defendant disputes. They must identify any witness the defendant intends to call and provide details of those witnesses' names, addresses and dates of birth. Article 84 allows the court to waive the requirement for a defence case statement to unrepresented defendants in exceptional circumstances and this, of course, has now been amended to allow the court to do so at its discretion. Also under Article 84, the defence is liable for any additional costs resulting from the failure to submit that statement. My amendment has limited this to those prosecution costs directly attributable to a failure to file a defence case statement. The requirement to serve a defence case statement will only arise once the prosecution has disclosed the unused prosecution material, ensuring that the statement can be prepared on the basis of a full appreciation of the evidence in the case. The purpose of the defence case statement is to ensure that in criminal proceedings it is clear what the real issues in dispute between the parties are, so that the

proceedings can be dealt with justly and expeditiously. In some cases having a full appreciation of the defendant's case in an early stage may assist the defendant by ensuring that the prosecution is able to identify relevant unused material that can be disclosed to assist the defence case. Alternatively, a defendant may decide, looking at the available evidence, that a guilty plea is warranted. This would bring the trial to a swift and satisfactory conclusion and, thus, make resources available to progress other cases. The requirement to provide a defence case statement is not to remove the defendant's right to silence. A defendant can still make no comment in interview and remain entirely silent during the entire process, including at trial and the jury will not be permitted to hold this against the defendant. The changes to this right to silence implemented in England and Wales in 1994 were considered. If these changes were adopted here that would, in effect, have meant that a jury could draw an adverse inference from the defendant's silence at interview or at trial, as is now the case in the U.K. However, we decided to reject this proposal and stick with what we have, which is no adverse inference to be taken from a defendant's silence. Article 87 provides that the court may draw adverse inference if a defendant has not provided a statement, as required, or puts forward a new or different defence at the trial. Article 88 allows a defendant to attend court by means of a video link, as long as the link is 2-way and the court and the defendant can see and hear each other. Article 89 provides that the defendant must be present at court throughout their trial, unless the court has excused them. If the defendant chooses not to exercise the right to be present, then the court may, having regard to the interests of justice, proceed to try the defendant in his or her absence. Articles 90 and 91 enable the court to make an order limiting the reporting of a case where it appears to be necessary for avoiding prejudice to the administration of justice. A person who contravenes such an order is liable to an unlimited fine. There will be a defence if the person does not know and has no reason to suspect that an order has been made. Moving on to part 11, which makes provisions for the treatment of defendants and witnesses, Article 92 explains that the provisions of part 11 sets out definitions of words uses. Articles 93 and 94 deal with who is competent to give evidence in court. Essentially, everybody is competent to give evidence, unless it appears to the Bailiff or Magistrate that he or she cannot understand the questions or cannot give answers to them which can be understood. Where there is doubt, the party calling the witness must satisfy the court that the witness is competent; the defendant is not competent to give evidence for the prosecution. Article 95 concerns compellability, usually now everyone can be compelled to give evidence in a criminal case and this Article clarifies that; relatives by blood, adoption or marriage are not exempt from compulsion. However, this Article makes a provision so that a spouse or a civil partner of a defendant will not generally be compellable to give evidence against that defendant. This follows the provision in the 1908 Law and the position in England and Wales. But there are exceptions from the general rule that a spouse is not compellable, set out in Article 95(3) and in Schedule 1 to the draft law. In essence, these provisions make it clear that a spouse or a civil partner may be compelled to give evidence against their spouse or civil partner where the charges involve domestic violence or violence against any child or vulnerable person. In proposing this part I am also proposing Schedule 1. Articles 96 and 97 deal with how evidence is heard; people who are competent to give evidence must swear an oath that it is true. People who are not competent to give evidence on oath because they would not be in a position to understand the ramifications of doing so may give evidence without taking an oath. Further provision is made with regard to the admission of such evidence in proceedings. I have addressed Article 98, which deals with the power of the court to require a person to attend court and, as amended, allows a person to be arrested where necessary, so they could be brought to court to give evidence. Articles 99 and 100 enable the court to issue a witness summons if a party applies for one, if the evidence is likely to be material but there is reason to believe that that person will fail to attend court. Failure to comply with the summons is considered contempt of court. Articles 101 and 102 make provision with respect to the giving of special assistance to witnesses. The court is, in particular, required to give special assistance to young or vulnerable witnesses if the court believes that this would be likely to improve the quality of the evidence given by the witness.

There is a regulation-making power that will allow the Assembly to determine the details of special measures that can be provided to maintain best practice in the future. This is an important expansion of the rules to help vulnerable witnesses in giving their evidence. Importantly, this will allow witnesses to give their evidence-in-chief and to be cross-examined before trial. Article 103 allows the court to adjourn to hear a witness elsewhere than in the courtroom if the witness has a valid reason for not attending. Articles 104 and 105 prohibits a defendant who is representing himself or herself and who is charged with certain offences, including sexual offences, from cross-examining the victim, a person under the age of 18 or a vulnerable person. The court may also prevent the defendant from cross-examining another person if the quality of the witness's evidence is likely to be diminished. These provisions are essential to prevent abusive questioning of witnesses. Where a defendant is prevented from cross-examining, the court must invite the defendant to arrange for a legal representative to do so for them.

[12:15]

Articles 106 and 107 provide that where a defendant does not appoint a legal adviser to cross-examine, the court will appoint an advocate to do so. The Bailiff must give the Jurats or jury a warning to ensure that the defendant is not prejudiced by the requirement to have someone else cross-examine the witness. Article 108 makes it an offence for a person to intimidate, harm or threaten a member of the jury or a witness, with a penalty of up to 10 years' imprisonment and an unlimited fine. The amendment has deleted paragraph 10(b)(ii) as a technical change, as the concept of withdrawal has been removed from the law. Part 12 deals with wasted costs, which are costs in criminal cases that arise unnecessarily due to the acts of one party. Articles 109 and 110 allow the court to order a party to pay costs, which have arisen as a result of their unnecessary, improper, unreasonable or negligent act or omission. A regulation-making power will allow the Assembly to specify the details of such orders. In Article 111, in addition this contains a regulation-making power to enable the court to order the payment of costs by a person who is not a party to these proceedings where they have committed serious misconduct. Articles 112 and 113 create a new Criminal Procedure Rules Committee to make criminal procedure rules governing the practice to be followed in criminal proceedings. The committee will be chaired by the Bailiff or Deputy Bailiff and be composed of the Attorney General, the Chief Officer of the States of Jersey Police Force, the Judicial Greffier, the Magistrate, the senior *délégué*, which could be known as the Head of the Probation Service, the Viscount, an advocate nominated by the Bâtonnier and a person nominated by the Chief Minister. These rules must be simply expressed and make the criminal justice system accessible, fair and efficient. Article 114 allows the Bailiff and Magistrate to issue and publish practice directions to be followed by the participants in proceedings. Article 115 introduces Schedule 2, which sets out the provisions dealing with the quashing of a person's acquittal. Schedule 2 deals with the quashing of acquittals; in this area the law follows best practice in the U.K. and in other jurisdictions and is intended to allow the prosecution to seek an order to overturn an acquittal if new and compelling evidence comes to light in relation to the offence and is in the best interests of justice to do so. New evidence must become available that was not raised at any point in the previous trial process and this must be compelling, meaning it must be both reliable and highly suggestive of guilt. It would only be possible to overturn an acquittal for a very serious crime and regulations will be brought to the Assembly, which will allow Members to approve the list of offences to which this rule will apply. The decision whether to order that, an acquittal be quashed and a new trial be brought, will be a decision for the Court of Appeal and not for the prosecution. The rule here is broadly the same as enforced in England and Wales where it has been in place since 2005. The call for this provision emerged from the MacPherson report from the murder of Stephen Lawrence and the Auld report on criminal justice. The intended use of the power is primarily to deal with issues where new technology has revealed evidence that was not previously available. Historically, in jurisdictions where this provision exists, it has been primarily used to retry people acquitted for very serious offences, such

as rape and murder, when new D.N.A. evidence has emerged sometime after the original trial. Article 116 allows the Assembly to make regulations for the purposes of this law. Article 117 introduces Schedule 3, which make consequential amendments to the Police Procedures and Criminal Evidence Law; those amendments and the Criminal Evidence (Jersey) Law 2003. Paragraphs 1 to 5 of Schedule 3 make minor amendments to P.P.C.E. to reflect changes to criminal procedure made by this law and to ensure that P.P.C.E. works harmoniously with the law and the Criminal Procedure (Bail) Law 2017. Paragraphs 6 and 7 of Schedule 3 of the draft law will make new provision for the admission in criminal proceedings of what is known as hearsay evidence. In general terms, hearsay evidence is evidence of a statement of fact or opinion made by a person that is not made in oral evidence at trial. Though currently some difficulties regarding the rule on admission of hearsay evidence in Jersey, other jurisdictions, including England and Wales, have adopted improvements to their rules on the admission of hearsay evidence. In particular, they have made statutory rules clearer and more comprehensive. They have, in consequence, addressed the issue that victims of domestic violence are often unwilling to repeat in court what they may have told police officers, doctors or family members at an earlier stage. Paragraphs 6 to 9 of Schedule 3 to the draft law will broaden the scope of admissible hearsay evidence in line with the current position in England and Wales. In essence, as provided in new Article 64(1) of the P.P.C.E., which is inserted by paragraph 6 of Schedule 3, hearsay evidence will be admissible if, but only if, one of the new provisions of the Police Procedures and Criminal Evidence Act inserted by the draft law makes it admissible. Each of these provisions addresses a specific situation when hearsay evidence may be probative in criminal proceedings or it is admissible, pursuant to rule of customary law, referred to in Article 64(a) of P.P.C.E. or all the parties to proceedings agree to it being admissible or the court is satisfied that it is in the interest of justice to admit it. New Article 65 of P.P.C.E. inserted by paragraph 6 of Schedule 3 addresses the situation where an out-of-court statement is made by a person who, through fear, does not give evidence at trial. That provision ensures that evidence of the out-of-court statement can be given when the court is satisfied that it is in the interest of justice. Paragraph 9 of Schedule 3 to the draft law amends P.P.C.E. to include new provisions with respect to the admission of evidence as to a defendant's or a witness's bad character. Bad character evidence is evidence of a person's misconduct or disposition towards misconduct, other than evidence that is relevant to alleged offence. These provisions inserted as new part 9(a) of P.P.C.E. replace the provisions made in the 1908 Law on the subject of witnesses and *informateurs* under customary law. In summary, new part 9(a) of P.P.C.E. makes provision so that evidence of a defendant's bad character is admissible if, and only if, it passes through one of 7 gateways to admissibility. In some respects, these gateways are similar to the grounds for admissibility of bad-character evidence under the 1908 Law. However, new Article 82(f) of P.P.C.E., included in part 9(a), makes provision for the admission of evidence of defendant's previous criminal record to show a propensity to commit similar offences to the one charged. Under the provision, evidence of bad character will be admissible, only at the discretion of the court and not all previous conduct would be admissible. For instance, if a defendant was charged with indecent assault and had a history of indecent assaults and other offences, such as drink-driving, then evidence of the indecent assaults might establish that the defendant has a propensity to commit crimes of the same description of that which the defendant is charged; the evidence of the previous convictions might then be admissible. The objective is to consider the tendency of the defendant to commit offences, not to list full criminal history to sway the jury to convict. This will correct a current unfairness in Jersey law where the defendant's criminal history must remain secret in most cases but the defence can list any offences committed by prosecution witnesses to raise doubts about their character and likely truthfulness. Paragraph 10 of Schedule 3 repeals part 10 of P.P.C.E., which is now re-enacted under part 7 of the Criminal Procedure Law. Part 12 in Schedule 4 of P.P.C.E, which are no longer required as a consequence of the Criminal Procedure Law and the amendments made by the Schedule are also repealed. We are almost there. Article 118 introduces Schedule 4, which makes consequential amendments to other laws and then Article 119 introduces Schedule 5,

which consequentially repeals 8 enactments. These are most concerned with the operation of the courts, which is now covered by the draft law. Some legislation about evidence is also repealed, as the relevant rules now form part of the amended P.P.C.E. Finally, Article 120 provides that the law will come into force following an Appointed Day Act or Acts. I move Articles 77 to 120.

The Greffier of the States (in the Chair):

Are those Articles seconded? **[Seconded]** Does any Member wish to speak on those Articles

2.10.1 The Deputy of St. Ouen:

I wish to address my remarks in relation to the sections of the law dealing with the defence case statements; that is Articles 84, 85 and 87. Members will have received a letter from the Law Society of Jersey about this subject. I wish to declare at the outset that I am a member of the Law Society of Jersey. I do not pretend to be an impartial observer in this matter. But I have no financial interest in the outcome of this debate and indeed it would be hard to find a member of the criminal bar. It is a long time since I have practised criminal law but those who do practise at the criminal bar would be hard pushed to say that they have a financial interest in what they do because much of the criminal defence representation is undertaken on a legal aid basis, gratis and free of charge, by lawyers who remain on the legal aid rota for 15 years rendering that service to accused persons in our Island. I value the experience that I received and I built up over the full 15 years that I spent on that rota. It grounded me in the life of our Island. It taught me how the courts work. I have great respect for the police force, the judges and all involved in the administration of justice. But moving on to this question of defence case statements, it is difficult because we have a dispute here between the Law Society on the one hand that says this is a breach of an accused person's right to silence and we have the Minister and the Attorney General who, in their comments, say: "No, it is not." But there is no doubting this is a fundamental change to the procedure of our courts. It is an entirely new provision that will even apply to every disputed case in the Magistrates' Court. If the Magistrate is trying somebody for being drunk and disorderly one night in town, that defendant will be obliged under this law formally to provide a defence case statement. This is something that moves us on from the fundamental tenet that it is for the States and the prosecution authorities always to prove on the material that they put before a judge that an accused is guilty. It is for the prosecution, of course, to present evidence and for the prosecution to satisfy a judge or a jury that the evidence meets the threshold, such that the Tribunal can return a guilty plea. The defendant has not been required to answer to anything. His right to silence, as the Minister has said, exists at interview by the police; he does not have to say anything when faced with an accusation and he has a right to silence in court. As the Minister has said, he does not have to give evidence. Many defendants will want to tell their story and I think in the majority of cases that happens but not always. Sometimes it is important, as a fundamental principle, that a defendant should be able to say nothing, to exercise his right to silence because, as a principle, it is not for a defendant to incriminate himself or to be at risk of incriminating himself; it is for the prosecution at all times to produce the material to prove its case beyond reasonable doubt.

[12:30]

That right to silence is preserved, as the Minister has said, in interviews with the police and in the court process there is no requirement to give evidence. But it seems to me and to the Law Society members who have written in that there is an inconsistency with the duty of a defendant to give a defence case statement. Because if you look at Article 85, Article 85(1) sets out what is the content of the defence case statement. It must set out the nature of the defence and it must indicate the matters of fact on which the defendant takes issue with the prosecution. It must set out why the defendant takes that issue with the prosecution. I cannot, therefore, in the light of those very firm and very clear words in Article 85, understand why the Attorney or the Minister takes the view that these provisions

are consistent with the right to silence because it is making an accused person say what his defence is; even if he then chooses not to give evidence he has still got to account for himself and that is an inroad into the fundamental principle that is part of our criminal justice system. Of course, a defendant cannot be made to do anything, he cannot physically be sat down with a pen in his hand and told to write this. There are consequences if he fails to provide that defence case statement and they are in Article 87 and 87(2): "When a statement is not provided the courts or any other party may make such comment as appears appropriate or to be the court major or such inferences as appear proper in deciding whether the defendant is guilty of the offence concerned." This seems to me that the prosecution could then start saying about an accused person that, well, if he had any defence, why on earth has he not disclosed it? If that accused person thinks he is innocent, why would he not put forward his defence? That is now open for a prosecution to suggest to a jury, whereas the position now is that the prosecution can make no suggestion of that nature because of the right to silence. No inferences, no suggestion can be made that an accused person would somehow surely disclose his evidence, his defence if he was innocent. The courts will direct a jury and the professional judges will know that no inferences can be drawn, just because an accused person chooses not to answer to the charge against him, not to put in a defence. I worry about that inconsistency, I worry that we are making inroads into the right to silence. I share the views of the Law Society that have been put before Members. Of course, the Minister yesterday circulated a letter to us all responding to the Law Society's letter itself and it is said that defence case statements already exist in Jersey law and have existed for 15 years and reference is made to part 10 of the Police Procedures and Criminal Evidence (Jersey) Law in which the courts have a power. It is not a requirement. The courts have a power to order the prosecution and defence to provide statements. That may exist at the present time but in the limited time I have had to make enquiry of 2 lawyers who carry out defence work, their understanding is that that power of the court, in their experience, has not been exercised. Perhaps the Attorney General may be in a position to tell us otherwise but it certainly seems to be very rare. The provision of defence case statements is not a regular feature or perhaps has never been yet a feature of our criminal justice system. The Minister said in her letter to us that the defence case statement is a feature of the English criminal justice system but there, of course, that the right to silence has been qualified, so that if you watch all the police movies and the like the caution that is read is that you do not have to say anything or if you do not say anything and it subsequently emerges *et cetera*, we might remember the sort of caution from the cop movies, that the right to silence is not the same in England and Wales as it remains in Jersey, where it is an absolute right. It is suggested as well by the Minister that the defence case statement is necessary so that the prosecution can fulfil its duty to disclose unused material that is relevant to the defence case. It is suggested that the prosecution cannot do that without having a defence case statement. But I do not think that follows, I do not think that is a good reason for requiring a defence case statement because the prosecution duty exists now at a time when we do not have these statements. It is in existence under our customary law, our procedures already and that has been going on for years that the prosecution have been disclosing to the defence unused evidential material without the prosecution having a defence case statement formally in written form before it. In any event, from Article 84(1)(b): "The duty to give the defence case statement only arises when the unused prosecution material has already been disclosed to the defence." I find the insertion of the defence case statement requirements very unsatisfactory and I cannot understand the view that it is entirely consistent and does not defend the right to silence. In my view, the clear wording of it, it does offend that fundamental right. I fear that the true reason for its introduction is all to do with the overriding objective of dealing with cases efficiently and expeditiously, which is a proper consideration to take into account in our criminal justice system but should never interfere with fundamental rights, I believe. Therefore, I would like to ask the Minister if she would allow a separate vote on these Articles 84, 85 and 87 because I do not feel the case is made. I would like to vote against those Articles and I would ask Members to consider doing the same.

The Greffier of the States (in the Chair):

Thank you for giving notice you want to do that. It is something that will happen if you ask. It is not in the Minister's gift, so when we come to the end the votes will be structured to allow for separate votes on 84, 85, 86, obviously, and 87.

2.10.2 Deputy S.M. Brée:

Most of what I wished to say was very articulately put by the previous speaker but I think he touches on a very important point. This fundamentally touches on what I believe to be a very important right of anyone, and that is the right to silence. We have already heard speak of the fact that it is the prosecution's duty to prove your guilt beyond all reasonable doubt. You have the right to trial by jury, a jury of your peers but you also have a right to silence. That is a very important right and it is unique in Jersey law the way in which we look upon that as a very, very important right. It does differ to English law because we are in Jersey, we are not in England. I think the moment that we start diluting that very important right, we are starting to nibble away at the rights of the individual who may be, for whatever reason, fearful, scared or just has nothing to say because the case against him he knows nothing about. He has the right or she has the right to remain silent. Articles 84, 85 and 87 are seeking to dilute that right. I, for one, would be very concerned if we saw that right of the individual to remain silent diluted in any way, shape or form. Once again, I would be supporting the Deputy of St. Ouen's approach in seeking to take those Articles as a separate vote.

2.10.3 The Deputy of St. John:

I will be brief. I am glad I came after the Deputy of St. Ouen as this was something on our panel, which we had long discussions about. I would personally, from the information that I have read, the evidence I have seen, I would disagree with the Deputy of St. Ouen and the reason I do so stems from the original submission that was made by the Law Society and they referred to a submission they made to the Minister at the time about the legislation in its draft form. They stated in there the defence case statement does not erode the right to silence. They stated that in their response. So I struggle when I see a letter being written to States Members stating that it erodes the right to silence because, if that were the case, I would have liked to have seen some examples of case law from the U.K. about how that erodes the right to remain silent. Because, under the Criminal Justice Act 2003, there was an allowance for defence case statements and if you read the Articles that are being placed within this, particularly Article 85, which talks about the content of the defence case statement, is literally the same, not exact verbatim words, but literally the same as what is set out in the Criminal Justice Act 2003. This, for me, goes back to the ideal of fairness between both sides, so the prosecution having to provide unused material. But also I put myself in, if I were the defendant, if I was in the defendant's shoes, and it is a case of maybe I am a little bit more reasonable about how I go about things, but I just think, for me, it would make more sense. I would be more aligned to giving a defence case statement if I was accused of something and I believed that I was not guilty and there were certain things that I had to set out for those reasons, I believe I would be more in tune with providing a defence case statement. I am saying this purely how I would feel if I was in those shoes. Of course that is me and that may not be anybody else, but of course we are here to represent people. So I feel uncomfortable, I receive a letter from the Law Society that in big bold black letters states that it may erode the right to remain silent, but yet within the submission they made to the Minister and to the Scrutiny Panel it clearly states that the defence case statement does not erode the right to silence.

[12:45]

So I struggle because we also, as an Assembly, whether we are the U.K. or not, also come under the Human Rights Act and so I would like anybody who is also in agreement with the Deputy of St. Ouen to tell me where in case law, where there is proof through the courts in the U.K., that this has affected

somebody' right to remain silent and that it has gone against the European Court of Human Rights, the Human Rights Act that we abide by. So until somebody can prove it to that extent to me, I fundamentally do not have an issue with regards to having the defence case statement in the legislation. I think I understand why there is an argument as to not having it clearly laid out within the law and how dare the legislature tell somebody how to put something into a defence case statement and whether to tell somebody to do something that others may not necessarily agree with. So, on that basis, unless somebody can provide absolute proof there that this has a huge effect on somebody's human rights against Article 6 then I am inclined to continue to support the Minister in her legislation.

The Greffier of the States (in the Chair):

We have passed 12.45 p.m., I wonder if Members wish to adjourn at this point or to carry on?

LUNCHEON ADJOURNMENT PROPOSED

The Greffier of the States (in the Chair):

The adjournment is proposed. I see no opposition. The Assembly therefore stands adjourned until 2.15 p.m. this afternoon.

[12:46]

LUNCHEON ADJOURNMENT

[14:15]

The Greffier of the States (in the Chair):

Resuming the debate on Articles 77 to 120 of the Criminal Procedure (Jersey) Law.

2.10.4 Deputy J.A. Martin:

I did put my light on straight after the Deputy of St. John because I was concerned about her interpretation of what the letter from the Law Society said, and it is a bit like the Law Society wrote to us early on Friday and then I have emailed the Deputy of St. Ouen and asked some questions about where we are. Then I have heard the Minister today, I have heard what the Deputy of St. John said and the Deputy of St. Ouen have said, and to me I am totally, totally in the middle. Because, if I believe the Minister, we now have Articles in here that still maintain, and she was saying what the Law Society says: "A defendant has chosen to remain silent as is their absolute right so to do." To me that is where we are now and if I am wrong somebody will hopefully explain it to me because I really do not know where I am. But the way I heard the Deputy of St. Ouen tell me that this was, in these new Articles there is a right to remain silent but it is quantified by having to make a statement, a written statement. The Minister and the legal advice is that this is not quantified and apparently we have taken away the absolute right but we are not introducing an adverse inference that, because you remain silent, you are then presumed possibly guilty. But I think we have not gone down the whole of the U.K. route, and the Deputy of St. John wanted case law from the U.K., but the U.K. have done away with the right to absolutely remain silent because it is quantified or qualified; they do look at somebody who has chosen to remain silent as they probably are guilty. So am I concerned that at the eleventh hour the Law Society come in to tell us that we could, and they do not say it weakly, they tell us we could be breaching the human rights under the European Convention on Human Rights if we pass these Articles. So we are stood here today and we have the Law Society telling us one thing, which these are not a pressure group, these are not people saying: "Do not increase the minimum wage, my industry cannot support it", these are very, very, very highly-respected legal professionals who have come together and formed an opinion. Then I had the opinion from our legal advisers and

the Minister. But I can only do what I do and it is reading between the lines and I think we had ... if we introduce these Articles we will be introducing a watered-down version of an absolute right to remain silent. Now, if you want that, please, Minister, be honest, but the way we are at the moment... and I do not mean the Minister is not honest, I am saying you cannot seem to me to have it both ways; you either have the absolute right to remain silent or you have to then make a written statement in your defence. One cannot be, to me, married up with the other. So I will listen to the rest of the debate. I think that is where we have come unstuck, we are in between a rock and a hard place, we have a bit of the new law that is now Jersey, try to mimic a law that is U.K., but we have gone down a middle route. But when it is written it does not do what it says on the tin. At the moment I believe what I have read from the Law Society because they are telling me, because they are the Law Society who have to work within this law. It is just a question of do I believe that people should have the right to remain silent. The Deputy of St. John seemed to think, if it was here, she would rather make a defence. If she wanted to that is fine, if the Deputy, not that Deputy, but anyone can make a defence. This is the right not to make a defence in writing or verbally and I think this is being eroded if we do pass these Articles that the Deputy of St. Ouen has said we need to vote on separately. At the moment I am going to vote them out but let us hear if I can be persuaded.

2.10.5 Deputy M.R. Higgins:

I must express concern for the provisions that are laid down in Articles 84 and 85, which is the fact that the defendant has to state his defence. Like the previous speaker, I happen to believe in the right to remain silent and it is being virtually totally eroded by this particular provision. If you look at Article 85 it says: "The content of the defence case statement" and it says: "The defence case statement is a written statement, which (a) sets out the nature of the defence, including any particular defences on which the defendant intends to rely; (b) indicates the matters of fact on which the defendant takes issue with the prosecution; (c) sets out in the case of each such matter of fact why the defendant takes issue with the prosecution; (d) sets out particulars of the matters of fact on which the defendant intends to rely for the purposes of his or her defence and indicates any point of law including any point as to the admissibility of evidence or an abuse of process, which the defendant wishes to take and any authority on which he or she intends to rely for that purpose." It is so prescriptive it is unbelievable and what I see it doing is handing every bit of information over to the prosecution, which they have the resources far more than an individual does to find ways of getting around all those particulars in the defence statement. So I am very concerned about how prescriptive it is. I do believe it is taking away the right to silence. My other concern was the fact that, in Article 84, it is talking about basically, if the defendant fails to set out a defence case document, if he is convicted in the end he is going to get all the prosecution costs, or a substantial portion of the prosecution costs. One of my concerns about the legal system in Jersey is people cannot afford to go to court in most cases. Very, very few people can employ top-notch lawyers and they are relying on the advocates who, as the Deputy of St. Ouen said, are doing their 15 years of legal aid. Unfortunately some are better than others. We also know that some of the firms are handing the business over to another legal firm, paying them to take on their legal aid cases. What I have seen though is the fact that it is the quality of the defence that counts, a lot of legal aid cases are badly served, they are badly serving the people that are concerned. I am well aware, and this relates to the corruption allegations they have been making recently, we have defence advocates recommending to people to plead guilty and they lost their case, when it went to appeal they won their case. The advice from the lawyer in one instance - I will just give you the one instance that makes me have grave concerns - a person was charged with an offence, he gets a lawyer, which he was paying for, and the lawyer advised him to plead guilty. The reason he advised him to plead guilty was he spoke to the prosecution's main witness and heard from them what the case was against the guy, and then goes back to him and says: "You are guilty." He had never been to court, the evidence had never been tested, he should not have been dealing with the person who instigated the prosecution and that evidence. Now this is the quality

of some of the things that go on and I am afraid that, if this is brought in, it just makes it even worse for a defendant to get true justice. So I shall be opposing this part of the proposition and I hope other Members will.

2.10.6 Deputy J.A.N. Le Fondré:

Yes, I am hoping at some point we will hear from somebody far more learned on the matter, either in regards to the Attorney General or perhaps from the Senatorial benches, because I am wavering on which way to go on these. I do take the point about the right to silence and I also take the representations we had that this is a good way to go. What I would like to clarify in terms of what the Deputy of St. John said earlier where she made reference to the fact that she is slightly confused by the submissions from the Law Society and felt they had been contradictory. I had a quick look in there, we were talking it through over lunch time, and I have had a quick look at the website. I may have picked out the wrong documents - I will just emphasise that - but from what I could see there is a letter dated 21st September 2017 from the Law Society, which categorically states that: "Defence case statements amount to a significant inroad into the fundamental right to silence. That right does not only exist at the police station, as suggested in the consultation paper, but throughout a criminal case. This is a fundamental right and requires debate at the very least." Now that is at odds, and I am very surprised to be saying this because that is why I am nervous because the Deputy of St. John does not normally get it wrong, there is a letter in response to that from Home Affairs, or Community and Constitutional Affairs, sorry, dated 15th December, which states: "The defence case statement does not erode the right to silence." Now, from what I recall the Deputy of St. John saying, she said the latter statement was attributable to the Law Society and then she was worried about the most recent response we had last week. From what I can see, I do emphasise just now it has come quickly off the printer, I think she may have mixed the 2 respondents around; that the Law Society have been consistent, as far as I can see, in expressing their concerns way back in September and it is the response from the department that restates this issue that in their view it does not erode the right to silence. So I thought I just wanted to clarify that as my understanding. I would very much appreciate some form of comment from people who have the experience on this because otherwise I am swayed by both the Deputy of St. Ouen and Deputy Brée in terms of whether I would support Articles 84, 85 and 87.

2.10.7 The Attorney General:

As we have heard, defence case statements pursuant to the Police Procedure and Criminal Evidence Law have been a feature of our criminal law for some 15 years and certainly orders under that part, part 10 of P.P.C.E.; have been made in relation to defence case statements. Defence case statements are an essential part of the new law because the court cannot really carry out its function of identifying the issues prior to trial under Articles 7 and 8 without defence case statements. Defence case statements firstly do not remove the right to remain silent and, secondly, are essential for defendants to ensure that they obtain proper disclosure of unused material from the Crown. The Deputy of St. Ouen is correct when he says that the Crown have a duty to disclose unused material in any event, but that duty can only be fulfilled by understanding what the defence case is. A defendant who says nothing to the police, as he is entitled to do, will of course not have given the Crown any notification of his defence and it is essential in every complex case, and frankly any case in the Royal Court now, many of the Magistrates are quite complex, that the Crown are able to do their job by reference to unused material by having regard to defence case statements.

[14:30]

This is a question of fairness to the defendant and, unlike indeed I think anyone here today, or indeed the author of the letter from the Law Society, I have practised in England and Wales for several years under a defence case statement regime and I can tell the Members that defence case statements are

rarely, if ever, certainly rarely, referred to during the trial. Their principal purpose is for the parties to know what the defence is and to ensure proper disclosure. There is a real danger if this does not happen. Let me read from Archbold, the lawyer's bible, the most recent edition: "For an illustration of the wider importance of a detailed defence statement in alerting the police of the need to make enquiries, which may support the defendant's accounts, see *Crown* v *Bryan* [2010] in which the conviction was quashed on the basis of fresh evidence obtained instead, not by the police, by the Criminal Cases Review Commission. When this case reached the Court of Appeal in 2010 the Court of Appeal quashing a young man's conviction for rape of a 15 year-old schoolgirl observed the case demonstrated the importance of a defence statement as required by the [English equivalent to this Law]. Had such a statement been served it would have alerted the police to the importance of investigating mobile telephone evidence and the need to obtain her itemised billing to see if a certain person's name and the number had been saved and whether calls had been made." In consequence of that late investigation someone's conviction for rape was quashed and he was released from custody but had there been a defence case statement he would not have been convicted. I was prosecuting a case in the Royal Court only 2 years ago, a stabbing in St. Helier, and we thought, because the defendant's account in interview was equivocal, that he was running self-defence. He was not obliged to tell us what his case was, he would be of course under this law in general terms, although it is ultimately his right not to do so, but the judge did invite him in strong terms to do so at the last directions hearing before trial. He indicated, much to our surprise - we could not see it coming - the defence was going to be not that he stabbed the victim in self-defence but the victim stabbed himself, so that led me as prosecutor to investigate whether or not the complainant in that case had a history of self-harm, ask him to give his consent to releasing his medical records, which he did, and there were indeed 2 previous suicide attempts, which were disclosed to the defence so they could explore them in front of the jury. Again, without that happening, and of course with a defence case statement we would have been alerted to that, there was a real risk of someone being tried and possibly convicted, as that young man was of rape, simply because there was no defence case statement. It is absolutely essential, as the Minister says, we have not taken the step in England and Wales of changing the caution so that defendants are told that they need to answer police questions otherwise there will be an adverse inference, and we have not changed the common law right not to give evidence without adverse inference, and those are the key differences in England and Wales now and you will hear a judge direct a defendant who is about to make his choice about giving evidence in terms that he must understand that; if he does not give evidence, the jury will be entitled to draw an adverse inference. The prosecution can say all sorts of things about a defendant who does not give evidence, which simply cannot be said at all in Jersey. But this is a step already in serious fraud cases, which we thought was right in a modern justice system to apply to all cases where there is to be a trial. It is something that was supported by all the judiciary, all the judiciary were consulted, and the magistrate, it was supported by the defence criminal advocate, who was on the steering group for 2 years, and supported by consultees. As Deputy Vallois asked rhetorically, is there any evidence it goes against Human Rights Law? There is none; none at all. Even the much more significant infringements in England and Wales in relation to the right to silence at trial have been considered by the E.C.H.R. (European Court of Human Rights) and they have said that even those provisions do not require a defendant to give evidence. He can remain silent. The burden of proof remains on the Crown throughout. An inference from not giving evidence cannot prove guilt and taking silence into account does not give rise to an issue under Article 6. So there is no question of these provisions not being human rights compliant, in my opinion and advice to the Assembly. They are sensible and they are proportionate and they will not affect the trial process. But they are important to ensure that justice is done to both parties, and I emphasise "both parties", as well as the court knowing what the issues are at trial.

2.10.8 Deputy M. Tadier of St. Brelade:

It has been said before in this Assembly that if you put 2 lawyers in a room you get 3 opinions. Presumably if you put 3 in there you might get 4 or 6. We are always grateful to have the Attorney General in this Assembly because he acts as a legal adviser, not just to the Council of Ministers, not just to Scrutiny, but to any of us who want to ask him a question and when he gives that answer he is giving an opinion, and if you ask a different lawyer he or she may well give a different opinion, and that is certainly the case. The other thing to remember is that, unusually, in Jersey the Attorney General is also the prosecutor. He is a prosecuting lawyer on behalf of the State, which is not the case necessarily in most other places. It is interesting and good to hear from him of his view and opinion of that but we have had a letter circulated to us from members of the Law Society, which are much more numerous, and who perhaps have a different role, and it is perhaps not surprising if you say: "Can we have a system that just makes it easier for procedures to run in the courts", whether it be in the Royal Court or in the Magistrates' Court, that make it easier for the prosecution to get the matter through more expediently, of course this is where it is coming from really, this just makes it easier in most cases for people to know what to expect, for the disclosure to happen, and for people to make their cases. But of course that is not what the Law Society tell us and they represent a cross-section of the legal community, and they are the ones often at the coalface in these kinds of scenarios often on the *tour de rôle* for legal aid, for example. They have said it is of considerable concern that the report accompanying the draft law at paragraph 28, page 15, that requirement to provide a defence case statement does not infringe the rights in Article 6(1) and (2) of the European Court of Human Rights to remain silent and to presume innocent. They say: "We fundamentally disagree." They have underlined that and that is quite significant no doubt. In bold now: "Requiring a defendant to state their case is wholly incompatible with the ability of a defendant to maintain their rights to silence. In our view it is likely to present a breach of their human rights under the European Convention of Human Rights." So what I am saying is, if we had a different lawyer in the Assembly, the person who wrote this letter to us, and we asked the question, they would say: "Yes, I fundamentally think it is a contravention of one's human rights." Deputy Martin was right, it is that you cannot have it both ways; it is a fundamental precept of the British legal system and the Jersey legal system that you have a right to silence. If you are forced to produce a defence statement, rather than choosing to produce one because you think it works for you, then that is no longer a right to silence because you cannot have it both ways. We were presented just a moment ago with a scenario where not having a defence statement would have worked against this person and they probably would not have got off, they would not have been found not guilty, but we have not been presented with a scenario where staying silent, not providing that statement, would be detrimental to you or to provide that statement. Surely that it the choice of the defendant, whether somebody is representing themselves or being represented, it is their call to decide how they best defend themselves. I have had a little bit of time in the last few days to just read books and just to catch up on some questionable chewing gum for the eyes T.V. (television) and there were some interesting synchronicities that came out in 2 programmes that I watched, one of which I know is definitely based on a true story, and the other, which was fictional, but no doubt drew on real life. They were both scenarios, the first one was set in East Berlin in about 1988 and it was this Kafkaesque situation where somebody found themselves in a room being interrogated by what would have been a Stasi officer and he said: "You are here, this is your name, is it not? You live at this address?" He says: "Well I do live at that address but that is not my name" and he says: "Are you saying the state has got it wrong then?" He says: "No, that is not what I am saying." "You are so-and-so, are you not?" He says: "No, I am not so-and-so." "You must be because you live at this address. The state cannot be wrong. We have just found that your girlfriend has been killed and you killed your girlfriend." He says: "First of all, I am married and that is not my girlfriend." He would have been much better staying silent because in that scenario he could not have done anything else. We are told that when you make laws in this Assembly, whether it is to do with how we run ourselves, you imagine also the worst-case scenarios that might come up. In a situation, whether it be in a police interview or whether it be in the legal

matters that arise in the discussions, if you do not have the equality of arms - and that is something Deputy Higgins referred to - sometimes it is just better to say silent because it is up to the state to produce evidence and to prove guilt. It is not up to the defendant. You are innocent until proven guilty. You are not proven guilty until the end of that court process and therefore you do not have to say anything in your defence. That seems to be obvious to me. That is what we are taught, even those of us who are not lawyers. To depart from that, albeit in this particular context we hear very emotive arguments because it is to do with the nature of the alleged offences that are being discussed. Of course it is on a knife edge for some people and I can understand that. But I think fundamentally these are precepts which have been enshrined in law for a good reason and I think we changed these, especially when the evidence from the consultation with the Law Society is not there, I think we are wrong to make these fundamental changes. Let us put it in the wider context. We have been going through a long process of legal aid reform. We do not really know what that is going to materialise for people in general in Jersey. We need to know where the figures lie. I strongly suspect that in the future there is going to be an attempt to reduce the thresholds even further so that more people will not be able to access legal aid and those who can will have to pay more for it. That is a problem. But in that scenario we were told: "Let us go with the Law Society." We need to make sure we have the Law Society on board. That is why we were told: "Let us set up the politicians oversight group and make sure we work with those individuals in the Law Society." So we want them on board in order to make sure that what we are getting through is correct. But when we get a letter like this, which is not just raising a couple of concerns, it is saying we have some fundamental concerns here, they are urging the States not to go ahead with it, I say if there is any doubt then you kick it out.

2.10.9 Senator P.M. Bailhache:

It was kind of Deputy Le Fondré to refer to the Senatorial benches in an intervention from here but I am sure that he will be aware that it is a very long time since I had any professional connection with the courts and certainly the process of criminal justice. I would like to say, first of all, how helpful I found the intervention from the Attorney General. I am sure that Members will have found it helpful as well. From my judicial experience a long time ago, I could see how disclosure of the nature of the defence, that is to say was it self-defence, was it accident, was it a denial of the facts alleged by prosecution witnesses, could be helpful to the court in terms of the sensible ordering of the trial. But I was a little bit less sure about the extent of the obligations upon the defendant to set out in the defence case statement the particulars of the defence.

[14:45]

But the Attorney General has certainly made it very clear to me that that is in the interests of the defendant because if the prosecution does not have any idea what the defence is it is very difficult to be sure that all material documentation has been made available to the defence. I have 2 matters that I wanted to raise. The first is to ask whether there is some typographical error, which the Attorney might like to think about before we move to the third reading, assuming we get there. That is right at the bottom of page 89 there is a reference to the courts directions given under paragraph (2)(b). I cannot see, unless I am missing something, that any directions are given under Article 84(2)(b). The second point is that all Members will have been aware of some of the unfortunate cases which have taken place in the United Kingdom recently where young men, in particular I think in these cases, have been charged with sexual offences. At the very last moment quite often, or certainly at a stage when the accused person has been under charge or on bail for a considerable period of time, some further evidence has emerged, which shows very clearly that the defendant is innocent of the charge. Those unfortunate circumstances arise from a failure by the prosecution to observe the duty of disclosure so that the defendant is in possession of all the evidence that there is in order to help him to put his defence. In the law, and this is a question really for the Minister, there is a provision in the Articles which are under consideration and it is the same paragraph as that to which I have just

referred. It is Article 84(5), which empowers the judge to order the defendant's legal representative or a defendant in person to pay the prosecution costs if there is a failure to comply with the obligation in relation to the defence case statement. There is nothing on the other side of the coin. There is nothing which obliges the Attorney General - only through his department, not personally - to pay the costs or pay costs that might be incurred either by the defendant or it may even come to a process of compensation, I am not sure, as a result of a failure to observe the obligation of disclosure, which rests on the part of the prosecution. It may not be the appropriate place to put such a provision but I would ask the Minister to give some consideration to this point so that there is a balance and so that defendants who suffer as a result of a failure by prosecutors to observe their duties can be compensated or recompensed in some way.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on these Articles? If not, I call the Minister.

2.10.10 The Deputy of St. Peter:

I thank all of those Members who have contributed to this debate. It is a fundamental point and it is important that we, as an Assembly, grasp the absolute meaning of what is intended in this law and agree to it. So I hope that the comments that we have heard, particularly from the Attorney General, will have helped Members to understand what the intention is and why we oppose the comments that have been made by the chief executive of the Law Society. First and foremost, we must remember that the Law Society have been involved in this consultation process for over 2 years. A member of their Society sat on the panel that deliberated the creation of this law and they have been involved throughout the process and also have agreed to this process because that group were unanimously in agreement with the law as it was brought to the Assembly. It is a really important point for everybody to recall and remember. Secondly, in reference to the issue of defence case statements, I think it makes it very clear in the human rights notes at the front of the draft law, on page 15, paragraph 28. I will read it in its entirety to Members: "The requirement to provide a defence case statement does not infringe the rights in Article 6(1) and (2) of the ECHR to remain silent and be presumed innocent. The purpose of the defence case statement is to ensure that there is consistency and clarity as to the nature of the defence and the defendant wishes to put forward at trial and no adverse inference may be drawn pursuant to those provisions where the defendant simply refuses to give evidence at trial." I think the Attorney General gave an excellent example of why it is so important that there is a clarity in that court of law to assist the proceedings and ensure that justice is done correctly rather than hiding a point that is only found at a later stage in the court proceedings, which is a waste of everybody's time at that trial. I will impress once again, there has been a specific decision in Jersey to maintain that there is no adverse inference to a person remaining silent. Therefore one can assume that ... and I think it is quite clear that it is possible to provide a defence case statement to the court simply maintaining that one wishes to remain silent, and there is no adverse inference to be taken by that. Members, I hope that this has been helpful. Of course, there are many other Articles before us and it is absolutely right that we have concentrated on this very important issue but I would also just simply, in referring to Senator Bailhache and the additional point he made regarding costs, that is perhaps something that is an issue that could be brought back to the Assembly in terms of regulation, and I will ensure that if it is not me as the next Minister then I will put it in the notes for the next Minister to consider. I hope that the Assembly will find that is an adequate response. I move the Articles. Just to remind Members, those are Articles ... shall we take Article 77 to 82, and then 83 to 87. I will allow you to do that.

The Greffier of the States (in the Chair):

Before we get on to that, I think the Attorney General wants to offer some further advice.

The Attorney General:

Just a response to Senator Bailhache's question, so far as it was not entirely dealt with. In relation to the error in Article 84(5) that Senator Bailhache drew our attention to, that was remedied by the second amendments that the Assembly considered earlier on today. In particular, the reference to sub-paragraph (b) was amended to sub-paragraph (d). So the amendment took place there. The provision in relation to costs was cut down by the amendment. In relation to a failure by the prosecution, that could result in a costs order under Article 109 of this law.

The Greffier of the States (in the Chair):

What I suggest is we deal with Articles 77 to 83 *en bloc*, which has been proposed. Then 84 and 85, which could be taken as one vote together, if Members agree. 86, then 87, and then the rest at the end, if everyone agrees with that. All those Members in favour of Articles 77 to 83 please show. Those against? Those Articles are adopted. Articles 84 and 85 ... the appel has been called for on Articles 84 and 85. I ask Members to return to their seats and I ask the Greffier to open the voting.

POUR: 32		**CONTRE: 12**		**ABSTAIN: 0**
Senator P.F. Routier		Connétable of St. John		
Senator P.F.C. Ozouf		Deputy J.A. Martin (H)		
Senator A.J.H. Maclean		Deputy G.P. Southern (H)		
Senator I.J. Gorst		Deputy K.C. Lewis (S)		
Senator L.J. Farnham		Deputy M. Tadier (B)		
Senator P.M. Bailhache		Deputy M.R. Higgins (H)		
Senator A.K.F. Green		Deputy J.M. Maçon (S)		
Senator S.C. Ferguson		Deputy S.Y. Mézec (H)		
Connétable of St. Helier		Deputy A.D. Lewis (H)		
Connétable of St. Peter		Deputy of St. Ouen		
Connétable of St. Lawrence		Deputy R. Labey (H)		
Connétable of St. Mary		Deputy S.M. Bree (C)		
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of Trinity				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy S.J. Pinel (C)				
Deputy of St. Peter				
Deputy S.M. Wickenden (H)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

The Connétable of St. Mary:

May I just say, I know it will not make any difference at all, but I did try to vote pour but my lights are still flashing.

The Greffier of the States (in the Chair):

Okay. There is something odd about that board because the last vote seemed to go one way and the other, one way and the other, so there may be an error. If you did not come up and you voted pour, you pressed your button in time, then we can add that in. Article 86, those Members in favour of Article 86 kindly show. Those against? Article 87. The appel is called for on Article 87. Members have had the opportunity to take their seats and I ask the Greffier to open the voting.

POUR: 33		**CONTRE: 11**		**ABSTAIN: 0**
Senator P.F. Routier		Connétable of St. John		
Senator P.F.C. Ozouf		Deputy J.A. Martin (H)		
Senator A.J.H. Maclean		Deputy G.P. Southern (H)		
Senator I.J. Gorst		Deputy K.C. Lewis (S)		
Senator L.J. Farnham		Deputy M. Tadier (B)		
Senator P.M. Bailhache		Deputy M.R. Higgins (H)		
Senator A.K.F. Green		Deputy J.M. Maçon (S)		
Senator S.C. Ferguson		Deputy S.Y. Mézec (H)		
Connétable of St. Helier		Deputy A.D. Lewis (H)		
Connétable of St. Peter		Deputy of St. Ouen		
Connétable of St. Lawrence		Deputy S.M. Bree (C)		
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of Trinity				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy S.J. Pinel (C)				
Deputy of St. Peter				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

The Greffier of the States (in the Chair):

That brings us on to the remaining Articles 88 to 120 plus the schedules. Those in favour of those Articles kindly show. Those against? Those Articles are adopted.

The Greffier of the States (in the Chair):

That brings us to the Third Reading. Minister?

2.11 The Deputy of St. Peter:

Thank you to those Members who have contributed to what has been a really good debate today, getting to the heart of some very interesting issues and it is absolutely right as an Assembly that we considered these because we are looking through a 21st century lens today and some have said and perhaps called this the 2064 Law rather than the 1864 Law, so I was aware that money was riding on this law never coming to pass. So we can all as parliamentarians be proud of this day. **[Approbation]** It is a historic moment and will bring a great many changes to the way we see justice done through our courts. I thanked the Assembly. I would also like to thank the Scrutiny Panel who have in very short order done an excellent job of considering legislation. **[Approbation]** It is a very complex piece of legislation and they have done the process rightly proud and it has been very impressive to see. The Law Officers have contributed wholeheartedly and also very grateful to them. I commend this to Members in the Third Reading.

The Greffier of the States (in the Chair):

Is the Third Reading seconded? **[Seconded]** Yes. Does any Member wish to speak on Third Reading?

[15:00]

2.11.1 Deputy M. Tadier:

My concern is that it is quite easy to build a case, if you excuse the reference, to pass these kind of changes in an Assembly, in a lay Assembly because we are not lawyers incidentally, with a couple of exceptions. On their own you can say we need to do this because sexual offences, when they come to trial, are very traumatic, we need to expedite things, make sure they go through quicker, it is done because of processes. When I hear terms like: "This law needs to be updated because it is a very old law and we need to bring it into the 21st century", what I just hear there, an alarm bell goes, and it is about expediency at the back of my mind, it is not necessarily about justice, it is about expediency and getting things done cost-effectively and in a way that does not necessarily reflect the long-held and tried-and-tested traditions that have gone before in legal practice. This is just another thing that we have passed today but it is only a few months ago that we had another small change to the law, which was that a husband and wife can no longer say that they will not testify against each other. I am not saying that is right or wrong, we had the debate there and then, but these things are put into law and into practice for a good reason and that we are basically unpacking and unpeeling a lot of these precepts and ideas that have been there, and we do not necessarily know where it is leading us. As I have said, we have to be very careful that access to justice for the lay person does not become out of their reach. So it is fair enough if you have committed a very serious crime we know in Jersey you will get representation for you, questionable what level of representation that might be depending on who you get and who is on the *rôle*. But for ordinary people the fundamental rights of being presumed innocent until proven guilty, they have to remain, the things like the right to remain silent, we have eroded that today, so are we going to go out of here and give ourselves a big pat on the back and say: "We have done something really good today, we have made it more expedient, we have made the court's processes more transparent, it means that all parties are much better off", because that is not the message I have heard from the Law Society and that is why I have not been able to support these fundamental changes that we are pushing through today. That does not mean that the Law Society always get things right, maybe they can be a conservative body of individuals. Are they more conservative than the States though? That is the question. At least they are knowledgeable in the practice that they deal with on a daily basis and they know what they are talking about. It is interesting when you get 11 votes for one amendment and you get 13 for another, whereas they are effectively exactly the same principles, and you sometimes wonder whether people in this Assembly know what they are voting for and the gravity of the changes that they make. I will leave it there. Certainly the Law Society knew what they were talking about, they knew what they were writing about, and I do not think that they just draw our attention to these things and I would certainly be

interested to see what further changes come down the line in 5 or 10 years' time and whether there will be scenarios in fact where they will be much different to what we have heard today.

2.11.2 Senator P.M. Bailhache:

Many Members may not know that the first Attorney General to attempt to reform the 1864 Law on Criminal Procedure was Sir Peter Crill who formed a committee in the late 1960s and left office without having achieved the end. Every single Attorney General since Sir Peter Crill has entered office with the avowed intention of bringing the 1864 Law up to date, advising the committee or the Minister as the case may be, and has failed to do so. So, although I have not always agreed with him in every respect, I should like to compliment the current Attorney General for what is an outstanding achievement. **[Approbation]**

2.11.3 The Deputy of St. Ouen:

Largely just to echo the words of Senator Bailhache, and although the Law Society has had some issues, which have been fully discussed, I hold no brief from the Law Society but it is the view among its members that this law was badly in need of revision and, in general, we have a much improved law. There will perhaps still be these issues to be discussed about how to ensure fairness, but the Law Society would as a whole welcome this new law.

2.11.4 Deputy M.R. Higgins:

I just wanted people to know why I am going to do what I am going to do. I am going to vote against the law, although I happen to believe that it was well overdue. So on the whole, yes, I am pleased the law is coming up to date. However, I feel very strongly about what is the removal of the right to silence and I cannot support this Bill at Third Reading. So when I vote against it now you know why.

2.11.5 Senator P.F.C. Ozouf:

Can I just distance myself from the remarks that have been made by the previous speaker and Deputy Tadier? I am not an expert in this area at all but I have listened to the arguments, which have been advanced by the Minister for Home Affairs, who has been excellent in her presentation in this whole Bill, who has obviously worked hard with her officials in relation to this. The comments that Deputy Tadier makes that we should somehow as a jury of 49 people making decisions, if we are not pleased with the fact that we have achieved what Senator Bailhache has said then I do not want to be part of any comments to do with that. For a Member to stand up and say they are going to vote against the whole Bill, even though they agree with some of it, frankly I do not think that is how parliamentarians should behave. Both of the Members who have spoken against this could have brought amendments, they did not, and we have had a good debate from a lot of interesting points. I have learned a lot as a parliamentarian on this and I congratulate the Minister and her team and the Attorney General in the most warm and glowing terms for what I believe to be a day where we have improved the administration of justice for our courts and our judiciary and the prosecution service, for the rights of individuals prosecuted, charged, and also innocent and guilty. That must be a good thing and we have advanced the cause of democracy and the functioning of our courts and I congratulate the Minister for Home Affairs.

2.11.6 Deputy A.D. Lewis of St. Helier:

Just briefly I wanted to congratulate the likes of the Law Officers and in particular reiterate what Senator Bailhache was saying, but also Members have pored over this as well and it has been a long and complicated read for us as lay people, for those of us who are not lawyers, which also highlights the issue of the fact that we do not have an Upper House here that would perhaps scrutinise this in much more detail and we do not have a Legislation Scrutiny Panel either. The Scrutiny Panel has done a great job here with limited resources. **[Approbation]** But it does highlight the fact, when you have a very complicated piece of legislation such as this, there is perhaps more that we could do.

But it has been scrutinised, it has been scrutinised by this Assembly as well, but in most Parliaments this would now proceed to an Upper House and that is something that maybe Members need to think about for the future, these changes will not happen overnight - and I know Senator Bailhache has views on this as well - but this is exactly the sort of thing that an Upper House would look at in more detail and we are not having that opportunity. But some Members have voted against a couple of Articles, I have done the same, so we have made our thoughts known and perhaps these things can be brought back, and of course amendments can be introduced to this law at any time; all Members have that right and I would recommend that they consider that right in the future when amendments have not come before the House in a timely fashion, it can be done at a later date. But I welcome this. To have a law that was that out of date for that long is not that great, but congratulations to the Attorney General and his team for sorting that out, and we have moved in a hugely forward direction today and I welcome that. I congratulate all those who were involved, in particular the officer team as well, one of whom is sitting out there at the moment, who I know has burned the midnight oil on this one as well. So well done to all.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on the Third Reading? If not, I call on the Minister.

2.11.7 The Deputy of St. Peter:

It is not entirely the right place to respond to some of the comments but one does have to respond to some of them. When I said that this is a law for the 21st century, yes, it is going to promote an efficient and effective criminal justice system, but efficiency is not what it is all about and today in the debate that we have had among Members, both on the principles and today as we have gone through the Articles in detail, and also in the proper legislative scrutiny process, we have debated our cultural opinions towards justice and how it is done. We have looked in detail at the issues surrounding retrials, majority verdicts, and also the right to remain silent and how that sits with the new defence case statements that are being brought forward in this new law. So I would say that this has not been rushed. As Senator Bailhache alluded, this has in fact been in course for a great number of years and many lawyers and parliamentarians have put their thought into it over a number of years and it has evolved to a point where it is here and fit for the 21st century. I congratulate every Member of the Assembly for their participation and their assistance, but of course also to the Law Officers and those people who have brought us to this day. I move the Third Reading.

The Greffier of the States (in the Chair):

The appel has been called for. It is the Third Reading of the Draft Criminal Procedure (Jersey) Law. I ask Members to return to their seats. Everyone is here so I ask the Greffier to open the voting.

POUR: 44		**CONTRE: 2**		**ABSTAIN: 0**
Senator P.F. Routier		Deputy M. Tadier (B)		
Senator P.F.C. Ozouf		Deputy M.R. Higgins (H)		
Senator A.J.H. Maclean				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				

Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Peter				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

3. Draft Machinery of Government (Miscellaneous Amendments) (Jersey) Law 201- (P.1/2018) - resumption

The Greffier of the States (in the Chair):

We now move to the Draft Machinery of Government (Miscellaneous Amendments) (Jersey) Law 201- lodged by the Chief Minister, P.1/2018. I ask the Greffier to read the citation. No, we are not doing that one because it has already passed the principles. In which case I will hand over. **[Approbation]**

The Deputy Bailiff:

I have a feeling that was a congratulatory retreat rather than being a warm welcome. **[Laughter]** Never mind. The next item of business is the Draft Machinery of Government (Miscellaneous Amendments) (Jersey) Law, the principles of which were adopted by the Assembly on 21st February. There are going to be some amendments to the later Articles, Chief Minister, but shall we start with Articles 1 and 2?

3.1 Senator I.J. Gorst:

I am certainly pleased to see you entering the Assembly, so there is nothing wrong with you taking those as congratulatory entrance stamps. Members and Scrutiny in particular have asked for these Articles to be divided up because they very purposefully are separate parts to changes to the

machinery of government and therefore I will propose Articles 1 and 2. 1 of course if the interpretation provision and 2 provides for new definitions in the draft law and I maintain those Articles.

The Deputy Bailiff:

Are Articles 1 and 2 seconded? **[Seconded]** Does anyone wish to speak on Articles 1 and 2? All Members in favour of adopting Articles 1 and 2 kindly show. Those against? The Articles are then adopted.

3.2 Draft Machinery of Government (Miscellaneous Amendments) (Jersey) Law 201- (P.1/2018): second amendment (P.1/2018.Amd.(2)) - as amended (P.1/2018.Amd.(2). Amd)

The Deputy Bailiff:

Article 3, Chief Minister, there is an amendment in your name and I understand also, although I may be misinformed, that you will agree to the amendment by the Chairmen's Committee, is that so?

Senator I.J. Gorst:

If I may, I know the Greffier has provided a very helpful handy crib of the process for the amendments to Article 3, however I am wondering if Members would agree to a slight amendment in that I am accepting the Scrutiny Panel's amendments, I am happy to propose Article 3 as amended by all 3 amendments.

The Deputy Bailiff:

Is that acceptable to you, Deputy Brée?

Deputy S.M. Brée:

Acceptable.

The Deputy Bailiff:

Acceptable to the Assembly? Very well, Chief Minister, do you wish to say anything more in proposing Article 3?

[15:15]

3.2.1 Senator I.J. Gorst:

Article 3 deals with the principal accountable officer and Members hopefully have read the amendments. As amended, what they in fact do is strengthen that Article, make the provisions clearer in black and white, and I am prepared to answer any questions that the Assembly might have. Perhaps I will say at this point I of course accept the Scrutiny amendment and I am very grateful. I know they were under time pressure for the work that they have done. While I do not agree with all of their conclusions, this amendment is a sensible pragmatic one and I am pleased to accept it.

The Deputy Bailiff:

Is Article 3 seconded? **[Seconded]** Does any Member wish to speak on Article 3? All those in favour of adopting Article 3 kindly show. Those against? Article 3 is adopted. How do you wish to deal with Articles 4 to 7, Chief Minister?

3.3 Draft Machinery of Government (Miscellaneous Amendments) (Jersey) Law 201- (P.1/2018) - resumption - as amended

3.3.1 Senator I.J. Gorst:

Article 4 is a straightforward consequential amendment to Article 39 of the Public Finances Law. Article 5 enables the Assembly to amend Regulation part 5 of the Public Finances law. Articles 6 and 7, which we are doing together as well, are consequential amendments to Schedule 2 to the Public Finances Law replacing reference to "Accounting Officer" with the new term "Accountable Officer".

The Deputy Bailiff:

Article 7 deals with the Schedule, does it?

Senator I.J. Gorst:

Indeed it deals with the Schedule as well, yes.

The Deputy Bailiff:

Are Articles 4 to 7 seconded? **[Seconded]** Does any Member wish to speak on Articles 4 to 7? All those in favour of adopting Articles 4 to 7 kindly show. Those against? Articles 4 to 7 are adopted. Article 8, Chief Minister, you have an amendment to the Article. Do you wish to take it as amended?

3.4 Senator I.J. Gorst:

If I may do that. Again the amendment clarifies the position arising out of concerns that some Members and the Scrutiny Panel had about the process that would be followed with these transfers and makes it clear what consultation will take place, which is what was intended anyway, but again it puts it in black and white into the amended law.

The Deputy Bailiff:

Is Article 8 seconded? **[Seconded]** Does any Member wish to speak on Article 8? All those in favour of adopting Article 8 kindly show. Those against? Article 8 is adopted.

The Deputy Bailiff:

We now come to Article 9, Chief Minister. That is subject to an amendment by Senator Bailhache. Articles 9 to 11 you would wish to take as amended presumably by your amendments, and so it probably makes sense to take Articles 9 to 11 together for you to propose those and then deal with Senator Bailhache's amendment if that is acceptable?

3.5 Senator I.J. Gorst:

Yes, I suspect this is the controversial Article from all of the conversations that I have had with Members, with Ministers, and the Scrutiny Panel are quite clear in their position of supporting what is really not an amendment as such but an annulment and takes the proposal out of the law. So just to make it clear to Members that, if Senator Bailhache's amendment is successful, I will not then proceed with Articles 10 and 11. So if any Members were wanting to speak about those Articles they would need to do so during the course of the amendment because, although I could continue with them, it does not make any practical sense to do so because they are in effect connected with it. So therefore we will come down to, should we change, to a single legal entity? I am proposing that amendment and Senator Bailhache will tell us, he will say many reasons, why we should not go ahead with it. I do not think there are many reasons, but there we are. It is a straightforward continuation of removing the silos from Government. We have just approved a change to the way that the service will operate with the principal accountable officer and for me this is an absolutely complementary change. It creates a culture of one Government. It creates a single legal entity. Those who oppose this change will say that the change is a gigantic step, they will look to other jurisdictions like Scotland, like New Zealand, and say that there is a party system we could create and others might even say we could create one Government by party politics. I do not agree with that. So there will be a number of arguments put forward about why we either do not need to do it or, goodness me, let us not rush a decision. That will be a strong argument no doubt. But I ask the opposite; in a small

administration, if it is really sensible to continue with 10 separate legal entities? Do those 10 separate legal entities lend themselves to creating an agile and responsive organisation all pulling together in the same direction for the people that we serve? It is not a new concept; it is not a concept that we need to be afraid of, we see it operating elsewhere. Some have said that the Isle of Man have spent 3 years thinking about this concept and still not quite decided and therefore we better take a little bit longer. The Isle of Man shows that sometimes, and this is a charge that the public lays at the door of this Assembly and this Government, all too often, and with good cause, we take too long to make decisions; that we find 100 reasons why we should not make this decision, and thereby we agree things in principle but when it comes down to making a decision we do not quite have the courage to do that. I have been criticised in this Assembly and in the public domain for saying that the Care Inquiry says that we should act as one Government and it was the Government structure that led to the breakdown ultimately in Children's Services and them being appropriately supported. So those Members that feel sensitive about me mentioning that, ignore what I have just said in my last few sentences and look to the myriad of reports that the Public Accounts Committee has produced; that the Comptroller and Auditor General has produced, quite dry accounts, reports that have not always got a lot of media coverage; that is the nature of our current excellent Comptroller and Auditor General. But when you take time to read them, when you take time to understand what she is saying to us, it is absolutely about these issues of working together as one Government, removing the silos, having appropriate governance structures in place, so that we can serve the Islanders in an appropriate fashion. So those who are much more concerned about governance and Government operations, I would say look to those reports of the P.A.C. (Public Accounts Committee) and the Comptroller and Auditor General, look to the reports around the Innovation Fund, and if ever there was a need to change, to deliver on behalf of Islanders, I believe that it is now. I believe that the concerns that are going to be raised, some of them may warrant debate in this Assembly, that is right, we are a debating Chamber, but a lot of the concerns that will be raised have been and can be answered and do not amount to a strong enough argument not to go ahead and make this change to remove the silos and to deliver a single government machine to serve Islanders into the future. I ask that Members really consider whether today, knowing what they know and have experienced over the last number of years or last number of decades, is today the day to say: "I will agree with the principle of change but just not this change"? I do not believe it is. I believe that today is the day when we should be saying let us get rid of silos, let us get rid of ministerial fiefdoms, let us change the bureaucratic 10 legal entities, let us create a single legal entity, which works well elsewhere, in order to serve the Islanders and to serve this Island and to create a system of government, which I believe can serve us well into the future and, importantly, help us deal with the problems of the past and prepare us for the challenges ahead.

The Deputy Bailiff:

Are the Articles 9 to 11 seconded? **[Seconded]**

3.6 Draft Machinery of Government (Miscellaneous Amendments) (Jersey) Law 201- (P.1/2018): amendment (P.1/2018 Amd.)

The Deputy Bailiff:

There is an amendment to Article 9 in the name of Senator Bailhache and I ask the Greffier to read the amendment.

The Deputy Greffier of the States:

1 Page 22, Part 4 – In Part 4 – (a) delete the heading and sub-heading of Part 4; (b) delete Articles 9 to 11 inclusive; (c) move Article 12 to follow immediately after the existing Article 16; (d) renumber accordingly the Parts and Articles following the deleted Article 11. 2 Page 25, Part 5 (renumbered Part 4) – In the sub-heading delete the word "other". 3 Page 27, Article 19 (renumbered Article 16)

– For paragraphs (1), (2) and (3) of the renumbered Article 16 substitute the following text – "This Law may be cited as the Machinery of Government (Miscellaneous Amendments) (Jersey) Law 201- and shall come into force 7 days after it is registered."

3.6.1 Senator P.M. Bailhache:

I hope that I can assume that Members have read the short report to my amendment and in which case I can be relatively brief. What is in question is whether the proposal to restructure ministerial government should be put on one side for more mature consideration at a later date. Although I do have strong reservations about the single legal entity, I do not say necessarily that changing to a single legal entity is a bad thing. What I do say is that it needs careful thought and that careful thought has not happened. It would be a great leap into the unknown. This is, in effect, what the Chief Minister himself says in the report to his proposition and I quote: "If decided upon, this change to a single corporation would only come into effect when further legislative changes have been developed and considered by the Assembly."

[15:30]

So: "We do not know how the change is going to operate, but let us take the decision in principle and then work it out." That is not, in my view, the way to make important constitutional change. The Chief Minister's report asserts that a single legal entity is best practice. The O.E.C.D. (Organisation for Economic Co-operation and Development) apparently decrees that 3 enablers are important: strategic sensitivity, resource fluidity, and the collective commitment to joint Government action. I am sure that means something to some people, but to me I must say it is complete gobbledygook. It tells me absolutely nothing about why it is a good idea to abolish the individual legal responsibilities of Ministers and pass them on to a single legal entity. It is true that this has been done in Scotland and a Scottish senior civil servant prepared a report for the Isle of Man Government. I read the whole of that report and what struck me was the almost complete absence of any reasoning as to why a single legal entity was a good thing. There were a few remarks only about the whole issue of which the key sentence was, and again I quote: "The main reason for this is that it clearly creates a favourable context for the more integrated working of Government." The more integrated working of Government is obviously a good thing and the Chief Minister referred to that, although not in those particular words. But it is true; few important policies do not cross the borders of a number of different departments. But how does a single legal entity help? All that a single legal entity does is to place power, political power, in fewer hands. Now maybe having power in fewer hands does make things easier, but does it make that democratic and is this an acceptable way, to the Assembly, of making decisions? What does the single legal entity achieve? Well we do know for certain that Ministers cease to be corporations sole. Being a corporation sole means quite simply that a Minister can be sued, you hold the ultimate responsibility for your actions and for the actions of your department. It also means that Scrutiny Panels know who is responsible and whom they can hold to account. This is important. The whole process of Scrutiny is underpinned at present by knowing who is responsible for what. In my own case, I am the elected Minister for External Relations and the officials who work for me in the Ministry of External Relations are the body of civil servants for whom I am politically responsible. If one of those officials were to make a serious mistake in relation to sanctions, for example, by allowing a designated person in Libya to do something, which that person ought not to be allowed to do, then I am responsible. I can be held to account in the Royal Court, I can be questioned and held to account by my Scrutiny Panel, and conversely, I can overrule my official and reverse his decision. Accountability and responsibility are clear. If the Minister for External Relations is no longer a corporation sole, would it be clear who is responsible in law? I submit that it would not because the person responsible in law would be the Jersey Ministers or the Government of Jersey if that amendment is carried. Does anyone remember the Innovation Fund to which the Chief Minister referred? Serious mistakes were made by officials and public money was

lost as a result. Now, hopefully, as a result of the Articles, which the Assembly has just adopted, those mistakes would be identified by the chief executive, wearing his new hat of a principal accountable officer, and dealt with. But one still needs political accountability. We cannot have the Chief Executive being questioned on the floor of this Assembly. He is already, in my view, far too exposed and that is not a criticism of him, it is a criticism of the process, which is underway. Civil servants should operate in the shadows, taking responsibility for operational matters, making the system work, and leaving Ministers to take the flak for mistakes and occasionally the credit when things go right. But then we come back to the Innovation Fund, I am sure Members recall the unedifying squabbles as to who was politically accountable. They should remember it because there are going to be a great many more Innovation Funds if this amendment is not adopted. There are going to be numerous occasions when the identity of the responsible Minister or Assistant Minister is unclear because the legal responsibility will vest with the so-called Jersey Ministers. If we look at Article 26(3) it provides, and again I quote: "Functions, whether or not statutory functions, may be conferred on the Jersey Ministers by that name." Then in Article 26B(1): "Any reference in legislation to a named Minister other than to the Chief Minister shall be deemed to refer to the Jersey Ministers." Almost every legal function in the book is going to be assigned to this amorphous beast "the Jersey Ministers". Is it Senator Farnham who is responsible? "Not I, Sir, it is the Jersey Ministers." Is it Senator Maclean or Senator Ozouf? "Not I, Sir, it is the Jersey Ministers." Good luck to the Scrutiny Panels, is all I can say, when some serious mess-up takes place and they are trying to pin political responsibility on a particular Minister or Assistant Minister. It is different in Scotland, the Chief Minister has referred to this correctly, because they have a mature political system. The Government of Scotland, the S.N.P. (Scottish National Party), is a recognised entity and the Government will and does take political responsibility. It does not matter so much, generally speaking, which Minister has the functions in question. But in Jersey we are not even sure what the Government of Jersey is. Most journalists, with some honourable exceptions, have not a clue or have lost count of the number of occasions when the Government is alleged to have rejected a particular proposal when it was done by the States. I have lost count of the number of occasions when the States are criticised for incompetence when in fact it was a decision of a Minister. **[Approbation]** The Jersey Ministers, in my submission, will make this confusion even worse. The other difference with Scotland is that the First Minister is accountable to her party, the S.N.P., she needs to keep her party's support in order to survive. The Chief Minister's position is different. In relation to this matter, half the Council of Ministers, 5 Ministers to be precise, namely Education, Environment, Social Security, Economic Development and External Relations, do not support the change to a single legal entity, it would compromise their roles as Ministers. All their functions would go to the so-called corporation aggregate, i.e. the Jersey Ministers, but not those of the Chief Minister. The Chief Minister keeps his functions and that is why I have said to him, and this is not a criticism of him, it is a criticism of the system, which is evolving, that he is effectively proposing the abolition of ministerial government and the introduction of chief ministerial government. I do not think that would be good Government. We need a balance of power and not a concentration of power in the hands of one man or one woman. Members might say that this is not a problem for them; it is a problem for Ministers. Our system of governance ought to be of concern to all Members. What should certainly be of concern to Members in general and to members of Scrutiny Panels in particular is the lack of clarity around responsibility and accountability. I move the amendment.

The Deputy Bailiff:

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

3.6.2 Deputy M. Tadier:

It is obviously one of those strange debates where there is an alliance between the centre left and the hard right in the Assembly. I say that tongue in cheek incidentally; of course it is subjective, but we

do get strange bedfellows every now and again. Just as I was making my notes, Senator Bailhache was pretty much making the same speech in different words. It is a completely correct analysis, he obviously says it as a Minister, it is almost a speech that is breaking ranks, if you like, at the end of a term, at the end of a very difficult term, 4 years for this Council of Ministers. I will try to keep the comments… I will not make them personal, but I will just say what the public feels, certainly from the pulse that I get from them. It is fair to say that we have never had a Council of Ministers or the equivalent in recent years, probably in my living memory, that has been so unpopular from the public. But obviously I am younger than some of the Members and their memories, and I can remember there has always been that murmur in the background of: "We do not like Government, we do not like being told what to do, we do not like all these new laws." It is not easy when people want to try to bring any kind of changes through. Of course, to be fair to this, and it is relevant, and I will explain in a moment why it is relevant, it does answer some of the points that have been made, there has been an element within the Council of Ministers, and it has not been a homogenous Council of Ministers it has to be noted, that has at least tried to bring some kind of social programme forward and they have not always found that easy and that is obviously something, which some Members have been able to work with the Council of Ministers, or at least support them, in some areas. But where the analysis is correct is that these changes are essentially saying: "The reason for our many examples of incompetence is not our fault; it is the system that is at fault." Senator Bailhache already referred to the one big elephant in the room, and the one big elephant at the hustings of course, which will be the Innovation Fund. Will that make this Council of Ministers or the future Council of Ministers more accountable? I do not think it will. What these proposals risk doing, and it could be an unintended consequence or it could be a calculated one, is that it does concentrate power into fewer hands, it concentrates power ultimately into the single entity, this nebulous entity, a bit like your Wilbur Mercer character in *Do Androids Dream of Electric Sheep?* which has been my holiday reading, obviously the novel that *Bladerunner* was based on, who is just this nebulous character, it turns out to be, who is of course unaccountable but represents motherhood and apple pie.

[15:45]

Or similarly the Big Brother type of character from *1984* and it is an ability for them to act collectively when it suits them but to not have any accountability also when it suits them. So when the constituent who phones me up today at lunchtime and says: "Why am I having to go and see 4 different people at the hospital just to get Sativex because I have chronic pain and it is not even the right type of drug for me, and I should be getting other drugs because the Minister for Health and Social Services promised a year ago that now medicinal cannabis is going to be legal, yet a year later I am suffering and I am being given the run-around at the hospital to get a medicine, which is not even the right medicine for me because my G.P. (general practitioner) cannot prescribe it." Is that a fault of the silo mentality? By voting for this is that going to change that kind of thing? Is it going to change the fact that the hospital has not been built yet; that we cannot even agree or we do not even know whether the plans are going to be agreed for the same site? Is that because we do not have the system that the Chief Minister wants? Is it because of silo mentalities or is it because they have no joint policy? The Chief Minister knows that the solution to that, and I will say it again, I will keep on saying it, is party politics. If he wants to have a consistent mandate, he should take it to the people, he will have his campaign people around him, he will have his candidates because he wants to be the Chief Minister again. Of course there will be other pretenders who stand up in a debate like this and make their opening remarks to become Chief Minister, no doubt tailored to the country Parishes who know that the Government is not very popular but that they are not going to vote for a left-wing perceived group to lead the next Government. The reason I say that is that these considerations are what is going on at the moment. The Chief Minister knows that this Government is deeply unpopular and what better time to go for a power grab and to change the system than now and to try to blame all of the failures of the last 8 years, not on the individuals in there, not on the fact that they cannot work as a team,

because necessarily they have very different politics on the right, it has to be said, but very different politics, which does not even allow them to be able to deliver properly. I am convinced that is not necessarily due to the system, but it is due to a mixture of the individuals and the wider political context that we still have; by and large 49 elected people in very disparate constituencies, some of whom will not even face an election because we do still have a phenomenon of rotten boroughs in Jersey, and other people will be standing for election under an election system, which even the Electoral Commission said was not the optimum one. That is basically first past the post. How on earth do you elect 8 people in the same constituency under a first past the post system? It does not make any sense whatsoever. These are the fundamental problems, which we need to get to, and we are going to have covert parties at this election using subterfuge, the usual subterfuge that they do, not declaring to the public their intentions. You will see people popping up in St. Peter with their flashy designs, new: "Please vote for Mr. X" or in this constituency: "Please vote for Mrs. Y", and having their strings pulled in the background by individuals, the public not knowing what anybody stands for, their values completely fluid, so what they say on the platform, if it does have any substance, when it comes in here it is merely a commodity to be traded in the corridors as people vie for power. The Chief Minister has not explained how we are going to see the breakdown of silo mentalities if we still allow this Assembly to pick individual Ministers. The 2 do not make sense. If you are saying we want to just be one homogenous group, which is called nebulously the Government of Jersey or the Council of Ministers, as a collective rather than the individuals being accountable, how does that work if the Chief Minister cannot even be the one to choose those Members and anyone can just stand up and say: "I do not have a mandate for this, I did not even mention anything to do with this particular portfolio in my election, I may not have even stood in a contested election", which is not the fault of the individual of course, and say: "But I fancy being Minister for Housing, I fancy being Minister for Education", and of course on top of that we do not even know if those portfolios are going to exist anymore. So somebody could stand for election and say: "I really want to be the Minister for Tourism, I want to be the Minister for Economic Development", only to find out that under the next Chief Minister that department does not even exist anymore because it has been outsourced, like we are doing with all these other departments. So we effectively do not have a Housing Department anymore, well we do not have a Housing Department, but we do have a Minister for Housing, but she was trying to palm as much legislation off to a third person, who was not a politician. We have seen the outsourcing of T.T.S. (Transport and Technical Services) changing to Df.I. (Department for Infrastructure). Effectively we do not need the Department for Infrastructure anymore, the property can just go to Treasury and then we just outsource that and the private sector can probably do it. That is effectively what happened. So what portfolios, what departments are going to happen, we are still going to have a completely dysfunctional system whereby people stand for election on particular issues saying: "I want to save Fort Regent." Well how are you going to do that? What do you mean save Fort Regent? "Do you not remember the good old days when we used to have Bonapartes and there used to be Laser Quest up there and everyone was fun and we used to walk around with candyfloss and we had loads of money and everyone was really happy? Well I am just going to bring that back." I would say: "How are you going to do that?" "I will be the Minister for Economic Development." "It does not exist anymore, sorry, no accountability there." These things are not going to change, so it is absolutely right that this amendment should go through. The other big reason that we should be voting for it, simply in principle, is that Scrutiny were not given the time that they asked for to do this job properly. It is still called P.1/2018 because it was only brought this year and I made that point last time and these ideas do need to be thought through. It is right that the public have a say on what is going on and they will do that at the election, and then we can hear the very different nuanced arguments, not just coming from us and this Council of Ministers, but from the other candidates and people in our own constituencies and throughout the Island about the direction of travel they want to see people go in, not just in terms of general policy, but also in terms of the structure and the way that we do business in this Assembly. If we look inside our hearts

we know that it is better to ask for more time, not on the other good stuff that has come out of P.1, I mean that is not being debated at this point, it is just saying that we do need to give serious consideration to these fundamental changes and it is only right that the Chief Minister should be listening to the voices in all parts of the Assembly on that.

3.6.3 Senator P.F. Routier:

I just rise to my feet after some of the comments that the previous speaker was just making about this being one of the most unpopular Governments there have been. Obviously my memory goes back a bit further than his: I can remember the Walkers, the Wobblers and the Wreckers, who went through a very trying time when we had Members who were in the first Council of Ministers and at that stage that was a very, very difficult time, but a lot was achieved in saying that. The Government that is in situ will always face a crisis of confidence within the community because they are there to make decisions and sometimes they are very difficult decisions. We have to be prepared to do that. The Reform Party from Jersey are always continually promoting the idea in this Assembly and criticising the Chief Minister for not having achieved things and always looking and asking questions every sitting: "Why has this not happened; why has that not happened?" It happened again yesterday. Asking questions and criticising the Chief Minister for not having achieved things, which were not his responsibility directly. So what is being proposed here is something, which is attempting to achieve things for the benefit of our community so we can have a way of working together across departments, we have agreed that for the departments the chief executive is now going to have responsibility across the departments, and we need to have a thing that mirrors that for Ministers as well so they can work across departments, so they can be involved in all the various things and look at what is happening and not work in silos. We approved the original in-principle decision a few sittings ago and that I thought was a good step forward. We need to have some clarity. There seems to be a misconception this is going to cause confusion. To my mind we are going to have a lot more clarity about what is going to be achieved by having this new system. I am sorry that the proposer of this amendment has got to a position where he feels this is going to cause confusion but I honestly do not see that. It is a matter of having the will to work together in a positive way. What is being attempted here is to try to have a system, which will be for the benefit of our whole community and I hope Members will reject this amendment and give us an opportunity for the new Government, whoever they are, because I will not be here, or if this was to get through I would be really disappointed I would not be here because it is really exciting, it is an opportunity to move forward in a new and positive way. Because our existing system is very difficult to work with and to achieve things, we know that, and we want to move forward in a positive way. So I hope this amendment is rejected and that the new Assembly can elect a Council of Ministers that can work forward in a really positive and beneficial way for our community.

3.6.4 The Connétable of St. John:

I was very disturbed when I heard the Chief Minister in his opening address proposing these Articles say: "The Comptroller and Auditor General has recommended this, read her reports." She most certainly has not. The Comptroller and Auditor General is exceedingly careful not to cross the political line and so to say that she is supporting these amendments is wholly totally and completely incorrect. She remains neutral. She has said we need to get rid of silos and in that area we have already agreed in this Assembly so far to do so in agreeing Articles 1 to 8. I had the very great privilege of attending the National Prayer Breakfast in Washington, the host was some fellow called Donald Trump. I was sat at a table right at the very, very back; rather similar to in this Assembly they keep me right at the very back. But we had a very interesting seminar and that was about political parties. They said that the ruination of America would come about, not through Al-Qaeda, not through any form of terrorism, but internally, you had the Democrats and the Republicans pulling the country apart. There were other members from other countries at the seminar, one that jumps to mind

was Germany who at the time could not find a leader and could not even find a Government because of party politics. Now, I raise this because they then asked me: "What do you have in Jersey?" and I said: "We have 49 independent Members, there is no party politics." There was a loud thud as all the jaws hit the table in complete amazement at what a wonderful system we have. **[Laughter] [Approbation]** Thank you. That is what we have and it is important that, whatever Council of Ministers or Jersey Ministers one has, they work with the Assembly. I have been struck rather negatively by the division that we have seen in this Assembly between the Government and the Assembly and of course one cannot understand how so many mistakes, as was early mentioned by a previous speaker, of the press reporting the States or the Government and not knowing the difference between the 2.

[16:00]

It really brings us on to a system, we have agreed the change to the Civil Service so far, but do we really need the change right away at the same time to Government? The answer is very clearly no. We are trying to do too much too quickly and the euphoria of change is tending to drag us forward when perhaps a lot more homework needs to be done. We know that changes to Standing Orders will need to take place; they are not part of this package. So by agreeing this we are forcing other changes, which we have not yet debated and may not agree with. It needs to come forward in a coherent way. I am also concerned about how it may affect one particular office; that of the Minister of the Environment. He holds a special relationship in this Assembly and I would hate to see that post brought into a political arena within then Assembly because it is that bit separate and it allows the Minister for the Environment to act very importantly in a more independent manner. What is being proposed is that Ministers would have areas of responsibility instead of silos. Forgive me, but we have Ministers responsible for certain areas at the moment, it is called Health, Education, D.f.I., Home Affairs, Social Security, those are areas of responsibility. Yes, we may need more fluidity than we have in exchanging parts of those responsibilities, but to go with this change that is being proposed is too much, too quickly, and I would therefore urge Members to support the amendment and to support Senator Bailhache in this amendment.

3.6.5 Deputy A.D. Lewis:

There has been some very interesting rhetoric. I listen with great interest because it is almost *déjà vu* when we were speaking not so long ago in this Assembly about electoral reform: "Too much too quickly." I am not so sure about that, this has been talked about for a long time. "Let us put it off for another day." That is a common one as well. It has been said widely, and Senator Bailhache said it too, other governments, other organisations, do this routinely. But there is a difference and Deputy Tadier said it very clearly; they often have party politics, which is a different system. But then the Constable of St. John says: "Well I have been in America recently and they were applauding our idea of having independence and no party politics." I sat last night next to somebody from the Embassy in Romania, a very bright young lady, a lawyer, who was intrigued by the independent status of all our Members and also thought it was an incredibly good idea. But with that come challenges and some risk. What the Chief Minister is trying to do here is take some of that out. What I cannot understand though, and I hope that later on in this debate the Chief Minister can clarify it, is that the biggest argument or observation that people make when they look at the States of Jersey as, let us say, a corporate, a business, is that the officers within it that do most of the work and recommend the Minister's decision that they might wish to make, they are only reporting to a Minister, they are not reporting to a sole body corporate in the form of a chief executive. That causes some very difficult decision making and reporting and it creates silos. With silos comes bad government. If you go back through the history of the Assembly, back to the committee system, it was even worse, 48 committees rather than the 11 ministries; everybody working on their own book. Then piling in, in a central way, when it came to supply day, when they all wanted more money because they were working in silos.

I can understand what Senator Bailhache is trying to do here but I can also understand the counter-argument that the Chief Minister well articulated. He did refer to the Comptroller and Auditor General reports; he did not say, I have to disagree with the Constable of St. John, that she was recommending this because she does remain apolitical and she has on this occasion. What she was saying though, she was observing the workings of the machinery of, not just government, the machinery of the States, and she was quite clear on a number of occasions that on, for example, the review of the money we spent on selecting the site of the hospital, she clearly says here in her report that: "Officers were working in silos and as a consequence there was not a sharing of information in quite the way it could have been and the whole selection process took longer and cost more than it could have done." She says exactly the same on e-Government, again this was supposed to bring everybody together, e-Government, yet I will quote you from 3.4 in the e-Government report, it says: "A programme cannot work in a vacuum. It is a key part of securing reform. Its effectiveness is reduced by weakness in corporate arrangements for and leadership experience of identifying, planning, communicating and monitoring." That was in the e-Government report. I could go on and the Constable of St. John may come back later on this because he is now the chairman of P.A.C. P.A.C. has written similar. If you have the structure we have at the moment it creates silos and with silo mentality comes inefficient Government and lack of effective use of resources. So this is what we are trying to achieve here. But I absolutely understand Senator Bailhache's point whereby at the end of the day the electing public, the public who elect us, want somebody to point the finger at when it goes wrong. What is the Government? Is it the States of Jersey, the Assembly, or is it the Council of Ministers? We know the Council of Ministers is the Government, a rebranding exercise took place a few years to call it the Government of Jersey, some objected to that, but it did clarify it a little bit. But they want to hold somebody to account and at the moment the Minister is legally accountable for decisions of that department. That is pretty clear. But what the new chief executive of the States of Jersey wants to be able to do is to lead and manage his officers in an effective way. That is very difficult if each single officer is reporting to a corporate sole in the form of a Minister. It makes that chief executive's job very, very difficult. Can you imagine running a business like that? I know the States of Jersey is not a business but it has to adopt many corporate rules and business objectives that the private sector would and it would be almost inconceivable that every chief executive of a separate company within that group could go and do their own thing all of the time without recourse back to the centre, the board. It would not happen and, if it did, it would be total confusion. We legislate for that to happen and that is what causes the problem. If we can legislate so that the centre, i.e. the chief executive, can achieve those objectives, yet responsibility remains with the Minister from a public accountability perspective, great. But I am not quite sure how you square that circle. If the Minister for External Relations here is trying to achieve that through his amendment and thinks that can be done, I am all ears, because I do not see an easy solution to this conundrum to allow the chief executive to direct and manage without the Minister directing and effectively sometimes managing, because, let us face it, some Ministers have in the past interfered with operational matters, and they should not, but some have. It is very difficult to prevent that as a chief executive if you have a corporate sole for each individual department. That is what you are trying to resolve here. If Senator Bailhache has a solution to that in his amendment, I would like to hear it, because I am not getting that at the moment. It is not an easy conundrum to resolve but we do need to resolve it to create effective Government and effective public service, an effective business run to serve the people of Jersey. That is what we are here to do and that is what the officers and senior civil servants in this Island strive to do every day and we need to give them every tool in the box we can to do that effectively. Unfortunately that cannot be a benevolent dictatorship, which is what some are suggesting might happen here, I do not think that is the intention here at all, but it is perceived by some as being that way. So I would like to hear from the Senator as to how he can resolve that conundrum, allow executive control within that board, that senior corporate management board, yet allow the Ministers to be accountable. If he can square that circle and demonstrate to me that is the

case I will support this amendment. If he cannot then I am sorry, I need to support the Chief Minister in his desire to make this simple, easy to understand, and make things happen, because that is what the public sector is to do, is to serve the public and make things happen for their benefit. At the moment that is a difficult thing to do so I look forward to the Senator summing-up as to how he feels this could work.

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

My mind goes back to a time before I was in the States, and I am going back to the time of Clothier in particular and the formation of the ministerial government at that particular time. That is when basically they introduced a ministerial government and in doing that as part of the arrangements I recall, albeit my information was limited to that in the *Evening Post* - it may have been a different paper then than it is today - but it was talking then about that time that Senator Walker, he was not the Chief Minister yet at that time, was trying to form the ministerial government and I can recall it being well reported in the *Jersey Evening Post* that Senator Syvret at that time was insistent that there had to be corporations sole because he did not want Senator Walker, the potential Chief Minister, to have all the power. So for me that is where my information comes back, it comes back to an individual Member who wanted to ensure the Chief Minister did not have all the power. But we have some good examples in Jersey Government where having a corporation sole, a single head of the organisation, works extremely well and it services the people of Jersey extremely well. There are 12 of them in fact and they are called the Parish Constables. In the Code of 1771 it gives the Parish Constables total power over their Parishes and yet we still have committees, growth committees, rate-setting committees, and all the other committees, and yet we have power of direction over all of those. It seems to work well in the Parishes and most people would say the Parishes are pretty efficient in the way they do things. I would say we are far more efficient in the way we do things than central government is, but then I would, would I not. But I do believe that anyway, we are very efficient, we are very close to the people and we have to think about how we deal with their money. The issues that I see today is that we do not get the cohesiveness between the ministries that there used to be. I also come from a background of working in the Civil Service and, at that time, there was a lot more primacy of government, there was a lot more collectivism where the boundaries between departments were very much more blurred and different committees helped each other out to get the best result in the way things were done. That has disappeared now. Very often now we hear the arguments, and I can think back to a previous Minister for Planning and Environment: "I am corporation sole, I will make my own decisions, I do not care what everybody else thinks", for example, and there are other examples of people saying; "I am corporation sole, I have the powers to do this", irrespective of what impact that may have on the wider work of the States. So I can understand that some Ministers at the moment are thinking very carefully are they going to lose powers, but I also look at the ministerial government from my perspective of being very much like the board of directors, and yet I do not hear the board of directors of companies that are working very efficiently in Jersey fighting against each other saying: "This is my bit, I am corporation sole over this bit", I see them working together because their interest is the overall performance of that company. Of course the beneficiary of that company is the shareholders, exactly as we are here today the shareholders of this company, which we call the States of Jersey. So for me the arguments, while they are well made and we have become accustomed to working in a particular way at the moment, I do feel there is an opportunity to look at it more carefully and come back to let us think about who we are doing this for, which is about the shareholders, that is Mr. and Mrs. Average out there in the street and us in this Chamber and all other people resident in Jersey. If this is the best way to get the best for them where we work cohesively and collectively around a common board of directors table then that is what I am going to be going for.

3.6.7 Senator L.J. Farnham:

I think we are heading in a really good direction already and, for the avoidance of doubt, the silo mentality that has prevailed is about to be consigned to the history books because we have accepted and we are fully supportive of the new Chief Executive's ideas, which have been presented to us in restructuring the public sector.

[16:15]

Deputy Andrew Lewis and other Members, when they refer to silos, they refer to the way departments interact with each other and that is challenging, it has been challenging for decades. But the important thing is the report, who governs the Island at the end of the day; we are elected to govern the Island. The States Assembly choose their Ministers and the Ministers are accountable to the Assembly. Civil servants are there to advise; they are not there to compel. I refuse to be compelled quite regularly as Members know, it is not what I am elected... well the electorate will compel me; they will be compelling me one way or the other shortly in May. But it is important that this Assembly… Ministers have to report to this Assembly, I do not think Ministers or Members want to be involved with the way the public sector is structured; that is not really up to us, we employ a chief executive and a really good team of people to do that and they have come up with a really good idea. I have been spending quite a lot of time drawing diagrams of how the current ministerial portfolio slots in above the administration. Do not forget we are talking about the ministerial portfolio here, not the public sector. We are not controlled; we are not going to create ministries because the chief executive has arranged the public sector in a way to be absolutely efficient, to pool resources, to share premises, to share staff, to make sure we cut out duplication. That is happening; we should expect that to happen. We then do not have to build our political ministries around that because the chief executive has said to us and his team: "It is up to you, you choose your ministries and how you want to manage it, and we will provide the backup and support what you need." So it is important that we remember that when we are making these decisions and we are trying to slide the ministerial organisation in on the back of the public sector reorganisation in our genuine goodwill to give the new team our full support. We have to be careful that we do not compromise the political system or the political structures. One thing in particular that I have noticed is the proposition calls for the removal of Article 26(6) of the States of Jersey Law and that Article says: "The senior officer in any administration of the States for which a Minister is assigned responsibility should be accountable to that Minister." Now that is quite important. Under these propositions that goes and there is some diluted wording that suggests that all senior officers could be accountable to all Ministers for areas of responsibility, but it is very, very broad. If Ministers are going to be held to account for the actions of their officers and their ministerial… I am not going to say "departments", but their ministerial responsibilities, and held to account by the Members of this Assembly, then there are senior officers that need to also be held to account by the Ministers. That is going and so that is something we need to think about. At the heart of a system, and people are talking about Scotland, and I always get slightly tetchy about when people say: "They do it like this in there and they do it like that in Scotland and they do it like that." This is Jersey and we must celebrate our uniqueness at times because, although we are very close to it and we see all the faults and we are very self-critical and Islanders are very critical, and quite rightly so at times, we must not lose sight of the fact that people do come here from around the world, politicians, and are very impressed and often envious of our system, faults and all. But at the heart of what is trying to be put in front of us here is a party political system. Now we might be in the stage of moving towards a full party political system, we have the Reform Party and other parties, but be under no disillusion that if the people of Jersey wanted political parties we would have political parties, notwithstanding the very good efforts of the likes of Deputy Mézec and the Reform Party who are gaining traction, there is no doubt about it. If the people of Jersey wanted parties we would have them quite simply, but the people of Jersey have failed to engage with that. I am not saying it will not happen but it is not happening now and I do not see a huge change coming up at the next election. I could be wrong and when I say a "huge change" I do not expect

new parties to suddenly appear and gain a number of seats in this Assembly. So just to reiterate, we have done the important work already by supporting the chief officer and his team to end the silo mentality and put together a really good structure, a really promising structure, for ensuring we have a really efficient public sector. No doubt he will want to change that as we go through the years ahead and we learn how this is going to work with the political system and hopefully it can be refined even more. But we do have to fully understand this and I am all for taking chances, political chances, and we have to take leaps of faith at a time, but there is a new Assembly going to be here with probably 15 or 20 new Members and I do not want to delay this; I do not want to. I mean one of the big mistakes we made is agreeing to transfer functions in 2014 and not doing it until 2016. That was a horrendous time for the Assembly and for Ministers and we must never go back there. But it could be worth just taking a little bit more time and engaging the new Assembly to achieve what we have to achieve.

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

Like Senator Bailhache, at first I had some concerns about what the Chief Minister was proposing, but after careful reflection I wish that we already had the proposals in place. I believe in delivering and delivering actions and not just words. In the eve of my political career I can reflect and I am disappointed to know that, if we had these new arrangements in place 3½ years ago we could have achieved more. So I urge Members to let the next Assembly, let the next Council of Ministers, achieve more, to deliver more, and to reject the amendments, although well-meaning by Senator Bailhache, and embrace these changes and to move forward together for the benefit of those that we serve.

3.6.9 Deputy S.M. Brée:

I have listened to this debate with increasing concern about the fact that we have heard from a lot of speakers that this is all about reforming the Civil Service, delivering services, but we have done that. This is about something completely different. Let us go back to exactly what the original proposal from the Chief Minister, as amended by him, is talking about when it comes to the Jersey Ministers or, as the Chief Minister now likes to call it, the Government of Jersey. We are moving to creating, if this Assembly agrees to it, a single legal entity. Everything that belongs to the States of Jersey, that is enacted by the States of Jersey, contracts entered into by the States of Jersey, will become within the Jersey Ministers. Now some may say that is marvellous, we are increasing efficiency, we are being able to react faster, we are moving towards one of the recommendations of the Independent Care Inquiry to have one government. So an awful lot has been blamed by the Chief Minister on the current system. There is an old adage that a bad craftsman always blames his tools and perhaps one needs to move away from looking at the system is at fault, not the current Council of Ministers, to go, okay, the Council of Ministers perhaps has not worked as well as it could, there have been divisions, there have been problems. That boils down to a whole range of factors, but it is not going to be… this is not the panacea that is going to solve the Island's problems because what this is going to allow is a single Minister to act on behalf of, enter into contracts, and sign anything to do with any bit of property, any regulation, any law, that now falls under the Government of Jersey legal entity. Now I am sure that may please some people, but it fills me with grave concern, because what it is doing is concentrating power. Senator Bailhache was quite generous when he said it is concentrating power into the hands of a few people; in my opinion this, used the wrong way, concentrates power into one body, one office, that being the Chief Minister's. When you start looking at the proposition itself, and Senator Bailhache did pick up on a number of them, I would draw Members' attention to Article 26A(6): "A document shall be validly executed by the Jersey Ministers if it is executed by any Minister or Assistant Minister." Now that has been amended with relation to Assistant Ministers, which was a concern of the Scrutiny Review Panel, but it still leaves in there: "By any Minister." Now, at the moment we have a situation where each Minister is their own legal entity, they are

responsible, solely they are responsible. Therefore we, the Assembly, and the public have accountability; we know which Minister is meant to be responsible for what. Under the Jersey Ministers we will not have direct accountability because any Minister can sign any document relating to anything to do with the Jersey Ministers or the Government of Jersey. So effectively, if we approve this and we do not support Senator Bailhache's amendment, what are we going to create? I would suggest we are going to create a monster because there will be no accountability because you do not need to have individual ministerial accountability anymore because no Minister is individually legally responsible for anything. That fills me with concern. Now, all of the questions that are being raised by various people are pointing to one thing, we do not know the consequences of this because we, Scrutiny, have not had the opportunity to really go into depth with this. We have not had the opportunity to perform what I believe should have been a full comprehensive Scrutiny review. So even if you do agree with the concept of setting up this single, totally autonomous, seems to be able to do whatever it likes, legal entity, which basically we have no direct accountability to any Minister in, even if you do agree with that, we have not had time to look at the long-term consequences of it, to seek the necessary legal advice, how far does the powers of the Jersey Ministers or the Government of Ministers extend to? So even if you do agree with the concept that we need to set this entity up, I would still urge Members to support Senator Bailhache's amendment to allow a much more comprehensive and possibly more time-consuming review of this change.

[16:30]

Now, it will be argued that anybody who disagrees with the Chief Minister's proposals is somehow being a traitor to the public of this Island, somehow not having the best interests of the Island at heart. But I can assure you I do. I am very proud to be a Jerseyman and I have the best interests of this Island at heart. But I also know that this is a major, major change to ministerial government. I will not support this for 2 reasons, I do not agree with it, number one, but number 2, more importantly, I do not understand the consequences of what we are being asked to vote on and we have to think of that when we decide. I would urge all Members to support Senator Bailhache because we need time to consider what this means.

3.6.10 Senator P.F.C. Ozouf:

Deputy Tadier started the debate after the proposer spoke and he spoke about a coalition between the extreme right and left. So here we have it, we now really understand that Reform are extreme left and I do not quite know how Senator Bailhache is going to respond when he is summing-up to being described as an extreme right, I do not quite see Senator Bailhache as an extreme right, neither did I think that ...

The Deputy Bailiff:

Senator, I hesitate to interrupt you, but I think Deputy Tadier referred to it as the centre left.

Senator P.F.C. Ozouf:

Centre left, he said, okay, right, centre, well certainly it was left; I still would be interested to know how Senator Bailhache is going to react to this coalition of right and left, as it was described. I apologise if I did not hear the word, I thought "extreme", maybe I was just hearing things in my head. The questions Members really need to ask themselves is: is the current system of Government working? Is it working in the interests of the people that we are here to serve? Is this system that Senator Bailhache is trying to effectively throw out, to re-silo, is this novel? Is it new? As Deputy Brée says, is it completely a jump into the unknown? Of course it is not. What the proposer in the unamended form is proposing is in place elsewhere in the British Isles, in Scotland and in Wales, in the Commonwealth; I understand this is the system in, for example, New Zealand. So this is not a jump into the unknown; it is a solution to a siloed system, which is not serving the people of Jersey effectively. One of the things that I have heard most of from Islanders in recent weeks is the absolute

frustration that the people of Jersey and think, and directed perhaps correctly at the Council of Ministers, of the speed that it takes time. This is not about efficiency; this is not about a right-wing efficiency thing, the speed of time it takes to get things done. We just have to look at the hospital issue. One common theme is that this system of ministerial government that we have is unfortunately, and it is quite interesting to note which Ministers are advancing the views that they are against this, it is really quite interesting to look at the Ministers who are standing up and saying: "No, no, the Chief Minister is wrong." We are effectively, and I have been there, I have done that, I have seen it, the Council of Ministers and the current system unamended, and if we go along with what Senator Bailhache does, is effectively a system of dysfunctional silos. I will come back to that in a second but what are the consequences of not making the changes? What are the consequences of agreeing with Senator Bailhache? We have a new Chief Executive who, in my view, of course has to show results, but so far the remarks and the speed at which he has got to the real heart of some of the issues with the public sector is impressive. He is clearly an individual who is going to be breaking down silos, removing middle layers of management, ineffective management. He is refreshingly a chief executive who, for the first time, has publicly said and spoken about the people that matter, the people that are there to receive services; that we are there to provide services for, and which we provide resources for. The public sector, and at the end of the day the Council of Ministers and the Government of Jersey, should be focusing on serving Islanders. They are the ones that matter, not individual egos, if I may say, who want to maintain their own individual silos. We are going to create, in my view, a nightmare if we see the creation of what is effectively be a much more efficient and effective and responsive, customer-focused public sector and then we are going to see the unreformed system of disconnected dis-unified Ministers. Deputy Brée, I am afraid, I take the absolute opposite view that he does when he says that this is a concentration of power. As far as I am concerned, from my experience Ministers are these individual collection of individual power, which it is quite difficult to deal with. The proposal that Senator Bailhache wants us to support effectively is a proposal that diffuses power to a collective of the Council of Ministers. If I may say to Deputy Brée, who is not here, it is absolutely wrong to say that there is going to be no accountability. He almost presents this as being a sort of Kremlin-style presidential system. That is absolute nonsense. It is a system that is designed to break down the siloed system, which so many Members have criticised, and rightly so, the current Council of Ministers and previous Councils of Ministers for. The fact that in the opposite direction of the arguments forwarded and advanced by Senator Farnham and Senator Bailhache, we have other experienced Ministers who have worked in the system who are going to be supporting this unamended proposition by Deputy Bailhache. The Minister for Infrastructure, who has been an Assistant Minister for Treasury and Resources and now the Minister for Infrastructure; we have the Assistant Minister for Treasury and Resources and Constable of St. Peter and I understand the support, and I was sad to hear him announcing he is standing down too, but the Minister for Treasury and Resources supports this. If anybody understands how effectively a collective of Ministers should work it is the role of Minister for Treasury and Resources, which really does make you understand about the fact that the silos exist. I am astonished with the remarks of Senator Farnham, who is not here to listen. He said this was a vote in favour of a political party system. What absolute nonsense. Senator Farnham and Senator Bailhache clearly want to continue in their silos if they are re-elected in Government. I have always been known to hold strong views but I have always recognised the importance of a de-siloed collective government and that is what this is effectively trying to do. Members need to think very carefully about the track record and about the way that certain Ministers like to behave and act in the Council of Ministers, not in a unified way, versus those that really do believe in a collective system. We are behind the times, there is no doubt that the public sector needs reform, for Comptroller and Auditor General report after Comptroller and Auditor General report, I find it really quite difficult to understand how any Member who has served, past or present, on the P.A.C. cannot be in favour of this because the Comptroller and Auditor General has for ages, and the previous Comptroller and

Auditor General, has argued for a de-siloed approach. The Jessica Simor report also said that; the Care Inquiry report said that; and now we have a new chief executive, which is reforming the public sector, and we are going to effectively tie his hands behind his back so that cannot work with effectively a system of accountable de-siloed unified Ministers. This is a vote in favour of a diffused system, a de-siloed system, which is going to serve the Island better. It may not be perfect but the Constable of St. John said this is rushed. Really? Really, rushed? We have known that we have a siloed system of government that is not working and we need to bequeath one thing to the new Assembly, it might not be perfect in every single way, but if it gives the new Assembly an opportunity to vote in a Council of Ministers that is de-siloed and they will then make improvements on it, then it is a jolly sight better than what the unreformed system, the nightmare scenario, which Senator Bailhache is going to allow us to do it, which is a half approach to P.1, which is effectively a vote in favour of a dis-unified siloed continuation of everything that has been wrong of much of this Council of Ministers. I urge Members in the strongest possible terms to vote against Senator Bailhache's siloed amendment and vote in favour of something that is diffuse, which is going to be more accountable and more effective.

Deputy M. Tadier:

May I ask a point of order before my colleague speaks, and it relate to Standing Order 21(3)(a). Could I get an interpretation, because obviously there has been a statement made on P.1 generally, which says that the Council of Ministers has a single policy position on this proposition.

The Deputy Bailiff:

Standing Order… which Standing Order are you looking at?

Deputy M. Tadier:

Standing Order 21(3)(a) and obviously (3)(a) talks about collective responsibility and (3)(a) talks about: "If the draft of the proposition that the Council of Ministers, the Chief Minister, or any other Minister wishes to lodge, it must be accompanied by a statement, and the statement has been made, but it says: "Also the extent to which the principle has not been waived should be clarified in (3)(a) part B, and it seems to me that, by virtue of the fact that we have had an amendment here from a Minister and another Minister speaking against what is a fundamental part of the main proposition, and what the consequence of that Standing Order is in this context? I also know it is coming up to time for a break and there are a few empty seats, so it might be an opportune moment for us to break and come back in half an hour.

The Deputy Bailiff:

As rightly you say, Deputy, there is a collective responsibility statement; however that is clearly not something that has been relied on in the circumstances, given the amendment. Clearly Senator Bailhache has brought forward the amendment and, as you rightly say, at least one other Minister has spoken in favour of the amendment, so it seems to me that we are where we are. I do not think anything flows from Standing Orders in terms of collective responsibility. That is a matter, I suppose, to be dealt with within the Council of Ministers itself.

Deputy M. Tadier:

I was just wondering, when we go on to debate P.1 and the remainder of it, the Articles and the Third Reading, whether or not a new statement should have been reissued by the Council of Ministers given the fact that P.1 no longer has collective responsibility because we have had 2 Members speaking against it and they do not have a single policy position on this matter.

[16:45]

The Deputy Bailiff:

I think the position must be that when the proposition was lodged the statement must be taken at face value. The position now appears to be one that appears to be technically subject to collective responsibility but in fact not. So I am not sure that there is anything more that can be said about that. Deputy Mézec.

3.6.11 Deputy S.Y. Mézec:

I sort of wonder what the point in this Standing Order is then if what is on the document in front of us can be changed at a whim without any notice like that. I have to say I am feeling *déjà vu* here because I remember that it was in the final months of the previous electoral term, which I was a Member of briefly, where we were debating changes to the machinery of government and where we were told at the time that was going to lead to drastic improvements in the way that government is done in Jersey and it is fair to say there will be many people, both inside the Council of Ministers and outside it, who will have been very disappointed at how that has transpired in reality. So I want to talk about why I am sorely tempted to vote against this amendment and then vote for the Article in the proposition, because there are large amounts of it - tempted, tempted - there are large amounts of it that make perfect sense. I like the idea of flexibility within government; I like the idea of breaking down silos, that is absolutely crucial for Jersey moving forward, and, to tell you the truth, I like the idea of a bit more power being held in the hands of the Chief Minister. The reason I think that is because I have in my head what the best government system for Jersey would look like; that is a Government, which is able to govern; a Government, which is able to get on with it; one which does not spend its time coming up with excuses for why it is not able to deliver this or that; that does not spend its time shifting the blame to one person because it is convenient and then another person when it is convenient on a different day. Because I want us to have a Government, which is dynamic, which gets results, and I in particular share the concerns that the Chief Minister made in his opening remarks, and has made elsewhere as well, about what was said in the Independent Jersey Care Inquiry report, which absolutely inspires many of the political positions that I have taken recently and will in the future. I want change, in short. We have a system here, which ultimately lets Islanders down in many ways, and it could be drastically improved. In my vision for what an improved system of government would look like, much of what is in P.1 does feature in that vision. So I make no bones about that and the current Government we have had, and this is where it gets partisan, so some Members on the other side might stop nodding their heads now, I think that over the past few years we have had a very dysfunctional Government, I think that is fair to say, and it is a Government that, while it has done many things, which are commendable, it is also a Government that has made lots of mistakes. Some of those mistakes arise from the systematic problems there are within the system of government, but the point also has to be made that many of those problems cannot be put down to the system, they can be put down to the fact that some Government Ministers have had political priorities, which have been unhelpful or, at worst, misguided. There have been Ministers that have made decisions not based on the evidence before them and that there have been changes that have been made over the last few years, which will have made life for some Islanders more difficult because of the way public services have changed or the support that has been offered. But some of that is systematic, that is there is a problem in a system, which allows some people to take up important ministerial roles with no experience in that political area beforehand and sometimes offered those roles as a political compromise for the fact that: "No, the job you were after is going to go to the other politician that I would like it to have." That is not particularly helpful and there are wider problems that lead to some of the comments that have been made by other Members, Senator Farnham included. Here is the problem I have with this proposition though, it is missing one really, really important word, the most important word, and that word is "democracy". I have searched P.1 to find the word "democracy" or the word "democratic" and it is not there and that is what I find troubling about this because we are here, meant to be democratically elected representatives of the people to make decisions, which are in line with the desires of the community that we represent. We

exercise power, which is only temporarily bestowed upon us, based on the mandate that we should be receiving in elections, and we are not here for a privileged 4-year jolly. We are here for serious business to work to improve the people's lives based on the policies that we are elected upon. This proposition I feel is out of place with the other reforms that are desperately needed to our system to make this system democratic, where those who exercise power are to be held accountable, and that is what troubles many of the people I have spoken to about this proposition is they are worried how accountability fits into it. Now there are some enhanced features of accountability here, the Chief Minister being able to shift portfolios around is certainly going to be helpful, but the problem is, at the end of this process, the Chief Minister will be no more accountable to the public than he already is. That is a real problem and this is where I agree very much with the point that was made by Deputy Tadier here, is that there is an elephant in the room here, which is that what we have behind the scenes where no ordinary member of the public is able to exert influence are the political deals that go on, the compromises that are made, that compared to other jurisdictions are completely opaque and undemocratic. The Constable of St. John spoke of his experience in America where they all seemed to believe that it was wonderful that we had this system of 49 independents. Of course you would say that in a country whose democracy has been completely captured by big money and citizens united, forget democrats and republicans, they only have one party in America, it is the party of big money. Of course people might feel enthused by another system but the question has to be asked is that, if that element of our system is so wonderful, why have so few other countries adopted it and why is it that the only transition that is made in democracies, in small democracies around the world, is from non-party to party? It is never the other way around because once you adopt a party system you suddenly realise that things work so much better because when your Government is elected it already has its work programme sorted, it was endorsed by the public in an election, it goes from being a manifesto to being a blueprint for Government. Now, what we have in our system is this absurd situation where you have your general election, where the public elect States Members if they are lucky enough to live in a Parish where they have a choice there. The States, including its - in this Assembly - 17 unelected Members, then pick who the head of the Government is, and then it spends 6 months putting together its Strategic Plan. That is a terrible system. The systems that exist in other countries, I use the U.K. as an example, although I accept that it is not the best democratic system in the world certainly, but where the Government stands or falls is at the Queen's speech, which comes very quickly after a Government is elected because, whether it is a majority Government or a coalition Government, it puts that Queen's speech together very quickly and then there is a parliamentary vote and then they get on with it. That will not be changed by this. Instead we will have more power held in the hands of a Chief Minister who, unless something drastically changes soon, will be elected most likely on a very flimsy election manifesto, which will not be many more sides on a sheet of A4, rather than a comprehensive document, which contains costings, which contains deadlines, which contains all sorts of very concrete pledges that they know can be delivered because of the consultation that has taken place with States Departments and with members of the public beforehand. That will not happen under this system. Instead it puts more power in the hands of fewer people without that accountability. I do not have much more to say on it. There is just one strange point, which is that this law will seek to get rid of the legal clause at the moment that defines collective responsibility at the same time as abolishing the individual corporation sole of Ministers to have one legal identity. So we currently go from having different legal identities with collective responsibility to one legal identity with no collective responsibility. That to me seems strange. How can you have one government entity and those who make up that Government then free to do whatever, free to, if they politically want to undermine a particular Government perspective, theoretically be allowed to do that. That strikes me as a recipe for disaster. That to me makes me believe that if this is passed that this next Government could well end up being much more dysfunctional than the one that we currently have and I would see that as a backward step. Right now, more than ever, when there are so many key challenges facing the Island, and I see the 3 key challenges as Brexit, implementing the

Care Inquiry's recommendation, and improving the standard of living for Islanders, when these 3 challenges are so fundamental the Island does not need 4 years more of dysfunctional Government, it does not need it. This is what I worry is that we may well be making some positive changes to the legal framework that makes up this Government but we will be making the democratic framework for this Government worse and that is a seriously important point that this does not address. On that basis, I do not think I can support it, but I say that with a huge amount of regret, and I hope that this will be revisited very soon, and when I say "soon" I mean within months, there is a new Assembly to be elected shortly, and I hope that it can take a look at this to do so in a non-partisan way, an inclusive way, that includes whoever the next Government is with Scrutiny, with those who are not aligned with the Government perspective, to come up with something, a model that is democratic, that does achieve what we all want, which is to see a Government that works. That would be a positive way forward. I vote against this today but I hope there will be opportunities in the future to further enhance the machinery of government because Islanders frankly need it, they deserve it, and that I will be voting against.

Senator L.J. Farnham:

The previous speaker mentioned about collective responsibility but ...

The Deputy Bailiff:

Is this a point of clarification you are seeking?

Senator L.J. Farnham:

Yes, it is.

The Deputy Bailiff:

From the previous speaker?

Senator L.J. Farnham:

Yes.

Deputy M. Tadier:

Is it clarification from the Council of Ministers or from a rogue Council of Ministers Member?

The Deputy Bailiff:

A Member of the Assembly has asked for a point of clarification from the Deputy. What is the point of clarification?

Senator L.J. Farnham:

The point of clarification is that collective responsibility is being removed from the law but is being introduced in a Code of Conduct and I think that just needs clarification.

The Deputy Bailiff:

For a point of clarification; that sounds like a speech that you are looking to make about something.

Deputy S.Y. Mézec:

I think that the Minister might be suggesting that what I said, whether intentionally or not, was not quite accurate and I am happy to accept that what he said is absolutely right and I do not think I said anything that necessarily denied that was the case. But rather than it being applied in statute it will be as part of another document, somewhere else, which the public will not be able to influence and which States Members will find much harder to hold their Ministers to account. So I agree with the point that the Senator was making.

The Deputy Bailiff:

That is the clarification.

3.6.12 Deputy J.A. Martin:

I always thought this afternoon, or whenever we got to this debate, would find some funny alliances and maybe not. Where am I? Well, somebody who has worked under the new system since 2005 but debated bringing it in from 2003, I am fed up basically, and when Senator Bailhache, or just before Senator Bailhache brought this amendment, I was looking at Articles 9 to 11 to amend because when we were debating the principles I said: "I have had enough, I do not think it goes further enough, let the Chief Minister ... let us elect the Chief Minister, and let him have his team, and what they are called is probably completely different from what us and what the public will call them anyway, so that I can live with. **[Laughter]** I can absolutely live with this. I am hearing so many conspiracy theories today and explanations. I mean the best one, and I absolutely really got on well with Senator Farnham, but Senator Farnham said: "Oh, we have passed the bit about the departments and we are going to streamline the departments, but do not do it to us because the Chief Exec said we can have as many Ministers as we want and work in some sort of bubble." I am like: "Oh, I do not think that is what he said to me", but obviously there are some people who do not think ... and I am taking a leap of faith after 15 years, because I have to have been dragged kicking and screaming to this point, but only because the other way has not worked, it really is not working. **[Approbation]**

[17:00]

So I totally see the caution: "Oh, let us wait again, let us wait again, let us go to the electorate with the same dilapidated system." We will get new people because people are not standing, there will be people who lose their seats and I could be one of them, so today is probably my last idea that I can influence the change of Government and I have to put some faith. I have to know that this team, and what are we talking about, we are talking supposedly about intelligent men and women who are asked to work together in a team, of course there will be some sort of structure because unless you have some sort of superman coming in, and it is certainly not anybody here, who can run around all these departments, keep all these civil servants, all right, admittedly now through the new Chief Exec, it does not work. It is all about: "Ooh, are we giving them too much power?" No. All I can rely on is it does not work this way, it really does not work this way. Yes, I am on P.P.C. (Privileges and Procedures Committee) and is it insurmountable, the changes? No. We will still be electing and we will still go through that process of electing the 10 or however many. Because I could not change it because it was either all in or all out, so I have to live with what I have today. Scrutiny, I mean there have been some fantastic ideas about Scrutiny, which again, if they change this, it will make the Scrutiny process more nimble. She was then the Deputy of St. Saviour, Deputy Vallois, and she is not the Deputy of St. John, she has some fantastic ideas how to streamline Scrutiny, which could follow this system, absolutely follow this system, so it makes the Ministers better, it makes Scrutiny better. Today we are here again prevaricating, saying: "Ooh, let us wait again." I would normally be ... well it would be really weird if I was normally voting with Senator Bailhache, but I can see where he is coming from, but he has only given me an opportunity to do away with all these Articles, which absolutely is no change, or not voting these Articles out, which is the change that has been proposed. As I could not amend it, which would have made it much more streamlined because the team is the team, there will be accountability, we know who the head of the team is, we know who is in the team, and then a team is only as strong as its weakest player. So we know that the team should be picked well, the team will be able to work under these new rules, and here today, I mean I probably should have known that there are 4 or 5 Ministers already who do not like the setup of the new possible line-up or how the team is selected; it is quite worrying. Because are they wanting to keep their silos when we are told, if I go and ask a question of somebody, somebody will come up to me and say: "Could so-and-so answer that because that now naturally falls under there?" and I do not

know that until I have asked the question and it is under all this. This is confusing, it has not been working properly, and I have this option today, do I delete these Articles or do I leave them in? To me it is very simple. I am going to take that leap of faith, I should have probably taken it a few years back when we literally had gone all the way through this and to me I have now, as I said in the principles debate, we have to put some faith in who we elect, we have to put the faith in the team, and, when we can, then hold them accountable. I am sorry that I am not getting support from the party behind me, but the debate they are having with themselves is not even on the table and, what, it is not democratic, but I can only live with what it says in this proposition, I can only live with the system. If and when parties come about, it is not here, democracy where people ... we all arrive at the polling stations, we are all declared red or blue team, and there could be a white team, green team, whatever as well, and then the public elect because they like nice, it could be Mr. Mézec, it could be Mr. Gorst, who are the head of that party, and they know then that they are going to get those as the Chief Minister. To me, it will not be in my political lifetime that happens. I am sorry. Deputy Farnham seem to think that the parties are gaining traction, Senator Farnham, sorry. Sorry, Senator. I am going off subject now; the only thing we have on debate today is P.1, either take the Articles out, we have already changed the Civil Service and we leave the Ministers or we take them or we leave them in, we have to trust that we know what we are doing. We have to trust that the Ministers will work as a team and there is always the option, and it will be the team, and the team will go. People will be much more confident to bring a vote of no confidence if the team is badly performing. There is nowhere to hide, nowhere to hide. So I am sorry, and I am sorry to Senator Bailhache, I know he strongly believes that he still thinks we need to do more consultation on this, but I have been here, not longer than him because he has been in every different seat probably, but I just feel now it is the time today when we have the chance to change it, do not leave it to next Assembly, it will not happen.

3.6.13 Deputy J.A.N. Le Fondré:

Often I am in agreement with Deputy Martin but unfortunately this is not one of those occasions. I go back to the point, and I was working out how long have we had; we have known for years about the silos and all that type of thing. P.1 was in this Assembly for debate on 22nd February; we are now 20th March. This is the point, Senator Bailhache has made the point, my blood pressure has calmed down from that particular moment, but it was ridiculous the amount of time or lack of time that has been allowed for Scrutiny Panels to look at this and that is the fundamental concern. So let us go positive briefly for a moment. We have made a significant change at the operational level that will sort out a lot of the problems on the silo mentality. Hopefully that is booked; or banked even maybe. That has to be one of the key things that I would suggest almost everyone, if not everyone, in this Assembly has been seeking for a long time, to get rid of those silos. Then it comes down to this issue, and it has been referred to as well, about democracy and responsibility. I was just standing back, there are 2 things, the problem is that, and I have been one of them, I am one of them, I want to see effectiveness and efficiency in how we operate and that is when we all make analogies to the corporate style of getting that efficiency through. But the one caveat always is that, unlike with a company, obviously what we do - and use Health as the example - then has a major impact on large chunks, if not the entire population. That is that difference. So we want efficiency and effectiveness but the impact on the population is the democratic part. That is the distinction. We have heard the comments, we have heard it, with power comes responsibility has been said somewhere in here. But responsibility also means accountability. Now, I have sat through, and I know there are other people here and Deputy Martin is one of them, not them all, but I have sat through 4 Councils of Ministers and I would say my assessment was that the first 2 were probably relatively okay. It is not saying they did not have big issues, they had the entire restructuring of the tax stuff, for example, we had Zero/Ten; we had G.S.T. (goods and services tax), and those went through. Yes, there were some very healthy debates in there, but ultimately decisions were made. It has to be a fair comment to say

that this present Council of Ministers, my perception is it is held in a lot lower esteem than those ones previously. The system has been exactly the same. So, is changing the system going to, on 4 weeks reflection basically, achieve the changes that we are being told? What I am struck by was Senator Bailhache's comment: "How do we hold what Minister to account because it is just going to be Jersey Ministers?" I am going to use - and this may be wrong - one of the characteristics of the Innovation Fund was decisions being signed-off by different people, there was no one overview picture. That is my concern in this lot, and Deputy Brée has made the same point, under the law any Minister - and I am not too sure if it is still an Assistant Minister or not - will sign off or can sign off anything under what the law says. So potentially somebody in Social Security can sign off something in Planning and the Jersey Ministers will be held fully responsible for that. So how then does one hold the Minister, which Minister, to account? The only analogy I came back to, it will be like juggling jelly. That is it, is that how do you get that picture? The trouble is - and I think Deputy Mézec has covered it as well - we are not clear on that yet. So you can take the leap of faith but this is law, as soon as it is in, it is in, and that is what the Minister will operate under. For me one of the big issues that we have had in these last 3½, we have all been told it is about personalities and how personalities function - we have seen quite a lot of that in the last 3½ - but it is also about can you take people with you. It is how do you take the Council of Ministers with you, how do you take this Assembly with you and how do you take the Island with you; and there have been some major failings in that in the last 3½ years. I do not think putting all that authority in the hands of effectively one person ... and I go back to Senator Bailhache's comments. He says political power is being centralised, the only Minister with the authority to call upon any senior civil servant to brief him or to direct someone to act on his behalf will be the Chief Minister. That is the structure. Now, we can go down that way but, as I said, that is the distinction between a corporation, if the corporation gets it wrong it goes bust. We cannot do that. A vote of no confidence is always the option: in reality in the last 12½ years I have been in I am trying to think how many votes of no confidence have been brought versus have succeeded. So although that option is there I am not convinced that works. I do not think that accountability is there in practice. That then takes us back to the point. If I understood Senator Bailhache correctly, 5 Ministers do not agree with this. That in itself was a slight revelation to me. So we do not have unanimity on the Council of Ministers at all, that is very clear. There is this concern - it has been reflected enough times - that no one has properly understood the actual consequences here. The consequences definitely are a major more centralisation of political power versus the operational power within the Civil Service. As I said, I absolutely endorse and I am very glad the Chief Minister accepted the amendment that the machinery of government review panel did put in place, so we absolutely endorse the operational changes. It is the political changes that we are discussing and I think those could take a little bit longer. On that basis I am happy to support Senator Bailhache.

3.6.14 The Deputy of St. John:

I am going to speak to a report that was done in 2013 because in the comments to Senator Bailhache's amendment it is suggested that there was no consultation that had taken place, that insufficient time has been allowed for discussion by Ministers, by the Scrutiny Panel and by Members in general. The reason why I refer back to the report, it was R.105/2013, and it was a 2-year long review whereby civil servants were interviewed, States Members were interviewed, everyone that interacts with the government system was interviewed; and we produced a report. The reason why that was produced was because we had had time and time again the same debates over whether we continue moving towards the machinery of government system, ministerial government system as we see it. Ironically, right on the first page it says: "There remains a pressing need to address blurred lines of accountability and a prevailing silo mentality." That was 5 years ago and still pretty much relevant today.

[17:15]

What the group tried to do was to devise a coherent single package of measures to bring about the necessary improvements in short order. I will skip straight to the area where we talked about collective responsibility. The reason why the current Chief Minister - as was then the Chief Minister - brought forward collective responsibility was because of this report. In the report we also stated: "We recall that Clothier saw a need for the Council to have the power to direct departments if such direction became necessary. This seems to us to be a sensible addition to the powers of a Council bound by collective responsibility. Any such direction would need to be clearly defined by way of deadlines and targets so as to enable the Council to monitor compliance." The recommendation, therefore, stated that the Council of Ministers should be invested with sufficient powers to direct individual departments, if necessary. So when I look at what the Chief Minister is proposing I then go back to my original concerns when I was on the review group who looked into this, it was a sub-committee of the Privileges and Procedures Committee at the time, and the big question was do we continue moving towards ministerial government or do we have a hybrid system. The view of the group when making these recommendations was we move towards more of a hybrid system because the argument was that we needed a more inclusive system of government. What is being proposed here is very much towards the ministerial government side of things, it is much more for a political party system, but then we have to ask ourselves a question of what comes first. It is a chicken-and-egg question: do we wait for the political parties to arise or do we put in place the powers and ensure that it works effectively? My own view is it does not matter what system you put in place, it is the people that are in that will make it work. I agree with Deputy Martin who talks about the team element; and you do have to - like Deputy Le Fondré says - take people with you. This role of being a politician is not for the faint hearted and it can be extremely difficult sometimes. One of the biggest concerns, and I think it remains absolutely today ... and with all due respect to having a new chief executive officer and it is great that we have somebody that is coming in willing to do the work, knows the issues and is getting on and doing that particular operational side of the governance structures that we have. But the follow-on from the recommendations made by this group was on page 34 of that report where we talked about governance. Governance, I believe, has been a huge issue for the States during my time, 9 years. One of the paragraphs which we refer to in the discussion about governance was deciding what the right thing to do is, that it can be challenging, and that the ultimate aim is that we want to try and improve the public trust in the States. Ethics is about principles, values and beliefs, which influence judgment and behaviour. It goes beyond obeying laws, rules and regulation. It is about doing the right thing in the circumstances. Ethics is fundamental to establishing trust. The existence of trust is essential to businesses and society, it enhances the dependability of relationships, facilitates transactions and promotes the efficient allocation of resources. Some of these areas ... we talk about the threats, the various organisations have identified certain threats that could impact upon the decision making processes and that needs to be guarded against. These are all readily transposable to the world of the politician and civil servant and can fall into one or more of the following categories which are: self-interest threat, self-review threat, advocacy threat, familiarity threat and intimidation threat. We stated that: "It seems clear to us that to mitigate some of these threats there is a requirement for greater transparency and better oversight than is presently the case. As an example we do not believe that it is appropriate that decisions that could be made that are known solely to the Executive. However, one also has to ensure that the counterarguments regarding confidentiality are addressed." We considered that there was a further need for checks and balances. So I am stood here now and I have come to the position where Deputy Martin states do we carry on doing the same thing knowing the problems that we have, knowing the issues that are fundamentally there. Then there is this other voice niggling at me saying: "I am concerned about the checks and balances." I did ask a question when we were ... I know we have passed the agreement of the principal accounting officer and I agree with that fundamentally, but at the end of the day it all comes back to the accountability function and the role of accountability and what that means. I have concerns later on in the draft law in another particular Article about

shuffling Ministers. But I am willing to at this point say that I am going to vote probably against Senator Bailhache's amendment, and the reason for that is because things need to change and I think that going forward I need to be able to give whoever is in the States following May the confidence that there will be an accountability structure in place with a team of Ministers. But I would also add caution to that concern of the checks and balances and ensuring that what happens going forward is that there is more openness and transparency in the way that the Council of Ministers, and ensuring there is more of a cohesive working with non-Executive Members because otherwise ... well, it does not really change. This is my problem. I go back to the issue of is it really the structure that is the issue or is it the people that is in it. So I am willing to give this change to the structure a try; I am not convinced of the arguments that this structure will make everything wonderful again because I just do not believe that argument. But I am willing to move forward and I would say to the next States if they do not feel it is the appropriate thing to carry on with then it is within their power and their remit to change it again.

3.6.15 The Connétable of St. Mary:

I am very pleased to follow an excellent speech again from the Deputy of St. John. Like a number of other Members, a dwindling number I would say though, I came into the States of Jersey at the same time as ministerial government came in. I do not have Deputy Martin's experience of the previous system and of working towards the change, but I do remember the expectation that ministerial government would deliver a real tangible difference to the people of the Island. It has failed totally to do that, in my opinion. Deputy Le Fondré touched on something, he said that he believed the first one, perhaps 2 Councils of Ministers, worked more effectively and there has been a decline; I think I am not paraphrasing too much. But that is not just a question of the style of the membership. The machinery of government was flawed from the outset and it was, in my opinion, like a trusty wagon rolling through the plain that had one loose wheel. At first that did not really matter, there were a few residences set up, a bit of constructive or destructive interference happened; but there was such goodwill, such hope and such expectation by the people who were in that new system that compromises were made and people really chugged along to get things moving. But as we have progressed the ... I am being eclipsed by the Constable of St. Martin who has guessed the punchline. **[Laughter]** As things moved on that wobbly wheel got worse and eventually fell off. Now, we carried on going with the 3 wheels but the Cherokees are after us and now there are only 2 wheels on this wagon. I do not wish to make light of this, the fact is that the people of the Island by and large do not care how we deliver government. The only thing they want is that the Government we provide them with, the Government we deliver them, makes their lives better or at the very least certainly does not make their lives any worse. I do not think we are doing justice. I have said that so many times, it has been my abiding theme over this term I think; that we are not giving the people of this Island what they need. Historically Members, the public, anecdotally have said: "It is because you always accept half a change." Here we are again accepting half a change or considering accepting half a change. We have got a massive potential for change at the moment in our Civil Service structure. We have got some very difficult decisions to make and there will be some very difficult conversations being had. I do not want to undermine or belittle any work that our workforce are undertaking, any discussions that are being had, because our workforce, Members, is our coalface and is the most important thing probably in service delivery that we have. When we are asking big things of them we should be making sure that what we do in this Assembly echoes and facilitates the progress that we want to make. Again, this is a thing where the power of debate is a really important thing and we must not skimp on it because, to me, Senator Bailhache's amendments are proposed with the utmost care and really do deserve consideration. I really have thought that I had the possible ability to support it but the more I have listened to what has been said the more I am sure that if we do not seize this opportunity to make the changes that are required the people of the Island will end up with another 4 years of probably a Government delivering things in a way that is not efficient for

them and does not enhance their lives. The reason for that is simple: no matter what happens in the election ... bearing in mind that the people of this Island only have one chance now every 4 years to put people that they think will be effective for them into the States of Jersey, and then they have 4 years during which time - if we carry on the way we are going - those people will be frustrated yet again that the people they have put into the States Assembly cannot achieve anything like the things that they want them to achieve because of the way things are structured. When we have the ability now at the next election for the people to have their say, we already know that there will be a massive change in the makeup of this Assembly, even if there are no overturns at the polls, the people who have already indicated that they will be leaving the Assembly will leave very big shoes to fill. I think that the new Members of the new Assembly will have very much bigger things to focus on than the machinery of government, yet again. I have said this in every debate we have had I think on machinery of government, on reform, that every new Assembly does not really understand the difficulties that the previous Assembly has had in the way it runs and needs time really to feel its own way and to find out how things are working and to make their own decisions. So if we do not make a decision to change we risk building in stagnation for the next 2 or 3 years probably at least, and the States may even find themselves prior to the next election with people saying there is not enough time to consider these changes. The cycle repeats itself and I think we really have to now decide, as I think the Deputy of St. John said - and I hope I do not paraphrase her - are we convinced that we can go on the way we are? If we are not convinced that we can go on the way we are and we can support this change or embrace this change then why would we not? Why would we not do whatever we can to ensure that this time we have the 2-pronged approach of a reform of our structure in the government and a reform of our structure in the workplace at the point of delivery?

[17:30]

Because in my experience, speaking as a Constable and a representative of the Comité des Connétables in some areas, I personally, when trying to promote ideas have found not just a silo mentality in a department but silo mentalities within that department, one area of a department is not talking to the other area of the department. That simply cannot go on. We cannot allow it to go on. Because while we allow that to go on we do not give the people of this Island any chance at all of getting a balanced and a cohesive government to serve their needs. That is what we are here for; we are here to serve the people of the Island.

Connétable L. Norman of St. Clement:

Sir, I wonder if this would be an appropriate time to have a 30-minute adjournment?

The Deputy Bailiff:

Well, Connétable, that was exactly the point I was about to say, and I was about to say that Members will recall when agreeing to sit until 9.00 p.m. tonight that we were going to have a break of about half an hour. I am in the hands of the Assembly as to whether it is now or whether or not it is at 6.00 p.m. or thereabouts. But, in any event, it needs to be ... **[Aside]** Very well, I guess the mood of the Assembly is that it should be now, in which case the States will stand adjourned for 30 minutes. We will reconvene again at 6.00 p.m.

Senator S.C. Ferguson:

May I ask, sir, before we break how many people are left to speak?

The Deputy Bailiff:

I have notification from 2 who wish to speak on this amendment but I suspect there will be at least another 3 or 4 on top of that.

[17:22]

ADJOURNMENT

[18:02]

The Deputy Bailiff:

The debate resumes on Senator Bailhache's amendment to Article 9.

3.6.16 Senator A.K.F. Green:

I am pleased to follow the Constable of St. Mary, the Deputy of St. John and a little while ago Deputy Martin. I aligned with what those Members said but I was moved really to speak by a comment - and I do hope I quote him correctly - by Deputy Le Fondré, one of things he said was: "We do not understand the consequences of this." I hope that I have got that as a correct quote. But I would argue that we do. We do understand the consequences of this amendment. We do understand the consequences of not making the change, as laid out in P.1 by the Chief Minister, and that is more of the same: another 4 years of what we have had for the last 3½. That said, I also align with the comments of Senator Routier that despite the difficulties much has been achieved. We have got significant investment in housing, £30 million extra in health, which has a direct effect on people, particularly those being cared for in the community. We have seen considerable reduction in unemployment and we have seen an economy that is stable, coming back into the position that we would like it to be. But it could be so much better if it was directed and co-ordinated properly. We have a new Chief Executive ... and the Constable of St. Mary was referring to our wagon with 3 wheels, I think we ended up with one wheel, and I do not remember which previous Chief Minister it was, it might have been previous Senator Walker, used to talk about the good ship Jersey. As far as I am concerned, with the new chief executive we have got somebody at the helm who wants to be directed, if you like, by having a proper programming of the chart plotter, and to have a single identity, one person setting that chart - obviously in consultation with not only the other Ministers but in fact in consultation with States Members - but one person programming the direction and one person being held to account. I do not subscribe to this being a diminishing of ministerial responsibility. Forget about the future hospital project which is a different team, but as Minister for Health on everyday work I get advice principally from the Chief Executive of Health. I get advice from the Medical Officer of Health who is in the Community and Constitutional Affairs Department, and that is something that I progressed myself and it happened; there are a lot of other reasons why that needed to happen but fundamentally how could she oversee regulation when she was reporting to the Chief Executive of the department she was regulating. That was one of the reasons for that. I also get advice from the head of Environmental Health who sits in the Minister for the Environment's Department. So you will more of that advice coming in where it is right to come in. I do not hold with this Minister going off, going rogue, signing agreements and contracts in other departments without anyone knowing about it. That just is not what it is designed to do and it just will not happen. But you do need to have a Chief Minister who if he does not like the direction that a Minister may be taking his department in or setting the policies for, rather than giving words of advice you need to have a Chief Minister that can say: "This has got to stop and this is what we are doing." If the Minister does not want to do it that way then it may be time to look at a shuffle or something else. If we go on the way we are we will just end up with another 4 years of chaos, of frustration, and it is frustration not only for Ministers, not only for Members of this Assembly, but it is frustration for the Civil Service, it is frustration to some brilliant people we have got who are not allowed to do their job properly. These changes will allow it. Is it perfect? Possibly not. But the person that used to sit here before me, Senator Le Marquand, used to say the downfall of a good plan is the quest for a perfect plan. This is a good plan. It may need tweaking as we are going. This is a plan that could work. This is a plan that could make a fundamental difference to government, to ministerial responsibility, and to the outcomes for the people of Jersey. At the end of the day those are the people that count. So I urge Members to reject the amendment but support the Chief Minister in P.1

unamended in this part, because more of the same is just not acceptable and we have just got to go with this one and hold the Minister to account, whoever the Chief Minister might be, later on.

3.6.17 Deputy S.M. Wickenden of St. Helier:

If you plan for change tomorrow it will never be today. Tomorrow, tomorrow, it is only a day away. We have lots of reviews into changing the way that we deliver our public services, we have had the fundamental spending review, comprehensive spending review, public sector reform, over I think the last 12 years. It is only now that we have a plan called One Government, and it is all about providing and developing an effective, efficient and responsive public sector. This is what this is about; it is about providing services to the people. It is not about who has what power or consolidating power. This is where we went wrong with all the previous reviews. The people in charge were the ones that needed to dilute their powers to make the services more efficient, but they were not willing to dilute their powers. Let us have change. We know it is needed, we have seen it in just about every report. This is the change we have been looking for. At least it is something that we can do, but it is about one government, it is about delivering efficient services for the people. Let us not have change tomorrow, let us have change today. I would say let us not do it half either. This amendment seems to say: "We will do one half of it but we will keep the other half the same." It will cause more confusion than it will cause help. It needs to be dynamic, it needs to be efficient. I would say I am not going to be supporting Senator Bailhache's amendment because I think it is just diluting and it is only doing half the change. Let us do the whole change and let us do it today.

3.6.18 Senator S.C. Ferguson:

I do think it is all change for change's sake. Somebody in the debate, I do not know who it was, said trust in the next Chief Minister and Council of Ministers to make sure there is accountability. How many people here have owned and run their own businesses? How many of them would operate a business entirely by trust? Do you just trust people to keep to the budget? Do you just trust people to pay the bills? It should be trust but all I hear - with a few notable exceptions - is the political equivalent of "it will be all right on the night". One of the former chief executive officer's problems was that he could not direct chief officers, which really took away any sort of vestige of management power. I have no problem with that part of the proposition, but I do have a problem with the insipient centralisation of political power which might well read as dictatorship that we appear to be setting up. Where are the checks and balances? How do we know that they will be installed in the next Assembly as has been implied? As has been said, trust but verify, and you verify that things are happening before the changes. Can we be certain that promises made now can be achieved after the next election? It is not that I distrust my colleagues, but who will be in power in due course? I really feel very strongly that Senator Bailhache's amendment should be supported because a bit of caution; trust but verify.

3.6.19 Deputy R. Labey:

No, no, no, Senator Ferguson, you are on the wrong side, you really are. You should be on the side to push through this. So should Deputy Le Fondré, so should Deputy Brée. I really believe that. There is a weird axis going on, there are half the Council of Ministers in support, half not, there is the Brée/Le Fondré axis, so it is probably going to be down to the Constables on this one so I am going to see if I can pick up a few stragglers for Senator Gorst. **[Laughter]** I sense that some of the Ministers, subconsciously and not in a bad way, are slightly being territorial and clinging on to the power that once was theirs. It is understandable, but we have got to move on. I wanted to get in after the Minister for the Environment but I switched my light on too soon. But I can sense what he is going to say and I would like to remind him that at the start of this term he had to relinquish some power because of a decision by the previous Assembly, and he was honest enough to say: "Well, I am reluctant to do this but it has been set in course and I will do it" and he relinquished his power for

determining applications to the Planning Committee, upon which I serve. I have really enjoyed my time on the Planning Committee, in spite of the fact that every decision you make is not going to make you 100 per cent friends, there are always 2 or 3 sides to a planning decision.

[18:15]

So it is a job that not a lot of people want in this Assembly but it is a job I have enjoyed doing because it is difficult to get things done in politics, and I feel on the Planning Committee we can have immediate results where we grease the wheels, we apply balance in one direction or another, and we can make individuals' and families' lives better by a decision we take. So I have really enjoyed my time in it and it is 6 or 7 Members from all sides of the House that sit on that committee. I left the Planning Committee at the last meeting and I was walking out with one of the other members of it and I said: "I really enjoy sitting on this committee, we work really well together" and our figures, by the way, I have to say, are brilliant because at least 75 per cent of our decisions are upheld by third party appeals. So you could say that the new planning system is working and, as yet, we have not passed a massive eyesore that everybody is up in arms about. I said as I left: "I really enjoy this because I like listening to and learning from the other people on this committee and I am grateful when they listen to me." I said: "I think we work really well together, we come from all sides of the House, and we listen to each other and we are productive and we work well." The person I was saying that to said: "Yes, and that is how every States department should work. That is how they should all work, where you come together in that way." The worst thing we can possibly do, it is not a blessing, it will be a curse if we leave this over to the next Assembly. Just as the architects of the Planning Law, and I pay tribute to former Deputies Scott Warren and Young and all the others of them, who put in this system for planning, it is working and it is better. We are getting less complaints, and it is not pleasing everybody all the time, it never will, but it shows that it can work. I have flip-flopped on this debate, especially after Senator Bailhache's - as always - very persuasive speech. After his speech I thought: "Right, I am going to go with him, he makes a lot of sense." Then I thought: "Going with Senator Bailhache and cherry-picking this proposition is going to be exactly what people expect of this Assembly." I do not want to do that now. We are coming to the end; we have had no reform hardly, I mean, at the moment there is 3 weeks to an election and there are 6 Parishes without a contested election for Deputy or Constable in them. That is half the Parishes. We have failed in that way. I know there is time but it is going to be dangerous. We have the opportunity to do some reform here. What if it does not work? There is nothing worse, in my mind, than sticking to the *status quo* because like those old posters "Labour is not working" Government is not working well enough in this Island. It is taking far too long to do things. It is a leap of faith and it is a leap into the dark, but what is worse: the *status quo*? I think the *status quo* is worse than taking this chance. Suddenly people are getting romantic about the current system and clinging on to it like a beloved friend when it is really worth pushing aside. I agree with Deputy Mézec that the Chief Minister, he or she, should have more power. We are electing them to do this job and we are tying their hands behind their back. But with more power comes the potential to be exposed, comes the potential to be more vulnerable if you get it wrong. This business about not knowing who to hold to account, well, there will be a Minister for Education so if there is a massive failing in the schools we hold the Minister for Education to account surely. If he stands up and says: "Well that was not my policy but the Jersey Ministers made me change it" then we chuck the lot out. We have got to get tough and we have got to get tougher about doing that sort of thing if we return, because it is not about us, it is about the people out there and the people we serve. What are we going to do? I agree with Deputy Mézec's ideals, but what do we do, wait until there is party politics before doing this, or do this and see if it grows party politics. I think that is the better way around. I think Reform are missing a trick. I think that some people are weirdly on the wrong side of the fence. Let us do it. Let us not curse the next Assembly with something that they have to then do. Let us give them a chance to hit the ground running. *Carpe diem*; seize the fish. Let us do it. **[Laughter]**

3.6.20 The Deputy of St. Martin:

I am delighted to be able to follow Deputy Labey for the first 2 things I could say to him is I am delighted he is going to save me so much time because as he now knows what I am about to say he will be able to write my speeches for me. Secondly, I am delighted that he has enjoyed his time on the Planning Committee so much. I risk falling out with him but I think he has enjoyed it more than I have enjoyed him being on the Planning Committee for so long. **[Laughter]** I was confused, but now I am worried. I am worried because I am confused and I am worried because I appear to be one of very few people who seems to be confused. I am confused because at the start of this session of the Assembly we had a Chief Minister who announced he wanted a new ministry. I am not sure we will have new ministries in the future. It appears to me that it might be at the behest of somebody outside of the political arena. I am confused because I am elected as an individual, with a manifesto. We do not have party politics, as has been pointed out. But I am happy to declare that I want to do things better. I want to be responsible and not have others be responsible on my behalf, and I do not want to hide behind the Jersey Ministers. I am happy to live and die politically by my own decisions. I am confused about Scrutiny. I do not think we have consulted with Scrutiny enough about how this would work and I do not think we have consulted with the Assembly enough about how this new system will work politically. I totally agree that we should have done better and we could have done better in this last session of Government, and there are a number of reasons for that. I felt some time ago that the Civil Service system needed to be reformed, and I am sure that had it been earlier we would not be here today. I cannot help but think this is a ... I have written down a pre-election knee-jerk reaction; maybe that is a bit too strong. But I think more discussion on both sides would avoid things coming rushed at the end of the session. I want to be clear, I want to break down silos and I want to be more flexible. But I also want to be responsible, so maybe I should be running for Chief Minister because it seems to me that that is the only position you can have the responsibility and the flexibility at the same time. Members will know, if they can remember back 6½ years, that when I first stood for election to this Assembly I put working together as my manifesto pledge, and I put working together with every other thing I do. I try in every speech I make to use those 2 words and promote working together. But I am still confused. I am still not clear on this proposition. I want to do better and I think my confusion is held out of the fact that I am sure that if we had the new Civil Service system as proposed we could do better with the system we have in place politically. So I feel there is compromise, I feel that there is an opportunity for both sides to work together to make the system better. I respect Deputy Labey and others like him who say: "No, today is the day, we need to move forward, never comes." Deputy Martin, I have the greatest respect for, who has got plenty of experience of seeing these things come and go in the past. But I say I fear that we are rushing this for those reasons and we will regret our decision if we move ahead with this now without considering it further.

3.6.21 Senator A.J.H. Maclean:

I am disappointed to hear the words of the Deputy of St. Martin. I hold him in very high regard. I think he does an excellent job, he is an excellent States Member and he is an excellent Minister. **[Approbation]** There is no particular "but" aside from the fact I am disappointed to hear that he is worried in the way that he has expressed, and concerned about what is being proposed here. Because I do not think there is any need to be. In fact, there has been mention of various strange allegiances. I was struck by Deputy Russell Labey who talked about leaping frogs, I think it was, or the need that Deputy Martin also referred to about taking a leap of faith, rather than leaping frogs; the leap of faith that is required. One or 2 other Members have also talked about leaps of faith, to the extent that I almost feel we have a party building called the Leap of Faith Party. But in all seriousness, this is not a matter that one should deal with in a flippant way at all; it is very serious indeed. I was struck also by the Constable of St. Mary because we entered this esteemed establishment at the same time back in late 2005. It seems an awful long time ago, in fact I had almost forgotten the exact time, but we

and a few others - including the current Chief Minister - arrived in this Assembly at that time at the beginning of ministerial government with a great deal of hope. We heard a lot about committees and committee systems and how it moved at a glacial pace, it was inefficient. Actually there were elements of the committee system which I think worked quite well. But moving to ministerial was deemed to be progress, and I think those of us who came in at that particular intake at the beginning had a degree of excitement about the new world that we were entering into. I was interested with the analogy that the Constable of St. Mary used about her jalopy chugging along and wheels falling off. I think she only had 2 wheels left by the time she had got half way through her speech. It struck me that she was right. There was so much optimism in that first States that I think a lot of people were prepared to work together to paper over some of the cracks. The cracks were not necessarily a problem because the system was designed to evolve. This is what we are talking about; it is about evolution. Every system needs to evolve. We need to move forward continuously to improve. As it was used and put through its paces it was clear that the ministerial system had some areas that dramatically needed to improve, and the speed at which that improvement was put in place quite simply has not happened. I think we need to recognise that taxpayers are paying for a Ferrari. That is the public sector; they are paying for a Ferrari but they are not getting the performance of a Ferrari at the moment. That is where we need to focus our attention and that is why after all this time I was so excited about first of all the recruitment of what I consider to be an excellent hire in the chief executive. **[Approbation]** This is a man that has done reform before, that has changed organisations for the better. Not once, not twice but on 3 occasions in 3 different locations. This is somebody that knows how to do it so I am prepared to listen to what he has to say. I think what we have indicated support of in terms of Articles 1 to 8 deals with half of the challenge that the new chief executive is facing. It gives, with a principal accountable officer in particular, the necessary authority for that position to be able to operate in the way that is utterly critical in any organisation if it is going to operate efficiently and effectively. That is what the public expect. They expect that every pound of taxpayers' money is invested effectively to deliver good quality services. That, quite simply, is not happening and has not happened for a long time because of the structure we operate in. So we give the chief executive half the tools in the tool box. But unless we reform the other side, the political side, and we deal with the silos from a political point of view, then there is no way that he is going to be able to deliver on what we have asked him to do.

[18:30]

That is not in the interests of this Assembly and it is not in the interests of this Island. I feel very passionately, as somebody who has been here for quite a number of years and who is leaving, that this is the right thing to do. We absolutely must take this step. I took the point of I think it was Deputy Le Fondré and others who have said: "Look, Scrutiny have not had a chance to have a proper look at this." I was pleased with the Deputy of St. John's comments about there have been reviews and reports in this area before. There has been a lot of work done, maybe not to the detail that some might like on this particular aspect, but that will come. The little bits that are yet to be refined, that will come in due course. We know the direction of travel and, as far as I am concerned, we know that it is right. Yes, Deputy Le Fondré, we have made the changes or we are proposing the changes at an operational level, but we do need to take that leap of faith to ensure we make the changes to the other side. Deputy Mézec when he spoke earlier, and I have really been practising hard to get his name right **[Laughter]** and right at the tail end of my term I am almost getting there. I was having to resort to calling him a chairman but we will stick with the name. But, in all seriousness, I was really quite pleased with many of the things that he said. I thought he was very fair in a number of his comments, and I like the idea that he recognises the need for change. He does recognise it. I think everybody across this Assembly recognises the absolute need to change, because only through positive change will we get the improvements that are necessary, that the public expect and frankly we should be delivering. But he also talks about dysfunctional Government and I think that point -

if I may say so - has been overcooked. Yes, not everything has been perfect in the last 3½ years. One thing that has been particularly poor is the ability for this Government to communicate what it has been doing, because there are a lot of good things that have been going on. All we read about are the negative things that happen, and things do go wrong and it is a question of how you respond to it. Yes, it is partly the people, but it has got a lot to do with the structure, the reasons that things at times have not operated in the way that both I would have expected, the Council of Ministers would have expected, this Assembly or the public. I think that is a matter of some regret. But there are a lot of good things, and I will come back to that in a moment. Deputy Mézec also talked about the one thing missing, because actually he said he likes most of this, he thinks it is good, he thinks we should be changing and we should be improving, and he is absolutely right. But he said the one thing that was missing, which struck me, was democracy. It does not deliver, in his opinion, democracy. I think he is completely wrong. I think P.1 is all about democracy. It is about a good, functioning government. I find it absolutely ironic that he does not see it quite in that way. He talks about the systems we operate, the Strategic Plan, the time it takes to put it together, all of these things, I agree, need to improve. But it is not that drawn-out and lengthy and inefficient. By the way, we are not the only Government or jurisdiction in a similar boat. Look at the position that Germany have found themselves in, it took them 6 months to even form a Government. They are not alone, there are other places that are in exactly the same place. So we do not need to beat ourselves up all the time. There is an awful lot that is done that is good, both in this Assembly, the Council of Ministers, and throughout the Island. I think we should always continue to focus on those positive aspects. Articles 1 to 8, broadly Members seem to be in agreement with, which is encouraging. I am going to go back to the amendment that we are debating now around Article 9 and Senator Bailhache, in particular. It is easy to see that there are one or 2 Ministers - and there is a bit of a split here in the Council of Ministers - about the way in which we progress on this. It was Senator Bailhache who said I think that this is a leap into the unknown. So we have got a leap of faith and a leap into the unknown. But it is not really that much of a leap into the unknown, Senator Bailhache, if I may say, because this happens elsewhere. We have seen it in places like New Zealand, Scotland and other places. It is happening elsewhere so it is not really that difficult to see that it could work very effectively here in Jersey. I think that there is a concern again raised by Senator Bailhache, and other Members, about accountability and about how the system would work and how Ministers could hide from their responsibility. But there are Members of this Assembly quite rightly saying there is a lack of accountability now. You may think Members have got accountability but have they really when they say that various things have gone wrong; and I have heard the Innovation Fund mentioned on a number of occasions, and a number of Ministers were involved in that over more than one term. If Members think they have accountability now, they do not. So this change, why the fear about lack of accountability, in fact it will be a far greater chance of accountability by this streamlining, both in the Civil Service and also on the political side. That will apply also to Scrutiny, in terms of them being able to identify who is accountable for particular policies, and I might point out that is one of the critical functions here, that Ministers are supposed to be developing policy and strategy and that is where they should be focussing, not down on the operational side. We have clear divides which are being developed as part of P.1, which help in that regard. This is about improving the efficiency of government, making it more nimble, making it more agile and able to react to the very volatile world that we are now living in. It is for that reason that we critically need to make sure we are in the position to do so, whether it is Jersey Ministers or not, or the Government of Jersey. Scrutiny and Members will know who it is responsible for policies that are developed and brought forward. I just want to pick up on one final point about this factor mentioned by one or 2 Members about this Government being more unpopular than any before. I disagree. I would suggest that governments that are involved in bringing forward unpopular measures like G.S.T. were incredibly unpopular. So this is not a Government that is more unpopular than the rest. Governments that make decisions are not necessarily going to be popular. Governments that do nothing, Ministers who do nothing or

Members who do nothing, may well for a time get away with it, but quite frankly we are better making difficult decisions and being unpopular than not making any decisions at all. That applies to Members and this particular proposition. We need to make this decision today to support P.1 in its entirety and I am afraid to reject Senator Bailhache's amendment, because that is dilly-dallying, it is not making a decision. We need to put this decision in place for the next Assembly to ensure that it can be as efficient as possible and get a fast start to properly serve the Island of Jersey, which we all care about so much. The unpopularity or supposed failures of this particular government, we are forgetting ... and I was pleased that Senator Green touched on it briefly about some of the achievements that have been delivered on. Through 2 consecutive Council of Ministers dealing with the global financial crisis, dealing with businesses going out of business, dealing with jobs being lost. More than 2,000 jobs lost in financial services during the heat of the global financial crisis. The strategies put in place, the back to work stream, excellent work in Social Security, that scheme getting Islanders retrained, reskilled and back into the work place. Now we see unemployment levels dropping, levels of employment at the highest level they have ever been. Economic growth in the last 3 years; 3 consecutive years of economic growth. Real earnings growth above inflation for 3 or 4 years in a row. This is all positive work that this Government and Members of this Assembly have been party to, and it should not be underestimated at all; and the state of public finances which some years ago may not have been as strong through the global financial crisis as we had to use some of our reserves to support the economy and support jobs. Moving on with some other points: this Government has delivered efficiencies during this term, £77 million targeted, £49 million of efficiencies delivered by the end of 2017. Investment in health, investment in education, investment in infrastructure, a Medium Term Financial Plan with £168 million of funding, Andium Homes improving the quality of housing. I could go on and on but I am sure Members would not like me to do so. But the point I am making is that this Council of Ministers has made decisions, it has made difficult decisions in certain areas, and if Members reflect on that they will understand why there has been a lack of popularity in certain areas. This today is an opportunity to set the scene for the next Government. This is a big opportunity to make sure that we put in place a Government that can be the most efficient and most targeted and functioning Government, able to adapt, able to be agile, and able to deliver for this Island. By voting through P.1 that is how Members will do it and I would urge, therefore, Members, to reject the amendment from Senator Bailhache, which is simply seeking to delay and to block. We know that if that were to be the case what will happen is that the next Assembly will come in, it will not be a question of weeks or months, it will probably be years before this opportunity presents itself again, years when we will not be serving the Island who elect us in the way that we should. The way we can do that is by voting through P.1. I would urge Members to reject this amendment and support the rest of P.1. Thank you. **[Approbation]**

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

How wonderful it is to hear Senator Maclean in full flow. We shall miss him. **[Approbation]** But we have had a proposition before us from the Chief Minister lodged on 22nd February that we have been able to peruse for 26 days. Do we understand it fully? Is this a case of any change better than no change? The wheels have fallen off the wagon, does the Chief Minister come along and hurriedly fix them? Perhaps he does and says: "There you are, I have fixed the wheels, we can drive on again" until somebody points out to him that the wheels he has made are square. Are we opting for square wheels? Because can we be confident in any sense whatsoever ... oh my gosh, I shall miss that look as well from Senator Ozouf. That was a wonderful gurn, that was. Brilliant. Stopped me in my tracks. Very effective. Where was I? Square wheels. Do we know that this change is going to work? We were sold - or at least I was sold because I was here - way back we were sold the fact that the committee system was too slow. It took ages to make decisions. But we knew what was going on because we were in committees. Everybody knew something of the picture and could use it. But we were told that ministerial will be more efficient, more quick, more effective. Now we find that it

is not functioning properly and we are told: "But narrow it down, concentrate the power, and you can really get things moving efficiently and quickly." Another promise. Is that the case? Is that what happens?

[18:45]

We have heard from people about not just leaps of faith but faith and trust in what is going on, and that takes me even further back, pre-ministerial government, to the days of ex-Senator Walker, Chief Minister Walker, who would say time and time again: "Trust me." He would say: "We have studied this, we know what we are doing, we understand the issue and our proposals will work, trust me." Back in those, it seems to me, simpler days we often did and we went wrong completely. So the question of trust is absolutely vital in this particular case, but the issues here are about the concentration of power. We are talking about power and accountability, and as soon as we talk about power in politics then I am drawn to Tony Benn's 5 questions for the powerful, and I will ask them now and say and where is the public in answer to any of these questions. The questions are: what power, Chief Minister, have you got? Where did you get it from? Did you get it from a mandate, from an election? No, not in our system, not in this new system. The mandate, the decisions, the policies get invented after the election. Fundamentally wrong. In whose interests do you exercise power? Is it in the interests of the ordinary voter? I would suggest it is not. To whom are you accountable? Again, where is the public in that? Are you accountable to them? Can they affect decisions in the States? No; once every 4 years, that is when we get the accountability. The final question, and it is the vital one: how can we get rid of you? If Ministers are accountable to this Assembly and Scrutiny, which they have to be, how can we get rid of you? The answer is highly likely we cannot. Imagine a motion of no confidence in the Chief Minister or in the whole Council of Ministers when they are underperforming and performing badly. Can we get rid of them? It is extremely unlikely. The chances of success in a motion of no confidence are next to zero and that is the reality. When you take those 5 questions and analyse what is happening in this Chamber, in this Island, you have to come to the conclusion that accountability is not very great at all and that the system actually is broken. A tweak here and the addition of square wheels is not going to mend it. I think we are looking at any solution, any change, rather than no change, and I do not think that is a good basis on which to act. So I shall be supporting this amendment and opposing the entire P.1.

Senator A.J.H. Maclean:

Can I seek clarification from the previous speaker? I thought I heard at the beginning of his speech for the first time in 12½ years he congratulated me and I wonder if he could just confirm that I heard him correctly; and if he did indeed do that why was he suggesting he is supporting this amendment when I was against it?

Deputy G.P. Southern:

Because I love hearing your rhetoric, the Minister's rhetoric, because it is lovely words and it is lovely sounding and it means very little. **[Members: Oh!]**

The Bailiff:

Well, you did ask for clarification. **[Laughter]**

3.6.23 The Deputy of St. Peter:

Cherry-picking. Cherry-picking. We have heard all of this before. Remember Clothier? Clothier was almost 20 years ago and the result was a cherry-picked system. It has not worked, we know it has not worked, we have tried and tried and tried to put it all back together and we have failed. I think after 13 years of ministerial government it is probably time to have a little reflection and adaptation of how it works to encourage the system to be better. It is simply normal for a system to look at itself and adapt as time goes by and make itself stronger and better, because we are here to be

stronger and better for the people. We are not here for the "I", we are here for the "we". This is a consensual Chamber and it is consensual because we do not actually need party politics, we are here to drive consensus, and that is one of the very great qualities of our current Chief Minister. He is sometimes frustrating because of his absolute determination to drive that consensus, but that is one of his very great strengths and that is what we try to achieve. That is why we should absolutely reject these amendments because it is here for those people who are trying to strangle us by putting the "I" before the "we" and I think that through my limited experience in my first term as a Minister it is a joined-up process working across government to do what we do. Policy is about bringing people together and finding that consensus. It is not about looking at something from one angle of the lens; it is about working across and bringing people together, and I think this amendment would work against that and I ask Members to vote against it.

3.6.24 Deputy D. Johnson of St. Mary:

I was not going to speak but my immediate neighbour has prompted me to do so. She began by referring to the fact that ministerial government does not work. There is nothing in P.1 which affects that. Instead it concentrates ministerial government within a possibly small clique of personnel, and that is what the public's concern is. I think all Members here agree that the changes in P.1 as to the civil servants are very well intended and will work, especially in conjunction with the various reports from the Comptroller and Auditor General. That is where accountability is going to hit and that alone will serve one of the main purposes and remedy one of the main problems we have had over the last few years. But as for ministerial government, I do not see anything in the original P.1 which redresses the problem that the public have, which is that the Assembly as a whole has little say in the affairs of government. That is their concern. Reference has been made to the Assembly as a whole being shareholders. If that is the case then the shareholders wish more account to be taken of their wishes by the directors, so I fully support Senator Bailhache's amendment which, for the moment, keeps accountability in the hands of the various Ministers. That is not written in stone; I would hope that at the relative time, a short time, during which Ministers can see how well they have adapted to the proposals contained as to the civil servant changes, that might be changed. But for the moment I fully endorse Senator Bailhache's amendment.

3.6.25 Deputy S.J. Pinel of St. Clement:

I, like others who have spoken, am very supportive of our new chief executive officer and his team and the projected overhaul of the public sector, and the operational side of government structures. I also understand, but do not condone, that the communication from and within government has been poor. I also firmly believe that a Minister should not interfere in the operational side of the department. However, I remain unconvinced that the analysis of the projected consequences on the political - especially ministerial - element is complete. I am an advocate for and can embrace change when required, but find the lack of investigation into the explanation and direction of future ministerial roles is not, in my view, acceptable at this time. I do not believe in prevarication but 2 areas of such dramatic change, i.e. operational and political, at the same time as an election is a very big ask.

3.6.26 The Deputy of St. Ouen:

I understand the Deputy of St. Martin was worried that he found himself confused among a sea of people who were very certain about which way they wanted to travel, but the Deputy of St. Martin does not need to worry that he is the only person because I find myself very confused also. I am confused that a proposition of this nature could be brought forward which is so vague in its essential constitutional arrangements; how we govern this Island. We all believe it a great privilege surely to be elected to serve one's community, and we occupy a place of privilege in doing so. But that brings with it responsibilities to ensure that we have adequate material to take decisions and to exercise our

judgment responsibly. I would love to be able to say: "Yes, I have faith. I have faith that we can take this new road and all will be well, and let us go down that road and see where it leads us, and sure we will work things out and it will be so much better than where we are now." I would love to have that sort of faith but I am confused because I cannot exercise that degree of faith and I am confused that other people should think that a sufficient way of proceeding as Members of Parliament. Surely we have that responsibility if we want to change to ensure that there is a proper framework for government in place that has adequate checks and balances of power, especially in a system such as we are of independent Members where there is not a related party political system to control the exercise of power. So I remain confused. I can only support this amendment because I think we must proceed slowly, cautiously, and not in a position where we launch out into the great unknown, at goodness knows what, imperilling. So, let us take care about what we do and I, for one, will be supporting the amendment. Thank you.

3.6.27 Senator I.J. Gorst:

I think, on balance, we have had, today, a good debate about this particular issue. There are some speeches that I have been disappointed in and I will come to those. There are some that have been a little bit naughty. I am not surprised by that little bit of naughtiness, but I would go back to that right at the start. The idea was planted in our minds that the O.E.C.D. public governance directive was, I think, to use the proposer's words, gobbledygook, and there was a suggestion that that work was not worthy about a single legal entity and best practice. But I go back to it because in talking about a single legal entity it talks about the capacity to respond to emerging strategic challenges. I do not think there is any Member in this Assembly that does not acknowledge that we, as a community, face emerging strategic challenges. There are challenges of Brexit, there are challenges of the ageing population, the challenges that we face from around the globe as we seek to continue to have a strong economy and thereby provide the social services that Islanders rightly want.

[19:00]

So I do not think the aim of the single legal entity as outlined by the O.E.C.D. is gobbledygook. I think it is a model that can help us in this community, as a legislature and as a government, meet those strategic challenges. We have also heard that we require more mature reflection, we require more careful thought and that some Members are confused. I think that the Deputy of St. John spoke about some of the previous work that has been undertaken. Deputy Southern suggested that this proposition had only been lodged in February; he knows that it was lodged on 8th January and when we set aside this day for debate we had a discussion then about the other strategic and policy priorities that we discussed, not only in the Council of Ministers but also at a number of panels about the policy direction of these changes. Some Members suggested it might be a pre-election change. Well, these have been on the cards and been discussed since October and November of last year. If that is an accusation of pre-election then I stand accused of that. Others have suggested that we have dealt with the silo working in the first 8 Articles, that is the job done. We have sorted out the Civil Service, we have given a new accountability framework to the new principal accountable officer. If we want to do that today, if we want to put our heads in the sand and tell ourselves in this Assembly and tell the public that we serve that we have done the job, that we have got rid of the silo mentality by approving Articles 1 to 8, so be it but I know that Members in their heart of hearts know that that is not the case. They know that by approving only that and not the single legal entity they will be retaining a silo approach in government. It is not about taking power and consolidating it, it is the reverse. Currently, every single Minister has that legal power and it is saying that that silo approach is not the right one for the future and creating a single legal entity. Others have said about half the change. We can decide to do half the change but I believe that we will be selling ourselves, and we will be selling Islanders, short. It was Senator Ferguson who, at a Scrutiny hearing, post the Care Inquiry, started talking about the changes that needed to take place to the Civil Service and who was

to blame. Who was to blame in the Civil Service for these decades of not listening to children; of these decades of a system of government that did not work in the best interests of Islanders? I said then, in answer to her question, it is the wrong question. We are all to have the blame apportioned. We are all responsible. It is not good enough. It is only a partial answer if we try and pretend that everything that went wrong in those decades was simply about the Civil Service and the silo structure. We are not being honest with ourselves if we really believe that and we are prepared to stand up and tell Islanders that because we all ... I hear somebody saying it is not about the Care Inquiry. The change to the structure of government is exactly that because that is what the Inquiry said: government had let children down for decades, let Islanders down for decades. So if we pretend it is just about the Service, and that is our prerogative, but I ask that Members ask themselves whether that is the full story. Are we right to talk about "them and us" because that is what we will be doing, that is what a number of speakers have said. We are happy for them to change but we do not want to change. We support change; the principle of change is great but not this change and not us. It comes down to you can change, they can change, I am not going to change, we are not going to change. We have heard also, during the course of this debate, some of the tone of the coming election. Every problem of the last 6 years is my fault. Then we hear: "Why not?" An absolute misunderstanding of how the current legal accountability structure works. But we will have those debates during the election. I will be accused of A, B, C and D, of not having done more than the letters of the alphabet and I will talk about what has been achieved. But I will not be afraid to say that the change is now happening and these changes should not have happened earlier because they should. I am not afraid of telling the truth even if it means that I will be electorally unsuccessful because we, in this Assembly, owe it to the public. That is why I am proposing, later in this, to get rid of the collective responsibility as it currently stands. Debates like this are good for democracy, where you see senior Ministers ... it might not be good for our health but it is good for democracy when we see senior Ministers arguing out the issues of the day. I committed myself to change. Deputy Brée said, in July: "Nothing can ever be the same again" in a very, very moving and eloquent speech, and he was right, nothing should ever be the same again. I knew this day would come and it will not be the only one where we argue in this Assembly about change. Recently at an I.o.D. (Institute of Directors) event one of the questioners raised their hand and said: "The change that is being proposed is scary." Which was the change to the structure of the Service, it was the change to the principal accountable officer role, it was the change to the single legal entity; it made them fearful. I understand that and I understand today that some Members are unsure, they want more information, they want more time. But I say today, as I said then, I am more afraid of not changing. I am more afraid of muddling on because muddling on is easy. The reality is that in a single legal entity Ministers will have to work more closely together. Yes, they will be held accountable for what they have in their portfolio, of course they will. They will have laws that they oversee for which they will be accountable. But it will be more difficult because those Ministers will have to work together in the single legal entity. Is that what we want? Do we want Ministers to work together? Do we want to remove all of the silos and those silos within departments as well as across departments? Or do we want to muddle on? We have also heard people saying: "Well, you know, we are not really sure what it means." But as other speakers have said, there are single legal entities around the British Isles, there are single legal entities across the Commonwealth and they work well and they work effectively. Deputy Southern seemed to suggest to us that by staying as we are would deal with the issues that he highlighted. That is no answer. Things will get better by just staying as they are. Many Members said they have been persuaded by Senator Bailhache's eloquent opening speech and I have got no doubt that Senator Bailhache is going to give an equally eloquent closing speech that will be persuasive, that will say we need more time, will say we are not quite sure exactly what it means, will say we wanted to have more conversation around the Council of Ministers' table about the changes to the service and what that meant for ministerial portfolios. All good reasonable points but I ask Members to consider this: are they really content to go on with the system as it currently is, to

say that all our problems will be solved by a change to the service? Because I do not, for a minute, believe it will. That is why I make the case for the rejection, much as it gives me no pleasure to do so, to argue against my colleague in this way, no pleasure whatsoever. I do it because, just as he thinks his amendment is the right thing, I think moving to the single legal entity and removing the silos, that is the right thing to do for Islanders. It will bring greater accountability of Ministers to this Assembly and the Council of Ministers, not less. You see, it was Senator Maclean who reminded us of 2005. How times change. I recall, with him and then Deputy Le Fondré, going around the departments, being given permission, if that was the word, to look at how departments were structured, to see where savings could be made. Begrudgingly, officials agreed with Ministers that we could do it, and I think the Irish would say we were given the blarney. I am not sure if that is parliamentary. But do you know what, it was worse than that because it was not just the officials it was the officials right behind the Ministers who were stopping us from seeing what was going on and looking to see where efficiencies could be delivered, and in the corporation sole that is what happens.

[19:15]

Where the accountability and responsibility stops and starts is blurred and so you get Ministers doing the will of the official, parroting the official, stopping change from coming, stopping a co-ordinated, collegiate, consensual approach from taking place, and we kid ourselves if we think it is anything other than that. We have examples here, examples there of good working but that is how the current system works. That is why he and I and others feel so passionately about it because do you know what, we thought it was just about wasting a bit of money, about duplication across 10 departments. We thought that one day we would catch them out and if we banged our heads against the brick wall of: "No, enough" change would come. But I think we all had a rude awakening last year when we saw that that was not just the outcome; people's lives were destroyed because of the system we have got. That as well, and the system allowed it.

Deputy M. Tadier:

Would the Minister give way? Does he not acknowledge the fact that child abuse happens all over the world? It is not something, as terrible as it is, that is unique to Jersey. It happens in lots of different countries and institutions and it is nothing to do with ministerial systems. It is distasteful, I think ...

The Deputy Bailiff:

It is not question time.

Deputy M. Tadier:

I think the reason there is murmuring is because it is distasteful for some that he is trying ...

The Deputy Bailiff:

Deputy, please, if the Chair is speaking you have to sit down and let him speak. You are entitled to ask the Minister to give way to clarify a point in his speech or to clarify a point in a speech that you have made which he has spoken about but those are the only reasons you can interject at this point. You cannot do it in order to ask a question and certainly not to make a point. If you are asking for the Chief Minister to clarify a point in his speech, well then you are certainly able to do that if he is prepared to give way but he does not have to give way.

Deputy M. Tadier:

That was the point of clarification I wished to ask and I took it as tacit that he was giving way by the fact that he let me speak.

The Deputy Bailiff:

No, as he sat down you were entitled to assume he was giving way.

Senator I.J. Gorst:

May I resume, Sir?

The Deputy Bailiff:

You may.

Senator I.J. Gorst:

One case is too many but serious case review after serious case review after serious case review with a system, with a structure that does not talk to each other, that just allows it to carry on, and there are more in the pipeline. That is the sadness, there are more in the pipeline. We do have a choice, that is right, and it is right that we have this debate about that choice. But let us, please, not think that the best approach is more mature reflection, more careful thought because for me it is not. That is half the change, that is muddling on, that is continuing without proper accountability. That is burying our heads in the sand, that we can maintain silos of ministerial government and all will be well. I believe that Islanders are crying out for change, are crying out for a system that listens and acts, and I believe Islanders deserve it. It is for that reason that, as difficult as it is, I ask Members not to support this amendment. Thank you.

The Deputy Bailiff:

Does any other Member wish to speak on the amendment? Then I call on Senator Bailhache to respond.

3.6.28 Senator P.M. Bailhache:

It has been a long debate and the hour is late and I am not going to detain Members for too long. I think there have been a number of interesting speeches and I would like to pick out 4 points that have been made - perhaps 5 - in the speeches and then conclude with what I consider to be the 2 central points of the debate, which turn around silos and accountability. Dealing first with some of the points raised by Members. I think it was Deputy Tadier, first of all, and he was followed by Deputy Le Fondré, Deputy Brée and perhaps others, who said that simply not enough time had been given to the Scrutiny Panel to consider carefully the implications of the change that is proposed by the Chief Minister. That point seems to me to be completely unarguable. Insufficient time has been given to the Scrutiny Panel and insufficient time has been given to Members in general to consider all the important implications of the decision that the Assembly is invited to make this evening. The second point that I wanted to address was made by the Constable of St. Peter who likened the States and Ministers, I think, to the board of directors of a company. I think it is a mistake to regard politics as equivalent to the running of a limited liability company. The running of the Island is not the running of Jersey plc however much one, of course, wants the administration of the Island to be efficient. Politics is different from the running of a business or even the running of a county council. Politics comes into it and when politics comes into it there are political choices to be made and political choices are a matter for Ministers and indeed for Members and not for civil servants. The third point was made in an interesting speech by Deputy Andrew Lewis, who made the point that it was important to allow the chief executive to take control of operational matters and to address them in the context of the way in which the Civil Service runs. The Deputy said: how could one reconcile that with the position of Ministers as corporation sole? He said this was a conundrum to be resolved. I think that the conundrum is resolved in this way, and indeed has been resolved to a certain extent because Members have already voted on Articles which have established the institution of the principal accountable officer and have removed the powers of individual Ministers to control monies

allocated to their departments. That power, which did exist under the old system, has gone and the power now vests in the Minister for Treasury and Resources who, with the approval of the Chief Minister and the Chief Executive, can procure the movement of money from one department to another, to another and back again and so on. All the power to deal with money has gone from individual Ministers, be they corporation sole or not. The second thing that has changed is that we have made accountable officers, the old accounting officers, in each department or ministry, accountable to the principal accountable officer so that in terms of money there is an overarching power, in the form of the principal accountable officer, who can direct other accountable officers how to perform their duties. That is one of the changes that was suggested by the chief executive and we have embraced it and we have just debated and passed the Articles of the law which give effect to that change. Thirdly, although we have not yet adopted it, there is the question of the additional powers to be conferred on the Chief Minister to shuffle the ministerial pack, to move responsibilities from one Minister to another. All those powers, taken collectively but even the ones that we have already adopted, in my submission, are sufficient to allow the chief executive to take control of operational matters subject to the duty of Ministers to exercise political control. The fourth point that I wanted to address from the speeches made by Ministers is a point that was made by a number of speakers, and it really turned upon the thesis that this was the time to change. Things needed to change, said Deputy Martin. The Constable of St. Mary said: "If we do not seize the opportunity for change it will be too late." My rhetorical question is: but what opportunity? We do not know what opportunity we are debating. The Chief Minister said he was committed to change, and my rhetorical answer to him is: but what change, Chief Minister, what change are we talking about? Senator Green made a speech which was extremely honest in its effect. He said: "We want this change and we will hold the Chief Minister to account." Well, indeed, but if the Chief Minister is the only person to be held to account then that seems to me to be a very unsatisfactory situation. The long and the short of it is that we simply do not know what the effect of moving to a single legal entity would be. Some Members are willing to take a leap in the dark. A leap from the top of a cliff in the hope that there is deep water at the bottom and that they can emerge into the sunlight after that. Members may be surprised to know that there has been no discussion among the Council of Ministers about this important change, which is why some Ministers are reluctant to embrace it. We have asked for a discussion but no discussion has yet taken place in the Council of Ministers about this fundamental constitutional change.

[19:30]

I do not think that is a satisfactory state of affairs and it is one of the reasons why I have pleaded, argued, that there should be a delay so that we can be clear how the changes to the Civil Service are going to be reconciled to the political operation of ministerial government. I am sorry if other Members feel they made points that I ought to reply to but I am going to conclude by dealing with what I think are the 2 central matters surrounding this debate. The first is around silos. Many Members have said that silos must be disposed of. I think some Members have been bewitched by the presentation which was made to Members by the chief executive, which was indeed the same presentation that was made to Ministers. I confess that I was bewitched too. It was a splendid presentation and many of the ideas - I reserve my position in some respects - if not most of the ideas, in relation to the reorganisation of the Civil Service, are ideas that I can willingly embrace and support. It is not the Civil Service that we are talking about today. What we are talking about is the political entity, the single legal entity in the way in which political responsibility is organised. The question to be asked, it seems to me, and it is a question that I put to the Chief Minister and to the chief executive: if we did not move to a single legal entity would it affect the other changes that the chief executive is seeking to drive through in relation to the Civil Service? I have not had any suggestion that the answer to that is: "Not in the slightest." Neither the Chief Minister nor the chief executive has been able to point to a single change that would be thwarted if Members were to adopt

this amendment and to abandon, at least for the time being until we know what we are talking about, the notion that government should be a single legal entity. Getting rid of silos is a matter for the Chief Minister and Ministers. They have that responsibility because they have, as I explained in my opening speech to Members, responsibility for the civil servants in their department or ministry. I do not want to blow my own trumpet, and there is no reason for doing that because the credit goes largely to the chief officer in my department, but the Ministry of External Relations has shown, in the context of Brexit, how it is perfectly possible for departments to work together outside silos perfectly satisfactorily in order to achieve the end. You do not need a single legal entity to achieve co-operative working within the context of corporation sole. I would add to that, because the Chief Minister drew Members' attention to the emerging strategic challenges that we have, I am perfectly confident that the Ministry of External Relations, under its current Civil Service leadership, is perfectly capable of dealing with emerging strategic challenges even though the single legal entity is not enacted into law. Senator Ozouf was wrong to suggest that I wish to continue operating in a silo. I have never operated in a silo and I think if he examines his conscience he will remember perfectly well that when he was in ministerial office we worked extremely collaboratively together over a large number of different subjects. The abolition of the silo mentality can only really be achieved from the top. One could argue that perhaps until now the Chief Minister and the chief executive lacked the wherewithal to impose their will in terms of silo working, I do not think that is any longer true as the result of the changes that have been brought about today. The second and last thing that I want to mention briefly to Members is the question of accountability because what all this is about, to my mind, is accountability for one's actions. It is frustrating when people do not know who is responsible for things that have gone wrong. A single legal entity will create confusion as to who is responsible and that is, as I think Deputy Mézec said, a negation of democracy. If everyone is responsible through the Jersey Ministers then no one is responsible. We do now have accountability at the Civil Service level. It is accountability at the political level that is in question in this debate. It is not a question of territoriality or reserving the rights of Ministers, it is a question of having a political system with the appropriate checks and balances. We are creating, as I said in my opening speech we would be creating, if this amendment is rejected, a system of chief ministerial government. I cannot really understand how so many Members, who have whinged for years about the concentration of power in the hands of Ministers, can contemplate endorsing and falling over themselves to endorse a system of placing political power essentially in the hands of one man or one woman. I think Members should beware Deputy Mézec's enthusiasm for this concentration of power because he thinks that one day he will have it **[Laughter]** and he may well be right. I think that we ought to be more cautious. It is not a leap of faith, it is a leap in the dark and it is not sensible to take a blind leap in the dark. I think we should say to ourselves that we are going to preserve the system that we know and understand until we have a better idea of what it is that we are invited to adopt in terms of a single legal entity. Deputy Labey, I think it was, said that never mind, let us take the leap in the dark and if we get it wrong we can scrap the new system and have a new one after that. That is not responsible government and I hope that Members will be more responsible than to take that approach. I move the amendment, Sir, and I ask for the appel.

Senator P.F.C. Ozouf:

May I ask a point of clarification?

The Deputy Bailiff:

Clarification from the previous speaker?

Senator P.F.C. Ozouf:

Yes. The Minister for External Relations is a barrister and has the ability to make a number of assertions. Can I ask him how he can claim that thing that he insists on calling "his ministry" can

claim collective working when he is the only Minister that is legally bound to operate a common policy?

The Deputy Bailiff:

I am sorry, Senator, that is not a point of clarification that is a question and this is not question time.

Senator P.F.C. Ozouf:

Okay, well clarify how he can assert that then, and also why he ... **[Laughter]**

The Deputy Bailiff:

That is not a point of clarification about the speech. He has not said anything about that and he does not have to clarify.

Senator P.F.C. Ozouf:

Can I ask for the clarification of how he can assert, if it is not a question, he has made the assertion that only the Chief Minister will be accountable and I just ask for his evidence for that because there is nothing in this that says that? Delegation must mean accountability, surely. It is an extraordinary assertion.

The Deputy Bailiff:

That is a proper point of clarification.

Senator P.F.C. Ozouf:

As was the first one, Sir.

The Deputy Bailiff:

No, I do not think it was and I think that is up to me, Senator.

Senator P.M. Bailhache:

I am not quite sure what clarification the Senator is seeking.

The Deputy Bailiff:

It is a clarification to the assertion, I think, Senator, that only the Chief Minister will be accountable under the regime if it is supported.

Senator P.M. Bailhache:

I make that suggestion to Members because, as I said in my closing remarks a few moments ago, when everyone is responsible then no one is responsible. You cannot focus responsibility on individuals if everyone is responsible. I said, I think, in my opening speech that the - and perhaps it is in my report too, if the Senator would like to look at that - only person who has the authority to direct civil servants to work to him in other departments is the Chief Minister, quite properly so. I do not complain about that but he is the only Minister with that authority and that is why I make the suggestion that what we are talking about is in fact a concentration of power in the hands of the Chief Minister. **[Approbation]**

The Deputy Bailiff:

The appel is called for. I invite Members to return to their seats. I am not sure if there are any seats left empty. I will ask the Greffier to open the voting.

POUR: 22		**CONTRE: 24**		**ABSTAIN: 0**
Senator L.J. Farnham		Senator P.F. Routier		
Senator P.M. Bailhache		Senator P.F.C. Ozouf		

Senator S.C. Ferguson		Senator A.J.H. Maclean		
Connétable of St. Ouen		Senator I.J. Gorst		
Connétable of St. Saviour		Senator A.K.F. Green		
Connétable of St. John		Connétable of St. Helier		
Deputy G.P. Southern (H)		Connétable of St. Clement		
Deputy J.A. Hilton (H)		Connétable of St. Peter		
Deputy J.A.N. Le Fondré (L)		Connétable of St. Lawrence		
Deputy K.C. Lewis (S)		Connétable of St. Mary		
Deputy M. Tadier (B)		Connétable of St. Brelade		
Deputy M.R. Higgins (H)		Connétable of St. Martin		
Deputy J.M. Maçon (S)		Connétable of Grouville		
Deputy S.J. Pinel (C)		Connétable of Trinity		
Deputy of St. Martin		Deputy J.A. Martin (H)		
Deputy S.Y. Mézec (H)		Deputy of Grouville		
Deputy A.D. Lewis (H)		Deputy of Trinity		
Deputy of St. Ouen		Deputy E.J. Noel (L)		
Deputy S.M. Bree (C)		Deputy of St. John		
Deputy T.A. McDonald (S)		Deputy of St. Peter		
Deputy of St. Mary		Deputy R. Labey (H)		
Deputy G.J. Truscott (B)		Deputy S.M. Wickenden (H)		
		Deputy M.J. Norton (B)		
		Deputy P.D. McLinton (S)		

3.7 Draft Machinery of Government (Miscellaneous Amendments) (Jersey) Law 201- (P.1/2018) - resumption

The Deputy Bailiff:

We now return to the debate on Articles 9 to 11 which has already received fairly extensive consideration in the course of the amendment debate. Does any Member wish to speak on Articles 9 to 11? No? Then all Members in favour of ... the appel is called for. The vote is on the adoption of Articles 9 to 11 as amended by the Chief Minister's own amendment. I will ask the Greffier to open the voting.

POUR: 30		**CONTRE: 16**		**ABSTAIN: 0**
Senator P.F. Routier		Senator P.M. Bailhache		
Senator P.F.C. Ozouf		Senator S.C. Ferguson		
Senator A.J.H. Maclean		Connétable of St. Ouen		
Senator I.J. Gorst		Connétable of St. Saviour		
Senator L.J. Farnham		Deputy G.P. Southern (H)		
Senator A.K.F. Green		Deputy J.A. Hilton (H)		
Connétable of St. Helier		Deputy J.A.N. Le Fondré (L)		
Connétable of St. Clement		Deputy K.C. Lewis (S)		
Connétable of St. Peter		Deputy M. Tadier (B)		
Connétable of St. Lawrence		Deputy M.R. Higgins (H)		
Connétable of St. Mary		Deputy J.M. Maçon (S)		
Connétable of St. Brelade		Deputy S.Y. Mézec (H)		
Connétable of St. Martin		Deputy of St. Ouen		
Connétable of Grouville		Deputy S.M. Bree (C)		
Connétable of St. John		Deputy T.A. McDonald (S)		
Connétable of Trinity		Deputy of St. Mary		
Deputy J.A. Martin (H)				
Deputy of Grouville				

Deputy of Trinity				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Peter				
Deputy A.D. Lewis (H)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy M.J. Norton (B)				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

[19:45]

Senator P.M. Bailhache:

I do not know whether we are continuing until the appointed hour or whether we are going to conclude this evening ...

The Deputy Bailiff:

Obviously there are a number of other Articles to this piece of ...

Senator P.M. Bailhache:

I am so sorry.

The Deputy Bailiff:

I was going to propose to invite the Assembly to consider the position once we have finished this particular matter because it has been a long day and I am slightly conscious that the next one is the Sexual Offences Law, and I am conscious that the Minister has already had a substantial piece of legislation to bring before the Assembly, but that is a matter for the Assembly which we will deal with in due course. Chief Minister, do you wish to propose Articles 12 to 19 as amended by your own amendments?

3.7.1 Senator I.J. Gorst:

I can do so. I think that is possibly a good idea and then any Members that want individual votes could have individual votes. I think that might be the better way forward. So 12 then is a published list of responsibilities, 13, which is amended, and 14 deal with the removal of collective responsibility, and 15, just for those Members who might want separate votes, deals with reshuffles. The amendment puts a 6-month bar to carrying out reshuffles, 16 is following on from that. Sorry, 16 is about transfers, that is the learning coming out of the Comptroller and Auditor General's report in the Simor report about J.I.F. (Jersey Innovation Fund), 17 is about the timings after the election, 18 is consequential and 19 is the citation.

The Deputy Bailiff:

Are Articles 12 to 19 seconded? **[Seconded]** Does any Member wish to speak on any ...

Senator P.F. Routier:

Yes, Sir.

The Deputy Bailiff:

I see there are few who do.

Deputy M. Tadier:

Can I just ask a point of order?

The Deputy Bailiff:

Yes.

Deputy M. Tadier:

I know it is obviously possible to get asked for any Article to be taken separately on the vote but is it also possible to ask for any and every item to have a separate debate?

The Deputy Bailiff:

No, it is a matter for the proposer how they move the proposition. The entitlement under Standing Orders is to call for a separate vote but of course that is not to stop you or any other Member from making any points in connection with any of the Articles that you wish to do so, and rolling your speech to the Assembly to cover several different Articles if that is what you wish to do. Can I ask again, does anyone wish to speak on these Articles?

3.7.2 Deputy J.A.N. Le Fondré:

I would like to request a separate vote on Articles 15 and 16, probably not unexpected. I am just going to reiterate the points that the review panel have made that, again, this represents a fairly significant transfer of power to the hands of the Chief Minister. Excepting the issues around flexibility and things like that, the panel was concerned that there was insufficient consultation with Members; as we have said, we had less than 4 weeks in terms of looking at the impact of what is being suggested, and on that basis I will not be voting for Articles 15 and 16. I will say that Article 17, while I am on my feet, I think is a sensible improvement in terms of the time available for the Minister. Anyway, just to reiterate, 15 and 16, which is reshuffling, I will not be supporting.

The Deputy Bailiff:

You asked for a separate vote on those.

3.7.3 Deputy M. Tadier:

Looking at Article 12, for example, it says, under 30(a): "The Chief Minister shall cause to be established, maintained and published a consolidated list of the responsibilities, for the time being, of each Minister and Assistant Minister." I think this is part of the problem when the devil is in the detail. Perhaps Members might wish to consider why they did not adopt the amendment previously, although that is now passed. It is because we will have this potentially, or maybe more than potentially, incongruous situation whereby the Assembly chooses the Ministers and the ministerial roles and they could be changed immediately by the Chief Minister. So, any new Chief Minister coming in, who may of course be somebody different, might say: "Okay, well, look, I do not really know how the system works but I think the current system is fine I am going to stick with the traditional ministerial portfolios that we have had up until now with the - I think it is - 10 Ministers plus the Chief Minister." So the Assembly votes for them and the Assembly may even go against, in half of the cases or in 2 or 3 of the cases, some of the Chief Minister's choices. So let us say the Minister for Education, the Chief Minister does not get his person. The Minister for Treasury and Resources might go to somebody else and we have seen that before although not in this Council perhaps. Then afterwards the Chief Minister just says: "I do not want a Minister for Education anymore, we do not need education we will just have a cultural department or we will just do sport and skills and we will put skills under Economic Development." We will not bother about Education or whatever, and then it puts the Assembly in a very strange position because they have chosen the Ministers but the Chief Minister can effectively undermine them by the redistribution to his choice of portfolios. He might say: "I am going to give all of the responsibility to 2 or 3 of my close generals", if you want to call them that. So he or she builds a little entourage around herself of the

ones that she trusts and nobody else gets a look-in of course. But then you might have lots of Assistant Ministers who do not really have anything to do. They are twiddling their thumbs but they have, nonetheless, some kind of patronage. Of course they will be paid more in the future because there will be all these little perks because that is what one of the recommendations will be, that, of course, now that we have only got 4 Ministers we can start paying ourselves quite a lot of money because we are doing all the work. We can give ourselves ministerial cars, we can fly around even more and we can make sure that we give our Assistant Ministers a pay rise and all those who do not go looking we can pay them less. Because that is what the public think they want, is to reduce the amount of money that the States Members get. We have already seen this phenomenon anyway in the empire-building that has gone on already in the Chief Minister's Department. We know that, generally speaking, Jersey is not profligate when it comes to the public sector it is very frugal, and in some areas we do not spend enough and many of our departments are not resourced enough. Environment is a classic one. What do we have if we do not have the environment? Yet it is something which we neglect to our peril. We have seen that exponential growth, if you like, in the Chief Minister's Department and yet we are making these, I think, mutually contradictory proposals today, which were lodged at the beginning of the year. I think this particular Article is just another example of the fact that it has not been thought through, Scrutiny has not been given enough time to look at these kinds of issues. We were told, in this proposition, that it is backed by the Council of Ministers in its entirety. That is why the particular Standing Order was signed-up to, and I am wondering whether that was true, even at the time when it was lodged. That does not seem to be true. It seems that we are debating this whole proposition and the Articles on the basis of what is potentially an untruth. I think we need to hear from the Chief Minister in summing up, particularly in relation to these Articles, which I do not think work, and from the other members of the Council of Ministers who are not supporting P.1 because you cannot put a statement in there saying: "This has been lodged by the Council of Ministers, collective responsibility as applied" when it is certainly not the case now. I do not even think it was ever the case. I think the comments are veering towards comments perhaps of a Third Reading, so I will stop there. But I think when you look at those particular Articles and how they will play out in practice I think you cannot accept that. I will certainly be asking for Article 12 to be taken separately and I ask Members to seriously consider voting against Article 12 and also consider voting against it in its entirety in the Third Reading.

3.7.4 Deputy J.M. Maçon:

Much as Deputy Le Fondré, I was very concerned when I was given the presentation about this in, I think, Article 15 which is about the shuffling of ministerial responsibilities. If Members can cast their minds back to about 3½ years ago when for some Members it was their first time of electing Ministers into various positions. Now, on this particular occasion the Chief Minister managed to get all the Ministers that he proposed. Of course, previously that has not been the point. I know the Chief Minister has now lodged a safeguard of 6 months but it does seem to be in a particularly ridiculous situation where the Assembly can go through hours of selecting and appointing Ministers, putting them into a position and then maybe they do not toe the party line, maybe they are a bit difficult, maybe they have got a different perspective; and maybe the Assembly put them around the Council of Ministers' table because they had a different perspective, that was healthy to the team to have someone who has a different perspective around the table. But of course now we are going to have a situation whereby the Chief Minister can start shuffling portfolios around without having to come back to the Assembly. So it seems to be a bit of a nonsense to go through all that period of appointing people into positions only then for that individual not to have the safeguard of knowing that they can be appointed by the Assembly and are protected by the possible tyranny of another Council of Ministers in order to allow that person to carry out the function of that Assembly. Or consider this further, the Assembly might have continually rejected an individual to be a Minister, for whatever reason, but then that person gets appointed as an Assistant Minister and 6 months down

the line the Chief Minister can shuffle responsibilities round to that person because again, the person that the Assembly has appointed is someone that the Council of Ministers and the Chief Minister do not want. Again, that can be referred to in certain situations, perhaps there is a decision a particular Minister does not want to make, for whatever reason, well, we will just shuffle his or her responsibility to another person who we know will do our bidding for us thank you very much. I cannot understand why Members would want to give that power, that influence, away to the Chief Minister. I do not think it helps. We know that continually from day one we ask this Council of Ministers, we ask the Chief Minister, to have an inclusive government and did we get it? Well, not from my perspective. I certainly do not think the public felt it has been an inclusive government either. In which case, some of the smallest influences that we have as States Members, why on earth would you give that away? Why on earth did Members do that? Absolutely no problem with the situation now, the Chief Minister comes along and says: "I think we have got it a bit wrong, I really feel that this Member would be better over there, this Member would be better situated over there." Brings it to the Assembly, the Assembly might endorse it, they might not but at least it is done in an open, transparent way in this Assembly and that, for me, is a key reason why we have the Standing Orders set up in the way that it is done, that we can, in some way, have a public way in which we review people. But it also gives the opportunity for a Member to say: "No, I am doing quite a good job in this particular role, this is my mandate, this is what I have managed to achieve so far. It should not be scuffled away because the team do not support me, do not like me, do not agree with what I am trying to do." I do not think we should just be handing our power away quite so easily. I will not be supporting this particular aspect and those are my reasons.

3.7.5 The Deputy of St. John:

I am grateful for following that speech because I am exactly aligned with what Deputy Maçon just stated but I will add a little bit further. We were asked by the Scrutiny Panel to submit our views on the proposition and I made a submission, and I had a particular concern surrounding this, Article 15 and Article 16, with regards to ministerial shuffling. I refer to the report that was done 5 years ago where part of the agreement was that the Minister, if they were given the power to direct from the Council of Ministers, they would come as a slate to the Assembly, not as individual Members.

[20:00]

But, more importantly to that, it does not correlate with the changes to Scrutiny. There are no changes to the Scrutiny function. The Scrutiny function is laid out specifically within the Standing Orders about who they hold to account, which Ministers they hold to account. I believe that if this was to be approved, especially having it by order of the Chief Minister, would create some further bureaucracy, some further difficulties and would completely make the whole check and balance and accountability function completely dysfunctional. I have raised this; I have lost count of the amount of times I have raised this with the Chief Minister. I have raised it with the chief executive. I have raised it with the Greffe. I have raised it with Scrutiny. I was going to bring an amendment and then I thought if the Chief Minister wants this and he thinks this is the right way to achieve it, then it is quite clear what the amendments need to be to the Standing Orders. It just comes to a point where, how many extra things do you have to do as an individual, as a Back-Bench, doing 8 reviews on some quite complex legislation and then asked to bring amendments to something that, I think, was quite clear, from my point of view and I did make the effort to raise the issues and ask that it was considered; that is why I am standing here now and saying I cannot support it at all. If it is considered by whoever the next Council of Ministers are, then they can bring that forward as a consideration and, preferably, as a package with the Chairmen's Committee so that there is some work between the Council of Ministers and the Chairmen's Committee about how functional, accountability, checks and balances, openness and transparency and proper governance of the way that we reach democratic

decisions, not just in the Assembly but within ministerial functions. I would ask the States Assembly if we are voting separate Articles to please vote against, particularly Articles 15 and 16.

3.7.6 Senator P.F.C. Ozouf:

I put my light on when I heard Deputy Tadier speak because it sounded as though, in passing these amendments, that we were creating an absolute power in the Chief Minister to do what he wants without any accountability. Could I just draw attention to what Article 29A does say: "Powers relating to changes to ministerial officers (1) the Chief Minister may by order do any of the following (a) establish and abolish Ministers, (b) determine the name by which an existing Minister is described, (c) make provision relating to a Minister's responsibilities and functions (including their transfer from one Minister to another)"? It goes on, *et cetera*. Deputy Tadier has been in this Assembly for some time and presumably understands what an order means. In other words, it must be laid before the Assembly; there is a requirement that it must be laid which is for not less than 2 weeks' notice and if Members are not happy it can be challenged. But that is not a Ministerial Decision; that is an order.

Deputy G.P. Southern:

No, it can be rescinded.

The Deputy Bailiff:

Point of order, Deputy.

Deputy G.P. Southern:

Surely the Senator is misleading the House accidentally because all you can do with an order is rescind it. It needs regulation if you want to amend it. It seems to me that it is a concentration of power.

Senator P.F.C. Ozouf:

I think the Deputy has just made the point. Sorry, was that a point of order?

The Deputy Bailiff:

It was mentioned but I am not sure that I can give a ruling on it. The trouble is that the amendment proposed is quite clear, it is to amend to add (3): "Before making an order under paragraph (1), the Chief Minister shall give not less than 2 weeks' notice to the States." It seems to me within that period any Member of the States can bring forward a proposition to rescind that but I do not think you can bring forward a proposition to make an amendment to it; this is a notice of an order.

Senator P.F.C. Ozouf:

No, indeed, Sir. In other words, the Chief Minister can have his wish thwarted by a majority view of this Assembly, simple as that. If the States does not like it or if a Member does not like it, they can bring forward a proposition. If the majority of Members do not like it, they can rescind the order and it is back to what the previous arrangement was. The Chief Minister can try it again if he wants and try and do another order. It was not correct to assert that somehow because Deputy Tadier has spoken as though there is going to be some sort of Kremlin-like future Council of Ministers in power, presidential system, whereas the Chief Minister can do what he wants without any accountability; absolutely not. It is an order-making ability that can be challenged and struck down by the majority of this Assembly. I am not giving way again. It might be painful … unless it is a point of order, another attempt.

The Deputy Bailiff:

No, it is not called as a point of order, so please carry on, Senator.

Senator P.F.C. Ozouf:

I will do, Sir. This may be uncomfortable for some Members but I am going to refer to the Simor Report because it is uncomfortable and I do not like talking about it because it has been pretty painful to me. Because, effectively, what the Chief Minister faced and if Members will recall and we cannot change the past, we can change the future and, Members, I am not standing, so I can say this but last time, effectively, the Chief Minister decided and made it very public that he was going to create a ministry for competition, digital and financial services and then that thing, innovation, appeared in my letter. He did it, he got the ministerial suite that he wanted, as Deputy Tadier and others have said, but the ministry was never created. I do not quite know why, I did ask for a long time but anyway it did not happen. Jessica Simor Q.C. (Queen's Counsel) in the report, which I do not know how many Members read it but I read it, in the recommendations it said this: "In the light of the legal complexities of Ministers and Assistant Ministers' appointment, functions and delegation, the limited power of the Chief Minister to arrange Government responsibilities, it would be useful for Ministers to receive training." That is absolutely right: "Ministerial oversight necessarily depends on Ministers being kept fully informed of what is going on at operational level." She went on to describe very clearly an organic ground should be ... it is partly responding to some of the points that have been made, which are, effectively, this sort of problem that some Members have got with these Articles but it is in fact a bit of a repetition of the previous debate we have had. But Jessica Simor Q.C. is one of the leading Q.C.s in the U.K. and looked at our ministerial system and how it was working and she …

Deputy M. Tadier:

Sir, this is a point of order. It would just be helpful for Members, I think, in order to maintain order if we knew at any one time which Articles the Senator is speaking to because it is a Second Reading and not a First or Third, of course.

The Deputy Bailiff:

I think it is not a point of order, it is a point of clarification. Can you clarify which Article you are speaking to in connection with …

Senator P.F.C. Ozouf:

I am talking 16. Yes, I do not think the Deputy said which Article he was particularly addressing either.

Deputy M. Tadier:

I did.

Senator P.F.C. Ozouf:

But I am not giving way again. If the Member wishes to carry on trying points of order …

The Deputy Bailiff:

No, please do carry on.

Senator P.F.C. Ozouf:

I will, thank you, Sir.

The Deputy Bailiff:

I shall be astute to permitting only points of order.

Senator P.F.C. Ozouf:

Yes, thank you, Sir. Perhaps …

The Deputy Bailiff:

Nothing has happened and that is a …

Senator P.F.C. Ozouf:

No, good, I think he is looking over as if he is going to try, Sir. The fact is it is the final paragraph in the recommendations of an eminent Q.C. …

Male Speaker:

Even the clock is swinging. **[Laughter]**

Senator P.F.C. Ozouf:

Swinging, in nearly 19 years I have never seen the clock start swinging like that. Is it giving me a direction, Sir?

The Deputy Bailiff:

In fairness, the hour hand is swinging like a pendulum …

Senator P.F.C. Ozouf:

If I talk a bit louder, Sir, or we have a bit more points of order maybe we can …

The Deputy Bailiff:

Anyway …

Senator P.F.C. Ozouf:

I did want a clock to stop me talking too much but apparently that did not come. But I will say this, finally, the final conclusion of the Simor Report said this: "Finally, aware as I am that this, potentially, falls outside my terms of reference, in the light of the source of the many difficulties that arose between November 2014 and January 2016, consideration should be given to whether a method of streamlining decisions as to the relevant responsibilities of Ministers and departments can be found." That was the conclusion of an eminent Q.C. that looked into the nightmare scenario that we faced as Ministers but boast as officer levels of that. These Articles, 16 and others, respond to that and I took responsibility for something and I was glad to take responsibility but I am afraid the system did not work. These Articles, to my mind, fixed that issue, even though that some Members of this Assembly will not like and do not like the ability of the Chief Minister to shift portfolios and to put matters of public importance, which I assumed is what he wanted. He wanted, when he originally stood for Chief Minister, to say: "These issues are important enough to be created into a ministry." But, unfortunately, the wishes of the Chief Minister, who got a mandate all the Ministers he wanted, did not get what he wanted because it was thwarted. This allows this to happen but with an appropriate check and balance of a rescindment order and I fully support unamended. If there is a call on Article by Article, I will be voting in favour of each one of the Articles because I understand what it means and the consequences for the failure of governance that follows if you do not have these appropriate checks and balances in the Chief Minister to be held to account and to create the right people in the right place for dealing what matters at the end of the day, which is not our own egos but what is important for the people that we serve and that is the most important thing. If the Chief Minister cannot respond to the issues of the day that matter and create a Minister or something of an issue that is of real importance and get the Assembly's ability to strike it down, then we are not doing our job because it is the people we serve and not ourselves.

Deputy M. Tadier:

Sir, I do have a question. I would like to give notice of a question that I would like to ask the Attorney General, if and when he is around, if that is okay.

The Deputy Bailiff:

That sounds like you only want to ask him if he is around.

Deputy M. Tadier:

No, I would like to ask the question and I am sure he is semi-omnipresent, so he may be listening.

The Deputy Bailiff:

Greffier, could we send an email to the Attorney General, please?

Deputy M. Tadier:

I know that is tautological to say that, Sir, but it is …

The Deputy Bailiff:

We have sent a call to ask if the Attorney General … he did send me a note saying that he did not think he would be asked any questions, so he was going back to the office.

Deputy M. Tadier:

That is fair enough and that is one of the reasons we should not sit this late and that is why I voted against it last time. But, nonetheless, the question I have, if it can be answered, if not I will put it on the record anyway, is whether there is a tension in Article 16 when it says: "The Chief Minister may by order do any of the following, establish and abolish Ministers and determine the name by which an existing Minister is described." Between that and the powers that currently are the privilege of the Assembly, so it is the Assembly who currently chooses Ministers and it is also the Assembly that has to fire Ministers, effectively, so the Chief Minister cannot fire a Minister. He would have to come back to the Assembly in order to get that approved. But he can abolish a Minister and it does not say abolish a ministry, it says he can abolish and establish Ministers. Clearly, if he were to establish a Minister he would have to then bring the actual person of that Minister to the Assembly for a choice but he can abolish it. The question is whether there is a tension between the rights of the Assembly on the one hand and the new powers being given to the Minister and also: "Determining the name by which an existing Minister is described." The Assembly might elect a Minister for Education and then he just says: "Okay, I am now going to change the name of …"

The Deputy Bailiff:

I think it has to be a very succinct question to the …

Deputy M. Tadier:

The question, Sir, is like, for example, would it be acceptable for the Chief Minister, after the Assembly has just appointed, say, a Minister for Treasury and Resources and a Minister for Education, to then say: "I am going to change the names of those 2 Ministers and the Treasury will become Minister for Education and the Minister for Education will be known as the Minister for Treasury and Resources and I will simply switch the portfolios around."? It is a question for the Attorney General, not for the Chief Minister.

The Deputy Bailiff:

It certainly could not be done without the lodging of an order 2 weeks in advance, in any event, because that is on the surface of the amendment itself. But, in any event, you asked the question, we have asked if the Attorney General is available to come over. If he is not, then the Assembly will have to decide whether it is content to proceed without that question being answered. Very well, Deputy Andrew Lewis.

3.7.7 Deputy A.D. Lewis:

That was quite confusing. I was having the same sort of issue with some of these Articles. The point that Deputy Maçon raised though I think was a very valid one and this was raised at a presentation via the Chief Executive of the States on 6th March. It was the issue of the Chief Minister having the ability, should he choose, to completely change his Cabinet a few days after having this Assembly approve it. An amendment was inserted and it is on page 25, 10, Article 15, it says there now that that cannot be done in less than 6 months of the Government being formed, so that is the check and balance that I am content with. It was raised at the meeting with the chief executive. Coincidentally, the amendment that I am looking at here was issued on 6th March and the meeting was on 6th March, so I am not sure it was a result of that; if it was it was later on that day this amendment was made.

[20:15]

That is consultation with Members and it was taken on board and some of us were not happy with that ability to change … it was the day after you presented your Cabinet to the Assembly and that, I think, would be wrong. I hope that that reassures Deputy Maçon that I do not think there is any intention here to form a Government and then 2 weeks later change it all. But you could in 6 months, not that you would change the whole Government necessarily but you could make the necessary changes. Because after 6 months you may well have seen the ability of those people in those posts and that is the sort of time that you would perhaps make some changes. You do it in normal business, 3 and 6-month probationary periods they call them. I am not suggesting we suddenly have that for Ministers but it is not unusual to make changes of that nature after that period and 6 months is a reasonable period; 2 weeks would not have been. The other thing I would like to add is that the Article is slightly confusing and maybe this can be explained by the Chief Minister but does one require to make an order presented to the States 2 weeks before for the moving of a Minister, as well as the abolition or creation of a new Minister? Is an order required for both? Because if it is, as Senator Ozouf has eloquently said, that is laid before the States and can be rescinded by any Member, so the Member does have the control, the ultimate sanction of that suggestion by the Chief Minister. I would hope the Chief Minister, in his order, would present a very good case for doing it and present his order and if people were not happy for it they have got 2 weeks to lodge a rescindment. Therefore, the checks and balances that we were concerned about at the meeting with the chief executive have been addressed through a bit of consultation with us and the issue of some amendments. I personally do not have an issue with the Articles that Members are beginning to debate at the moment. I think it has been well-covered in the amendment that was presented to us on 6th March, as a result of that meeting with the chief executive.

3.7.8 Deputy G.P. Southern:

I just point to the table in front of the Chair and I think those are probably 2 orders laid before the States on the table and I wonder how many Members of the Assembly have picked those orders up and read them. Because that is what we are talking about, as a safety mechanism to make sure that we pick things up and we challenge them if we do not like them. I did not notice anybody volunteering to say: "I picked them up and read them and they are perfectly safe, harmless things." There you go.

Senator P.F. Routier:

I looked at them on email when they were sent to us.

Deputy G.P. Southern:

I am glad somebody can be more efficient than me. It would be a sad loss for us, would it not, again? That safety mechanism for me is not a sound one necessarily and then I look to this whole issue of orders; again I point out that these come to the House in that manner, not as regulations. We have got by order we can abolish Ministers. Hang on, what is happening there? By order we can change any Article in this order, in this regulation and now we are on 16. We have got tremendous powers

here by order and then I pick up on the point that the Deputy of St. John was making and it reminds me of the old days when we used to have individual panels, they were the Southern Panel or it was whatever. Yes, the Martin Panel and we could pick and choose where we went to Scrutiny. If something took your interest or you thought there was something going wrong over there, you could go there without any arguing with who does what. If we are going to have this flexibility to change the portfolio of any Minister, then are we going to go back to the days when Scrutiny used to be able to pick and choose what its portfolio was? If it was particularly meaty over there then we will go there and here is an issue that is really important, so, bang, let us take that one on. We are talking about significant change here. This is not just superficial on the surface we can make it work. This has got all sorts of ramifications and it has not been properly scrutinised; that is a bad day when things go through here without sufficient scrutiny. The risk is not only because of the lateness of the hour but because the absence of scrutiny we are increasingly prone to making bad decisions. We should be very careful with these orders.

3.7.9 Deputy S.M. Brée:

Just to reiterate the point made by Deputy Southern, as chairman of the Machinery of Government Review Panel, we have not looked at this properly, we really have not. There is, I think, in the panel's mind a rush and a haste going on here. These are fundamental changes to the way in which this Assembly elects its Ministers and there is a definite transfer of power from the Assembly to the Chief Minister. I would just stress the point that Scrutiny have not had the time to properly scrutinise and consult on this particular area. On Articles 15 and 16, and this is not speaking as chairman of a Scrutiny Panel, what concerns me is that this Assembly has just created a new legal entity to be called the Government of Jersey. We are now being asked to share the Chief Minister's vision on how ministerial government should work, which is all power really rests in the hands of one office. While changes may be made by order, it is very difficult, looking back, to rescind orders because the vast majority of people who are Ministers or Assistant Ministers will naturally support their Chief Minister. Collective responsibility is being done away with was the publicity angle first used when this was released; Chief Minister does away with collective responsibility. What a marvellous Chief Minister we have. Is it not good for democracy? You can do away with collective responsibility because you are replacing it with something a lot, lot more dangerous, which is the ability of the Chief Minister to, and let us read it: "Establish and abolish Ministers", which I found a little bit harsh to abolish a Minister. I can understand abolishing a ministry but maybe not a Minister. Effectively, it is up to the Chief Minister by order to completely change Ministers, ministries, functions, duties, responsibilities; the amendment to say that change can only happen after 6 months of the election by this Assembly. We had a discussion with the Chief Minister on the Scrutiny Panel of our concerns that, as it was originally lodged, it could happen the day after the election. I am very pleased that the Chief Minister took on board the Scrutiny Panel's concerns. But I go back to Articles 15 and 16, we, as the States Assembly, are vesting a great amount of influence and power into one office. That office now sits within this new legal entity that we have created, the Government of Jersey. If you share that vision that there should be one head of the Civil Service and one head of Government because that is the only way we are going to get things done, then you should vote for this. I do not share that vision because we, as an Assembly, should be making the decisions. We, as the Assembly, should be voting-in Ministers. We, as the Assembly, only get one chance under this scheme to vote somebody into a ministerial position. Because after that you have to challenge the order, you have to issue a rescindment of an order; that is not the most efficient way of doing it. I think the Assembly should be involved in this side of ministerial government but, again, it depends on your view. If you share our current Chief Minister's view that he and only he can lead the new Council of Ministers forward in this fashion, then you should support him. I, unfortunately, as I said, cannot support this because I do not share that vision of our future.

3.7.10 Deputy J.A. Martin:

As the evening has gone on I am getting more confused because I did say earlier on, and I think I stand by that, maybe this Council and I did not … maybe the right Articles but when the Chief Minister sums up, can he please confirm or deny that I have got this correct because after what Deputy Brée has said and other Members we will choose the Chief Minister? The Chief Minister then will go through the process of naming his team. It can be challenged from this Assembly and we can all stand against only one choice or all the choices from the Chief Minister; some may be successful. Abolishing Ministers or ministries is none of those people that are elected, persons or people that are elected that day, this is how I am understanding it. That is where I differ from Deputy Brée, whether I want to go for this step but it, to me, follows what we just did; we cannot have one without the other. He says we will only get one chance. No, because if the Minister wants to sack somebody, we are not changing anything. It is not an order, he will have to bring it back to the Assembly and say: "This Minister …", Deputy Maçon is looking confused because I think we are all getting confused. If I am saying this wrong, the Chief Minister will correct me.

Deputy J.M. Maçon:

Will the Member give way?

Deputy J.A. Martin:

Yes, I will.

Deputy J.M. Maçon:

Of course, I think, and I said it in my speech, you do not need to sack a Minister; you can just move their powers away.

Deputy J.A. Martin:

That will be done by order, the person will still be there. If we have put that person in place I think we do have some safeguards. I am not quite sure because I am not convinced which way this one is not confusing to me but we seem to have given the powers. The people who voted against the amendment are now sort of thinking: "Are we concentrating it?" As I say, I might need to be convinced but I need to understand what exactly is happening. Because after 6 months when we are in the new Assembly and the new system has come in and we have gone through the 10 ministries, sorry, now 11 but they are not for 6 months or coming up to that 6 months. Why I have to pick on the Minister for Education because I do not think any Government is going to get rid of a Minister for Education. But let us say there are 3 or 4 that sit really nicely under that Norton silo now and the Minister wants to change the name; the Department of Funny Clocks or something like that it could be. It could be that and that is how I am reading it. Is it too far? Have we not gone far enough because we did not amend? We still wonder, everyone in this Assembly and I said earlier maybe the Chief Minister who brought P.1 could have said: "Let us see if we can go far and we elect the Chief Minister, who elects their team." We know what this is but we do not know from the public side who the Chief Minister will be. It is about: do you think then we are putting too much power in their hands but then you have to follow through? Has the system been working as we have had it? Did it work before? I will turn this on its head with Senator Ozouf's argument. He said he was promised a new ministry and he was going to get all these things under it. There was buzzing, if he never heard it in the very early months, and Scrutiny saying: "You are not having this new ministry, Chief Minister" and that is why it never came through.

[20:30]

There were soundings taken from Back-Benchers, there were soundings taken from this Assembly and the Chief Minister did not get what he wanted for Senator Ozouf. It may be right, it may be wrong but that is what happened. I do not know where all these people are coming from, these dictators and everything else. We are shying away from changing parts and not it all. But the way I

understand it is there is no conspiracy theory. I see the argument, what Deputy Maçon said, it could be the one person that wins by one vote, who everyone else in the Assembly thinks is brilliant for the job. I do believe that and I then think that it would be a very silly Chief Minister who tried to side-line them if they were doing a good job after the 6 months or a year. I remain to be convinced on this one but at the moment I just think it follows through that we do have safeguards. We are not suddenly appointing people one day with 6 months down the line sacking them. It is the ministries that can be renamed. I do take the point from Deputy Maçon about the powers, which I need to be assured from the Chief Minister when he sums up; it might not be him. But it is the system design that can happen and that is quite worrying if it is.

The Deputy Bailiff:

Deputy Tadier, there is no response at this point from the Attorney General, so it seems unlikely that the Attorney will be coming back into the Assembly to answer your question. I obviously cannot give legal advice to the Assembly but I have looked at the Articles inasmuch as they interplay with the Articles currently under the States of Jersey Law. The position, as I understand it, this suite of amendments, by which I mean Articles 15 and 16 currently proposed, is that the first of those Articles abolishes the existing Article 29 in the States of Jersey Law. The existing Article 29 deals with the powers to move Ministers and change ministerial offices. It is a fairly elaborate Article but, in essence, the first provision is that currently the Chief Minister may, subject to the approval of the Assembly, move a Minister from one ministerial office to another and then the States may, by regulation, establish and abolish Ministers, determine the name by which Ministers shall be … and do the other things, although not in precisely the same terms, which seemed to be anticipated by 29A of the amendment. The effect, I think, is to take away the existing replacement and moving around provisions to provide, nonetheless, that, although the Chief Minister can do what previously the States might have been able to do by regulation, he, nonetheless, has to give notice to the States of doing so; that is my understanding of the interplay between the 2.

Deputy M. Tadier:

Sir, a further question relating to what Deputy Martin said. If the Chief Minister had a Minister that he wanted to sack, he was not happy with a given Minister but knew that the Assembly would not sack him, he could just abolish that role, pass the portfolio to somebody else and then possibly either straightaway or a few months later either swap Ministers around without going back to the Assembly or simply say: "I want to create a new role, the same role" and then there would be an option for people to stand for election for the role. Is that the case?

The Deputy Bailiff:

Chief Minister, if you do not mind, I will just talk to the terms of the Article. The Article 29A would provide: "The Chief Minister can by order establish and abolish or make provisions relating to any Minister's responsibilities and functions." In theory, that can happen at any time but it must be preceded by an order on 2 weeks' notice to the Assembly. Obviously, Chief Minister, you will respond in due course and I am conscious I am not giving legal advice but merely reading the law as it stands, if that is …

Senator I.J. Gorst:

It might be helpful for further commentary that 15 is about the reshuffle provision, 16 is about moving responsibilities around, so they are separate and there will be separate votes on them.

The Deputy Bailiff:

Yes, indeed.

3.7.11 The Connétable of St. John:

Listening to the debate, it has raised a serious concern to me because although one is giving an order and we have 15 days to respond, if this is made in August when the majority of Members, apart from Scrutiny, are on a summer break, it, effectively, means that this could go unchallenged. I would seriously question whether 15 days is appropriate and I would like to hear the Chief Minister's response to that.

The Deputy Bailiff:

Does any other Member wish to speak on the Articles? If not, then I call on the Chief Minister to respond.

3.7.12 Senator I.J. Gorst:

I think we started the debate on these Articles with Deputy Tadier talking about a list in Article 12 and then moved on to some of the other Articles, which perhaps led to some confusion. He is quite correct, of course; Article 12 is about maintaining a published list so that Members of the Assembly and Islanders know who is responsible for what. That is why some of the comments in the previous debate were somewhat underlined with knowing who was responsible for what in the new system because it will be quite clear who is responsible for what. Article 15 is about the reshuffle, and Scrutiny rightfully said they were concerned that the Chief Minister might move Ministers within the portfolios the day after they had been elected by this Assembly. In order to satisfy that concern I brought forward an amendment to say that they could not have that ability within the first 6 months of this Assembly electing those Ministers, so that is the ability to move Ministers between offices. But any sacking, which the Chief Minister has the ability to do now and the appointment of a Minister to the office currently where the Minister has been sacked from, still requires an election in this Assembly and for any other Member to stand against them. That is the reshuffle and that, I think, addresses the concern that Deputy Maçon said about the total loss of power of this Assembly; so the appointment process of a new Minister to a post is not changed in these amendments. It is right. I do not think it was right to say the single legal entity provided extra power to the Chief Minister but we have that debate in that amendment. But in these amendments it does and we need to be absolutely clear about that. It gives the ability to the Chief Minister to move Ministers that have been elected by this Assembly between portfolios; that is a reshuffle. But if there is a Minister that, for whatever reason, is sacked then this Assembly still retains the right to elect a new Minister to that post. It is the rights are curtailed. A lot of the concerns that Members have raised about too much power being given to the Chief Minister, it is a matter of balance. Some Members suggested that I should have proposed the whole hog and removed the ability for this Assembly to elect Ministers anyway. I did not think that would find favour with Members and some Members are still not satisfied with the ability to reshuffle anything that goes too far. So, 16 is the changes to portfolios and, as painful as it was for Senator Ozouf, he said it quite eloquently, comes out of the learning from the Jessica Simor report about the need to change portfolios. If we look to the previous election and the previous changes there, I proposed to change the Economic Development Department to the Economic, Tourism, Sport and Culture. Under this amendment the Chief Minister would be able to do that by order and then the order gets lodged here, rather than the current system, which is a change in regulation that this Assembly has to agree. It is for Members to make that decision. But the Simor Report was quite clear, that that need to come here to amend by regulation those ministerial offices were part of the problem that led to the issues in the J.I. Fund. We may not like that but it is quite clear in black and white and that is why Article 16 is there to address those deficiencies in the current system. But they rightfully stand alone and can be taken separately, and it is a matter for Members to decide whether they think they are appropriate or not. Deputy Vallois is absolutely right about the implications for the Scrutiny function. I have been loath, and Scrutiny questioned me about this, to make proposals to change the Scrutiny function. That has, historically, come from P.P.C. or a sub-committee or from the Chairmen's Committee themselves. Perhaps I can be criticised for not

bringing those proposals forward myself but I do not think that it would have been appropriate. I am on record not only in this place but in front of the Scrutiny Panel and in media interviews in saying that I think that the proposal that Deputy Vallois made about a Scrutiny Management Committee, therefore being able to follow issues of the day, which is what Deputy Southern suggested he would like, is the way that Scrutiny can be strengthened and improved into the future. But, of course, it requires changes to Standing Orders and it would, historically, have required the majority of Scrutiny members to agree those changes. There will be implications from these 2 particular Articles, so I make no bones about that. There will be implications that flow from that. Then we obviously have, again, Article 17, which is that time after the elections; consequential regulations and the citation and commencement. I maintain the Articles.

The Deputy Bailiff:

Very well. There are separate votes to be taken. We had a request for a separate vote on Article 12, Article 15 and Article 16.

Deputy M. Tadier:

Sir, can I ask for clarification? One of the questions I asked the Chief Minister and I think he can address it now if he wants to or in Third Reading, is to do with whether or not the Council of Ministers did have a single position, a policy position at the time when this was lodged, including on all these Articles because that is what we have been told in the report.

The Deputy Bailiff:

Deputy, I do not think that that is a matter for Second Reading. It could, conceivably, be a matter for Third Reading and when the Minister proposes it in Third Reading by all means ask and he will say what he says.

Deputy M. Tadier:

Sir, it might be germane insofar as it might affect how Members would vote on this because we have been sold the whole package, both in the First and Second Readings, that this was supported at the time of lodging by all of the Council of Ministers and if that was not the case it might change the minds of some Members. I think it might be helpful for transparency for it to be answered now.

The Deputy Bailiff:

It is a matter for you, Chief Minister. The Chief Minister indicates he will address it in Third Reading and will do it then. Very well. The vote is, firstly, on Article 12. Those in favour of adopting Article 12 … the appel is called for. I invite any Members that are not in the Assembly to return to their seats. The vote is on Article 12. I ask the Greffier to open the voting.

POUR: 42		**CONTRE: 4**		**ABSTAIN: 0**
Senator P.F. Routier		Senator S.C. Ferguson		
Senator P.F.C. Ozouf		Connétable of St. Saviour		
Senator A.J.H. Maclean		Deputy of St. Martin		
Senator I.J. Gorst		Deputy T.A. McDonald (S)		
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				

Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Peter				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

[20:45]

The Deputy Bailiff:

We now can deal with, I think, 13 and 14 together, if that is … Yes, the appel is called for. The vote is on the adoption of Articles 13 and 14. I ask the Greffier to open the voting.

POUR: 41		**CONTRE: 5**		**ABSTAIN: 0**
Senator P.F. Routier		Connétable of St. Saviour		
Senator P.F.C. Ozouf		Deputy G.P. Southern (H)		
Senator A.J.H. Maclean		Deputy M. Tadier (B)		
Senator I.J. Gorst		Deputy of St. Martin		
Senator L.J. Farnham		Deputy T.A. McDonald (S)		
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				

Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Peter				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

The Deputy Bailiff:

I have a request to take Article 15 separately, the vote is, therefore, on Article 15 and I ask the Greffier to open the voting.

Deputy J.M. Maçon:

Sir, just to clarify, this is about shuffling of posts, is it not?

The Deputy Bailiff:

Yes, it is about Minister reshuffling.

POUR: 26		**CONTRE: 19**		**ABSTAIN: 1**
Senator P.F. Routier		Senator S.C. Ferguson		Deputy R. Labey (H)
Senator P.F.C. Ozouf		Connétable of St. Saviour		
Senator A.J.H. Maclean		Connétable of St. John		
Senator I.J. Gorst		Deputy J.A. Martin (H)		
Senator L.J. Farnham		Deputy G.P. Southern (H)		
Senator P.M. Bailhache		Deputy of Grouville		
Senator A.K.F. Green		Deputy J.A. Hilton (H)		
Connétable of St. Helier		Deputy J.A.N. Le Fondré (L)		
Connétable of St. Clement		Deputy K.C. Lewis (S)		
Connétable of St. Peter		Deputy M. Tadier (B)		
Connétable of St. Lawrence		Deputy of St. John		
Connétable of St. Mary		Deputy M.R. Higgins (H)		
Connétable of St. Ouen		Deputy J.M. Maçon (S)		
Connétable of St. Brelade		Deputy of St. Martin		
Connétable of St. Martin		Deputy S.Y. Mézec (H)		

Connétable of Grouville		Deputy of St. Ouen		
Connétable of Trinity		Deputy S.M. Bree (C)		
Deputy of Trinity		Deputy T.A. McDonald (S)		
Deputy E.J. Noel (L)		Deputy of St. Mary		
Deputy S.J. Pinel (C)				
Deputy of St. Peter				
Deputy A.D. Lewis (H)				
Deputy S.M. Wickenden (H)				
Deputy M.J. Norton (B)				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

The Deputy Bailiff:

Very well. The next vote is on Article 16 and I ask the Greffier to open the voting.

Deputy M. Tadier:

That is the one about abolishing and firing …

The Deputy Bailiff:

That is the one establishing and abolishing Ministers on giving 2 weeks' notice to the States.

Deputy M. Tadier:

Just so everyone knows.

The Deputy Bailiff:

Very well.

POUR: 26		**CONTRE: 20**		**ABSTAIN: 0**
Senator P.F. Routier		Senator S.C. Ferguson		
Senator P.F.C. Ozouf		Connétable of St. Saviour		
Senator A.J.H. Maclean		Connétable of St. John		
Senator I.J. Gorst		Deputy J.A. Martin (H)		
Senator L.J. Farnham		Deputy G.P. Southern (H)		
Senator P.M. Bailhache		Deputy of Grouville		
Senator A.K.F. Green		Deputy J.A. Hilton (H)		
Connétable of St. Helier		Deputy J.A.N. Le Fondré (L)		
Connétable of St. Clement		Deputy K.C. Lewis (S)		
Connétable of St. Peter		Deputy M. Tadier (B)		
Connétable of St. Lawrence		Deputy of St. John		
Connétable of St. Mary		Deputy M.R. Higgins (H)		
Connétable of St. Ouen		Deputy J.M. Maçon (S)		
Connétable of St. Brelade		Deputy of St. Martin		
Connétable of St. Martin		Deputy S.Y. Mézec (H)		
Connétable of Grouville		Deputy of St. Ouen		
Connétable of Trinity		Deputy S.M. Bree (C)		
Deputy of Trinity		Deputy T.A. McDonald (S)		
Deputy E.J. Noel (L)		Deputy of St. Mary		
Deputy S.J. Pinel (C)		Deputy G.J. Truscott (B)		
Deputy of St. Peter				
Deputy A.D. Lewis (H)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				

Deputy M.J. Norton (B)				
Deputy P.D. McLinton (S)				

The Deputy Bailiff:

Are you happy to 17 to 19 together, Chief Minister?

Senator I.J. Gorst:

I am, Sir.

The Deputy Bailiff:

Very well. The vote is on Article 17 to 19, inclusive. I ask the Greffier to open the voting.

POUR: 43		**CONTRE: 3**		**ABSTAIN: 0**
Senator P.F. Routier		Connétable of St. Saviour		
Senator P.F.C. Ozouf		Deputy of St. John		
Senator A.J.H. Maclean		Deputy T.A. McDonald (S)		
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Peter				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				

Deputy M.J. Norton (B)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

The Deputy Bailiff:

Do you wish to propose the Act in Third Reading, Chief Minister?

3.8 Senator I.J. Gorst:

If I may. I thank Members for their support in the Second Reading. I recognise that, as I said during the course of Senator Bailhache's amendment, although it has been in some respects a difficult debate, I do think we should expect debates in our Parliament, because it ultimately enhances democracy where senior Ministers can disagree on particular issues, but then continue to work together. These changes, I hope, are going to help that. Deputy Tadier seems to have been, during a number of his interventions, somewhat fixated on the collective responsibility statement. There is no great mystery. If memory recalls, when this was discussed ready for lodging at the Council of Ministers at the lodging stage Senator Bailhache and I think Senator Farnham were not at the Council of Ministers on that date. I think Senator Farnham was represented by one of his Assistant Ministers. It was probably Deputy Norton on that occasion. On that occasion Ministers were supportive, but they have had other subsequent discussions about these proposals. Senator Bailhache has made the points around the Council of Ministers' table subsequently that he made today during the Assembly. Those discussions persuaded those Ministers who voted with him to change their mind. There is no mystery. At the time it was an accurate statement. It subsequently proved after further discussions not to be so. But, I maintain these changes in third reading.

The Deputy Bailiff:

Very well. Is the adoption in Third Reading seconded? **[Seconded]**

3.8.1 The Deputy of St. Martin:

I would just like to start with 4 words which I suspect may confuse the Assembly. Deputy Labey cannot answer because he has written my speech, so he already knows. These 4 words are this: Grech, Baker, Winwood, Clapton. So, I add another 4 words. Ric Grech, Ginger Baker, Steve Winwood, Eric Clapton, the U.K.'s first super-group and the name, Blind Faith. The Deputy of St. Peter spoke about looking and adapting. What Members have done, I believe, is to close their eyes, not looking and not adapting. They have closed their eyes and have taken that leap of blind faith. The Minister for Treasury and Resources spoke about our construction industry being at a peak. More jobs, more growth, more people in work, the state of our public finances and how good they are. I completely agree. I happen to think they could be even better and could have been even better had we taken on the Civil Service reform earlier in our term of office. The Chief Minister warned us against muddling on. But, I fear we are still in a muddle, because we have a system now which we understand and endorse in the Civil Service and a political system which we are not quite sure how it fits together. Anyway, *c'est la vie*. We voted and I have never been afraid of change and I am not going to vote against this now. We need to push ahead. I finish with 2 things. The first one is the name of a boat that my ex-partner and I had in Gorey Harbour. We used to use it for harvesting mussels. It had hydraulic wheels that went up and down; hydraulic steering; hydraulic drive; hydraulic propeller; hydraulic crane. We named it "What Could Possibly Go Wrong?" **[Laughter]** If you want to see it it ties-up in the harbour sometimes. The reason was provided if the hydraulic motor was working it was fine, but if it did not, everything else stopped. I say to Members I am going to vote for this today, but I fear that we may have bitten off a bit more than we can chew.

3.8.2 Senator L.J. Farnham:

I am pleased to follow the Deputy of St. Martin, Blind Faith indeed, although I did prefer Cream, which came slightly afterwards. I hope we have done the right thing. What we have done and I am sure a number of Members, including myself are not entirely sure how this is going to play out, but we have presided over quite a large consolidation of powers, not just within the public sector, but politically as well. Members will soon realise that their influence over Ministers will be diminished and the Minister's influence over departments will be also. That is not necessarily a bad thing, because it is going to be down to us, the States Assembly, to make it work. As Deputy Vallois said before: "We are good at blaming systems, when often the people are at fault." We have to seize the opportunity or seize the day or seize the fish as Deputy Labey put it earlier and try and make this work. I will just leave Members to think about a quote. I think it was Rothschild that said: "Give me control of a nation's money and I care not who makes the laws." Thank you.

3.8.3 Senator P.F. Routier:

I said in an earlier part of this debate that I would be sorry to be leaving this Assembly if this went through. I am really excited for the future of this Assembly now. I think we are now in a position where this Assembly can really go forward in strength, knowing that they can achieve things. I really wish the new Assembly all the best in the future. **[Approbation]**

3.8.4 Senator P.F.C. Ozouf:

Former Senator Le Marquand, who used to sit next to me, said in one of his last speeches: "The enemy of a good plan is the dream of a perfect plan." **[Members: Oh!]** There is always a perfect plan, but I think that with the changes that have been made it is really disappointing to hear the remarks of people that may be in this place when this place re-comes after the elections. I know that you require both informal power and formal power, with the appropriate checks and balances. While I agree with the Deputy of St. Martin about the fact that the Civil Service reforms should have been happening earlier, there also needs to be an appreciation, if I may say, of Ministers working more collectively together. This does not in any way stop, but requires … the thing that I was trying to say earlier was: there are going to be accountable Ministers. The Chief Minister is going to delegate to a Minister an accountable area. They will be held to account properly and this Assembly will be strengthened and government business and, the most important issue, the services that flow from those decisions and that accountability will improve and Jersey will become even greater than it is today. The system was broken but it is now well on the way to being fixed. I congratulate the Chief Minister on having the courage to come forward and make these necessary changes, because they are absolutely necessary. I am sure that with good will and with people working together and wanting to work together, and I cannot be accused of electioneering, because I am not going to be here, it will work and it will be made to work by good people with a good arrangement.

3.8.5 Deputy M. Tadier:

First of all, I have to correct something I said earlier, because if one is to be pedantic one has to be pedantic with oneself as well. When I stood up and said that the Attorney General was semi-omnipresent, I apologise if that was tautological, but of course that is not the right word, it is an oxymoron. It is not tautological. It made me sound like an oxymoron, but without the oxy part. I am not necessarily the brightest spark today, but I would not want that to be recorded for ever on Hansard without it being corrected. You could also say that the enemy of a poor plan is a very poor plan. What we have seen today is that the Council of Ministers have got, I think, a pyrrhic victory here. They have a vote through 20:26. What we generally know in this Assembly with the very skewed political weighting towards the Council of Ministers at any one time is that when you get a result which is only just like that, when you get 20 votes against, knowing that the Council of Ministers can put a very poor plan together and still get 13 loyalists on their side. We saw an example

of that a few weeks ago. It shows that it is not a ringing endorsement for their plans. Those Articles have not received the scrutiny that they should have had. There are holes in them so big that you could drive the proverbial horse and carriage through that. It is a complete nonsense to say on the one hand that the Chief Minister did not have the confidence to bring the full package to this Assembly which would have been to say whoever the Chief Minister is, empower him properly. We are empowering the Civil Service, single point of responsibility, single point of accountability and this Assembly has let the Chief Minister to do it. We have allowed this complete nonsense to get through, whereby we give ourselves an illusion that we are still in control as an Assembly. But, there are so many mechanisms for any Council of Ministers. One thing I always remember that Deputy Le Fondré always says is that you have to remember the worst case scenario in any system. You can have the best Chief Minister now. He gets praised all the time for being a gentle man, he is a reasonable man, he does try and talk to people from across the Assembly, he is quite friendly. But, you could have a despot in there in the future. You could have your worse political nightmare in there. You could have a landslide victory for any one given grouping at any one time. It could be of any political persuasion.

[21:00]

They could control in a real way what goes on in this Assembly purely by numbers. There are so many mechanisms for the Council of Ministers, whoever they might be, to get round the intended safeguards. We have heard that today. You just abolish a ministry. Saying: "Look, I just abolish it." Sleight of hand. Put loads of orders in that nobody is going to read. Members do not have time, because they are too busy and too tied-up on Scrutiny anyway to do all the work. We can do what we want. It gives more and more power. I am really disappointed to have heard this from experienced Members that I would have thought better or saying: "Oh, now we cannot bring a vote of no confidence, because it is not going to succeed." But, somehow when you have a Council of Ministers where there is a single power entity, where they are even more powerful and it is going to be even more difficult to dislodge them, because you have to bring a vote of no confidence in the whole lot. At least at the moment you can bring it against the weak and the non-performing Minister. So, if somebody is not performing at any one given portfolio, we will say: "Sorry, Chief Minister, we cannot have that." That happened in the last Assembly. We had threats saying: "You have to get rid of that person; otherwise we will bring a vote of no confidence in him." Then the Chief Minister was forced to act. That person was ousted because he knew that his political longevity in that particular office was not going anywhere. It is going to be even more difficult to do that. Who do these Members think they are kidding? Who is going to be the one to bring the vote of no confidence in the Chief Minister when all of them are going to be floundering round? It is not going to happen. It is not going to succeed. There have been lots of talks about votes of no confidence, but they simply do not materialise. There has been lots of talk saying: "Oh, in the past it was much better, when we had the committee system, because there was votes of no confidence all the time." No doubt after a well-watered lunch at the Capannina, people saying: "Blow it. Vote of no confidence against him. I did not like something he said to me in the morning. He did not pick up the tab, so vote of no confidence. I will stand against him." Then nothing really changed. I am really concerned about what we have voted for. There is a temptation for Members to be self-valedictory and give everyone a pat on the back, saying: "Have we not done great today?" We should not be sitting after 5.30 p.m. anyway. We have not done anything. I cannot see the clock. It is 6.05 p.m. we have got loads of time. **[Laughter]** So I think the concern is be careful what you wish for here because I think we have just signed away a lot more power to this Assembly. What this does is that the next step automatically has to be to give the Chief Minister the ability to hire and fire; that is consequential. Did we know that we were voting for this today? Because that is necessarily what has to happen now, it becomes a complete nonsense for the *status quo* to remain. The only glimmer of hope that I can take from this, and remember this still is the Third Reading, it is not too late to vote against the

whole lot, is that this will definitely catalyse party politics. There is no doubt about that. When people see the amount of power that you have given to a Council of Ministers, and of course an empowered Civil Service, which is fine if it is carrying out the will of a mandated Council of Ministers, but it will not be, probably not at the next election, there will be a political vacuum where there will be exactly the same kind of issues that we have had this time round. The litmus test, I think you have to ask yourself hypothetically, is that if we had exactly the same people in power as we do now, exactly the same faces and political inclinations but under the new system that we are going to have, do you really think it will have been any different? Do you really think anything else would have changed? Would the hospital have got built quicker? Would the Les Quennevais School have been built quicker? Would the Innovation Fund have got done quicker? I do not think it would because it is not about the system it is about the political vacuum and the fact that the Council of Ministers, in its current constitution, cannot work together possibly because they are too disparate politically. This is disparate on the right. It is a fairly narrow grouping it is not as if we have got a massive spectrum of libertarians, centrists, social democrats, greens, neo-liberals and all the rest of it there over the 4 corners of the political spectrum. This is a very narrow right wing Government that we have got. Essentially what we have seen played out today is a feudal section in the Council of Ministers fighting with the neo-liberals. Senator Bailhache was right that the Council of Ministers and Government and the Assembly cannot be seen as just running a business, we are not Jersey plc, but nor are we Jersey 1066. I think that is a stark choice to have to choose from and that is why it has been so difficult for some Members, and, I think, the public, looking at this. There has to be a better alternative than between these 2 options. I think at the next election, of course, that is the choice for the public to choose between the 2 systems. The functioning and mechanisms of this Assembly will no doubt be constantly under scrutiny but it is really the personages that get elected into this Assembly and their political drives, that is what is going to make the difference. So I do ask Members, this last ditch attempt here, we can kick it out on the Third Reading because there are so many unintended consequences. We are not here just to rubber stamp poor governance and to do so just a few weeks before an election because we want to feel that we have done something and we can pat each other on the back. Let us kick this out in the Third Reading because it is the right thing to do.

3.8.6 Senator A.J.H. Maclean:

I have lost the will, I am afraid. I was simply going to say that there has been much talk about good plans and perfect plans. I was going to offer for Members to encourage the Chief Minister to sum up quickly and the perfect plan is that we go home. I am very pleased that we have got to the position we have got to. I think this is somewhat of an historic day. I do urge Members to continue to support in the Third Reading and we can move forward possibly in the next Assembly. Thank you.

3.8.7 Deputy J.A. Hilton:

I am really disappointed that Senator Bailhache's amendment was lost by 2 votes. I agreed with everything the Deputy of St. Martin said in his speech. I differ to him in that I am not going to support this in the Third Reading. I think what has happened today is fundamentally wrong to force through legislation like this which is going to have a huge impact on the States Assembly, I just cannot agree with it. So I will be voting against in the Third Reading. Thank you.

The Deputy Bailiff:

Does any other Member wish to speak in the Third Reading? I call on the Chief Minister to respond.

3.8.8 Senator I.J. Gorst:

Sometimes Third Readings are indeed difficult because a Member might have a particular view on a particular Article that was or was not successful, and that makes them then wonder about the whole of the Third Reading. Those Members who are wondering now about whether they will support this

in Third Reading, I ask them to think carefully. I know that change is not easy. I think that these are important changes but they are by no means the radical change that some people have suggested during the course of this debate. But they are important changes because they drive out silos in our institutions and deliver appropriate and important accountability structures and framework. They drive out the silos of the corporation sole as well and I think that is important and it delivers improvement. Some people have tried to say that the organisation and institution is not to blame it is the people in it. By all means blame politicians; that is what we are here for, but I want to reject the idea that those people in our organisation are the ones that are wrong. Day in, day out I see absolutely committed first-class people wanting to do better than they can in the current system. I see the frustration on their faces and sometimes it is heart breaking to see the sheer hours of dedication that they put in and yet they are frustrated on every side by the system within which we ask them to work. Therefore, I know that the changes in the Civil Service, for some, are difficult at this point when we are in the consultation period, some are concerned about where they will fit in the new organisation. I understand that and I say to them and I ask them to keep heart because out of these changes are going to come a service and a system which is going to serve Islanders better and put Islanders at the heart of everything we do into the future. Therefore, I ask that Members do support these changes in Third Reading. Thank you.

The Deputy Bailiff:

The appel is called for. The vote is to adopt the law in Third Reading and I will ask the Greffier to open the voting.

POUR: 34		**CONTRE: 11**		**ABSTAIN: 0**
Senator P.F. Routier		Connétable of St. Saviour		
Senator P.F.C. Ozouf		Deputy G.P. Southern (H)		
Senator A.J.H. Maclean		Deputy J.A. Hilton (H)		
Senator I.J. Gorst		Deputy K.C. Lewis (S)		
Senator L.J. Farnham		Deputy M. Tadier (B)		
Senator P.M. Bailhache		Deputy of St. John		
Senator A.K.F. Green		Deputy M.R. Higgins (H)		
Senator S.C. Ferguson		Deputy J.M. Maçon (S)		
Connétable of St. Helier		Deputy S.Y. Mézec (H)		
Connétable of St. Clement		Deputy S.M. Bree (C)		
Connétable of St. Peter		Deputy T.A. McDonald (S)		
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy of Trinity				
Deputy E.J. Noel (L)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Peter				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				

Deputy S.M. Wickenden (H)				
Deputy M.J. Norton (B)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

The Deputy Bailiff:

Well, it is only 6.15 p.m. according to the wall clock. **[Laughter]**

Senator P.M. Bailhache:

Before the Assembly adjourns, I wonder if I might make one request of Members. I have an amendment to Projet 36, which has been lodged by Senator Ferguson, seeking a committee of inquiry in relation to the all-weather lifeboat. I have, unfortunately, to be in London for ministerial meetings on Thursday and I am wondering whether Members might be willing to take Senator Ferguson's proposition as the first item tomorrow in order that I can, in due course, lodge my amendment and participate in the debate. I would be very grateful if Members would be prepared to allow that.

The Deputy Bailiff:

Very well. That is the request. It seems to me that the Deputy of St. Peter must have an interest in this as well as Senator Ferguson.

The Deputy of St. Peter:

I would be grateful if that could go after Sexual Offences Law, please. **[Laughter]**

The Deputy Bailiff:

Yes. Is there a particular reason, Deputy, that you want that one done first?

The Deputy of St. Peter:

Yes, simply there is a reason due to Law Officers not being in the Island. We had planned everything so that it would go as soon as possible.

The Deputy Bailiff:

All right. So is it that neither of the Law Officers are available tomorrow or is it just that one is not? Do you happen to know that?

The Deputy of St. Peter:

I cannot recall exactly what the situation is but I do recall that there was an issue about timing and so, if we can, I am sure that we could fit both in in time.

The Deputy Bailiff:

Senator Ferguson, do you have any comment?

Senator S.C. Ferguson:

The problem I think is the fact that Senator Bailhache has a plane to catch tomorrow evening and therefore if we do not go first I do not see that it should take long frankly. **[Laughter]** I may be being optimistic there but if we do not go first then Senator Bailhache might not have the chance to speak to his amendment.

The Deputy Bailiff:

Very well. It is of course a matter for the Assembly. Do you wish to make a formal proposition that the matter moves to first item of business tomorrow, Senator?

Senator P.M. Bailhache:

That is my request, Sir, yes.

The Deputy Bailiff:

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

The Deputy of St. Martin:

I will do whatever the House wishes of course but it is a little bit disappointing to be told at 9.15 p.m. in the evening that a debate, which is scheduled for another 15 pieces of public business down the road, is brought forward so quickly. If we had had more notice I would have been very grateful, I could have prepared greater today. I will prepare overnight if necessary.

[21.15]

Deputy G.P. Southern:

I am just looking at the P number on the Draft Sexual Offences, it is P.18. I think it would be disrespectful to the Minister for Home Affairs to put something in front of that with a plane to catch in the evening. Certainly the request from the Minister to have her P.18 first and then the debate, which need not take long, on the lifeboat is a far better arrangement.

Senator P.F.C. Ozouf:

I just rise to support, unusually, what Deputy Southern has to say. We had planned for the Sexual Offences Law first. I understand the Attorney General is out of the Island and if there is an issue with Law Officers it is an issue which we absolutely must have Law Officers on the Sexual Offences issue. Surely we can deal with the 2 in the order of Sexual Offences first, I do not know whether I can make a counter-proposition, and then the Lifeboat. Surely that must be the way to deal with matters.

The Deputy of St. John:

It may be appropriate for me now to state that the Education and Home Affairs Scrutiny Panel will be withdrawing amendment 3 of the Sexual Offences Law so there will only be 2 amendments to the Sexual Offences Law and hopefully, if it is dealt with in an appropriate manner and not repetitive speeches, we can get it done in a timely manner and in a respectable way.

The Deputy Bailiff:

Very well.

Senator P.M. Bailhache:

May I just seek clarity from the Deputy of St. John as to whether that is the jurat amendment?

The Deputy of St. John:

No, amendment 3 is with regards to the relationships. Article 2, I believe it is.

Senator P.M. Bailhache:

These things are difficult, Sir, I am in the hands of the Assembly.

The Deputy Bailiff:

Very well.

Senator P.F.C. Ozouf:

Sir, what happened to my counter-proposal?

The Deputy Bailiff:

The answer is we have to take one proposition at a time and so the first proposition is that we deal ... sorry, Deputy Tadier.

Deputy M. Tadier:

Just a question on a point of procedure. Has the Standing Order been amended yet whereby a States Member, in absence, can propose somebody else to present his amendment or proposition? If that is the case it may be another way forward.

The Deputy Bailiff:

Yes, that Standing Order has been altered. It is open for someone else to present that petition. Clearly, there appears to be no traction for that. I think we must just deal with it a proposition at a time. Firstly, those in favour of bringing the Lifeboat matter to ... the appel is called for. The vote is whether or not the Assembly is in favour of bringing the Lifeboat proposition to the first order of business tomorrow morning. If you are content to do that then you will vote pour. I ask the Greffier to open the voting.

POUR: 11		**CONTRE: 33**		**ABSTAIN: 0**
Senator P.M. Bailhache		Senator P.F. Routier		
Senator S.C. Ferguson		Senator P.F.C. Ozouf		
Connétable of St. Clement		Senator A.J.H. Maclean		
Connétable of St. Ouen		Senator I.J. Gorst		
Connétable of St. Saviour		Senator L.J. Farnham		
Deputy J.A. Martin (H)		Senator A.K.F. Green		
Deputy J.A.N. Le Fondré (L)		Connétable of St. Helier		
Deputy A.D. Lewis (H)		Connétable of St. Peter		
Deputy R. Labey (H)		Connétable of St. Lawrence		
Deputy S.M. Bree (C)		Connétable of St. Mary		
Deputy T.A. McDonald (S)		Connétable of St. Brelade		
		Connétable of St. Martin		
		Connétable of Grouville		
		Connétable of Trinity		
		Deputy G.P. Southern (H)		
		Deputy of Grouville		
		Deputy of Trinity		
		Deputy K.C. Lewis (S)		
		Deputy M. Tadier (B)		
		Deputy E.J. Noel (L)		
		Deputy of St. John		
		Deputy M.R. Higgins (H)		
		Deputy J.M. Maçon (S)		
		Deputy S.J. Pinel (C)		
		Deputy of St. Martin		
		Deputy of St. Peter		
		Deputy S.Y. Mézec (H)		
		Deputy of St. Ouen		
		Deputy S.M. Wickenden (H)		
		Deputy M.J. Norton (B)		
		Deputy of St. Mary		
		Deputy G.J. Truscott (B)		
		Deputy P.D. McLinton (S)		

Senator P.F.C. Ozouf:

Can I make a counterproposal, Sir, to have it immediately after the Sexual Offences Law?

The Deputy Bailiff:

There is now a counterproposal. Is that seconded? **[Seconded]** That to have it listed immediately after the debate on the Sexual Offence Law. Deputy Tadier wishes to speak.

Deputy M. Tadier:

What is the procedure here in terms if someone makes a proposal, can you amend that proposal? Do you have to wait until ...

The Deputy Bailiff:

This is something that I think is within the discretion of the Chair because it is a matter not specifically provided for in Standing Orders. It is a matter for the Assembly the order in which the business is taken. So it is an obligation of the Chair, I think, to consult with the Assembly and to go the way the Assembly wants. But in terms of the order of propositions, that I think is a matter within my discretion. You do not amend. What you do is you take these kinds of propositions, one proposition at a time. The proposition at the moment, Deputy, is whether the Assembly agrees to go in the order of Sexual Offences followed immediately by the Lifeboat.

Deputy M. Tadier:

The reason I ask is it is inherently problematic in the sense that if any proposition passes there is no option for somebody else to propose a counter-proposition. The logical way forward would be for an amendment to be put forward so that Members can choose between which one is preferable. The reason I would ask that, and this can be counted just as a speech on the merits of this particular one, is there are not just the 2 pieces on the Order Paper. There are lots of other important matters such as the Discrimination Law, which is there, and it has been sitting there for a long time. That is not to say that the Lifeboat issue is not also important but it is something which has been lodged later and, as I said earlier, if it is simply because Senator Bailhache is not here he can delegate his amendment to somebody else to present. The arguments will remain valid. I am very uncomfortable about changing orders, especially when we may not even get through the whole paper.

The Deputy Bailiff:

Deputy, obviously the answer to that is to vote against it.

Deputy R. Labey:

When I popped out from this Assembly all day today to take a breath of fresh air, or what have you, the only thing that members of the public have said to me is: "Are you debating the Lifeboats yet?" There is huge public interest in this. I think we should do it tomorrow when Senator Bailhache is available to make his amendment. There is huge public interest in it. We are better to do it. Some of the other things on the Order Paper, if we run out of time we run out of time, but for the Lifeboat we should do it tomorrow.

The Deputy Bailiff:

The position is the Assembly has already rejected the idea it is the first item of business. The proposition is it is the second item of business after the Sexual Offences Law.

The Connétable of St. Mary:

Just to find out, if we run out of time tomorrow before Senator Bailhache leaves, will the Senator be back in the Island, because we have continuation days scheduled for next week?

The Deputy Bailiff:

Are you able to give an indication, Senator, as to what your availability is?

Senator P.M. Bailhache:

If it helps Members, I shall be back in the early afternoon of Friday but if the Assembly has already dealt with matters by that time it will be too late.

The Deputy Bailiff:

Those in favour of dealing with the matter Sexual Offences Law first followed by the Lifeboat matter kindly show. Those against? That is the way the business will be dealt with tomorrow and then we will proceed ...

Senator P.F. Routier:

I propose the adjournment, Sir.

The Deputy Bailiff:

Then we will proceed in accordance with the Order Paper as currently constituted. The adjournment is proposed. The States stands adjourned until 9.30 tomorrow morning.

ADJOURNMENT

[21:22]