

STATES OF JERSEY

OFFICIAL REPORT

THURSDAY, 21st JULY 2011

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

[9:00]

PUBLIC BUSINESS - resumption

1. Draft Long-Term Care (Jersey) Law 201- (P.108/2011) - resumption

The Deputy Bailiff:

We return to P.108. The debate is on the principles of this piece of legislation. I understand there are 8 Members wishing to speak although as I have not got my glasses on I am not sure who they are [**Laughter**] and, in the light of the comments I made just a moment ago, perhaps I can ask if any Member wishes to speak. Senator Routier?

1.1 Senator P.F. Routier:

Some Members have mentioned that they would like to have seen this legislation brought forward sooner and the department has been criticised and the previous Minister has been criticised, I think, for why it has taken so long. I think Senator Breckon referred to the fact that Guernsey has had this legislation in place for a number of years. Well, in fact, this legislation, what we have before us, is not what the Guernsey legislation is, it is a hybrid of that and although there are some similarities there have been some major enhancements. When I was Minister I had regular contact with Guernsey to discuss their system and how it worked and there were some important matters to consider; they were considering how their gatekeeper was working and how people got access to their care provision, so we had to make sure that what we were bringing forward did not suffer from the same sort of issues that they were currently suffering at that time. Importantly, the Guernsey financial support system at the time did not provide for continuing care within the community in a person's own home. So while we have had the benefits of the knowledge of the Guernsey model, at the time I know we felt ... and I can see that the current Minister also wants to ensure that we have an appropriate gatekeeper system for Jersey and also the supply in care homes is sufficient and the prices are known and affordable. Of course, now we have the benefit of the knowledge gained from the income support link because care homes are being paid for by income support and there are negotiated models for paying for care, so there has been a lot of information that has been brought together in recent times. The other enhancement that has been made in this legislation is the ability to provide financial support with an approved care package in someone's own home. This will enable people to stay in their own homes for as long as possible with appropriate care support. I am sure Members will congratulate the Minister and the department for carrying out this additional work and bringing forward what I think is a complete package for long-term care, which is suitable for the needs of more people rather than just providing for those who are in care homes. I certainly believe that care in the community where possible has to be the way forward, enabling people to stay in their own homes for as long as possible. I think it was Deputy De Sousa who mentioned yesterday the need to ensure that there are rooms suitable for couples to live together; well, helping to support people to stay in their own homes enables that for a lot longer period but she is right that there is a need also, for when people do have to make that move into formal care, that there is a provision for them to live together. I do hope that Members appreciate that the Social Security Department have a very small team in that department of people working on policy to develop new initiatives and they have progressed this legislation as soon as they could. We should not forget that they have brought forward many pieces of legislation in recent times and also worked on enhancements to the income support system, so I hope Members will join me in thanking them for all their endeavours because they have worked extremely hard to bring this here [**Approbation**] but I cannot help but mention that because they are a small policy team they also have the responsibility for drafting answers to questions, both written and oral, and I know that they have been diverted from their work when they have had to deal with a lot of the questions that have been coming forward. I know that is an issue which does cause some grief and also the Minister is also in here a lot of the time so the more we sit the less there are opportunities for Ministers to do

their important work of bringing forward new policies. Anyway, back to the proposition. This legislation has been developed, it is much needed and I hope that everybody in the community will benefit from this and we should all support it unanimously.

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

I know the Senator wandered off, and maybe if the Assistant Minister for Social Security did not spend all their time giving written rather than oral questions to Health, she could be working on the legislation with her Minister, but we are all ... I am not giving way ... our officers spend a lot of time answering that. I will be very brief on the legislation: I do welcome it. I agree that it should have been done earlier. I was on the Scrutiny Panel; our excellent adviser, Mr. Julian Forder, on the first presentation we knew what we had to do and I think he has been advising on this at Social Security. I do have a couple of questions: this keeping people in their own homes for longer; what homes? We are 20 years behind in planning for people to stay in their own homes, we have a short-sighted one-bedroom policy, 3 floors high with no lifts, ridiculous. In their own homes or prisoners in their own homes?

[9:15]

We need to be spending money out of this pot to probably ... like Deputy De Sousa says, they do not need to go into residential but adapting homes so people need to be cared for in them - the Minister is nodding. I do have a question ... and we do need warden control, which is not sheltered, and they do not seem to get it, and even the new Minister for Housing does not seem to get it, and I hope he goes to where Senator Breckon was talking about yesterday in Edmonton. It might sound, you know ... but it has got a waiting list and it has since it has started and it works fantastically and people love it there. The question I had is following on from Senator Shenton, the fairness. Deputy De Sousa said her children, my children, would not mind paying; this has got to be ... children today of 20 can still get out of this pot in 50 years' time, when they will probably be working till they are 70. I do not think this is far-reaching enough, I do not think it will do it. I know it is a start and I applaud the start, but do not expect people to pay today who will not have anything left in the pot in 50 years' time. We are addressing the elderly population, the baby-boomers of the 1970s and the 1980s now, we are not addressing the kids who are just starting out to work. The ratios do not add up, you cannot have 1.8 to 3.9 people and have the people to look after them and also earn the money to pay for them, it does not add up, so we have a problem; we know we have a problem. My other question - and I think I heard the Minister right - is about the residency. I think he said he is going to have a tough residency policy, 10 years on the Island, so I am asking the question, can you be 5 to 15 and go away until you are 55 or 65 and spend one year back on the Island, never having paid a penny, not one penny, and then claim from this pot? I think the Minister said you can. All right, if you are an adult, if you are over 18, you can spend 18 to 28 on the Island, come back at 65 still - you might have been married between 18 and 28 - never paid a penny, never worked, for some reason you have never paid into this pot, and we have a lot of people who are looking ... what are people offering? I am not sure about this 10 years, it sounds good: "You must do 10 years" but you only have to be back one year and you can dip into this pot. We are too generous; I say that - I do not mean to sound mean - but we could have hundreds and hundreds of thousands of people who have done 10 years' residency, over 18 who have left the Island, and they will at 60 be looking for somewhere: "Where can I retire?" Now, we are bringing them back, we would easily bring them back. We cannot cope, so I really have a question about ... I do not know how to make it fair but 10 years on the Island, never paying in and one year back never paying in does not do it for me. I will work with the Minister if I am still here and hopefully to come up ... and I know it has to all be human rights compliant and everything else and it will affect Jersey-born people, but if you have never paid into the pot and you have got kids here who have always paid in and the pot is going to run out, it is not fair so it is all about fairness. I do not

know whether £750,000 is the right sum; again, we can always change that, but I really do have concerns about we are not looking long enough and the concern about the residency.

1.1.2 Deputy A.E. Pryke of Trinity:

I shall heed your words and be quite brief. I said yesterday at the Assembly, approved laws for medical prescriptions and medical practitioners, that it was an important milestone in changing the healthcare in Jersey. Well, if this proposition is approved, this will change the way care is given for generations to come, and that will be a good thing. I just pick up with a couple of points. Where this proposition goes further than Guernsey is the choice of being able to stay at home, and I know most people do wish to stay at home, one of my consultants quite rightly says that we have got enough long-term beds in Jersey and they are in people's homes. The department has been working very closely with the Minister and Social Security and I congratulate him and his Assistant Minister for bring this. This is an important piece of work and we need to approve it.

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

A Member asked me yesterday whether I would be speaking on this proposition and initially I was not going to, however this particular Member wished to hear the views of younger Members in the Assembly so I think it appropriate to provide a brief overview of my opinion. Firstly, I would like to say that I am disappointed, not in this particular proposition before us today, but in the fact that it has taken over 18 years for this particular issue to be addressed in an appropriate manner. To put it into context, 18 years ago I was 9 years old living with both my parents and grandparents in the same household whereby my parents aided the care of my grandparents. Understanding the concerns relayed by Senator Shenton and the fact that younger generations will bear the brunt of this increase in social security, it disappoints me that sound bites can be made without any viable alternative options being put forward. I believe it is an extremely important piece of legislation we are debating and reclassifies the definition of what social security is set up to do. Addressing the point that Deputy Martin has made about us still having the problem for children of today that may not benefit from this in the future; I completely agree, which makes me ask the question of the Minister that although there is a possibility of this benefit increasing in 5 years' time, how it will be reviewed going forward, whether there will be a requirement of future Assemblies to address this going forward in an appropriate manner instead of deferring the decision and leaving it for younger generations going forward to bear the brunt of even higher increases than we are seeing at this precise moment in time.

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

It is interesting to note in the Scrutiny Report it said in looking at this issue of equity: "This can give rise to feelings of grave injustice among those families finding themselves substantially disinherited while at the same time creating perverse incentives for others to beat the system by divesting themselves of assets" and that was the big issue. There has been a paper sent round to us, which I thought was quite interesting, by a member of the public - a candidate no less - where he argues that it is an extremely immoral system. But, in fact, if you read the paper, halfway through he changes his stance and accepts the detail of the system and starts coming up with detailed changes as opposed to saying: "The whole system is rotten." I think it goes back to the insurance principle, this was a principle put in by Beveridge, it was one that, after a great battle with considerable hurt to a lot of people, was accepted in Jersey in 1951 with the establishment of the Insular Insurance Scheme and it simply acknowledges that we in society are, in certain vital respects, our brothers' and our sisters' keeper. That is what insurance is about and that is where I divert from this gentleman because we pay insurance for car use - and indeed those who do not run cars pay taxes for hospital use for those who suffer from the consequences of misuse of cars - and so it goes on. So it is an insurance scheme and I think that is very good. Indeed, the Achilles' heel is the co-payment because it goes back to the dreaded property issue and that is it. But I think we had a lot of representations on the panel that: "I could have been in the pub every night instead of

diligently saving up my money and investing it”, and of course, a similar argument is going to apply to people who took seriously government exhortations that one should save for one’s private pension, because that pot will be raided under this system even though these people took to heart the advice that the Government could simply no longer provide a pension which met properly the pressures of the cost of living and that you had to bring up a supplementary system. People took that to heart and tried conscientiously; again, those people will suffer. A very difficult one and I think the only way to cut through that is an insurance scheme but, as I said, the Achilles’ heel does remain co-payment. I think the cap is too high. I think it would make more sense if you are to avoid - and I accept this gentleman’s view on this - the issue that has arisen with inheritance tax and which has so infuriated readers of the *Daily Mail* in the U.K. (United Kingdom) that as property values have risen many, many more people have been drawn into inheritance tax to whom it was seen as a “tax” to soak the rich but all of a sudden your typical *Daily Mail* reader finds themselves, or a lot of them find themselves, drawn into this net. It should never be a lottery where if you have been a conscientious (or indeed, an unconscientious) member of society, society grabs an asset off you; why does it not grab other assets like, I do not know, classic cars which have appreciation attached to them and so forth? It is a very strange philosophy on which to run a financing system for such an important service. What I would say is yes, the panel did acknowledge that there are a variety of levels and I think ... and I notice the Minister for Housing after the very tragic events at Victoria Cottage Homes talked of: “I want to stress this is independent living.” I do not think that we are going to be able to say that much longer, quite frankly; we are going to have to be much more sophisticated in the way we approach ... and heaven knows we have had a lot of arguments in this House about what is over-55s housing - and Senator Breckon has become a world-class expert on this matter - what is independent housing, et cetera, et cetera. I do not think it is sufficient anymore to say, particularly in the light of the events for example at Victoria Cottage Homes, that: “This is independent housing” and leave it there. I do not think we can do that. On the Guernsey scheme we were very impressed - yes, they had not moved into community care at that point, but they will - but what has not been mentioned is their rates per week were much lower than Jersey because the Guernsey authorities almost informally were a commissioning authority, they negotiated deals with the big providers of residential care, they did not go out on a totally open private-tendering basis as we do. When we went there they were paying just over £600 a week ...

The Deputy Bailiff:

Deputy, excuse me, we are not debating the Guernsey scheme, we are debating the principles of the Jersey legislation; there is no amendment suggesting that there should be anything closer to the Guernsey scheme therefore the Guernsey scheme cannot possibly be relevant to the principles of this proposition. Can we please keep to the principles of this proposition?

Deputy R.G. Le Hérisier:

I thank you, Sir. I think there is still a lot of learning to be had from it and I have no doubt the Minister is handling it. On that note, having trespassed into foreign territory, I finish.

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

I just want to note that the principles that underlie this scheme owe a great deal to the work of the Scrutiny Panel led by Senator Breckon and his colleagues and that we should recognise this is in part as a result of some serious Scrutiny work and follow-up.

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

Firstly, I would like to just address the Assistant Minister for Health and Social Services in that she should realise that, if Health gave answers, it might result in less questions and it is the Deputy ...

The Deputy Bailiff:

That also, Deputy, is not relevant to the principles we are discussing; do not rise to the bait.

Deputy A.E. Jeune:

I could not let it go, no, Sir.

The Deputy Bailiff:

I understand.

Deputy A.E. Jeune:

When I stood for election this was probably overall the most important issue raised by parishioners when I met them. Little did I know I would be privileged to work as the Assistant to the Minister for Social Security and to be part of a team who have brought this proposition; a dream for most people now, I trust, to become a reality. As Senator Breckon and others have said, it has been a long time coming, and they are absolutely right, and I recall attending a presentation given by Senator Breckon, Deputy Le Hérissier and then Deputy Troy, to their credit, before I stood for election, that very importantly, I believe, will be the opportunity for people to remain where appropriate, living if possible independently in their own homes, something which I as a health professional have always been fully committed to.

[9:30]

Deputy Le Hérissier has just made reference to what I will call “smarter working” if people are to stay in independent living, and this is readily available. This money that goes into this fund will be ring-fenced; yes, a buffer will be in place prior to the commencement of this care, this is a scheme which has been designed as easy-to-administer. Social Security does not look for an army of bureaucrats, the people of Jersey were given every opportunity to be part of this process, they have been the driver and it was the outcome of their responses that has brought us to where we are today and developed this proposition. I am very pleased with the support that this is getting from this Assembly.

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

I obviously really welcome this and give a lot of credit to the Minister for bringing it forward. I think as Deputy Southern said going back - and it is long before my time in the States obviously - but people like Senator Breckon and others deserve a lot of respect and a lot of credit for doing this, for this happening, and it is probably a sorry indictment that here we are all those years later ... as Deputy Vallois said, she was at primary school when this was started, not that she looks much older than that now, of course. But I have seen how this affects people, like probably a lot of Members, with my own parents, certainly when my dad got ill and had to go into care, I have seen the strain that the worry of perhaps losing your home, what it does to people, seeing your savings ripped through in no time at all. Why things like this I think are so welcome is if we are to encourage people - as we do, and rightly so - to stand on your own 2 feet, to make sacrifices, and I can remember, as I say, in my own life people did not have the holidays perhaps that some of their contemporaries did, they did not have the luxuries because they wanted to leave something concrete - and there is no pun intended there - behind for the children, ultimately. I think this should have been, as we all probably agree, in place a very long time ago. Taking it on from that on a personal level, once my father sadly passed away I have seen how important it has been to my mother, who is unfortunately also seriously ill now, to be able to stay in her own home as long as is possible. Many other elderly people - and as we all know there are a lot and I work with a lot - have all told me that being able to stay in your own home gives that sense of independence and pride and it is not an exaggeration, as many of them say, that it helps them retain that sense of humanity; they are people. With older people being so undervalued by so many in a society like Jersey where too many I am afraid, even in Government, value greed and how much money you have above all else, I think it is these key things that the Minister has touched on bringing this forward that are so important. Again, it is going to that core of what we value most and if it is not people then

government really is a waste of time. I do have to say, I think Deputy Le Claire was slightly confused on his objection to people's homes being protected because, after all, what is the point of all those sacrifices that many people have made and will continue to make if they are then going to be punished for those at the very time of their life when they are most vulnerable and most needy? What I would say is perhaps the figure is too high but, as the Minister I think said, he is not completely nailed to the mast of that one, perhaps it should be £500,000 because once you talk to anyone in other places in the world they assume automatically you are a millionaire if you have got a house of a certain value; as we know in Jersey, that is just a result of government not getting to grips with a whole variety of issues, so possibly that does have to be looked at. But if we are going to encourage people in the future to work, to stand on their own 2 feet, which this is all about really, not to exist off the State but to try and be as independent as they can for as long as they can, then I think this is absolutely fundamental and, as I say, well done to the Minister. It is not perfect, but then what is? It has been a long time coming and fair play to him.

1.1.8 Connétable M.K. Jackson of St. Brelade:

While I must first of all declare a conflict in that I am on the Management Committee of the Parish residential home, Maison St. Brelade, I do not think I have any financial interest so I hope that you will allow me to speak. I would express relief initially that this legislation has finally come to the House and empathise with the comments of Members who have spoken in that regard, but I would caveat that in that I am concerned about the funding route proposed, and I would not want to have a system that is effectively relying on the support of the private sector to provide it, which is very much the case at the moment. I think that I will confine my words to that at this stage and comment further when it comes to the articles.

1.1.9 Deputy M. Tadier of St. Brelade:

I have 4 points to make, all of which I hope are germane to the debate, and then I would like to just quote from a correspondent; he may be the same individual that Deputy Le Hérissier was referring to. Just to put the legislation in context; I think many of us have received representations from people and it certainly was aired at the last elections that there was a big issue surrounding a perceived inequity about people having to sell their homes simply to be able to afford residential care or long-term healthcare in their elderly years. There was also an argument, which hopefully is a minority argument, which suggested that those who did not own their own homes ... the argument essentially went like this: "Why should those who have worked hard all their lives to buy their own homes be punished while those who have basically squandered their money, whether that is at the pubs or on cigarettes or on the bookies, and therefore have not been able to buy houses, should get away with it?" I think it is important just for the record to say that while those 2 scenarios are entirely possible, and there may well be instances of those, it has to be said that simply just because somebody does not own their own home does not mean that they are a waster, and we know certainly in the modern era that many people cannot afford to buy homes, and I think that is a point which we know only too well, they can certainly afford to work hard to pay very high rents. Similarly, it is also entirely possible that because somebody owns their own home ... they could have inherited it, it could have been due to other entirely fortuitous and not necessarily meritorious activity, but of course, there is a whole spectrum of possibilities in between those too. The second point I think to perhaps continue is that property, I believe, is a blunt tool of assessing who should and should not have healthcare, and I think that is the real reason that this is being brought forward, because the current system we have, which does look at the assets and discriminates purely on that basis, is completely unsatisfactory. My concern is that we are extending that again here, so we are saying that: "If you own a property up to a certain value, after that you will have to pay" and if you do not own a property, there is a certain amount of disregard for assets. Well, my question to the Minister is why should there be any link at all between property and between what we can afford to pay? This leads on to the third point, that I am not a fan of means testing, and I am sure that there will be other Members in the Assembly who have

concerns as a principle about means testing. I think means testing can have perverse consequences and it can also be pernicious and divisive, but I also acknowledge that in a jurisdiction which predicates the provision of public services on a low-tax model whereby there is not simply enough money out there to provide a service for everyone, we target obviously services to those who are most in need. I think that it would be preferable if we had a contributory system which provided sufficient funds for everybody in our society so that those who were wealthiest, of course, do not get something for nothing, but they get something from which everyone can benefit because they have paid in some other form. This was an argument I made during the T.V. (television) licences debate for over-75s. I said that everybody should be having T.V. licences because we are not giving something for free to the wealthy because they would have paid for it elsewhere. So I think that is something which should also be considered. I think Deputy Le Hérisier has mentioned it already, but the fourth point is of course, we know that the major issue here is that the sheer cost of healthcare of this nature, especially when it is specialised and it borders on basically a hospital service, is that there are immense costs which were not necessarily envisaged by anybody in their younger days. So I think if we can do anything to keep those costs down, and I know it is not easy because some of those costs or many of those costs are not within our control, whether it is to do with equipment, technology for example, I fully understand that is not the case, but we need to look at the system and the mechanisms for delivering healthcare. I think it has already been said that we should not be over-relying simply on necessarily the private sector. We need to see what we can do to drive down the base costs of healthcare so that we alleviate the problems in the first place. Those are the 4 points. The correspondence comes from 2 internet bloggers who have been following things very closely and I will just quote selectively because I realise we do not have a lot of time, or we do have time but we have got a lot of business, I should say. The blogger talks about the really unequal and morally indefensible part of perhaps what we are doing here. He said, and this is Tony the Prof, incidentally: “For homeowners, acknowledging the special status of the main residence, family homes worth up to £750,000 will be disregarded from the assessment of assets with homeowners allowed to hold other capital of up to £25,000 and still be eligible for financial assistance. With the co-payment, where the main residence is worth more than £750,000, an individual will be given assistance with a co-payment for the initial 3 months of care to allow time for families to make arrangements to meet the co-payment. However, for non homeowners, assistance will be provided if their capital and savings are under £100,000. They will be expected to use any sum above this amount to meet the co-payment before qualifying for assistance.”

Senator F. du H. Le Gresley:

Would the speaker give way? Can I just make the point that we are not debating today any of the figures that the Deputy is discussing; those are all to come back by way of regulation, so I do feel that going through somebody’s correspondence relevant to that is not relevant to this debate.

Deputy M. Tadier:

It does relate to the report because these are figures which have been suggested in the report and I feel that, of course, Members are sometimes in a no-win situation because if one does not put something on the record or put forward viable suggestions at a point when we are debating long-term healthcare, it is entirely possible that another Member will come back at the time and say: “Well, you did not mention this at the time, we have already gone down the road” so I have almost finished, so if you will beg my indulgence, Sir, I will just conclude ...

The Deputy Bailiff:

I would just simply add that, in relation to your last point, if Members vote for the proposition that is a complete answer to any critics who say that they were not supportive of it. So far every Member who has spoken has spoken in favour of the proposition, so it does seem to me from the Chair to be slightly hard to identify the usefulness of a prolonged debate on the principles. But nonetheless, everyone else has spoken, Deputy, and you are free to carry on.

Deputy M. Tadier:

Thank you, Sir. I take that advice. Anyway, the conclusion is, he says: "So there you have it, a compulsory insurance scheme, unless you are independently wealthy living off investment income, that protects homeowners over 7 times as much as it protects those who are not homeowners. The main reason most people are not homeowners, the initial point I was making, is of course, they cannot possibly afford to do so on median pay in Jersey." Both writers go on to commend the Minister for taking action but acknowledging that there is a problem which needs to be addressed and, of course, which the Assembly needs to address. So I will leave the comments there and I am sure we will have another opportunity to discuss this more than once.

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

Sir, bearing in mind your comments, I have got nothing new to add and I will tackle the issues raised around housing with the individuals in the coffee room later.

[9:45]

The Deputy Bailiff:

Oh, 3 gold stars. The Deputy of St. Mary.

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

Yes. I have been listening to the comments of the Chair, but I think my comments are worth making, I hope they are, I have 3 specific points which I will come to later, which I think are better made now than as we go to the articles because they are matters of principle, in fact, even though you could argue they should be taken with the articles, and one much wider point which I think is fundamental to the way we go forward with this. My starting point is on page 6 where the Minister quite rightly says: "This figure will need to increase in the decades that follow" and he is talking about contribution levels, and he says that is because of the demographics, that there will be relatively more older people and less younger people. I remember quite vividly quite a moving contribution from a young man at the conference of the Association de la Parlementaire La Francophonie, and he was a Jersey sixth former, and he castigated basically us for landing his - I am paraphrasing very loosely - generation with the burden of looking after the elderly, it had all not been dealt with as we went along and now it was going to fall to him to work for, as he put it, 60 years, I think - or 50 years, a long, long time - and a lot of his income would go on this. So that was my starting point, and therefore it does matter how we, if you like, relate to this positively and how we reduce that burden. I am a little bit worried, and I hope the Minister will declare firmly in his response about how important it is to encourage healthy living, both mental and physical, throughout society, because without that this burden will increase faster and the rate will not be 1.5 per cent, it will be a lot more. So I would just like him to comment a little bit on the role of how we can avoid this increase going up and up. When I asked the Minister for Health and Social Services in October last year in a written question: "Can the Minister advise Members who has overall responsibility for promoting the quality of life for the elderly in Jersey?" and the answer was: "As Islanders, we are all responsible for the quality of life of the elderly residents of Jersey."

The Deputy Bailiff:

Just one moment, Deputy, I think we are inquorate. I regret to announce that we are inquorate; can I invite Members who are listening to the debate in the coffee room to return to the Assembly room? Well, then Greffier, will you please open the voting and we will take the roll? **[Members: Oh!]** Well, there is nothing like taking a vote to encourage people to be in the Assembly room. Would you please now close the voting? I think we do now have 29 Members present. Thank you. Deputy of St. Mary, you may continue.

The Deputy of St. Mary:

Thank you, Sir. As I was saying, the Minister for Health and Social Services by not saying who has overall responsibility for promoting the quality of life for the elderly in Jersey and by saying as Islanders we are all responsible, was saying that there is no one who has that portfolio, and that is really quite surprising because it will have a direct impact on not only the quality of life of the elderly going forward but also, of course, on the cost of running this whole system. The reason I mention this is that I will ask both the Minister for Social Security and the Minister for Health and Social Services - although she has already spoken, which is perhaps unfortunate, but anyway - to say how they will focus on this matter of the quality of life of the elderly and their mental and physical wellbeing in the light of the fact that that will have a direct impact on the costs. Just one of the contributors from the Valle d'Aosta - I think that is Switzerland) - I just outline one or 2 of the things that they are doing, that their Parliament is doing in the social field to generate solutions in the field of the elderly, and one example she gave was that they are organising solidarity between groups of at least 4 families, and the goal - and I am translating as I go because it is all in French - to create a network of mutual aid: to look after the children, to do babysitting, to support the elderly and the handicapped, to offer assistance to single-parent families and to help organise free time and study time for the young ones. I am sorry ... you do not get it, do you? No you do not get it, but I think some people do, Senator. The point is that that conference was full of (a) research and (b) good ideas along those lines and the point I made about there being no organisational focus in Jersey for this work to be carried forward; there is no one responsible for taking these ideas, helping them to happen with the third sector, as the Minister for Treasury and Resources has just encouraged and that is quite right, there is no focal point and so we are careering towards rising costs, rising costs, rising costs, without doing anything focused about creating a better life for the elderly. Now, there are initiatives, of course there are initiatives: there are walks for the elderly and so on and so on, but it is not brought together, and I would like the Minister to comment on that. Then, the smaller matters, the top-up. I am puzzled by this, and I hope the Minister can comment, because the suggestion is that if the top-up cannot be afforded by some people then there would be means-tested assistance, but if the top-up is to cover the ordinary costs of living, your eating and your toothpaste, then my understanding was that everyone in our community had those means to live anywhere guaranteed, so how is it that we are talking about means-tested assistance for the top-up, so maybe there is a misunderstanding there that the Minister can clear up. The next point is the Minister talks about an overall standard cost of providing the required type of care package, and that would be the amount presumably paid out by the fund at different levels of care. My question is where are the provisions or will they be in the regulations? How is he going to ensure open book accounting so that the fund is paying at the appropriate amount? I do not quite see how that would work and I think that is a point that should be covered in the principles rather than when we come to the articles. My last detailed point, although it is quite a big point in a way, is this matter of care at home. I note from the report that the Minister is thinking in terms of regulating suppliers in the home-care sector and signing service level agreements with suppliers, and my note in the margin is: "What about volunteers? What about members of the family? What about flexible working to allow that to happen?" and so on, and how will the third sector be encouraged with more informal approaches. I am reminded in Germany, my wife and her siblings looked after her mother in her last few months and they had access to the support package, and I just want to be sure that this will cover that kind of volunteer help and enable that kind of care, which must be the very best kind of care, in the last months.

The Deputy of Trinity:

Can I just suggest that the Deputy of St. Mary reads my Green Paper and the technical document that goes with it, because most of these answers will be on there?

The Deputy of St. Mary:

Can you say which Green Paper, please?

The Deputy of Trinity:

Which Green Paper? The Health and Social Services Green Paper.

The Deputy Bailiff:

Does any other Member have anything new to say? Then I call on the Minister to reply.

1.1.11 Deputy I.J. Gorst of St. Clement (The Minister for Social Security):

I hardly know where to start. Perhaps Members would forgive me if I start with a personal story. Our family, some would say, have been very fortunate. As a teenager growing up my mother looked after my grandmother for many, many years, and she was a part of our family. She needed every item of care, in fact, because she had had a stroke, and that is probably now ... it worries me how many years ago that was, but it is a good 25 or so years ago, and in the area that I grew up, and it is very similar to how Jersey was in those days, it was the norm. It was expected, we were a much more close-knit community, as was the community here, and it was not a surprise we were not the only family where that happened. Some 10 years later when my grandfather fell ill he chose of his own accord, because he did not wish to be a burden upon us as a family, to go into care. I have got to say, that was quite difficult for the family because there was a removal from us and that relationship unfortunately inevitably changed because of that. My grandmother on the other side more recently again came and lived in the family home, I was no longer a part of that family home at that point, but she moved around my uncles and aunties so that all could be involved in the care. As I said in my opening comments, that care which is provided by family members is to be valued [**Approbation**] and I mention that because perhaps my department and government generally has been criticised for the length of time this piece of legislation has taken to come forward. But in actual fact, over that time period we have seen a complete change in the way that we as a community consider elderly members of our community, and I have got to say most of it not for the better. This piece of legislation, I trust, will go some way to correcting that balance. Yes, it will provide for the cost of a long-term care benefit for those who need to go into residential care, although I hope that what will be the result of this legislation is that fewer people will go into residential care, will still have the need to go into a higher-level nursing care, but what we will be providing here is care packages which can be delivered in the home to allow people to stay in that family setting for as long as absolutely possible, and I make that comment first because it really picks up on what the Deputy of St. Mary was just saying; it is fundamental, it is built into these proposals that care packages will be available for care in the home, those that need the high-level care. That will incorporate the caring done by family members, it will allow them to go and develop a package for the needs of their family member for which it might mean that there is a development of income that could be paid to the family but, more realistically, it will be about developing the home, it will be about allowing and providing respite, allowing perhaps care in the evening to be brought in. So it is a fundamental part of this provision and I think it is an absolutely critical one. Where am I going to go from there? Perhaps if I could talk a little bit about the co-payment. A number of Members have spoken about the means test of the co-payment. I want to reiterate that with this scheme what in actual fact we are doing is asking individuals to contribute into the long-term care scheme, which will allow anybody that goes through the placement tool to receive the long-term care benefit.

[10:00]

That will provide for the majority of the cost of care, either in the home, in a residential setting or in a nursing setting. Alongside that is a smaller co-payment; some people inevitably will find difficulty in making that co-payment and therefore there has to be other provision to enable them to do that but, yes, it is in effect what I said at the start "hotel costs", so costs of everyday living. Those who remain in their home, of course, will not need to make a co-payment because they will

just carry on living in their home, that will be another incentive for people to remain in their home with the same expenses that they have for everyday living, and on top of that then we will be creating the long-term care benefit. I hope that satisfies, although I am not sure it does, but I hope that that makes it absolutely clear. I also made it clear that what will be included is that means test will come back to this Assembly for debate by regulation - or, more rightly, what will be excluded - and at that point we will be able to have - and no doubt it will be a fiery discussion, and that is perhaps appropriate - a discussion about what should be included and what should be excluded from that small element that will be required for means testing. I am grateful for Members who perhaps spent a little bit of time talking about that because I have found it politically quite difficult to come up with a workable solution which would receive the approval of the majority of Members, and that is because when I published the Green Paper I included an all-assets figure of £500,000, no differential between houses or other types of assets. That did not receive, I have got to say, overwhelming support; a large number of respondents said they felt they just wanted the house eliminated in its entirety. I cannot say that they necessarily fully understood the system I was proposing and how much was going to be means tested anyway, so I took that away and came up with some hybrid proposal, which is the one I included in this report. It is not my final decision and that is why I am grateful for those Members who have made contrary views either to say: "That is too great" or "It does not go far enough and we should treat the house separately" but it will ultimately be now ... when we come to the articles, I have amended that particular article so that the States will decide by regulation. If I could just touch also on residency. Deputy Martin said that she felt that 10 years was not appropriate. It is always, again, a very difficult area because the corollary of the question is if 10 years is not suitable, what do we do with those under the residency period? Are we asking them to move jurisdiction to provide support with their care? It is a very difficult area yet, at the same time, we want to make sure that there has been a jolly good chance that everybody has contributed because we know also that Members of our community find that frustrating. Again, though, I have got to say that the residency criteria will be coming back to the Assembly for approval by regulation, and that is absolutely right, because they are relatively controversial areas and they must be decided on by the Assembly as a whole and not simply by the next Minister. Of course, there is another side to that argument, and that is currently what I am proposing is not portable, so one has to remain resident on Jersey to receive the benefit. There is an argument that says we could have either a longer residency period or we could make the benefit portable so that those who have done a qualifying period then moved jurisdiction were still able to access help with their care wherever they found themselves. But I equally know that a lot of members of our community even struggle with the idea that a contributory benefit where people have made up the contributions are eligible to receive that overseas. I personally think it is a good thing; they have made a contribution, they retain their eligibility and their right to that benefit. But these are the issues that we will need to come to some firm decision on rightly in this Assembly. A number of Members talked about the long-term sustainability of the fund and long-term projections. Any Member who has read or briefly touched upon the *Dilnot Report* ... it is an excellent piece of work and I hope that it, in its own way, will transform the care of the elderly in the United Kingdom. We are in a position to be able to go further than the proposals that he is making, and I believe that that is right. The reason I touch on it now is because he highlighted the great difficulty of knowing with any certainty what the future holds when it comes to long-term care. Having said that, of course the numbers that I included in my Green Paper were based upon the most recent actuarial review and therefore they are based on evidence and they are based on fact. A number of Members have said we have not done any work on the figures. That is not correct. We do know that these costs are doubling, we do have an indication of what the rate will be and that is why we have been quite upfront in that regard. We included it right at the start in our Green Paper so that members of our community were making decisions based on fairly robust figures. What we will do though is go away, should the Assembly approve this today, and do more detailed work about where the breakeven rate will be, how much above the breakeven rate we will want to charge in the first instance, which is another thing that Deputy Martin and Senator Breckon

talked about. I am of the opinion that we should not just start charging at the day 1 breakeven rate. We should have a buffer period where we collect contributions prior to paying the benefit. Guernsey was 3 months. I believe that 6 months is probably more appropriate to us and that we should have a slightly higher than breakeven rate so that we do build up a reserve fund to help us make the medium-term decisions. But be in no doubt the contribution rates will have to go up because we know that the demographic is changing. That does not mean to say we should not do it. We absolutely should do it. One or 2 Members have also spoken about the difficulties or questions about whether our children and grandchildren will be able to pay the rates that will be required at that point. There are levers within the current proposal which will allow the department and, ultimately, the Assembly to consider the medium and long-term sustainability of the fund as well. I am of the opinion it must carry on. We cannot start off a scheme believing that it is going to fail. We have put levers in there which can adjust specific elements of the scheme to allow it to be sustainable in the medium and longer term, albeit with a caveat so that we do know that contribution rates will have to rise. How will it be reviewed? There will be published accounts so we will know what the department are paying to residential care homes, what we are paying in care packages at home and what we are paying to nursing care homes. So there will be published accounts. They will of course be G.A.A.P. (Generally Accepted Accounting Principles) compliant and we will have a 3-year actuarial review which will look at projections going forward with the caveats that I have just mentioned that Dilnot talked about in his report. I am not sure whether Deputy Tadier was really leaning towards a fully non means tested system. I did touch on that right at the start by saying that that was an option that I presented to the community and it did not receive as much support as moving to the system that I am now proposing. Okay, I am probably going to leave it there, other than I just wanted to touch on something that Deputy Le Claire said with regard to my department. I have got to say I have the utmost respect for the policy section of my department ... well, for the whole of my department. They come in for a lot of criticism **[Approbation]**. We have heard it, unfortunately, again yesterday afternoon. They do difficult work under difficult circumstances and they do it to the best of their ability. I am grateful for the work that they put in on behalf of us as a legislative Government. **[Approbation]** But as I say, particularly my Policy Department have been working long hours on bringing forward these 3 major pieces of legislation that I am presenting to the States this week. They have done the same on other pieces of legislation. We have been involved in F.S.R. (Fiscal Strategy Review) and C.S.R. (Comprehensive Spending Review) and I am and I believe that we, as an Assembly, should be extremely grateful for the hard work that they have put in hour after hour unpaid, and some would say that is not a good thing. I come from the private sector where we are committed to our job and we will work unpaid and they have done that in my Policy Department. I am very grateful. I ask that Members do support this enabling law to allow us to move forward in a way which I believe every Member broadly supports and members of our community have been asking for for a number of years so I ask that Members will support the principles. Thank you.

The Deputy Bailiff:

The principles are proposed. Do you call for the appel, Minister?

Deputy I.J. Gorst:

Can I have the appel, Sir?

The Deputy Bailiff:

Then I invite all Members to return to their seats and I will ask the Greffier to open the voting.

POUR: 48		CONTRE: 0	ABSTAIN: 0
Senator T.A. Le Sueur			

Senator P.F. Routier				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator F.E. Cohen				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator F. du H. Le Gresley				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy of St. Peter				

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

The Deputy Bailiff:

Now, Minister, you will be proposing the law as amended with the amendment therefore in Article 3. How do you wish to deal with it?

Deputy I.J. Gorst:

Sir, if I could propose it *en bloc* as amended, I think Members might be grateful.

The Deputy Bailiff:

That seems to receive approval. Please will you do so?

Deputy I.J. Gorst:

Thank you, Sir. I will ...

The Deputy Bailiff:

I am so sorry. Before we come to that point, Deputy Southern is not here ... the Connétable of St. Lawrence and the Health, Social Security and Housing Scrutiny Panel. This matter has obviously

come to Scrutiny in the past but I am not clear whether this particular law has been the subject of Scrutiny. Do you wish to scrutinise?

Connétable D.W. Mezbourian of St. Lawrence (Vice-Chairman, Health, Social Security and Housing Scrutiny Panel):

It has not been, Sir, and we do not wish to. Thank you.

The Deputy Bailiff:

Thank you. Minister.

1.2 Deputy I.J. Gorst:

I will briefly speak about the articles if that is acceptable. The first one is a standard interpretation article. The second one establishes a new ring-fence fund under the control of the Social Security Department which will only be used to pay for long-term care. It states where the money coming into the fund will come from, i.e. Social Security contributions and on what it can be spent, i.e. the long-term care benefit. Article 3 as amended, the amendment will allow the States to decide by regulation the assets test. It sets out the eligibility criteria to receive a benefit from the fund. These include an assessment of the individual's care need having a place in an approved care home or in receipt of an approved care package at home, a commitment to pay a co-payment with means tested assistance if required and meeting the residency requirements. Article 4 covers the benefits that will be payable under the scheme, i.e. the long-term care benefit. Article 5 covers provisions relating to long-term care assessment of the individual and who may carry out that assessment. Articles 6 and 7 provide definitions of approved care homes and approved care packages. I did miss out on a comment, as I read that article there, from the Connétable of St. Brelade, and perhaps I will just address that now while we are on that particular article. The department does currently of course intervene in the market in the form of the payments that we make through income support. It is a difficult area. We have instructed Professor Forder, the pre-eminent expert in this field who was used by the Scrutiny Panel and helped them come to their conclusions. He has looked at the current proposals and is very supportive of them but we will be using him to help us to decide the level of payments that we should be making to care homes and in the community because it is very important that we go carefully when we are intervening in the marketplace in a much greater way than we were.

[10:15]

We do not want to go too high and we do not of course want to go too low, which would mean there were no beds provided. There is quite a large range of costs currently out there in the marketplace and some of the totally private institutions do not necessarily equate to the greatest cost but, equally, it is not the responsibility of the department to be driving people out of business and stop them making provision if they can do that in an effective, efficient and cost-effective way. There are a couple of particular homes - and I have to be careful what I say here - who are provided by the faith-based community and they do provide the most cost-effective care. It is not for government to come along and say if all care homes were provided by those faith-based organisations, we could reduce our costs but we must be cognisant that they do provide very cost-effective care, so we are mindful of the points that the Connétable made and they were very well made indeed. Article 8 cover procedures in relation to claims and the payment of benefit. It includes redeterminations and appeals. Article 9 deals with the expenses of persons required to attend proceedings. Article 10 sets out the penalties for offences in relation to claims for benefit. Articles 8 to 10 cover the administration of the benefits. Articles 11 to 15 cover the administration of the long-term care fund itself so Article 11 deals with fund accounts, Article 12 talks about the actuarial reports, Article 13 covers civil proceedings to recover sums due to the fund, Article 14 relates to recovery of sums due to the fund by deduction from earnings and Article 15 is about

recovery in bankruptcy and Articles 16 to 18 are various miscellaneous provisions. I maintain the articles. Thank you.

The Deputy Bailiff:

Are the articles seconded? **[Seconded]**. Does any Member wish to speak? The Connétable of St. Brelade.

1.2.1 The Connétable of St. Brelade:

I thank the Deputy just for elaborating on the points I brought up earlier. If I can just expand a little bit, I think the difficulty is that the care homes generally are regulated by the Health Department by their bi-annual inspections which of course is absolutely accreditable, but I think where one needs perhaps a little bit of definition is on the standard provided as alluded to I think in Articles 6 and 7. It has to be decided exactly what level of standards Social Security are expecting the care homes to come up with. Is it going to be a Rolls Royce or is it going to be a Ford Mondeo and I think there needs to be some clarity there. I am suggesting that maybe we should be looking at a situation where the Social Security Department provide a basic standard of care and should an individual wish to add to it, they ought to have the opportunity to raise the standard up a grade if necessary. I do not see that Social Security should have to pay more than they have to but, by the same token, the care homes have to be in a position where they can make a reasonable return and be put in the position where they can reinvest in their services and thus provide the residents with the sort of standards that people are expecting today. Negotiated models are mentioned and we all can be very clever at procurement, but I just ask the Minister to be cognisant of those elements. Finally, to conclude, I think there was mention by Members of the double rooms and it was mentioned to me that while it is extremely popular to have double rooms and a lot of people will be appreciative of them, but there was an instance we had where a couple were moved into a double room but they did not want it. They wanted to be as far away in the home as possible. **[Laughter]** That said, I think it is incumbent on the carers to provide double rooms as obviously there are those who wish to have them. Thank you, Sir.

1.2.2 Deputy D.J. De Sousa:

I too want to touch on Article 6 and what we also have to be cognisant of is that by providing funding towards care packages in residential homes, we have to be careful - because Social Security or a ring-fence fund is going to pay for it - that those costs are not going to escalate way beyond what they should be as well. So whoever is in place as Minister when this legislation comes back, we need to have some sort of regulations and safeguard in place against extortionate costs.

1.2.3 Deputy J.A. Martin:

Again, yes, it is just probably, as the Assistant Minister for Health and Social Services is asking on Article 6 and the approved care home, we have an approved care home - well, what I would call it - up at St. Saviour, which is a very high dependency dementia ward and we take patients from other nursing homes who are then so high dependency, the nursing home will not have them back. In that nursing home, they may be paying £1,000 a week. They come back to Health for basically nothing and it is a really high cost. I am not saying we should not be providing it but I hope when this comes back that it is seen as an approved care home and obviously I just ask the Minister to take that into consideration because we have, I think, 52 wards with 5 beds and we have a waiting list. You cannot just hide this away.

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

Obviously, with advances in medicine the picture is going to be changing as we move forwards. Research now is showing that perhaps falls are associated with Alzheimer's and there may be some cure for Alzheimer's in the near term which may help mitigate some of the people who are ending up in healthcare, so obviously it is a moving target. Can I just refer to Article 3 because in

particular in this article, in my in principle speech, I did refer to the fact that I thought the disregard for the housing element of £750,000 was too high, which was spoken about in principle by the Minister. I said in my speech - although it was misunderstood by Deputy Pitman and later it did seem to be agreed upon by Deputy Tadier - that I thought there was more work needed to be done and I think it is right that we make that known now. I did speak to the Minister before we started this morning and I did explain to him that I thought more thought needs to be given about those people who may wish to have saved all of their lives, but perhaps have not managed to achieve the amount of money to purchase a home and £100,000 disregard for those that have no home where £750,000 disregard I think is just totally inequitable. I also made the point that perhaps if he is looking for a benchmark, he may wish to benchmark any element of housing in terms of what is the average house price. I also would like to reiterate - because that seems to be confused by the Constable of St. Mary yesterday in my speech - that I was not certain that the housing disregard was necessarily the right way to go so I think we need more consultation and engagement with States Members on that. Also, in relation to costs - and no doubt the Minister will bear this mind as he comes forward - I think we need to have regard to the costs in other jurisdictions and not only the standards but also whether or not we are operating in the same environment. I think the other thing that I would say is for Third Reading.

1.2.5 Senator F. du H. Le Gresley:

I have resisted strongly not speaking before because I have some specific comments to make on Article 3. Although I would have liked to have spoken in the earlier debate, I was mindful of the directions from the Chair. I have a lot of experience, as people probably know, with helping people who were going into care over the years at the Citizens Advice Bureau and there were 2 issues that continually cropped up irrespective of the matter of the house, if there was one. Certainly, many of the clients I dealt with did not have property but what was the concern - and Article 3 covers this - was 2 matters. One is referred to in 3(b) whereby: "The Minister may make provision as necessary relating to the extent to which anything of a person's assets may be taken into account for the purpose of determining a person's means." Now what that means, if people are not too sure what I am talking about here, is how can you plan to divest yourself of assets so that you do not have to, if you have this new benefit, make any co-payment or certainly can look to the state to provide you with money towards co-payment. What has happened historically going back - and I did research this quite carefully and the Constables who dealt with welfare will remember this - divesting yourself of assets could mean passing your property to your children, it could mean giving away all your money when you start to think: "I am getting old now. I better get rid of all my money before the State tries to take it off me." What I found out was that in our laws, there is nothing very clear on this, but the period that was recognised was 10 years. So if you gave anything away substantial, and it was assumed that you did that 10 years ago, that was okay but if you did it within the 10 years, it was assumed you still had that asset when you came to be assessed or means tested. I would suggest to the Minister that we will have to be very clear when we make provisions because there will be accountants and lawyers looking to find out how people can divest themselves of assets, whether through trusts or donations or foundations or goodness knows what else, so I think this is a very important area which will need a lot of careful consideration and legal advice. The second point I wanted to make was reference to 3(4) and the definition of a person. Now I do not know if people have picked up that a person does not just mean the person going into care. It includes the person's spouse or any individual living in a marriage like relationship - now that is new language I think in our legislation - with a person whether or not of different sexes. So when we are talking about a person being assessed for their co-payment, it includes their spouse, it includes the person who they are living with together in a marriage type relationship, it could be same sex and we have already recently agreed that we have legal provisions for people who wish to live together of the same sex. So we are getting to a situation here where, quite clearly, we are making it clear to the public in our legislation that if people live together, there is a responsibility to look after their spouse or their partner when it comes to needing to go into care or providing care in

the home. What worries me - and again this will be a matter that will need to be considered carefully and this is something I experienced regularly when I was helping people - is where you have perhaps a much younger spouse, a second marriage or something like that, who is in full-time employment and their partner is much more elderly and needs to go into care. Now that partner who needs to go into care may only have a very small pension and perhaps just the State Pension. As we know at the moment, the cost of care is very, very high and I have seen people who have had to have a large proportion of their earned income being used to help pay for their partner being in a home and going without their own needs and in fact having difficulty paying household bills and paying the house insurance if they own a property. We have to be very careful when we are assessing and when we come to decide on how we are going to have these means tests that we do leave sufficient money for the person who is not going into care to live a decent sort of standard of living. I have seen a situation where somebody was forced to go out to work again having already retired at 60. This lady was required to return to full-time employment in order to help pay for her husband's care, so these are areas that we will have to be very careful about when we come to do the assessment. There is also the issue of bank accounts. A lot of people do not have all their money in joint accounts. Some people prefer to keep their money in separate accounts and there will be things like inheritances. Somebody might have inherited some money from their parents or whatever and they have kept it in a separate bank account. Now is it right that we should take away that inheritance from that person to help pay for the care in the co-payment assessment? So lots of issues there need a lot of careful thought. I am delighted that this law is coming in but a lot of the detail is where we are going to have to be very careful. Thank you.

[10:30]

1.2.6 Deputy G.P. Southern:

They must take into account the warning just been given by Senator Le Gresley. Already I see in routine daily dealings with Social Security all sorts of rough and ready rules being applied to means testing and deliberate impoverishment when people come to claim for benefit, and so there is a minefield out there. As soon as you get into means testing you have got a minefield and it is highly taxing and a highly expensive process. But I wanted to just ask a brief question about which article contains safeguards against raiding this fund because it is absolutely vital that this fund is ring-fenced for its specific duty and I wonder what safeguards there are in there to prevent, as we have seen recently with the raid on the C.I.F. (Common Investment Fund) because the Health or ... I will finish. I am asking a question. The Minister can answer it in his own good time. A raid on the C.I.F. - and I will use that word - to cover expenses elsewhere. So what safeguards or if not safeguards in the legislation, what assurances can the Minister give that this fund will be strictly ring-fenced for its purpose.

1.2.7 Deputy M. Tadier:

Senator Le Gresley gave I think a very good speech about the perils of means testing. Essentially, it could end up being a lawyer's and/or an accountant's dream. I am not saying that it is not already the case, that it is not going to be any better or worse. So speaking specifically first of all on Article 4 about the provisions which would enable means testing to occur, I want to just clarify my position on means testing because it is somewhat nuance. What I am saying is that in an ideal world, we would have a system which is paid for which everybody can access universally because they have already contributed, and it would be a progressive system so that it would be paid for during people's lives and that would be means tested so the contribution would be means tested on their ability to pay previously and not at the point when they need the care. I think that is the issue and if that is something that the Minister can take a steer on, I am not sure if it is too late for that. But the point is of course I acknowledge that if we are going to go down the road of having a fund

which is incomplete, which does not pay for the full costs to society of everyone's needs, then of course in that unfortunate scenario it is absolutely appropriate that those who most need and can least afford the care be given priority and those who can afford to pay it do pay. So in that sense, I am not against, in this context, means testing but I am against the ...

The Deputy Bailiff:

Excuse me, Deputy. Can I say to Members who are outside the Chamber, it would be very helpful if they would now return because we are currently inquorate. Thank you. Please continue, Deputy.

Deputy M. Tadier:

So that is the point about means testing clarified because it can seem somewhat contradictory for all of us. I think we all want fairness but it is a case of explaining what we mean. We are not saying that the rich should get away with it. We are saying that people should contribute at the appropriate time and it is not necessarily the appropriate time to contribute at the point of needing to receive care when you have a lot of other things on your mind. The Minister commented that it was perhaps the case that certain faith homes provided better service. Now rather than ...

Female Speaker:

That is not what he said.

Deputy M. Tadier:

I think that is a reasonable conclusion to ...

Female Speaker:

Cost-effective.

Deputy M. Tadier:

Cost-effective and, hopefully, because it is cost-effective and it is not a worse service, it must be a more efficient service they are providing. Is that correct? I think we can all agree on that. So what I would say to the Minister, rather than presuming that simply it is something to do with an intrinsic fact that they are faith related, the Minister, as an accountant, will know that correlation does not necessarily imply causation. There could be another factor and it will be prudent for the department and, in fact, for all of us to find out and establish exactly what it is in those homes about their business and care model that makes them perhaps more efficient than other models because I think, as has been said already, we do have to be mindful of the fact that this is public money, it is a contributory fund and simply to be dishing it out to, in some cases, private care homes where we do not have any control over the costs is going to be problematic so there will need to be safeguards in place. The point that Senator Le Gresley also made about fraud, I hope the Minister will take on board the contradiction at the moment if somebody does not own their own house but, for example, has £200,000 of savings, which may seem like a lot but of course that could go very quickly, what is to stop that individual from saying: "Rather than having this I am going to buy a property which is worth £200,000, which is much less than the £750,000" and therefore they would not have any liability and they could get entitlement to the exact thing; would that be considered fraud if it was done purely for those purposes? If it is considered fraud it would seem unfortunate because there is a disparity between the actual amount of cash assets and the amount of assets you can have in property, so I think that needs to be taken into account and addressed when this is brought back to the House.

The Deputy Bailiff:

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

1.2.8 Deputy I.J. Gorst:

Once again I am not quite sure where to start there. I just want to remind Members that what this law does is create a long-term care benefit fund; out of that fund will be paid the long-term care benefit that will cover, as I have said, the majority of the cost for care packages at home, residential care and nursing care. A lot of our comments have really been about the co-payment and how we should attach a means test to that co-payment, but we must remember that the principal thing that we are doing is creating a new fund and a new benefit. That is going to eliminate, for the majority of people, any need to call upon the State to help them with their everyday living costs or to help them with the costs of care because the majority will now be paid for by this new benefit. It is important that we remember that and that I reiterate it as I address the article question. Just going back to the Connétable of St. Brelade, he is absolutely right, getting the standard of provision that the fund will pay for will be important. We currently do not pay for a Rolls Royce provision and people will be able in the new scheme to upgrade to a sea view room, for example, or upgrade to have lobster every day for lunch, but they will pay for that from their own pocket. What we will need to do in advance of that is to make sure that that a care home knows that the individual has enough money to pay for those added facilities for a good length of time that they are going to be resident, or when we look at the average length of residency, otherwise all we are doing is subsidising that from the fund in future. It is an area which we would allow but it has to be dealt with very carefully and we have to have the safeguards in place to make sure those individuals do not go and live a life of luxury for a year and then year 2 and 3 need the fund to subsidise them. We could not ... that would not be acceptable. I would hate to say that it was going to be a Ford Mondeo provision in the light of general view of the Ford badge these days, better be very careful what I say about that otherwise I will be finding I have some injunctions against me, no doubt, albeit I should have Parliamentary privilege.

The Deputy Bailiff:

You are reasonably safe here.

Deputy I.J. Gorst:

I think what I am trying to say is that we are aware that we cannot just provide the cost for any standard that the home cares to provide for. It has to be uniform and it has to be a reasonable, but not luxurious, standard. Deputy De Sousa is absolutely right in the same light of that, we must ensure that costs do not escalate but we already have that role. We have some difficult discussions with existing residential care homes that we fund and we are aware that simply because it is States provision, private providers should not just ratchet up their fees because they think the taxpayer or, in this case, the long-term care fund is going to provide payment. It has to be managed carefully and appropriately on behalf of the community. High dependency provision, as the Assistant Minister for Health and Social Services will know, the particular issue that she raised has not yet been completely finalised and if we remind ourselves of what Senator Breckon said yesterday in his speech about the up £230 million, the reason we have used the words “up £230 million” is because that is the current cost of all that care that is provided for financially by Health and Social Services and by Social Security. There are some issues about particular care that the Assistant Minister spoke about because of the excessive costs involved and if it should be that it is decided that that care is not provided for from this fund it is only right that the Health Department would keep that bit of the £30 million to continue to provide for that level of care going forward. There is quite a strong argument that would suggest that we should not be taking that care and putting payment provision within the fund. Of course, there are other counterarguments and that has yet to be decided. Senator Le Gresley made some very good points and made a speech detailing the rationale for why we need to move from where we currently are because the issues that you raise are absolutely pertinent to the current scheme. They will be eliminated to a large extent in the new scheme but they will still remain in small areas, and he is absolutely right, they have to be dealt with carefully and considerately. We will be taking that on board, so it is my - maybe I will say this now - it is my intention that should the States go ahead and approve all of this today we should

set up a political steering group to oversee the details, the details that are going to be in the order. All the orders will be published well in advance, the regulations will be decided by the States and the States will have time to consider the orders, approve the regulation before the Appointed Day Act is brought before the States as well, so the control will remain in that respect with the State. Deputy Southern and some other Members talked about means testing, is absolutely right. Means testing does have administrative costs attached to it and that is by its very nature the balance we have to decide. Do we have a universal provision, which costs very little to administer because everybody is entitled to it, or do we go down the means tested route which does have administrative costs attached to it? I did struggle with Deputy Southern's comment about "raid" on the Health Insurance Fund. The law is quite clear in what the Health Insurance Fund can be used for; this law will be quite clear in what the long-term care fund can be used for. This Assembly makes laws and changes laws and that is absolutely right and proper. No Minister came along and "raided" the Health Insurance Fund. I came along, I presented a new law which allowed the Assembly to take money out of the Health Insurance Fund and provide it to Health for 2 years. The States listened to the arguments that were made by myself, by the Minister for Health and Social Services by the Minister for Treasury and Resources around the difficulties that the Health Department has, the fundamental need to provide an appropriate health provision to our community and the need to provide short-term funding to ensure that the Health Department could do the work required to move to a new type of healthcare provision. Later this year I will be asking Members to consider the changes long-term that need to be made to the Health Insurance Fund to ensure appropriate health in our community. It was not a raid, it was decided upon by this Assembly. I do not see how that can ever be considered a raid when this Assembly was asked to approve a law. This law is set up in a ring-fenced manner. This money will be used to provide a long-term care benefit. Who can say what another Minister might do down the line, or what this Assembly might decide to do down the line but the intention is quite clear, the law is ring-fenced and it will be used for the purpose as I have outlined it.

[10:45]

I just want to talk a little but further about means testing. It was Deputy Tadier who talked about ideally one would not means test at the point of use; one would means test at the point of contribution. Well, of course, the way that we will be structuring the contribution - along the same lines as Social Security contributions - you could argue is just that. You pay in relation to your income and a percentage up to what will now be the new ceiling of £150,000. If we consider what Dilnot is proposing and compare it to what I am proposing, I am proposing that individuals will make a small co-payment as they go and need their care. What Dilnot is proposing is that the individual pays all of that cost as they are going up to £35,000 - not forgetting that on top of that is £10,000 a year as well for the equivalent of the co-payment that I am suggesting - so he is saying you get all that bit paid up front and that will be means tested and the State only kicks in after you have made that payment. There is some argument for that, it means that people have a real incentive perhaps to save for that and use their savings up first, but I believe that what I am proposing is fairer, I believe that it is more appropriate and I believe that we need to be making the right decisions in the long-term best interest of our community and not trying to develop a new mechanism, which is simply about cost and that is what I have presented today. I hope that answers most of the questions, I maintain the articles. Thank you.

The Deputy Bailiff:

I am glad Members have retained their seats; it was a very interesting double-take to see the Dean **[Laughter]** in Deputy Southern's seat and Deputy Southern in the Dean's seat, where was this taking us, I thought. The articles are proposed and the appel has been called for. If Members return to their seats and I ask the Greffier to open the voting.

POUR: 45		CONTRE: 0		ABSTAIN: 0
Senator T.A. Le Sueur				
Senator P.F. Routier				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisssier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				

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

The Deputy Bailiff:

Do you move the Bill in Third Reading, Minister?

1.3 Deputy I.J. Gorst:

Yes I do, Sir. I thank Members for their support. As I said right at the start it is the first step, there is a lot of work still to be done throughout this coming 6 months and the first 6 months of 2012, but I do thank Members for their support.

The Deputy Bailiff:

Seconded? [**Seconded**] Does any Member wish to speak in Third Reading? Deputy Power.

1.3.1 Deputy S. Power of St. Brelade:

I just want to say like many Members that chose not to speak in this debate, I had prepared a speech which would have been probably a waste of the Assembly time because it did not say anything new that had not already been said and we had a very strong indication that everyone was going to support this. I just hope that Members listened to your cautionary words and that of the Chair of P.P.C. (Privileges and Procedures Committee).

1.3.2 Deputy P.V.F. Le Claire:

That speech was about not wasting time and repeated everything you had said in the beginning of the day. Yesterday I stood up and spoke quite strongly about the fact that we were being criticised for speaking at all. I was criticised by Deputy Pitman for having spoken, not what I had said, but having spoken, and I made the point that it really did not do this Assembly much good to have been forced with so much legislation at the end of a 3-year term, as usual ahead of an election, all the Ministers lining up their propositions and I criticised the content of the financial and manpower implications in particular. I have listened today and I have spoken with the Minister this morning about my criticism of his department. I would like to stand and I would like to apologise to the officers of his department because from what I am hearing my criticism of them and their predecessors yesterday was totally unfounded. I apologise for that, I am sorry. I have heard today also that they have been working without pay into the late hours. It shows the quality of the officers and they should be commended. I do not wish to be churlish but I would like to just make what I think is a significant point. These financial and manpower implications, which were originally criticised by Senator Shenton for lack of detail, were used as a parallel in relation to a proposition I was trying to get lodged yesterday where I was trying to get 25 per cent of a future fine allocated to the Jersey Association of Charities - many of the charities look after the elderly and the poor - and I am being driven through hoops in establishing what those future fines will be, what the 25 per cent will be and what loss that 25 per cent will incur. Here we have in this law - and I would like to ask the Minister to address this in the future when he brings legislation - the costs will be borne from existing resources, that is the nub of it. Why can I not just put that in my report? I asked the chairman of P.P.C. to revise or to review Standing Orders. Why is it a Back-Bench Member has to go through the hoops to the nth degree to determine how long a piece of string is and then determine how long it is once it has been cut in 2? It is absolutely ridiculous. I would also like to finish by saying this; not only do I apologise for the officers, but I would also like to stand by my comments. An 8 year or 10-year delay is absolutely unacceptable. The Minister pointed out that the officers will only do what they have been asked to do by the politicians, so if the Civil Service is not to blame, then there is only one other section to blame for the delay, the 10-year delay in getting this forward; in getting this into place, and if it does not rest with this Minister, as I said it did not because this Minister has been proactive and I praised his efforts and that of his Assistant Ministers, then we need to look in other directions and other people need to take the blame.

1.3.3 Deputy J.A. Martin:

To reply to Deputy Power that things were a waste of time something that was going to receive full support anyway. This, in principle, gets my full support. I absolutely worry, and I will go out to the community, when I hear the Minister for Social Security say on a long-term care package you do not know what your care, or our children do not know what our care is going to be in 20, 30, 40 years' time. We do know that the prevalence of dementia and Alzheimer's is growing the longer you live but the Minister for Social Security basically said that will be too difficult to come under the long-term care plan. I am very sorry; he will not get my support. If anybody wants to see where these people are living now we could arrange a tour for you. It is not the worst place in the world but I can assure you it is not Silver Springs and they are there one week and then paying £1,400 a week living under the health facility. This is a long-term care package for whatever may arise. Hopefully I will be one of the people plodding along and I just will not wake up one day, and I will not need to raid this fund or go into this fund but I do not know. If I am talking about long-term care, I want to know everybody is covered. Everybody is paying in, and do not ... in principle I support this, I wait for it to come back. It will not get my support if it does not cover everybody. The "too difficult" - and that is what we get fallen back - there is no too difficult when you are paying in from 20 and you might have dementia at 50, 60 or 70, sorry. I am hearing the Minister whisper: "Dementia is covered." Who does he think we have up at Beech Ward? Who does he think is there? I really do not understand; there is some sort of breakdown between Health and

Social Services under this point. I heard him say there will be some care packages that are too intense to come under this. Not in my book. You are paying in, you get your package. Some will be less, obviously, as the care you need, some will be high and the whole thing needs to work and flow together. Social Security collects the money and they pay it out. If it is under ... wherever the person is, they should get that package. So, in principle, I am sorry I spoke again, in principle this gets it, but I will be going through it with a fine toothed comb if I am in the House when it comes back and I want a lot of things changed.

1.3.4 Deputy M. Tadier:

I think since my time in office the 3 issues which have most been represented to me are the cost of living, the lack of affordable housing in Jersey and long-term care for the elderly, which is largely seen as the bombshell or the silver tsunami as it has been said, not that it should be seen as a problem, but it is something we need to get our heads around. This Minister, unlike many previous politicians, has grasped the nettle and come up with something. Now, of course, Deputy Le Claire was quite right to air frustrations that this has taken so long; that is not the Minister's fault. It is not the department's fault either; the responsibility has to clearly lay with previous political generations who have failed to act in the interest of Jersey, and who have failed to act with foresight. I think at least we have had a departure and while we may not necessarily always agree, the Minister and I, in fact it is very difficult to know whether we agree or not under this form of Government because we do not seem to have the same opportunities to sit down and discuss things perhaps as we might have done previously. I think that needs to go on record and I am sure the Island will have the chance to acknowledge or otherwise their gratitude later on in the year. The last point, is that I think in this Island we can often fall into the trap of despondency and to thinking that things do not change. What I would like to do, and I am sure the Minister would echo these words, is just to encourage the public because we live in a small Island in which it is remarkably easy, if we know what the mechanisms are, to consult, be consulted upon and make valid contributions to the political system. We know that it is very easy because often as small numbers it means that those who do contribute will often be heard, and we know that certainly with the current Green Papers that are going on Education and Health, those are also providing a great opportunity. So what I would do is encourage people, even though there has been consultation, to phone up their States Members to find out what is going on about this, about the Business Plan, for example, to know that they can ask for copies, they can ask to know what is going on because we are only at the end of the phone line and this is one positive step. Of course the meat needs to be put on the bones, of course there will be further contentious decisions that need to be taken in the States, but I think what we have seen today is something positive and I think that does need to go on record.

1.3.5 Deputy G.P. Southern:

Just briefly, the Minister mentioned a political steering group to work out how to deliver what we are organising today, I would urge him to widen that group to stakeholder, representatives of the elderly, et cetera, and providers of care to make sure that consultation and the right scheme comes out in order to decide how to deliver this scheme.

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

Whether the Minister likes it or not, at the end of last year at the Budget his department did have a raid on it bar this House and much bigger firewalls need to be put in place, much bigger firewalls. People pay contributions for social security and that money belongs to the people who pay social security. Whatever happens when these principles come back to the House in the future, if anything comes back to get this operational, we want to see the biggest firewalls around them that the Treasury cannot get their hands on any of this money at any time in the future. I am supporting this today but when it does come back, like Deputy Martin, I will be scrutinising it if I am in the House in great part because I think 10 years is far too short. In particular, as was explained by Deputy Martin that person, or persons, may within that 10 years have not contributed for more than

a couple of years. In accepting this I will be looking, as I say, at this in great depth when it comes back.

1.3.7 The Deputy of Trinity:

I will be brief. Healthcare in the future, as we know, will change. It will change very swiftly within the next 5, 10, 15 years and those who have been to any of my Green Paper presentations or the presentations from KPMG will have the evidence to back that up, it will change. But what also will change dramatically is that there will be more challenging people with multi-complex conditions who will need that extra special care which we are not seeing now but will see, and it is like saying ... oncology services, people now ... patients with cancer will become a chronic illness because there is so much new treatment around to be able to give better prognosis, which is such a good thing.

[11:00]

Deputy Rondel mentions about the Health Insurance Fund and saying the Treasury has the money, well where does he think that money has gone? It has gone to providing primary care to people in the community who do need it. I will finish there.

The Deputy Bailiff:

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

1.3.8 Deputy I.J. Gorst

I start by thanking Deputy Le Claire for his apology, I know that Members in the department will be grateful that he has acknowledged that they have put in and I thank him for that. In relation to the financial and manpower implications, I do understand the point he is trying to make with regards to existing resources. The only thing I would say is that it was in the Strategic Plan, it has been in my Business Plan, therefore we have allocated all our resources and part of that allocation was to bring forward this piece of legislation, so that is why we can say it is within existing resources that we can develop the legislation. Of course the scheme itself, perhaps with hindsight I could have put the numbers in which I had already put in the Green Paper and the consultation documents, and so perhaps I made the assumption that Members would have been cognisant of what those numbers were and what the costs and projections looked like. With hindsight perhaps I could have included them again in this enabling legislation. I wish to then move on and make an apology myself. I think that I need to apologise to Deputy Martin because I misunderstood the type of condition that the person might have been suffering from that she was suggesting needed to be covered. I have been up to the Alzheimer's Association a number of times and they have helped me come forward with these specific proposals and those with Alzheimer's should be covered. I suppose I was thinking when she mentioned St. Saviour, about those who might have come under a Mental Health Order and therefore needed to be residentially looked after and there is a debate to be had about whether they would be covered or not. She is nodding her head so it is my misunderstanding of what it was that she was referring to. Hopefully I can reassure her with regard to that. Of course, with that caveat, there are always some people with highly complex and challenging needs that the private sector are never going to be able to provide for because it just does not make economic sense for them, and it is my understanding that it is understood that Health and Social Services will continue to need to provide for those. But as I said, there is this slight area that we need to have further discussion about, about those with those very complex needs and about those who fall under a Mental Health Order and that is what I was thinking of which I now understand is certainly not what Deputy Martin was talking about, so I apologise for that. Deputy Southern talked about stakeholder groups, he is absolutely right; as I have just said we have been involving them from the start and they have helped us form many of the elements of the proposal which has come forward as well and we will continue to do that. With regard to the Deputy of St. John, I suppose we are never going to agree on the use of the Health Insurance Fund. He still

continues to refer to it as the Social Security Fund; it is not the Social Security Fund it is contributions collected to help towards the cost of primary care. The hospital provides some services which should be provided in the community via primary care. This is a whole new argument so I do not wish to re-enter it now. I simply, once again, thank Members for their support and ask that they continue to do so and call for the appel. Thank you.

The Deputy Bailiff:

The appel is called for. The vote is on whether to adopt the Long-Term Care Jersey Law in Third Reading. I invite Members to return to their seats and I ask the Greffier to open the voting.

POUR: 49		CONTRE: 0		ABSTAIN: 0
Senator T.A. Le Sueur				
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator F.E. Cohen				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				

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

**2. Draft Shops (Regulation of Opening) (Jersey) Regulations 201- (P.95/2011)
The Deputy Bailiff:**

We now come to P.95 the Draft Shops (Regulation of Opening) (Jersey) Regulations, lodged by the Minister for Economic Development and I ask the Greffier to read the citation.

Connétable D.J. Murphy of Grouville:

On a point of order, Sir, there is a report which is being prepared on farm shops, which I was expecting that we would have before this debate as it has quite a large influence on the debate, but I am told by the Minister that in fact it is not available and I should like to know why and is it being held up deliberately or is it just being clogged up in the system because it is a very important report as far as this debate is concerned.

The Deputy Bailiff:

Well can I ask the Greffier to read the citation draft first and then we will know what we are talking about.

The Deputy Greffier of the States:

The States, in pursuance of Articles 3, 4 and 10 of the Shops (Regulation of Opening and Deliveries) (Jersey) Law 2010, have made the following regulations.

Senator P.F. Routier:

Before the debate starts I need to declare an interest. I am a retailer, I am a beneficial owner of a shop and I feel I need to make that declaration and leave the Chamber.

Senator B.E. Shenton:

Although I am technically, under Standing Orders I am not conflicted, I am vice-president of one of the largest retailers in the Channel Islands and I think it is fair to say that there may be a perception of conflict with that position, so I will also declare an interest.

Senator A.J.H. Maclean:

I am delighted to rise to say that my Assistant Minister, the Constable of St. Clement, has been leading on this project and I would therefore like to ask him to be rapporteur, Sir. I could also if I may just make one other comment, the question raised by the Constable of Grouville about a report, I believe that was a report that was commissioned by Planning and Environment, not Economic Development, just for clarity's sake, so perhaps the Minister may wish to comment on it or he may wish not to but that is really over to him.

The Deputy Bailiff:

Minister, before we get into the debate is there anything you wish to say to Members just about this report, whether it is going to be available?

Deputy R.C. Duhamel of St. Saviour:

Yes, I have just had a note passed to me by the Constable of Grouville asking if that report could be circulated. It has just been released to myself with an officer recommendation that it is not formally passed around to other Members. There is an opinion by the officers at the moment in the department that the terms of remit have not been adequately kept to. I have not had an opportunity to review that opinion with the departmental officers so at the moment the report is sitting in the office. It has not been formally checked.

The Deputy Bailiff:

The position is that it is a draft report that has not been concluded and therefore is not suitable to present to us.

Deputy P.V.F. Le Claire:

Can I just ask for Members to consider, last night at the end of the session, I am not sure if you were in the Chair, I do not believe you were, I think you had vacated the Chair, but I made the point that perhaps this whole debate could be put back. It was argued strongly at that time that it needed to be debated especially given the fact that the rapporteur, the Constable of St. Clement is going to be away on Friday and is not going to be able to do this unless it is done today. I am just wondering at what stage, maybe the Minister can comment, the Constable of Grouville has said this report that we now know is not coming is a key document for debating this today. Can we just establish how key that is before we ask for a reference back on that, Sir?

The Deputy Bailiff:

The Assistant Minister has not yet proposed the legislation; he will shortly be doing so. He has heard the comments and no doubt he will cover them to the extent he thinks fit and if he does not think fit then it is open to Members to take such other steps as are available under Standing Orders. Before we go on to the debate of the principles, or invite the Assistant Minister to discuss the principles, may I say to him and to all Members that there are amendments which have been lodged to the detail as to the size of the different shop which would be covered by the regulations as to the days when it might be ... that the regulations might govern with. They should be extended to 26th December and so on, those issues we will reach when we come to talk about the amendments, if we come to that point, and therefore it is not necessary to cover them on the principles.

2.1 Connétable L. Norman of St. Clement (Assistant Minister for Economic Development - rapporteur):

Just on the question of the so-called farm shop, the legislation, the law that we passed last year covers all retail outlets and all businesses to which the public have access, so as far as Sunday trading legislation is concerned the farm shops are included in the Sunday trading legislation the same as any other retail or service business. The new legislation that we passed last year, like the 1960 law, is basically prescriptive in that it establishes that shops are not generally allowed to open on Sundays and other specified days. Having established that principle, the new law creates, or enables the States to create a permit scheme to allow shops to open on these days but only with the consent of the relative Constable and, for the first time, subject to limitations that the Constable may choose to impose. Just for clarity, the days concerned are Sundays, Good Friday, Liberation Day, 26th December and Christmas Day, although the law makes it quite clear, and these regulations make it quite clear, that no permit to trade on Christmas Day to any store whatsoever can be granted. The 2010 legislation, as I say again, which we approved last year differs from the 1960 law in a number of ways, but probably most importantly and significantly it removes, or will remove when it comes into effect, the schedule of permitted transactions. What the schedule of permitted transactions basically is, is a list of Government approved goods which can be sold on a Sunday by permit of the Constable, a rule which is observed more in the breach than in the observance. Indeed, some stores, most Members will have noted, openly advertise these goods for sale on a Sunday, or goods which are not permitted on a Sunday, and other stores open blatantly without a permit from the Constable to sell goods which are not on the approved Government list. Members may remember when I brought the proposition from the law, I described an example where you can quite happily and legally buy cat food on a Sunday but you cannot buy cat litter, you cannot buy aluminium foil, you cannot buy washing-up liquid in shops, which normally sell that during the week, but are open on a Sunday for the sale of food and other such items on the approved list. It is ridiculous to think that we should use police resources, Honorary or States, to go around these stores which have permits on a Sunday to check what they are selling and then arrest, presumably the shop manager because he has sold a bag of cat litter or a bottle of washing up liquid. The current law cannot be policed, it is blatantly ignored; it is clearly a bad law which needs to be changed. Thank you, Minister. So in essence if these regulations are approved and the Appointed Day Act is approved any shop which has the privilege of a Sunday trading permit will

be able to sell whatever it normally sells during the week and I use the word “privilege” because it is a privilege, it is not a right to open on a Sunday unless a permit is granted. These regulations are also designed to provide equity and consistency throughout the Island while at the same time restricting larger stores from opening, which will reflect the outcome of the significant consultation undertaken in the lead up to the debate on the primary legislation. I am aware, and I am sure some other Members are aware of at least one store openly selling garden equipment and garden supplies on a Sunday, items that are not on the Government approved list, while other garden centres, in other Parishes, cannot do so because they cannot, quite rightly, obtain a permit. That is the sort of unfairness and inequity which we need to remove. Under the 1960 law the Constable can only grant one type of permit and that permit ... there is no possibility under the current law of any conditions being placed on that permit and the permit can only be granted for the full year, not for a certain number of Sundays. The new scheme allows the Constable to apply conditions such as hours of opening as well as giving him control over the timing of the deliveries on those days that the permit applies.

[11:15]

Under the regulations the Constable must take into account the peace and tranquillity of the neighbourhood, the potential for littering, the potential for disturbance and the potential for excessive traffic. Rights that the Constable does not have at the present time. But on the other hand the applicant is also given a certain right, and that is the right of appeal should his permit not be granted or conditions placed on it which he feels are inappropriate. That appeal will be to the Comité des Connétables. As I say, this is intended to make the system fairer and allow decisions to be reviewed without the need to undertake a time consuming and potentially expensive court process, which is the only method of appeal open at the moment. Under the new regulations, 3 types of permit will exist, firstly is the general permit. These may be granted for an individual shop and can authorise the opening of a shop on Sundays, Good Friday, Liberation Day and 26th December. It will be valid, like the existing permit, throughout the year in which it is granted but a general permit cannot be granted under these regulations in respect of the shop with a retail area of over 500 square metres or 700 square metres if the Constable of St. Lawrence’s amendment is approved, and I emphasise that no permit is going to allow a shop to open on Christmas Day. Size, as they say, is important. 500 square metres was selected at the time the new law was under consideration because the optimum size of a shop that was legally trading on a Sunday at that time was 500 square metres. It is important to recognise that a size limit is vital if we are to ensure that Sundays remain special. Under the current legislation, the 1960 legislation, there is no size limit, just the Government approved list. This means that any size in store, and I mean any size, can apply for a general Sunday trading permit and, if granted, open every Sunday and the other days covered by the legislation for the sale of items on the list, and as that list includes food it does not take too much imagination to realise what that could mean. We have already seen at least 2 food stores, which were less than 500 square metres when the legislation was first considered, extend to over this figure, which is the reason for the amendment by the Constable which he will no doubt explain later. What we are seeing is the trend for larger shops to open on a Sunday and where that would end if we do not pass these regulations could mean that the larger stores at St. Peter, Plat Douet Road, in town near the gas work site, eventually we could well see those opening too, which is not something that I would wish to promote. At this moment it is probably just worth reflecting on the potential impact in the main shopping areas of King Street and Queen Street comparing the current legislation with the regulations I am proposing. Under the current legislation, the 1960 law, almost all shops in King Street and Queen Street could legitimately apply and have an expectation of gaining a Sunday trading permit. This is because on the Government approved list is jewellery and perfume as well as cosmetics, toys, photographic goods, amusingly enough including blank video tapes but not DVDs. Also on the list newspapers, books, smokers requisites, medicines, sun lotion, glasses, leather goods, pottery and other things, but from this it must be clear, if you think

about what is in King Street and Queen Street, that almost every shop in King Street and Queen Street could open now, including the major department stores because there is no size limit on a shop which can obtain a Sunday trading permit. Under the regulations that I am bringing forward today, the larger shops will not be able to open except by the granting of the single permit, which may be granted for any individual shop which can authorise its opening on a particular date specified in the permit but not a general permit allowing every Sunday. A single permit can specify more than one date and a shop may apply for more than one single permit in a year, however, no shop may open for more than 10 days in any one year, or 5 if Deputy Gorst's amendment is adopted. Again I emphasise that single permits cannot allow a shop to open on Christmas Day or indeed on 26th December if Deputy Green's amendment to these regulations is approved. The other permit is the blanket permit and these are granted by a notice from the Constables published in the *Jersey Gazette* ...

The Deputy Bailiff:

Will you please sit down Connétable, we are inquorate. May I ask Members who are listening to the debate outside to return to the Assembly Room?

The Connétable of St. Clement:

I have nearly finished, Sir. I was just explaining that the blanket permit are granted by a notice from the Constables published in the *Jersey Gazette*, for days deemed to be special occasions by the Minister for Economic Development and the Comité des Connétables. This reflects the situation in the current law and can be utilised for events such as the Fête de Noué. These are the basic principles of the regulations and I propose them.

The Deputy Bailiff:

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

2.1.1 Deputy D.J. De Sousa:

I just want to put forward an err of caution. If passed, this legislation and appeals in place with the likes of J.A.C.S. (Jersey Advisory and Conciliatory Service), just in case any member of staff is in danger of losing their employment due to refusal to working either on a Sunday or on one of these special days. Also, just to iterate my feelings on Sunday trading and the fact that this is one thing that does keep Jersey unique. There are people who come over on holiday, some will say that it is detrimental that we do not open on a Sunday because where they come from they do, but there are also those that do come and do write to our paper to say how nice it is that Jersey does not have all their stores opening on a Sunday. What I really just want to say is that we need to have an err of caution and that staff are protected against being forced to work on a Sunday.

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

Thank you. I rise early in this because this afternoon when it seems to me we may well still be on this subject, I am sitting as President of the Ecclesiastical Court to grant marriage licenses and so I shall swap the smiling faces of the Constables benches for lovely young couples who want to married. I just wanted to say one or 2 things about the principles of this, and it is not from a narrow religious perspective particularly, though I will start there. It is certainly true that in some parts of the British Isles at some stages in our history Sabbatarian principles have been counter-productive so that there are folks who have grown up in parts of the north of Scotland where it was the custom not only not to shop on Sundays but also for ordinary toys, et cetera, to be put away who found that extremely boring and if anything that diluted their Christian commitment. Having said that, across the world in all the major faiths, as they might put it together, they have tried to follow the manufacturer's instructions, so for Islam it is Friday, for Judaism it is Shabbat, for Christianity it is Sunday and whereas not wanting to impose all of that on everything else or everyone else, it does

seem to have been beneficial that one day, as the Assistant Minister has very helpfully told us, that one day is culturally different, that it is special. With only 2 exceptions I am not worried about church attendance, church attendance in Jersey generally is slightly growing rather than slightly declining, but I am concerned about members of the Portuguese and Polish communities for whom a large number work in the service sector and who, as a proportion of their communities, have a higher rate of church attendance. I would hate us to do anything that would mean that they could be discriminated against or any pressure put on them because it might be said that: “Well, unless you do this you will not be considered for promotion”, or all of that. It seems to me we do have a responsibility to protect minorities and to make sure that there is neither faith nor racial discrimination in these areas. I also, of course, declare in interest that I work on Sundays. Indeed, some Members may think it is the only day I work although I do not think that is true. I certainly do not have any problem with corner shops opening and that kind of thing. I always enjoy the Connétable of St. Clement when he tells us about the various things you can buy and cannot buy and, of course, that is utterly ridiculous and indefensible. It does seem me, though, it should be a principle for us that one day should be culturally different. Everything from the pilgrimage to the marathon, the cycle races to food festivals would be totally impossible if St. Helier simply became, on Sundays, like every other day. Therefore, to make sure that in whatever options Members go for that day and this lovely town that I enjoy living in is kept special seems to me to be a principle that is important for wider than the faith communities. Whatever we do in the economic sphere has repercussions for the rest of our life. It also has repercussions, particularly for family life, and if there is not a day where there is a presumption that for most people it can be a day of rest and, indeed, family relaxation. With the way in which time-off is spread around you can easily have a whole lifestyle where husband and wife are never together with the children for one day and then we wonder why there is pressure on family life and on marriages. So, it just seems to me that as I wanted to speak on this principle thing I would just urge Members to go for principles that make Sunday special, that promote the lifestyle and cultures, particularly of our minority communities, but do not put any obstacle to the freedom of worship of any particular faith or denomination and that means that if we have to chose between the culture of the Blue Water Shopping Centre or a rather nice French town or village, may I remind Members that we are a lot closer, geographically, and, perhaps, culturally to one than to the other.

2.1.3 The Deputy of St. Martin:

I am pleased to follow the Dean because I think what we are looking at now is a pragmatic approach and for those Members who do not remember we have almost had as many Sunday shopping debates, many years ago, as we were having because of the issue about how many Constables or how many Deputies, et cetera, we should have in the House. It has died a death for some time and I am glad it has come back in the form now, as we have got here, because this is common sense. If any Member here can really oppose it today they want to look at themselves. I think it was as Deputy De Sousa quite rightly said, that we have got to look after the workers and that always has been at the back of people’s minds. People have the right to choice but we also should give those people who have the right not to work as well. I am sure that there will be, if that balance is put right, again just to get away from the inconsistency. I mentioned yesterday how some years ago we brought a proposition to allow bookies to operate. We had these anomalies where you could have a tote operating but not a bookie, you have got a shop you can go into and you cannot buy things. I think it was a tie the first time I brought the proposition to the House that you could sell alcohol after 1.00 p.m. There was a time, in the distant past, that the shutter used to come down at 1.00 p.m. and you have got to buy your alcohol before 1.00 p.m. but after 1.00 p.m. you could not buy it. So if you were lucky enough to go in at 12.59 p.m. you could buy it and of course, afterwards it became a sin.

[11:30]

There we are, likewise, with the pubs. The world has not collapsed and I look forward to Members, obviously, not speaking too long on this, but again giving their support and let us get on then to looking at the amendments.

2.1.4 Deputy G.P. Southern:

Yes, briefly and I am pleased to follow the Dean with this particular aspect of looking at this. I, too, have reservations about this increase in Sunday opening because that what it will mean and the Deputy of St. Martin just said: "We want to offer people choice. We want to offer employees choice as well." The fact is that our employment laws do not, as presently structured, provide any protection against being made to work on a Sunday. In fact, all that will happen if further institutions, shops, want to stay open on a Sunday, they will simply issue new employment contracts and you either sign it and you have got a job or you do not and you have not, and there will be no comeback on that particular practice. So it will cause pressures on employees and until we have employment laws which are strong enough to protect against this sort of exploitation I cannot be supporting any move to liberalise Sunday opening.

2.1.5 Deputy T.M. Pitman:

Very briefly, I just really want to support the Dean and, indeed, Deputy Southern. I mean it is good to know I have got something in common with the Dean because I regularly work Sundays as well. I mean that is my choice to a degree but it is also a necessity with this job, I am afraid. But I really do think he has touched on a very good point with the Portuguese and Polish communities. I am not a churchgoer anymore, I am afraid, but you have got to respect the people who do want to go. As Deputy Southern says, our employment laws are absolutely in the dark ages, let us be honest, and we have to look after the interests of employees just as much as the employers, Jersey cannot be an Island jurisdiction, a Government, where money is God, if I can use that term. It is quite wrong and I have got real concerns about that and I think I am unlikely to support this in its present form.

2.1.6 The Deputy of St. John:

If a person earns £100 a week, we used to have 5 days a week in which you could spend it, then 6 and now we are talking about 7 days a week to spend that £100. There are effects here, not only on the employment of people having to work on a Sunday but also on the environment. There is an environment issue here because we are opening shops of a certain size, well any shop, but you are burning all the additional electricity, additional fuel, vehicles going and coming on a Sunday when all this can be done in an ordinary working week. While I am on that, vehicles; that is another problem. Sundays, at the moment, the roads are reasonably clear other than people relaxing and doing things with their families. Other than if you go to a certain supermarket in a northern Parish, my own, we have a supermarket on the edge of quite a number of houses and 6 days a week, or 7 days a week, they are woken up early morning with vehicles arriving and beepers going at about 6.30 a.m., 7.30 a.m., when vehicles come to unload. The people of St. Helier know what I am talking about because it happens every day of the week in town, all day long. I have got people who are moving or selling their homes to find another home in another quieter location. They were there prior to the supermarket coming into being. The Department of Planning and Environment put certain parameters of opening hours, et cetera, like everything these simply get lost in time. We have to remember those people who live and work in the area concerned. Whether it is in the middle of town or whether it is in the country, we have a duty of care, a duty of care. I can always recall my mother telling me, when I was a youngster starting out in business: "Look after your employees." She always tells me the hours she had to work in the, I suppose some people would say the good old days but I would say they were bad old days when unions were not really heard of in Jersey between the wars, a lot of that came later. They were working until 6.00 p.m., 7.00 p.m., they were doing about a 10-hour day and then had everything else to do when they got home. Really, do we really want to go down that particular road because, and I will come back to where I

started; the £100 in your pocket. If it takes 7 days to spend that £100 why can it not be spent in 5? There is only so much money to spend. We are in the middle of a recession and the money is not going to grow that much quicker in people's pockets, it is going to be even less. It is going to cost more because the employer is going to have high electricity bills for heating, lighting, et cetera, in his premises and making less. So, although I can see where the Committee of Connétables are coming from and the Minister in wanting this to happen and there are one or 2 safeguards. I have noticed that the Connétables will be able to put some parameters in place which might be very, very useful to some of these places that are open very early. But I hope Members take that into account when they vote on this. Thank you.

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

I am a fully trained qualified retailer for the International Store, that was a career before the ones you know about, but I had Sunday off, or at least that is the theory. You still went in and worked and did things like that to prepare for the following week but the one thing I will say to you, but the one thing about Sundays is that you do not get delivery vans that are calling. Even in those days I had about 26 delivery vans a day coming around calling. Now, I think at the back of Charing Cross there are 560 per day that deliver to the retail areas there. These are the things, it is not just the retailers and the staff there that have to be open; it is all the people that are delivering because of the demands. The other side of it, of course, is that if you look at the retail element in the U.K., they have now stopped big supermarkets from buying up out of town land because that will be, inevitably, a result. That if you have a Sunday opening, they will buy out of town land and they will want to build a supermarket there because it is good business for them, people are not at work so they will go shopping and it becomes an entertainment value, et cetera. Well, what happens is this, is your town centre goes dead and you have no quality in there. I do not think I have to say any more because I am sure everybody else will cover everything else but I just thought I would bring you that little snippet of the other side of the coin.

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

As our colleague, Deputy Fox, would say, in a previous life I was required to work on a Sunday but I believe in keeping Sundays special. What does worry me if we deregulate too much, there will be a case where while people are taking on employees, candidate A: "Would you be prepared to work on a Sunday?" "No, I believe Sunday is special, it should be spent with the family", or: "I wish to go to church." Candidate B: "Would you be prepared to work on a Sunday?" "Yes, I do not have a problem with that", "Good, you start Sunday." So we really have to look after the employees.

2.1.9 Deputy S. Power:

I do believe that Sunday is special but I also believe that our Sunday trading laws need to be revised. I was brought up in a city in the west of Ireland where my father had to sell milk, bread, fruit and other odds and bods on a Sunday until 2.00 p.m., but it did not stop any of us going to mass on a Sunday. I want to pick up on some of the words the Dean said and what Deputy Pitman, Deputy Southern and Deputy De Sousa, all 4 of them referred to protecting the employees in the hospitality industry and, obviously, protecting employees in the retail industry. Some of them mentioned the importance of Sunday. My view is that a lot of those employees that are in the retail industry on a Sunday are Polish and are Portuguese and are Latvian, and a lot of them are churchgoers, as the Dean has said. My own experience is that if these employees, retail people, want to go to church they will be able to go to church and I do not think any employer would make it difficult for people to go to church on a Sunday, and there are choices in church services on a Sunday where people can go. I do not think that is really as big an issue as is being made out. I support this, it is long overdue, and I think it is not a situation that is going to cause massive change in the retail industry; it is going to cause a small evolutionary change in the retail industry. The Constable of St. Clement has referred to the sort of stuff that is being sold now. We need to clear

out the clutter and standardise the way we approach Sunday trading and I think this is a good way of doing it, subject to the conditions that are attached in this report and proposition.

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

I, too, enjoyed the Dean's contribution very much and I think he made a very good case for *vive la difference* for Sundays in jersey. The Deputy of St. John made the comment that has been made before in these debates about the £100 that had to be spent somewhere. I think what, perhaps, has not been mentioned yet is the tourist's £100, that will probably only be spent on one day, if they are a day tripper. Certainly, the pressure that we have come under, certainly in town, has related to the large number of French tourists, a growing number of French tourists, who come over on a Sunday and want to spend that £100 and they are not going to come back on Monday and they were not there on Saturday. Having said that and having a lot of sympathy, for example, for calls that the new mall, I suppose that is what it is, at Liberty Wharf is right there for the French tourist but it is going to be closed. Most of the major shops, the big ones, will be closed under these regulations. Interestingly, the through route that we were promised when that was planned by W.E.B. (Waterfront Enterprise Board) will be closed as well and I think that is a pity. But one has to balance the need, for example, for premises to be opened with the need to keep Sunday special. I think the Dean referred, very well, not just to the religious side of that but the cultural side and the sporting side. Increasingly, there are things to do on a Sunday that having these large shops open ... it would make it very difficult were these large shops to be open. So we have to strike a balance and I think these regulations do strike that balance. The test, of course, will be in the appeals and we are already under pressure. I have a couple of pending applications and we have an amendment, which is going to push up that size limit. So that pressure is going to be here in this debate and it will be on the Constable's desks once these regulations are approved. I would reassure Members that the key power of the Constable to revoke a permit, the second one on page 10: "Where the opening of the shop damages the peace or tranquillity of the neighbourhood." That seems to me to be a pretty good safeguard and I am sure that Constables of the future will use that when a shop opening under these regulations starts to damage the peace and the character of a neighbourhood on a Sunday. So, I think there are safeguards in place. Like a number of areas where we have valued the Parish system, the ability of Parishes to set their own rates, the branchage those Parishes are involved in, or recently been involved with. Firearms licensing, always the pressure to do what they do elsewhere with that but here, as well, Sunday Trading Regulation maintains the ability of the Parish to monitor and to control. The Constable, of course, is under the control of the Parish Assembly so there is that. It is a very democratic thing we have here. I think it works, it has been shown to work and I do not think we should worry too much that the current status quo, I suppose. I mean the status quo at the moment people often say to me: "Seems to work quite well, why change it?" We are changing it because the status quo is unfair. Some small shops are allowed to open, other small shops are not and it will not be long before that is appealed successfully somewhere. So these regulations are right, they are rational, they are enforceable. The only thing I would add and it is, perhaps, a bit of special pleading, the costs of all this, certainly, in terms of St. Helier on a Sunday, are met by St. Helier ratepayers and that is a matter for another debate.

[11:45]

But, it is not right that we are now paying for street cleaners on a Sunday because we have to keep the Parish clean on a Sunday because there is such a lot of commercial activity and that, clearly, is a matter that will have to be addressed sometime in the future. I do commend these regulations to the Assembly, I think they will make the system much better and will be enforceable.

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

This is one of those propositions which have a number of good points and a number of bad points and a number of good and bad considerations which have to be balanced. The existing law is a

nonsense and I agree that if we are going to open up and allow more goods to be traded that it should be restricted to the smaller enterprises. Unfortunately, the larger ones, I think, are the ones who exploit their workers more than the smaller ones because many of the smaller ones are self-employed people who are earning a living and they are finding it hard enough to do at the present time when they are competing with a major supermarket or the major supermarkets. I also believe that employees should have a right not to have to work if they do not want to and I believe that the Discrimination Law is where we need to make sure all these safeguards are put in place. I hope everybody who is speaking on this issue will make sure that workers have a right. I see the Minister for Home Affairs seems to be disagreeing with me on that but I do believe that we need to enforce workers' rights. I have had a number of people who have spoken to me about, for example, having to work on certain bank holidays. They have had all their holiday things changed around to make sure that they are compelled to work and other people have a day holiday given to them. So contracts of employment are manipulated and people are told to either work these sorts of terms or you do not have a job, and I do not think that is right. I also would like to say that I hope the Constables will make sure that it is not a total free-for-all because I do agree with the Dean that there should be at least one day when families can get together and see each other because we know that the work ethic in this Island is people working all sorts of hours. Family are not surviving on a single income, it is both parents out working, it is important that they do get time to get together and with their children. Finally, I would just like to say that I wish that there were a number of enterprises that were not exempted; for example, we have got the Places of Refreshment (Jersey) Law, there was an exemption for these premises. Now, in a number of areas in town, and also in the country, there are certain firms that are causing havoc. I am going to raise here, takeaway establishment. Now there is one in First Tower which has caused no end of problems for the residents of the First Tower area and also, St. Saviour where, again, exactly the same problem. Now, these residents do not get any respite at all from these firms, they are operating every day of the week and working into the early hours of the morning. Because they are takeaway businesses there is an awful lot of vehicle traffic. My biggest criticism of all is why they have been allowed to be established in places that are primarily residential areas. So, it not only smells, it is noise and it is all the activity and the rubbish and everything else. So I wish we had brought some restrictions in on those as part of this legislation. On balance I believe that I will be supporting this legislation but I hope these things can be taken into account and I do hope that we bring in a Discrimination Law and safeguard the rights of workers who, for religious or other reasons, do not wish to work on these days.

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

Just one quick question for the Constable of St. Clement, and I feel I should know the answer to this one but if I do I have forgotten it. It is Regulation 2, in the explanatory notes for Regulation 2 it just says: "That a shop is the whole of the retail area and that part of it cannot be closed off to enable them to have the Sunday trading permit." If I can use an example, which is not a live example, but an example, of, say, the Co-op in St. Peter, the large Co-op there which would not be allowed to open on the Sunday because it is too large anyway. Let us say they wanted to open just the chemist facility of that shop; why could that not happen? The legislation as it is written and the explanation for Article 2 would not allow them to open just the chemist portion, which could be of a benefit to the parishioners. If you could just explain to me, I am sure he already has, and I have forgotten, but if he could help me on that it would be most helpful.

2.1.13 Deputy P.V.F. Le Claire:

I will be supporting the vast majority of the proposals. I do not believe that the farm shop report, which has been mentioned already, is, from quiet discussions while I have been sitting here, does not seem to be so integral to us getting on and revising what we have got right now. My wife cannot understand, being Russian, why the shops are not open on Sunday. They are certainly open in Russia. The children go to school on Saturdays there though so cultures are different. She

works all day on Friday and until 4.00 p.m. on Saturday and then has to rush into town to do any shopping that she has got to do. [Laughter] Some of the Members are saying that I should be doing the shopping. I do do some of the shopping but there are certain things that a lady needs that a man ...

The Deputy Bailiff:

Is that a proposition?

Deputy P.V.F. Le Claire:

There are certain things that a lady needs than a man should ... yes, exactly, it is not the man's job. [Laughter]

The Deputy Bailiff:

If I may say so, Deputy, I think the domestic arrangements of the Le Claire household probably are not terribly relevant. [Laughter]

Deputy P.V.F. Le Claire:

Well, I am trying to give an example of a lady who works, from a different culture, and has limited time to get into the community and I gave a personal example. But I also helped to start the Jersey Polish Association many years ago and I have got a lot of Polish friends. I know from their work practises they try to take one, if not 2, sometimes even 3 jobs wherever they can, and they generally are limited in relation to what they can do in their spare time. Certainly, in the main part it would seem to be a Sunday. There are, because we are very fortunate in Jersey to have a Polish priest, different services available for the Polish to access church services, in particular on a Wednesday night they have been practising services there in St. Martin. Perhaps, the concerns of those expressed by the Dean in relation to the Polish and the Portuguese probably do need some consideration. I will speak with the Catholic Dean about, perhaps, the need for another Portuguese mass, we do have a predominant Portuguese mass on ... they do the evening one as Deputy De Sousa is telling me. So I think we need to be flexible around the services of faith that we provide for people that are going, perhaps, to be caught up in work. The employee's protection is absolutely necessary. I believe, though, that we need to address that when that comes and I will be supporting that. I also think that it is wise to limit the extra opening hours, of ordinary people that are permitted to open, to 5 days as proposed by Deputy Gorst. I think that will stop what will inevitably be, if it is left at 10, a collapse of, in my view, permitted times. So, just to finish I would just like to come up with an idea for the ... oh, he has gone, the Minister for Economic Development, his rapporteur is still here, so perhaps the Constable of St. Clement can take this on board. If we are going to open more hours, in more locations, these locations will have manpower licences. Now, at the moment, if they are over a certain age they do not feature on the manpower numbers, and I am wondering if we cannot consider if there are going to be new places that are opened if we could not ask if a certain percentage of those people staffing those premises could not be drawn from the unemployed, the long term unemployed, special needs and perhaps, school leavers as well as the elderly that are currently allowed for.

2.1.14 The Deputy of St. Mary:

I will be very brief. I support the ironing out in these proposals of some of the issues that have been around so long but I also support the comments of others about the protection of workers and whether they have the right not to work on a Sunday. I support what the Dean and others have said about the need to keep one day a week special. So my question to the rapporteur on this is the issue about size of shops, is it not? Whether the little shops, the little convenience stores, should stay open, quite clearly, and what kind of other shops should be permissible. So my question is why the 500 square metre level has been chosen? What underlay the decision to go for 500 because that does seem to include an awful lot of shops? How many fall under it? How many fall over it?

Which exactly? What are we talking about? Because that is the issue, it is the issue of to what extent are we, across the Island, going to be open on a Sunday?

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

I think I would just start by saying if people have ever questioned the value of having the Dean in the States, I think today has emphasised it. We do want to preserve Sundays. I think the general population want to preserve Sundays. Yes, they like to be able to go and do their bit of shopping occasionally, but we do want to keep it special. I think people are missing the point of this legislation. It is not opening the doors to everything on a Sunday, it just provides more controls. The system we have got at the moment is a nonsense. This provides more controls. We can, at least, control deliveries, which is one of the main bugbears for people. We can control the hours and I really fail to see why we are making such heavy weather. I believe we can do an awful lot more with this legislation than we can with the existing.

2.1.16 The Deputy of Trinity:

As one who works, kind of, weekends most of my working life; one weekend a month or one or 2 weekends a months. Weekends, especially Sundays, are the most precious day of the week. It is a family life and we should cherish that and no way erode that importance of family life and keeping Sundays special, whatever special means for a family. While I do support this, tentatively, it does concern me that are we opening the door to getting to have all shops open? Is this going to be just by increment; that is my fear? I wonder whether the Constable would just, in his summing up, or whether perhaps in regulations. On page 6: "The peace and tranquillity of the neighbourhood and the avoidance of nuisance to residents." All very good words, but how is he, when people approach the Constable, how will the Constables look at addressing those problems, is it the number of submissions they have or are they going to hold a Parish Assembly about that? I just wanted some more information about that.

2.1.17 Deputy J.A. Martin:

I think I am in full support of this. I do have a question. I was quite surprised by the comments of the Constable of St. Saviour when he said it is more about more controls, I thought we were loosening up Sunday trading. I, like the Deputy of Trinity ... I mean, the quality of life is only what you can have. When my children were young I did 3 hours on a Sunday morning and finance on a Saturday morning because my husband was at home then. I had to do that to support the children. It was not all day but it was something I did and we rotated with other people. I am just questioning this, similar lines of the Deputy of St. Mary, when I was reading the Constable of St. Lawrence's amendment. I can think of 2. I might, absolutely, have to ask for a reference back here unless I get a complete assurance because I am thinking of the people who work in 2 very small shops, or smaller versions of larger shops, in the district I live. I can name them; Iceland and the small Co-op at Georgetown, that I am sure are as big as Benest's of Millbrook. Now, I think ... the Constable is asking me to give way, I will.

The Connétable of St. Lawrence:

If the Deputy will give way, I will make reference to other stores when I speak to my amendment because she is right; it is not only the St. Lawrence supermarket that would be affected.

Deputy J.A. Martin:

Then, on that, I really think that I have to propose ... for more information because I am putting ... I know people who have worked in that Co-op in Georgetown since I have lived there for 20 years. They rely on that. Now, I did not realise this was going to close down shops so I would like more information. I will give way to the Constable.

The Connétable of St. Clement:

I can assure the Deputy that the Co-op at Georgetown is not only under the 700 square metres proposed by the Deputy of St. Lawrence but is also under the 500 square metres proposed by this regulation.

Deputy J.A. Martin:

But I am sure Iceland is not. Iceland in the Georgetown it is open until 8.00 p.m. on a Sunday now and it is one of the busiest days of the week and it is family shopping and getting the family shop.

[12:00]

I am sorry, I am not getting enough. There are going to be more shops. I really want a reference back to know who is affected. Just on that ground alone, I propose a reference back.

The Deputy Bailiff:

The precise question is you want the Assistant Minister to give you information about which shops in the Island are over 500 or over 700?

Deputy J.A. Martin:

Yes, which are shops that are open now, under the already regulations, that will be closed under this new regulation if we pass it today. I mean probably the penny dropped a little bit late here because I have always gone along with Sunday trading. I did not think we were making it worse for people and I certainly am not putting people out of work who need those jobs. I do not know; Iceland is massive.

The Deputy Bailiff:

Before you formally propose that, Deputy; Assistant Minister, are you able to give information to the Assembly today about which shops, which are currently open on Sundays, will have to close.

The Connétable of St. Clement:

To the very best of my knowledge it depends on which size the States vote for when it comes for the regulations.

The Deputy Bailiff:

Let us go on what you are proposing.

The Connétable of St. Clement:

What we are proposing? We have discovered in recent times that probably 3 shops which currently open, which are Benest's, Iceland at Georgetown and I think there is one other, would have to close but because those shops have extended in fairly recent years according to their owner, who I had a meeting with only last week. However, if the Constable's amendment is adopted, those shops will be able to continue to open on a Sunday with a permit from the Constable. That is a matter for the States to decide what ...

The Deputy Bailiff:

Deputy, does that not give you the information you seek without a reference back?

Deputy J.A. Martin:

It does not give me the information I seek because I do not know whether if the people realise ... and it is an "if", if the Constable's amendment is adopted. Why did the Assistant Minister for Economic Development not amend his own ... if he knew these shops were going to have to close?

I think this is another muddle. I need to know what shops are ... and I am only talking about 2 in my area and it will probably affect more. Whether it is the 500 or the 700, and that is an "if". So I maintain that I want a reference back and I want shops measured and I want to know who, under the law, can open and who is going to be closed. I think it is as simple as that, they have not done their homework.

The Connétable of St. Clement:

If the States approve these ...

The Deputy Bailiff:

One moment.

The Connétable of St. Clement:

I beg your pardon.

Deputy J.A. Martin:

Standing Order 83. I really was just trying to be helpful.

The Deputy Bailiff:

Deputy Martin, you wish to make a proposal for a reference back. When you first put the question it was which shops currently open on a Sunday will have to close if the Minister's proposition is approved. You have been given that information so what further information is it that you want?

Deputy P.V.F. Le Claire:

He did not give the further shops ...

Deputy J.A. Martin:

No, that was off the top of the Minister's head. It was the shops I mentioned, off the top of the Minister's head. I do not know if that information is right. If he knew exactly how many shops were going to close, if it was the 500 square feet, why is it not in the report? I think we need more information. I am not closing shops that people have established and shopping in and working in today. I am not prepared to do that. It has been waiting so long I think it would be a little bit more work for the Department of Economic Development to find out which shops will close and if it needs to be 700 square metres, they should bring that back. I am not closing shops. I maintain I want a reference back to find out exactly, and I think I am getting a lot of nods around the Assembly, that we all need this information.

The Deputy Bailiff:

One moment please. Assistant Minister, this is a precise question and it needs to be answered precisely. Are you able to confirm to the Assembly that there are only 3 shops that would have to close, which are currently open if the regulations are approved as you request?

The Connétable of St. Clement:

The regulations cover every single shop in the Island. We proposed 500 square metres, as I explained in the opening remark, because at the time that the law was being prepared, that was the largest size of shop that was operating. We recently discovered that a couple of them had extended and went over that size. One of them was Benest's of Millbrook, when I was approached by the Constable of St. Lawrence ...

The Deputy Bailiff:

No, Minister. It is just a question; it is a yes or no. Are you able to ...

The Connétable of St. Clement:

I was then approached by the owner of one of the chains of stores and he indicated to me that if our amendment was adopted, the 500 square metres, 3 stores would have to shut. What we discovered, one of those was Benest's, the other one was Iceland at Georgetown and the other one was not relevant because it did not have a Sunday trading permit in any event. So, to the very best of my knowledge, those were the only 2 shops affected and if the Constable's amendment is adopted they will be able to continue to apply for a Sunday trading permit.

Deputy A.E. Jeune:

Point of clarity. Does this affect any stores in St. Brelade? [Laughter]

The Deputy Bailiff:

I am sorry; I am not going to have that discussion.

Deputy J.A. Martin:

It would be best if the Constable acknowledged ... sorry.

The Deputy Bailiff:

Deputy, will you please wait. At the moment I am considering whether or not to allow your proposal for a reference back; that is the only purpose.

The Connétable of Grouville:

As a matter of information, can I just say that it is not generally known that there are small shops which have petrol forecourts attached to them and the actual forecourt area is included in the shop area, which would mean the small shops with petrol forecourts would have to close and I would like a list of those as well, please.

Deputy M. Tadier:

Can I ask a point of order?

The Deputy Bailiff:

Point of order, Deputy.

Deputy M. Tadier:

Under Standing Order 83, is it possible that the person who makes the request for a reference back can seek more than one piece of information, rather than simply that? Because the reason I ask that is because I was also minded, independently, to ask for a reference back for a different reason for information, which I also think that we do not have. I could make that case or I am sure that Deputy Martin could make that case.

The Deputy Bailiff:

What is the piece of information that you think you need?

Deputy M. Tadier:

The piece of information I would like is the rationale behind why, first of all, 500 metres was chosen and, secondly, why square meterage was chosen at all in the first place when there were so many other factors to do with profit, to do with the employment, with the manpower count, et cetera, the type of shop, what they sell, which could be taken into account and why it was that this measure was chosen. I do not think we have that information and that is the information I would like in order to make an informed decision.

The Deputy Bailiff:

I am going to refuse the proposition that there should be a reference back on both those grounds. The reason for the refusal for Deputy Martin's proposition is Standing Order 83(2) which says: "The Presiding Officer shall not allow a proposal that a proposition be referred back if the effect would be to prevent the debate on the proposition resuming at a future meeting." It seems to me that shops currently open may no longer be open at a future meeting, shops currently closed may be open at a future meeting and therefore any information which the Connétable of St. Clement, Assistant Minister, might produce will only be accurate as of the very instant it is being produced, and therefore there is the risk of exactly the same reference back proposition coming back at a future meeting. I think Members will have to proceed on the assumption that there may be some shops which might have to close, or not, depending on their view of what the Assistant Minister has said in relation to the research which he has done and which he will, no doubt, cover in more detail, when he sums up. As to the rationale, that seems to me to be a perfectly proper question for Deputy Tadier to put to the Assistant Minister when he comes to speak, which is shortly, and the Minister can answer that question in his summing up. Deputy Martin, have you finished your speech?

Deputy J.A. Martin:

Certainly not. I respect your interpretation of paragraph 2 and the world will be a different place in 3 months' time. I was just asking for extra information but I accept your ruling. Unfortunately, that has totally made my mind up, and I can hear from people around here, that I will not pass the principles. I absolutely know this will put ... the Assistant Minister tells me that Iceland has got bigger since this law. I have lived opposite that supermarket when it was Le Riche, it was the Wine Warehouse and it is now Iceland. It has not grown, it has changed. The footprint of the building is the same as it has always been. I do not know where it has grown. I do not think anyone realised that what the Constable of Grouville said, this will probably close down Roberts Garage at Springfield. Now that is a lifesaver for many people. It will probably close it down. Now, we are too uncertain, I appreciate you said no reference back. I do not think this case has been made and there are too many questions. I am very sorry, I am not shutting down shops that people rely on to be employed in and people use. I would suggest the Assistant Minister withdraw this and come back with some very good information or, I am very sorry, I cannot support it and that is the end of my speech.

2.1.18 Connétable J. Gallichan of St. Mary:

Notwithstanding the comments the Deputy Martin has just made, obviously we have a Sunday Trading Law at present and what this is to do, as has been highlighted already, is to make things equitable and to iron out the problems which we experience with administration of that. But under the current law we already do know what the areas of the shops that are licensed are, that information is already gathered, so it is quite simple for us to say which ones would be affected. What I wanted to say was that it is in the nature of things to change; that is a part of life. But what we have to do is be careful of where we want that change to go and to understand fully what that change will mean. My children find it incredible when I tell them that when I was their age, late night shopping meant between 5.00 p.m. and 7.00 p.m. at Le Riche at St. Brelade, nothing else, not Monday to Thursday, not Saturday. I had to be careful when I shopped. Strangely enough, nobody starved. We managed as things were there. But what happens is things change, you get used to how they have changed and then you think: "Well, a bit more change will not make any difference." How far are we content for the change to go? Will there be paid parking on a Sunday throughout St. Helier because, of course, the shops will all be open, there will be needing to be street cleaning, there will be needing to be making sure the thoroughfares are open, that people do not park on the yellow lines, people will be employed to do that, therefore revenue will be required. I would see in a few years' times that we could end up, in certain circumstances, where there is paid

parking 7 days a week. I know now that many people use the Sundays when the parking is free to come into town, to take their family to the cinema, to go to parks and things like that. I am looking forward to going to the Millennium Town Park when I can park nearby free of charge on a Sunday. Railings, or no railings, Deputy De Sousa. Will the bank be required to open eventually, because, of course, people will want facilities to put the money that they make in the shops? I am not scaremongering here, I am just saying you need to consider fully the implications because I think the proposals that the Minister has got, with perhaps a couple of the amendments, will - at least one of the amendments I am likely to support - do probably what we want. They take away the inequity; they set a level playing field. Now, the question that has been raised is will some shops have to shut. Now, quite clearly, if we accept the proposition as it is; that there will be at least one, possibly 2 - 2 then - shops that will close. If we expand it, where will we set that level? We have one amendment that will allow shops and certainly the shop in question there has increased in size recently. We know that has been completely remodelled. But if we accept that do we say that is where it will stop or are there other shops then that would be caught? Would there be more shops able to open in future than can open now? Because my concern, although I am concerned about every job loss, my concern is what about the convenience stores? Because the convenience stores thrive on a Sunday when there are other shops that are not open, other shops do not open.

[12:15]

So are we saying, and I have seen it in the area in St. Lawrence, there was a little paper shop next door that is not there anymore but there are other shops in the area. We have to decide where we want to go and we have to understand that that decision will bring with it ancillary changes. So I think there has been a lot of consultation and there has been a lot of research. Obviously, there are some Members who have been more involved in considering this than others. I have certainly been considering this piece of legislation, as it has developed, for a long while because in my current role I am going to have a crucial job in making sure that it is properly administered. So that is my real concern, understand what this will mean; understand what the amendments to it will mean. But one thing I think, I do not know if has been said, a lot has been said about needing to keep the Sunday as the family day and I am all for that but one extra little point there. It is all very well saying it is the day when families can all be together and I endorse that fully. But think about the other thing, the one parent families, the families where there has been a divorce and the children are in custody of one of the parents for most of the week, the other parent may only see those children on the Sunday. It is not the question that the family needs to be together but it is a question where, perhaps, that family is in a different configuration on that day. I would hate people who are in that situation not to be able to have that day off. I need to make sure that there will be safeguards in place if the former husband, for example, has custody on a Sunday, he is working on a Saturday, he can have maybe Tuesday and Wednesday off instead but that is no good to him when his children are at school and he does not see those children. I think that is very important. The other little thing I would just like to say because I am really quite old, how things have changed really. I have talked about late night shopping. When I was young and I lived - I lived where I live now - in the very top of St. Peter's Valley, sort of equidistant from the little shop at St. Peter, which has now long since gone that used to be the post office, and the little shop at St. Mary, which I know one of our Members is intimately familiar with, again used to be the post office and has now become a garage shop, still serving the community. But those shops were open Monday to Saturday, I am not sure they were open on Sundays in that time at all, but they had a half day closing. Now, that was universal across the Island, practically every shop. You know we had to choose, if it was a Tuesday - the dates are subject to my memory - but if it was a Tuesday and my mother needed something we had to go to St. Peter because that shop would be open but the shop at St. Mary would be closed, but on a Wednesday we would go to St. Mary. All I am saying is we have always had, in our lives, no matter how busy we are, no matter what hours we work, a way of working around. We have had an opportunity somewhere and we have had to model our shopping needs to

it. We have always had to compromise: “I cannot go to that shop because it is closed on a Tuesday afternoon”, like I cannot go to the big supermarket because it is closed most Sundays. I think, really, the more we change effectively the more we stay the same but all we really do is limit the amount of free time that people have. I think one of the things that came out in the consultation, I remember when the proposition was lodged, a lot of the retailers said: “Well, we do not really want to open on Sunday. It does not make a lot of economic sense for us to do it but X will have to open if Y opens.” The fact is if X does not open Y will not open either and we need to know what we really want to achieve.

2.1.19 Deputy M. Tadier:

Of course this is an emotive issue, any time we discuss Sunday trading or bank holidays we get similar arguments made and they are all valid. In one sense, in a purely secular point of view, from a governmental point of view, from a free market point of view, Sundays are not a special day. I would agree with that but they are special to some people. I think that is the first thing that needs to be acknowledged, in a similar way to the fact that Saturdays are important religious days to some of our membership and to some of our community. Members have been quite right to highlight the protection of workers as a key thing even though we only hear that argument selectively depending on what we are debating. Of course, if we are debating workers’ rights in general then, of course, it would not be important but when it comes to Sunday trading it is an important consideration. Also the protection of rights of minorities or, indeed, religious groups is also important. But the way we guarantee the protection of those individuals and those groups is not by putting in laws and restrictions based on square metres of shops, the way you protect workers from being forced to work when they do not want to is through the Employment Law. The way that you ensure against discrimination on the base of faith is that you do it through a Discrimination Law and/or in conjunction with the Employment Law. We can put provisions in place which say that nobody should be forced to work on a certain day and make sure that does not happen in real terms even if the theory is there. I hope Members would take that on board. I also think this is a nonsense of a restriction, it is a nonsense for 2 reasons. First of all, the 500 square metres, which is open to amendment, is an arbitrary figure. What does it matter how big a shop is, what is the logic there? What does this all go back to? I think it goes back to 2 principles; one of them is obviously the religious context, which this comes out of, the cultural context of the Island. But the other one, I think, is a genuine attempt in the past to try and protect small retailers who do not have the same wherewithal, who do not have the same buying power to compete with globalised businesses or very large entities; that is what it all boils down to. The problem is we have already departed from that because we have opened it up, you do have the Co-ops, you do have the Iceland, you do have the, potentially, Benests of this world. Some of them not local companies, some of them are massive powers to undercut local traders on the corner shops who cannot, necessarily, compete in terms of cost. So, in some way, we are trying to regulate something which is very difficult, if not impossible to regulate against. How do we stop the free market? This is, essentially, one of the contradictions we are looking at here. I think we all are very uneasy when it comes to trying to regulate the free market because I think we all agree in basic freedoms. We also know that regulation does need to take place in Government. But this simply is not doing what it says or purports to do on the tin. So my previous question, which probably was not, to be fair, a reference back issue but I think the information does, nevertheless, need to be produced, backed up and understood is why have we gone for any kind of square meterage, why are we not looking at what shops sell in the first place? Why are we not looking at how many staff these shops employ because that is much more pertinent? If you have a shop, a small shop, which is perhaps under 500 square metres which employs few people but someone over 500 metres which employs twice as many people, surely we have to be looking at the employee’s benefit as well. Not everyone hates working on Sundays. Sundays are just another day of the week. What is important to individuals is that they get time off, guaranteed time off, at some point in the week where they cannot be forced to work and where they say if we do not work on that day you are essentially going to get the sack.

I know that we do have provisions in the law for that but the realities of these things are often far removed from that. I also do not understand, if we have made such a departure from protecting small shops anyway, the small corner shops, why we do not just completely open up the system and, say, let every shop in the Island that wants to open. That seems completely logical and that does not matter which political view you are, it does not really matter what your particular views are. As I have said, as long as protection is there for discrimination to safeguard against that and to safeguard against workers being exploited then I think we really do not have anything to worry about. I think this does need to be kicked out, we cannot get a reference back, I think this needs to be thrown out wholesale. More work needs to be done on it because it simply does not add up in the 21st century to be putting in these arbitrary restrictions to do with floor size which bear no relation, first of all, to what the shops may or may not be selling, what value they may or may not be providing to the community, also to the employees. I think we need to get back to what the purpose of this law is, whether it achieves it, whether we can regulate that. In the absence of that I would just completely favour opening it up and let the individual shops choose whether or not they want to trade. There may be consequences to that but they are consequences which already exist anyway. So this is not the way to do it. I think let us have a sensible approach and I cannot support this.

2.1.20 Senator T.A. Le Sueur:

I suspect there are 53 different views around this room of what the Sunday Opening Regulations should look like. But, unfortunately, we have a simple choice between 2 positions. We either accept these regulations, either in their current form or in some variation of that with one or more amendments to be approved, or we stick with the existing unsatisfactory law that we currently have. If Members wish to reject these regulations then I think they ought to accept the consequences that we ought then to enforce the existing law. If we are to enforce the existing law then I suspect that half the convenience shops which are currently open would need to close because they are currently breaking the law. If Members think that that is a desirable state of affairs to continue, then I do not.

2.1.21 The Connétable of St. Brelade:

Really, it is just in an attempt to give Members some comfort with regard to the information that is received by the Connétable on the present application forms and I do not see that is going to change a lot. I think it needs to be clear that apart from the floor areas discussed the Connétable is also made aware of the opening hours proposed, the number of staff proposed and the number of deliveries to be made to the respective premises. That, of course, enables the Connétable of the respective Parish to make the appropriate decision. For my part, I do not believe there will be much change to the present situation in my Parish and I would be very, I think, concerned if I were to be put in a position where I had to close a shop which is busy trading at present in the future. I think if it is busy and demonstrates that it will be busy, it is clearly popular so that would be rather a perverse move. I do not believe we have any circumstances in the Parish where that will occur.

2.1.22 Senator A. Breckon:

I have a great deal of sympathy with the rapporteur for this, the Connétable of St. Clement, and we had some discussion this morning and yesterday about how much time we spend talking about these things. I brought something very similar to the States about 11 or 12 years ago and to give some comfort to the Connétable of St. Clement I got 3 votes. It was said then, as the Chief Minister has just said: "The Sunday Trading Law is a nonsense and it must be changed." When you propose changing it, everybody says: "Change it but do not do that", and that is, probably after 10 or 12 years, where we are today. I picked it, and I must say, with my Consumer Council hat on, after it had been to Department of Finance and Economics, after it had been to the Department of Policy and Resources, after it had been to the Department of Trade and Industry, the Tourism Committee set up a working group and this whole thing, as the Chief Minister has said, for example: "You could not sell legally furniture polish on a Sunday." Well, take the Constables, go and enforce it,

go in the car and say: "Sorry, you cannot sell that stuff" because that is what the law says. So what we have is a law that is not policeable; it is not policeable. Now, everybody has made that admission. Now, the Department of Economic Development and the Constable have tried to come forward with something that is workable and what we are doing here is we are now starting to micromanage that, of what we exactly do with that, do we continue and turn a blind eye? The answer is "no" we cannot do that. I remember when I did my presentation I had some photographs up there of some convenience stores and they had outside flowers in buckets. Now, within the existing law, and it has been changed since, it was amended, but they could not sell flowers from that shop because they had to be grown on the holding on which they were sold, which I think is what the law said, to cater for tourists with the carnations. They were breaking the law, which was not a problem until the florist complained at Five Oaks: "I cannot open on a Sunday and they are selling flowers." We have got something here. The other thing is with the size of the shop, is it important? We had discussion at the time about garage forecourts, I remember that: "What are the premises?" There was legal definitions and all sorts of things and there was all sorts of spanners thrown into the work so where we are today, we have been here before with discussions, various groups were consulted, it was about the employees. I know from the Channel Islands Co-op they get volunteers to work on a Sunday and they have got more volunteers than they have places. In the main what has changed is, and I think it was the Minister for Health and Social Services who mentioned this morning, and I came from the same thing in the gas industry; it was literally 24/7. So if something went wrong and it was a Sunday it did not matter. Whatever it was had to be dealt with and if we ... the thing of the emergency services, the hospital and there are many other things, the utilities that keep people going on a daily basis, whether it is Christmas Day or whatever it is.

[12:30]

I sometimes wonder whether we should not, that is why the reference back might have been tempting, whether we do not just step back from this because the other thing, and I know there are some issues depending which Parish the premises are sited, if the Connétable takes a different view, then there may be some tests for this that will apply the mind of the court, whether challenges are made. If you say a garden centre or something similar that in one Parish is open and trading and in another Parish is not, then there might well be a challenge if money is involved, and the same might apply to D.I.Y. (do it yourself) premises, so where exactly are we there? Then the other thing Members might like to ask themselves, if I may say this, is how far should we be telling people whether they can go to the shop or somewhere on a Sunday, because we did a survey on this: what happened is we used local students and they enjoyed doing it, they started off from blank paper and they collected the results; in general terms, it is fairly predictable. If you take young professional people, they want places open all the time because they have not time to go in somewhere at lunchtime, they would rather go on a Saturday if they are going to look at furniture or whatever it might be, wallpaper, or do that together, and even perhaps as a family sometimes. If they are going to make a major purchase they would rather do it at that time, but if you ask older people, who perhaps are not in full-time employment, they have got more time, they do not necessarily want it open. The other thing, just to throw another spanner in the works, is we asked people: "Should shops open on a Sunday?" That is a bit of a loaded question, because people say: "Yes" and then you say: "Well, what about betting shops?" "Oh, no, no, I did not mean that. No, no." "Well, you said shops should open." But if you said a pharmacist: "Oh, yes, you can open a pharmacy." Somebody might well need a prescription or some medication themselves, or if you said a paper shop, a newspaper shop, but the other thing, the facts are that people's lifestyle and habits have changed and what are we going to regulate for here, because years ago, if somebody popped out on a Sunday, they might get a paper, a pint of milk and they might have forgotten something, say like mint sauce or something like that and they get that. That does not happen anymore, and the proof is if you ask the shops, people go in there and they will spend more money on a Sunday on a few groceries and bits and pieces than they did. Now, that has put pressure on what used to be a lot of

family corner shops and the other things. The other thing, if shops are trading, if there are a clothes shop in King Street and they can open for 52 Sundays if they want, if it is a wet February and nobody is in town, they are not going to open. The market will decide. We have done things here, we have got the Fête de Noué, where we have got a couple of stilt walkers and somebody blowing balloons up or something, and then the shops can open, because it is a fête. So are we being perhaps a little bit disingenuous with what we are doing here? Should we maybe just step back? That is why I have a problem with some of this, because the Constable of St. Clement is now in a position where I was a number of years ago. He did vote for it, I should say. He was one of the 3. The other one was myself and the former Deputy of Grouville. We were the 3 people who voted for it, and everybody said: "Oh, yes, do not do this. If you draw the line ..." we even had discussions about if you take a big department store in town, what if they put in a front office and say: "This is our shop for the day, and if you would like something on this computer or in this little catalogue, we have got lots of jumpers or bedding or something out the back, we will nip and get it, because the shop is now the warehouse." There was discussions about how people might get round it and we did exercise some legal minds at the time on some of this, so it is perhaps a bit of a nightmare this for this House to try and micromanage and discuss. So if there was a reference back then, the question is where does it go if that had been accepted? On one hand you say: "Oh, well, let us get it off the agenda. Let us have a reference" but the other thing, when does it come back, how does it come back and who else can you consult with? I am not sure who, but certainly the public to an extent would sign up to an element of liberalisation, but that is qualified in certain ways, and of course if somebody lives near the premises, which again would apply the minds of the Connétables, then they do not want these lorries reversing with collections on the back at 6.30 a.m. on a Sunday morning, and that is where some of the issues were. So I hope that has made Members' minds up, what I have said, but that is where we are, unfortunately. Somebody said before: "We are where we are" and the Minister for Economic Development is smiling, because he has delegated this to his Assistant Minister, which is probably a very smart move. So how I will vote on this, I am not quite sure anyway. But I hope that has given Members something to think about.

2.1.23 Deputy R.C. Duhamel:

I am pleased to follow the previous speaker. I think he was right to highlight the potential difficulties that might arise with multiple agencies determining the set of rules by which the permits are granted. That said, I do think it is right that we should endorse the principle of moving towards a system that clears up any of the difficulties that manifest themselves under the existing system. I only really want to make one other point, and that is within the schedule, in terms of whether or not we should support the principle, generally it is my understanding - and I may be wrong in this respect - that schedules should necessarily have specific items appended to them, rather than just being an outline of a set of rules, which would govern whether or not a particular item should be considered under a particular schedule or not, and certainly in relation to the questions that were asked by Deputy Martin as to the size of particular premises that be caught or not caught under these provisions, I would have thought that it might have been helpful had a fully populated schedule, both under 1 and 2, showing all of the properties and premises that were either permitted or not permitted or going to be permitted or not going to be permitted should have been available for Members to peruse. That said, I think when it comes to the debate on the regulations, perhaps there should be some consideration given to the rapporteur as to whether or not information pertaining to those shops that would be included under those 2 schedules, as to how those details will be made available to the members of the public in order members of the public, and perhaps the States Members, to determine whether or not there is the overall consistency of application of the permitting system that we are wanting to set up through these regulations.

2.1.24 Senator S.C. Ferguson:

This got me thinking, because I used to be a retailer, and I wondered what work had been done as to what the shopkeepers want, and perhaps the rapporteur could report on things like the Chamber of Commerce attitude, because shops will not open if nobody visits. It is quite simple. They are not going to sit there and eat their heads off in overheads if nobody is coming through the door. As I say, I was a retailer in a former life, and there were occasions when I opened on holidays, but in fact, I stopped, because my particular niche market was not profitable on holidays, so no point in opening. Interestingly, in the U.S. (United States), with the highest percentage of people attending church, shops can open, and what happens is that in the cities, it is primarily convenience stores, and in the suburbs, a much wider range of shops, but not all open. I carry on with Senator Breckon's comment: should we really be regulating this aspect of business? I will support the updating of the law, but I do recommend that the E.D.D. (Economic Development Department) look into whether this is necessary or just a bit of red tape and nanny state.

Senator A.J.H. Maclean:

Can I propose the adjournment?

The Deputy Bailiff:

It is 5 minutes. Do you wish to start your reply, Minister?

The Connétable of St. Clement:

I am ready if you are, Sir.

Senator A.J.H. Maclean:

In which case I will speak.

The Deputy Bailiff:

The debate will probably go on considerably this afternoon. Minister.

2.1.25 Senator A.J.H. Maclean:

I am not going to speak for that long, Members will be pleased to know, but I do feel that there is just a few comments I would like to make. I mean, clearly this is a difficult issue. That is one of the reasons I passed it to my Assistant Minister to deal with, as I think Senator Breckon had already pointed out. It is similar in many respects to the Gambling Law which we dealt with yesterday, a law which is out of date by a long way. It is very prescriptive, it is difficult, it is expensive and difficult to enforce, and that is the reason why a change has been required. Senator Breckon is right, it has been looked at many times before. The difficulty, of course, is reaching an accommodation that is going to capture all the different competing issues that exist. Quite frankly, we fell on size as being more acceptable than the current system of prescriptive lists, which clearly has not worked, and over a considerable period of time has been amended, and amended to such an extent that we have a position, curiously, where - the Connétable of St. Clement has already mentioned this - most of St. Helier, most of King Street and Queen Street, to be precise, could open now if they so applied. Most of the items, jewellery, perfumes, toys and many, many other things are now included on the permitted list, so these businesses could open. They could apply and they could open, and we would have considerably more Sunday opening now if the status quo remains as it is. Now, there have been some concerns, quite rightly, and I know Deputy Martin raised one about size, and I am going to really concentrate more on that, just briefly. The size of 500 square metres was arrived at not just by picking a number out of thin air and trying to arrive at something that seemed like it was reasonable. There has been research done. Experian carried out quite a bit of research to look into the number of establishments that would be captured by this particular suggestion of 500 square metres. There would be something in the region of about 50 businesses as such that would be caught, but when you analyse that, in terms of retail food outlets in particular, the number fell right down. The one area that we have got a concern about, which has come to

light very recently, and was raised by the Constable of St. Lawrence, was where the actual retail area, not the non-retail area - I am talking specifically about the trading retail area, as opposed to any other office space that might be contained within a store - it came to light that 3 establishments, one was Benest's of Millbrook, was larger than the 500 square metres. There are 2 others, 2 other Iceland stores, which also fall above that particular limit. Now, the amendment that the Constable of St. Lawrence has brought at 700 square metres captures those, so if Deputy Martin or others are concerned about existing stores, well-known existing stores having to shut as a result of this legislation being passed, that amendment should be supported, and if that were the case, we do not believe there is any other particular impacts that have not already been considered. I would like to just point out, as far as Deputy Martin is concerned - she is looking confused - she asked about ...

Deputy J.A. Martin:

No, I do have a specific ... just on the point of the amendment, is the Minister for Economic Development accepting the amendment?

Senator A.J.H. Maclean:

The Minister for Economic Development is prepared to accept the amendment and has made that clear to the Constable. For the reasons stated, we do not want to see any businesses already trading such as that being closed down as a result of this legislation. It is a difficult area, and that comment will not meet favour with some of my other colleagues in the Assembly for competing reasons, but nevertheless, we have to, I believe, get a reasonable and sensible balance, and as such, I think that reaches it. The Georgetown New Era, which I think specifically Deputy Martin was concerned about, would have been closed down by this legislation. It is 660 square metres, and as such, the amendment will secure that position. So the Deputy would have the choice to support the amendment, which I suspect she would do. I would also point out, just to give the clarity to Members and some comfort, I hope ...

Senator F. du H. Le Gresley:

Would the Minister give way a second? Thank you. Can I just ask him for clarification? He keeps talking about shops selling food, but if we go to 700 square metres, are we not opening the door to large shops selling clothes, et cetera, in St. Helier being able to trade as well?

Senator A.J.H. Maclean:

Yes, it is based on size, not specific to whatever it is that may be sold, but as I was mentioning just a moment ago, we are already in a position where many stores in King Street and Queen Street under the current legislation can open for that very reason. So that is why getting the balance right in this proposal has been difficult to achieve. We believe that the proposition before Members today, if the amendment is accepted, is going to get us into a much better position than we currently are now, with a law which is not enforceable and many of the areas of which are being broken, which is not satisfactory at all.

[12:45]

I am conscious of time. I have got a few more comments to make. Would it be appropriate to propose the adjournment and continue after lunch?

The Deputy Bailiff:

That seems to be the consensus, Minister.

LUNCHEON ADJOURNMENT PROPOSED

The Deputy Bailiff:

The adjournment is proposed.

Deputy T.M. Pitman:

With apologies, could I just pray your indulgence just for a moment? I am advised that there is some Members who will not be here tomorrow, and I think it is important that all Members get to hear a forthcoming resignation statement from the Education and Home Affairs Scrutiny Panel, so could I ask the Chair if we could try and find an appropriate 10 minutes for the chairman at some time during the day, Sir? Thank you.

The Deputy Bailiff:

This is a matter on which I am seeing the chairman of the panel at 6.00 p.m. this evening. The States now stand adjourned until 2.15 p.m.

LUNCHEON ADJOURNMENT

[14:15]

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

The Assembly is now quorate. Minister, you were in the middle of speaking. Minister for Economic Development, you were in the middle of speaking on Draft Shops. Do you wish to continue or have you concluded your speech?

Senator A.J.H. Maclean:

I was just going to make a few more remarks, if I may, Chair.

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

Yes, very well.

Senator A.J.H. Maclean:

Yes, I was briefly speaking before lunch, and I would just like to make a few additional remarks. Clearly, I appreciate that there are going to be some split views on this particular topic. It has been around for some time. It is never easy legislation to bring forward, to improve a position, but nevertheless, I think all Members, whether they agree with the exact methodology of legislating by size or by prescriptive items, would do anything other than agree that there needs to be clarity. I am convinced that this proposal on the table today is an improvement. It does, without doubt, give clarity. It is a commonsense approach. It is flexible, it is practical, it is fairer, in my opinion, and it is more consistent than the previous or existing system that we have. For all those reasons, and as was pointed out before lunch, but I will mention it again, because I think it is a really relevant point, the 500 square metre size limit that is being proposed - with of course an amendment to 700 square metres, which I have already stated would be acceptable, certainly from Economic Development's point of view - we will support the Constable of St. Lawrence with her amendment. I believe also, I understand - although I will be corrected if this is not the case - that the Constables are also supportive of that particular amendment, for the reasons stated before lunch, and I hope for Deputy Martin that will give her some degree of comfort. The size limit as set, I pointed out already, which I think is particularly relevant, and I will just repeat it, that King Street and Queen Street, shops in those streets, many of them that are not currently open could now apply under the existing legislation to open, including large department stores in St. Helier that are located on those streets, who are selling jewellery, perfume, toys, photographs, books and a whole raft of other items. So it is not just as simple to say that by changing to this particular proposal, it is going to be either limiting or increasing. What it is doing is clarifying what the position is, and I believe giving some balance to how we deal with Sunday trading. The Dean spoke this morning, and other Members repeated the comments that he made about Sunday being special, about the cultural issue of Sundays, family life, the issues surrounding jobs, employment and so on, and all those issues have been carefully considered while crafting this particular proposition, this particular suggestion. I would just like to pick up on a couple of other comments that were made, in particular the Deputy

of St. John was referring to the £100 and how it can be spread or could be spread originally over 5 days of trading, then 6 and now we are suggesting effectively 7 days of trading. Well, in fact, we are not suggesting a free for all at all, and equally, one can argue that particular point the other way round, that £100 will quite easily be spent in a shorter period of time if somebody so desired, but if they have spent money, it is not going to assist on a Sunday, because it will already have been spent earlier in the week, in which case the shops proposing to open will find they get a lot less trade on a Sunday. I think this really comes to the heart of the whole issue about Sunday, and that is that more retailers will not necessarily open, as is the case now, if they decide or feel it is not going to be commercially viable for them so to do. Why would they incur the additional costs of opening on a Sunday if they could not make a profit out of it? Some will choose to. Many others will choose not to, purely on commercial grounds. Deputy Fox raised a very relevant point, I thought, about deliveries, particularly on a Sunday, wholesale deliveries, but of course within the regulations are controls put specifically for Constables to be able to deal with that matter. It is an important matter and it has been recognised during the process of consultation on this law and it has remedies in there. There are a range of powers for Constables, as important safeguards, and that is exactly as it should be, because after all it is the Constable in a particular Parish where an entity is trading or seeking to trade that has the best knowledge to be able to deal with such matters. The Deputy of St. John also talked about - and this is linked in some respects - control of parking, vehicle movements and so on. I would just point out again those are issues that the Constables can deal with.

Deputy R.G. Le Hérissier:

The speaker seems to be replying to the debate. I thought that was the rapporteur's role.

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

The Minister is speaking. There are others yet to speak before there is a reply.

Senator A.J.H. Maclean:

I am picking out, Deputy Le Hérissier, some key points that I feel I would like to mention. The Assistant Minister, the rapporteur, is going to deal with all the questions and queries that have been raised. I am just picking out one or 2 that I think are relevant, and I have almost finished, but thank you for that. I feel that we have here an improvement that will help to assist in the Sunday trading debate and to make the matter of Sunday trading much clearer than it has been in the past. I would hope that Members can feel that they can give support, necessary support, to this improvement. We cannot, as the Chief Minister pointed out before lunch, be in a position where there are quite a number of businesses which are effectively trading illegally in the Island at the moment with the current legislation as it stands. We need to be in a position where we can police an effective law, where we can put in place enforcement measures and have a law that is both fair, equitable and, as best we can, a level playing field. I believe this particular law delivers on those issues, and I would encourage Members to support it. Thank you.

2.1.26 The Connétable of Grouville:

Oh, sorry, I was going to borrow your ring binder. I think that this legislation that has been brought in is like the curate's egg and it is good in parts. I was going to - and I intend to - support the increase in the net floor area from 500 square metres to 700 square metres, basically because the Minister has said in his preamble that: "The important points are the peace and tranquillity of the neighbourhood and the avoidance of nuisance to residents." Well, what is better, to have a 700 square foot farm shop stuck in a field, well away from all the local residents, or to have a takeaway of 100 square feet in the middle of St. Helier, where it is causing nuisance to everybody around? It is not a matter of size, it is a matter of location, and we must be able to sort that out. The Constables can do that. I am not asking for special powers, but it is a matter that it can be done with the input of the Constables and the local Parishes. So I do not accept that size matters. It does not. The other thing I want to go on to is that I was going to try to attack the basis with the use of

the report on the farm shops, but now of course we have not got it, and I am very disappointed that has not been produced, because it does have an effect, and I do not care what Deputy Le Claire has said, farm shops are now an integral part of our community life and they are quite important, and their effect on the community is important. It is my belief, as I have said earlier, that in fact the farm shops are less of a nuisance to the community than many, many corner shops. Going on to the question of staffing, all the shops under 700 square metres have staff. What happens to them? Nobody seems to worry about them, but it is the staff in shops over 700 square metres the people are getting upset about it. It is the same thing, you are going to have a lot more staff in shops under 700 square metres or 500 square metres than you have in the big supermarkets at the moment, so where is your worry about them? I really am very worried about this Act, and I do not feel I can support it in any way at the moment, even though it does have some excellent points and I wish the Minister would bring it back in a different form. Thank you.

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

Does any other Member wish to speak? Then I will call the Assistant Minister to reply.

2.1.27 The Connétable of St. Clement:

I do not want to be parochial about this, but I will just answer the query of the Constable of St. Peter first, who asked about the position of the chemist at the Co-op at St. Peter, and if he has a look at schedule 1, he will see that as is currently, that such shops registered under the Medicines Law are exempt from the Sunday Trading Law, the sale of medicines and other medical products, so I do not know whether that opens now, but it certainly will be able to under these regulations. It was Deputy Lewis who spoke about or implied that this was deregulating the Sunday trading legislation. It is not. It is increasing regulation and increasing control. The current Sunday Trading Law is currently only 8 articles complete, no regulations, just 8 articles. Now we have a law which we passed last year and 25 articles under 25 regulations, if it is approved today. So that is not deregulation. That is increasing regulation and increasing control, and that is important, because the principles behind this proposition is to keep Sunday special, but it is also to have a law and regulations under that law that make sense and are policeable. The principle is ... and this reminds me that Senator Ferguson asked the position of the Chamber of Commerce. Well, we have worked very closely with the Chamber of Commerce over the years and the development of the law and of these regulations and they are fully supported, because what their main concern was is that stores that have a permit to open on a Sunday may sell whatever they normally sell during the week, and that is the principle, the whole principle behind these regulations, to have a law which is fair and which is policeable. I say it needs to be fair and it needs to be consistent. Members may remember in my opening remarks, I spoke about one store that has a Sunday trading permit because it does sell some food. It also sells, quite illegally on a Sunday, garden equipment and supplies, but other garden centres in other Parishes cannot open or sell anything on a Sunday, because they sell nothing which would entitle them to have a Sunday trading permit. That simply is not fair. They might think that the simple answer would be to put in a department which sells some food. They might then get a Sunday trading permit. Technically, they could only sell the food, but like everybody else, they would sell what they normally stock, so you will have an explosion of shops and stores throughout the Island being able to open. There is no intention of increasing the incidence of Sunday trading and there should be no assumption that the law and these regulations will increase Sunday trading, because my experience of preparing this legislation, there is no appetite, there is no appetite from the retailers and there is no appetite from the Jersey public for increased Sunday trading. As I mentioned earlier, and the Minister reinforced just now, virtually all shops, all shops in the main shopping area of King Street and Queen Street can open now with a permit from the Constable, and it is unlikely that because of a very limited legislation that the Constable would be able to refuse them a permit. But they choose not to do so, because they do not have the appetite and the public do not have the appetite.

[14:30]

Deputy De Sousa was quite understandably and quite rightly concerned about staff, but they are protected of course by the Employment Law regarding working hours, holidays and days off. But the reality is that in all the major chains who currently do trade on a Sunday and do have Sunday trading permits, they pay a premium to staff who want to work on a Sunday, and all of them have a waiting list for staff who want to work on a Sunday. There is a demand from staff to work in those stores that currently open on a Sunday. The message from these regulations is to keep Sunday special, by ensuring that large stores who do not open now but could if they made application cannot open on a Sunday. I repeat, this is not about encouraging additional commercial activity on a Sunday, but rather, controlling it and keeping it sensible, and that control should please the Deputy of St. John, who complained about early morning clatters from delivery lorries. Under these regulations, the Constables will have the power to control opening hours. Under the current Sunday Trading Law, any shop who has a permit can open 24 hours. That will change, the Constables will have the power to control the opening hours, but more importantly, they will be able to stipulate how and when, and indeed, if deliveries can be made on a Sunday, because it will be an absolute duty of the Constables under these regulations to ensure the peace and tranquillity of the neighbourhood. That will be our legal responsibility to do that, and of course we will. Another thing which we cannot do now and we will be able to do - Constables will be able to do - under these regulations, is to amend or even cancel Sunday trading permits if, for example, there is a series of complaints or our own observations make that appropriate, but as I say, those are powers that do not exist now that will help us to ensure that if someone gets a Sunday trading permit and we find that they are breached in any way by inappropriate deliveries, by disturbance of tranquillity and peace of the neighbourhood, the Constables will have the power to amend or even cancel the permit. I think Deputy Tadier was about the third Member to ask why 500 square metres was chosen as the appropriate size. As I said, at that time that we were developing the regulations, developing the law, the optimum size of shop that was opening on a Sunday and trading legally with a Sunday trading permit was 500 square metres, and size, of course, despite what the Constable of Grouville says, is the best indicator. It is not the only indicator, but it is the best indicator of potential disturbance and noise and traffic generation which we want to try and avoid. I think it was Deputy Martin who wanted to have a list of all shops under 500 square metres or 700 square metres and all the shops over. It is just not possible to provide such a list, because under current law, any law, stores are not required to provide that sort of information. We have even looked at rates returns and we took a sample of rates returns to see if we could get some guidance from that, but a check on a sample of those showed an 80 per cent error level, so it would be totally unreliable. We are not going to know for absolute certainty until the surveyor's reports are provided with those shops who wish to apply for a general trading permit, and of course those who wish to apply for single permits would not have to do a surveyor's report anyway, and their size is irrelevant under the law anyway. The danger, if there is a danger, is not in these regulations but rather in rejecting them. Because of the comments that have been made today, because we do not want to see shops closing, I do not want to find tomorrow that - I do not mind mentioning the names - Mr. Waitrose or Mr. Grand Marché or Mr. Co-op of St. Peter puts in an application to open their stores on a Sunday, because under the current law, if they do that, any Constable will be very hard-pressed to turn such an application down, because right at the top of the Government-approved list of goods is food, and all of those shops sell food as their mainstream business. There are no conditions that can be put on a licence, so it would be very difficult for a Constable to turn down such applications. We can resist them but, at the end of the day, I think it would be very difficult under the current law. What thereafter? Garden centres, D.I.Y. shops and everything else we can think of, because the current law is not fit for purpose and it is totally unpoliceable. It is, in fact, in disrepute. The law is ignored by types of goods sold, and even I am well aware of a number of shops opening without Sunday trading permits, and either the Constables and the police of the Parishes do not know, or they turn a blind eye. What these regulations do is keep control, keep

Sunday special and, quite simply, make sense. The only real alternative to adopting the principles in the regulations is to repeal the law that we have and have a free-for-all, because if we are going to maintain the current law and cannot police it, that really is what we are going to get anyway. I maintain the principles.

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

On the vote, are you asking for the appel, Assistant Minister?

The Connétable of St. Clement:

Yes, please, Ma'am.

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

Very well. If all Members are in their designated seats, the vote is on the principles of the Draft Shops (Regulation of Opening) and I ask the Greffier to open the vote.

POUR: 33		CONTRE: 11		ABSTAIN: 0
Senator T.A. Le Sueur		Senator T.J. Le Main		
Senator P.F.C. Ozouf		Senator A. Breckon		
Senator S.C. Ferguson		Senator B.I. Le Marquand		
Senator A.J.H. Maclean		Senator F.du H. Le Gresley		
Connétable of St. Helier		Connétable of Grouville		
Connétable of Trinity		Deputy J.A. Martin (H)		
Connétable of St. Brelade		Deputy G.P. Southern (H)		
Connétable of St. Martin		Deputy of Grouville		
Connétable of St. John		Deputy K.C. Lewis (S)		
Connétable of St. Saviour		Deputy I.J. Gorst (C)		
Connétable of St. Clement		Deputy of St. Mary		
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy of St. Peter				

Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy A.E. Jeune (B)				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

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

Now, this matter falls within the remit of the Economic Affairs Scrutiny Panel. The chairman, the Deputy of Grouville, does your panel propose to consider this law?

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

Well, Madam, even if we were minded to scrutinise such a thing, I would just like to flag something up here. This proposition was lodged on 3rd June. We have been sitting 5 of the 6 weeks. If we called it in now, we would have to bring it back within 4 sittings, which would take us into the new Assembly. There is no provision here for Scrutiny, none, and this is the second piece of legislation that has been brought forward like this today or in this sitting. This whole thing just makes a complete mockery of the Scrutiny process.

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

So your answer is that it is not going to be scrutinised?

The Deputy of Grouville:

It is not, because I cannot compel another panel to bring it forward in the given timescale.

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

Very well. Assistant Minister.

Senator A.J.H. Maclean:

If you do not mind, I would just like to correct a point made by the previous speaker. In fact, this legislation did go to Scrutiny on 25th February, and I appreciate the Deputy of Grouville was

obviously not the chairman at that stage, but they had it to consider for some time, and I know officers were in regular contact with officers from Scrutiny, so there was an opportunity if they so chose.

The Deputy of Grouville:

Madam, it did not come to Scrutiny in its present form.

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

Well, your decision at the moment is that you do not intend to scrutinise. That is all that the Assembly needs.

The Deputy of Grouville:

It is not going to be scrutinised, but could I also make another point that I think this is the sort of thing that should really go to Parish Assemblies, so that parishioners have the opportunity to have their say in which shops they see as convenient to them and which are not.

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

Assistant Minister, we move on to the articles. How do you propose to take the articles?

2.2 The Connétable of St. Clement:

There are some amendments to Article 6, so I think it is logical if we go in sequential order, if I propose Articles 1 to 6 and then take the amendments, Ma'am.

The Greffier of the States (in the Chair):

Very well.

The Connétable of St. Clement:

But I just want to reinforce the mention about Scrutiny. I was absolutely determined that Scrutiny should be kept in the loop right through the drafting of the law, and we had a hearing with them on the law and with the regulations and they were kept up-to-date all the time. As I say, in February we did send them an almost completed draft, almost as we see them today, so the Scrutiny Panel did have the opportunity to scrutinise these regulations. I was absolutely determined that would be the case. Yes.

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

Very well, I invite you to propose Articles 1 to 5.

The Connétable of St. Clement:

Yes, I will propose Articles 1 to 5. Article 1 is simply the interpretation. Article 2, important article, describes the meaning of the retail area, which becomes important when we start talking about size, and to make it clear, it excludes areas such as storage, offices, staff facilities, parking and so on. It is simply the area to which the public normally have access to browse and to make their purchases. Regulation 3 indicates that shops and services exempted by schedule 1 do not need to obtain a permit, and regulation 4 empowers the Minister by order to designate special occasions for the purposes of the regulations after consultation with the Comité des Connétables. This, for example, has been used in a similar facility that we have now, and used for occasions such as the Fête de Noué. Regulation 5 outlines the responsibility for application forms and permits, and Article 6, to which there are some amendments, but I will now propose it, indicates that permits ...

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

We are not proposing Article 6 now, just 1 to 5.

The Connétable of St. Clement:

Okay, fine.

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

Are Articles 1 to 5 seconded? **[Seconded]** Does any Member wish to speak on Articles 1 to 5? Very well, would you like to go straight to the vote on those articles? The vote is on Articles 1 to 5. Those in favour, kindly show; those against. The articles are adopted. Would you propose now Article 6, please, Assistant Minister?

2.3 The Connétable of St. Clement:

Yes, Article 6 provides for the 3 kinds of permit: the general permits, which enable the shop under 500 square metres to open every Sunday and on the other days; the single permits, which are for shops over 500 square metres, and it also provides that a permit for a vehicle, such as an ice-cream van, which moves around the Island, can be valid in all Parishes. I move the article.

2.4 Draft Shops (Regulation of Opening) (Jersey) Regulations 201- (P.95/2011): second amendment (P.95/2011 Amd.(2))

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

There is an amendment to regulation 6. The first amendment is in the name of Connétable of St. Lawrence and I ask the Greffier to read both parts of that amendment, please.

The Assistant Greffier of the States:

Part 1, page 21, regulation 6: in paragraph 4, for the words “500 square metres” substitute the words “700 square metres”. Part 2, page 31, schedule 2, in the heading and in parts 1 and 2, for the words “500 square metres” substitute the words “700 square metres”.

2.4.1 The Connétable of St. Lawrence:

I will deal with this as briefly as I can, because I believe that we have almost had the debate on the proposed increase in the size of the retail sales area, and the rapporteur spoke a moment ago and said that there was no intention of increasing the incidence of Sunday trading. I believe that there was also no deliberate intention to decrease the Sunday trading, and my amendment seeks to correct what I believe was an oversight by the department, albeit that I do recognise that they consulted widely with retailers and that during the preparation of the law the retail size area was 500 square metres. But as we know, some shops have increased their retail area since these regulations were drawn up, and those traders are predominantly food retailers, and Members of course will know that I have referred in the report to the Benest’s supermarket, and I think that I did that quite rightly. As a Connétable, it is important for me to view any impact that there may be within my Parish and certainly I know that the Benest’s supermarket is used widely on a Sunday. But we have also heard that the Iceland store at New Era in Georgetown would also be affected if my amendment is not adopted, as well as potentially a farm shop in Grouville, and I think it is important to reiterate what the Constable of St. Clement said a moment ago about the onus being on the Constables to ensure that any Sunday trading is carried out without disturbance to near neighbours.

[14:45]

I know that the Connétable of St. Clement and Grouville and myself are satisfied that these stores which have been trading on a Sunday for some years cause no disruption by trading on a Sunday. Clearly, as we have heard, the regulations are designed to control any disruption that might potentially be caused. We have also heard that a key determining factor for any Connétable as to whether a shop would be able to open on a Sunday is, apart from their retail size, their effect on the quality of life of nearby residents. I wish to reassure Members that I met recently with the owner of the property that adjoins Benest’s supermarket and he has assured me that he has no problems at all

with it trading on a Sunday and in fact he would be comfortable with the possibility of it continuing to open. So not only is the Connétable able to impose conditions restricting the hours of opening and the numbers and times of deliveries, but as we know - or we should know because we will have read the regulations - Article 18 permits the revocation of a Sunday trading permit, as the rapporteur has told us. That would be revoked having regard to the disturbance of the peace and tranquillity of the neighbourhood or if there is nuisance to residents. I am sure Members will agree that Article 18 is essential as there must surely be redress for the concerns of nearby residents to any shop that is permitted to open on a Sunday, whatever the retail area that they have. So notwithstanding the necessity to ensure that neighbours are not affected by Sunday trading, I think it is also incumbent upon us to consider those members of the public who are now used to having the option to shop at these stores on a Sunday; and this is not something that I heard earlier, the freedom of choice of shoppers and we have heard about culture and how we of course respect Sunday as being a special day. But in the changing world in which we live we are not always able to shop Monday to Saturday and the convenience stores that are open on a Sunday are exactly that, they are a convenience to us all. I must declare an interest here as I do not live very far away from Benest's supermarket and I have been known on more than one occasion to trip down La Rue de Haut with my shopping bag and shop on a Sunday. That is because my hours of work preclude me from shopping on a Monday to Friday and even, dare I say it, on the Saturday. So I do have an interest in convenience stores being open on a Sunday. Of course when I am down there at Benest's it is an opportunity to see how many people are using the service which is being provided. Of course it is not just parishioners from St. Lawrence, although it is bang in the middle of an urban area within my Parish and my parishioners do use it, but it is used by anyone and everyone; passing trade, it has a marvellous car park there so anyone can nip in and out. I know that the Deputy of St. John is concerned about the environmental impact of shoppers on a Sunday but what I would say to him is that if my amendment is accepted and we do retain the services of Benest's being open on a Sunday then I will not have to drive up Mont Felard to the supermarket in the middle of his Parish and nor will anyone else because we will have the option, and that is what the public have come to expect. They have come to expect to have an option to shop at whatever shop is convenient to them on a Sunday. That is why I am reluctant to have this, we have heard it called arbitrary figure of 500 square metres imposed, because I believe these shops that have been trading on a Sunday without causing problems should be able to continue to do just that. We heard earlier from the Constable of St. Mary that we need a level playing field and I believe that there are no viable reasons to restrict that to what is proposed in the regulations at 500 square metres. I do not really think I need to speak for too long on this, I am sure Members will have made up their minds already; but I will just refer to something that the proposer said earlier, which is that it is a privilege to open on a Sunday, and indeed it is for the retailer. But that privilege to the retailer allows the general public the privilege of choice and that is a privilege that I seek to retain for them for the few premises which are just over the 500 square metres but which by this amendment being accepted - up to 700 square metres - would permit the public to retain their option. One more thing before I finish; I have got plenty of notes here, if I can find them. The Deputy of St. Martin mentioned freedom of choice for workers not to have to work on a Sunday. Well of course conversely there is the freedom of choice for those who choose to work on a Sunday, and I do know that if we do not accept this amendment and these stores are in fact forced to close by our decision today, that freedom of choice for workers who want to work on the Sunday will be taken away from them. I have just heard Deputy Le Claire mention possible redundancies and of course we have to bear that in mind. I will conclude here now and put the amendment.

The Deputy Bailiff:

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

2.4.2 Senator F. du H. Le Gresley:

I am pleased to be the first to speak after the amendment has been proposed and what I am going to say is possibly quite controversial but I think it is absolutely disgraceful that we should be considering changing a draft law on the basis of one supermarket. I think that is just totally, totally wrong. Now, the Constable will obviously say: "Well of course it does not just affect this particular supermarket" we now know it affects 2 supermarkets in Georgetown, but that is not the point. The Constable has brought this amendment because of one supermarket in her Parish and as a result we now know that the Assistant Minister and the Minister for Economic Development are going to accept this amendment because now we want to open up Sunday trading to any establishment with under 700 square metres. So we suddenly jumped from 500 to 700. Now, I voted against the principles because the more I hear the more I get angry because all we are hearing from the supporters of all this stuff - a horrible expression, I apologise for that - is supermarkets, convenience stores. Why does anybody not understand that what we are doing is opening Sunday trading to every single shop in Jersey no matter what they sell, because there will be no restrictions under 700 square metres. So it is no good. The Constable of St. Clement when he summed up saying: "We want to keep Sunday special, it will not increase Sunday trading" 2 of the things he said. Is he so naïve to not realise that if you have an opportunity ... now, I will stop there and say the Minister spoke and he said there are approximately 50 shops in Jersey under 500 square metres. Now, I wonder how many shops there are in Jersey under 700 square metres, I do think we ought to know that, but even if it is another 10 or 20 that means that virtually every shop apart from the multiples or the large shops in the centre of St. Helier will probably realise that it is worth trading on a Sunday; there is no restriction on what they can sell and so suddenly Sunday will become a normal shopping day for everybody. The visitors will be happy, I am not so sure the residents will benefit from all this; and the Constable of St. Helier will find that all his events in town will be ground to a halt because there will be traffic everywhere and we will totally lose keeping Sunday special. I do wish Members would realise we are not just talking about convenience stores and supermarkets; we are talking about every retailer in Jersey will be able to open their shop on a Sunday with a permit from the Constable - you have got to admit they will not be able to refuse them - and they will be able to sell anything in their shop, quite rightly; and now we are going from 500 to 700 square metres because the Constable believes that one supermarket which, by the way is in a chain it is not an independent, it might sound independent but most of us know it is in a chain and that chain has many shops in Jersey, some of which are under 500 square metres which can continue to trade. It is in her Parish but there are other shops which her parishioners could access. So I am sorry but I am totally against what is going on here and I am going to vote against it.

2.4.3 Deputy J.B. Fox:

I shall be voting against this amendment because it is a lovely Island we live in, it has got a good combination of town and country and urban and rural, et cetera, et cetera. But what I am hearing is that if everything is allowed to be opened usually what happens, like the little shop next door to Benest's supermarket, they will close and then you do not have the convenience, you do have to go to somebody else. Then the bigger shops will open and the medium shops will close down and then you start having to go further afield, et cetera. Now, the Dean was talking about France, well in France - which is something I probably should have said before but I did not - they have a different policy; yes, they have different rules but if you open on a Sunday you have to close one day during the week which is another way of doing things. But the other thing is probably why the French tourists come flooding over here is the French Government controls when you can have a sale, they call it something else but they control. Last weekend in Dinard there was a lot of shops that had sales because that was their turn to have a sale; in another town it will be another week and it is very restrictive, you cannot just have a sale and reduce goods whenever you like. So things are much more controlled over there. Here we seem to be decontrolling things and certainly I was being told that in fact a large garden centre in the west of the Island in fact had now opened a restaurant in their premises. I wonder if that is so that it would allow them to ask the Constable whether they can open on Sunday as well. So it looks as though instead of going to car boot sales

and everything else we shall be going around to various shops as part of the entertainment of life, who knows. The next thing I can see happening is that retailers will be objecting when they are not allowed to open because their Constable says no and another Constable says yes, and then they will be going around like they do at St. Helier Parish Assemblies and they will get all their staff to turn up at a Parish Assembly, 4 people will propose something and they will all vote for the way they want and anybody else that might have a different point of view has no say whatsoever because they do not have such an accumulation of people. It is the area where Parish Assemblies, I am afraid, are not very objective and that is the reason that I shall not be voting for this because I see this as a creeping disease that will change the concept of our Island. You can quote one shop at the moment, you can quote one garden centre; I know that a garden centre in my district wants to open in a large greenfield site right next door to a pub in the main road and would be delighted to do so. I suspect that if we keep changing the rules there will end up being a big garden centre on a greenfield site next to the main road, even though there is a perfectly adequate one already existing. That, I am afraid, is what happens

[15:00]

2.4.4 Deputy M. Tadier:

I was impressed with Senator Le Gresley's insight because of course this is exactly the purpose of the amendment; because essentially the Assembly and the ministry is having to engage once again in smoke and mirrors because of course they know that we live and we have a very conservative Assembly. The logical position, of course, in this day and age is just to allow everybody to open their shops, but that cannot be done overnight and so it has to be done slowly, slowly which is exactly why I am happy to support this because it will eventually get us to a position where we will stop all this nonsense, stop this time wasting and say: "Traders, if you want to trade on a Sunday then you can do so." What are we going to have next; are we going to stop churches from being able to open when it is not a Sunday and say Sunday is a special day but the rest of the days of the week are for secular activities so you are not allowed to open your churches. Complete nonsense of course. So it is unfortunate that we have had to, as we always have to do, there is a logical conclusion which not everyone will necessarily agree with, which we cannot get to because there is not a consensus, so we have to do these silly little games which waste a lot of time and energy when the answer is just staring at us in the face. It makes sense for tourism; it makes sense for convenience for residents who have different lifestyles. People can still go to church on a Sunday, they can still spend time with their families, they can also buy stuff to eat with their families or they can buy a duvet perhaps in the future if they do not have a duvet and it is a Sunday. It is perfectly logical. I do not know why the States wishes to micromanage every single aspect of people's lives, so I have no problem in supporting this but I would prefer to be supporting a package which was common sense and upfront across the board.

2.4.5 The Connétable of St. Mary:

Just very briefly. I was minded not to support this amendment for exactly the reasons that Senator Le Gresley said. I am concerned that there will be creep; not by this law because this law is designed to set a level playing field and to enable that level playing field to be manicured and maintained but not extended. But I am very conscious of what other Members have said and if this is the point that makes this law go through then I am willing to accept it I think, because the law itself, the regulations we have before us, are vital if we are going to have a workable Sunday Trading Law. It is - as has been said before - impossible to maintain the current situation and if the general consensus is that 700 is the level, well maybe I can be persuaded. But there is something that the Constable of St. Lawrence said, well 2 things; firstly on the side of the amendment she has done research, she has had no problems with this particular enterprise, she has had no adverse reactions in the time that it has been running. But on the other side, a very innocent remark she made, I cannot remember it exactly, was that we should not take away the opportunity of people to

shop there because they have grown used to it. That was exactly my point during the principles when I said change happens but once change has happened we end up where we were before; people say they want to increase, an increase is made and they get used to it and then they want more. I just think that we do have to put a line in the sand and this is simply a matter of deciding what size is sufficient. The Constable said this was a convenience store; it is not a convenience store, it is a supermarket. A convenience store is something much smaller, much more localised. To be fair, these groups of shops - and we have been told this is one of a group - have taken advantage of the current situation and presumably have taken stock of where the legislation is likely to go. Over this Island we are, I think, very well served now by a network of what I would really call convenience stores who offer most of the goods that we need without necessarily there needing to be a massive supermarket open. I know that Deputy Martin has raised another issue with a St. Clement's shop, but this particular one that caused the amendment was the right size. It was the right size during consultation and it is a shame that this store did not make representation when it increased its size because, as Senator Le Gresley says, it is not right to be amending well thought and consulted on legislation on the grounds of one representation. While the matter of staff and redundancies has been raised I am also concerned about the small locals - as we heard this morning quite often family run shops or small run shops - my husband's grandparents both ran shops, small shops, and they would have been by now squeezed out of the market. But I worry there are small enterprises that will go to the wall if we do not look out for the kind of trading environment in which they can flourish. I think probably I will abstain on this one because I really cannot make my mind up. It is difficult, is it not, but I feel very strongly; I mean, this has not arisen in my Parish and I am trying to work out how I would be feeling if I was the Constable of St. Lawrence. I know that she has put a lot of thought into this, she has not brought this amendment lightly, but it is right that the shop should have its voice heard but at the same time I think it is the responsibility of this Assembly to see the whole picture and to decide what is a suitable size; bearing in mind that larger shops will still be able to open on certain Sundays with the right kind of permit. I just think we need to be very careful, what we do now is literally - as has been said - open up potentially a lot more shops. I know there are not many supermarkets that probably fall within that 500 to 700 square metre area, but there are probably quite a few other shops that might do. We just need to be aware of what we are doing and make a choice.

2.4.6 The Connétable of Grouville:

It gave me great pleasure to second this amendment. I think the Constable is quite right in saying these regulations have been taken out of thin air and for once I find myself agreeing with Deputy Tadier; and that is that really he is a great believer now in the free market situation, he believes everybody should open and let the market decide. Well there is a conversion for us today, is it not? Absolutely great, well done. **[Laughter]** I am just going to make 2 more points if I may; and that is that firstly I am going to push the farm shop side, if you like, because it is the only big supermarket or big shop I have in my Parish, so obviously it is the only experience I have of dealing with them. I would say this, that in the farm shop situation is that you get fresh food; the whole aim of a farm shop is fresh food. The food is out in the field, it is cut the night before or that morning, delivered on the shelves the next day. That needs space in a shop, you cannot do that in 300 or 400 square feet or 500 square feet; it needs a bigger area. So I am not really going to go on about it but I think that we do need more space, I still have not had an answer from the Constable of St. Clement about the garage forecourts and how many shops will be closed down because they have garage forecourts, which are going to be over the size or over the 700 square metres. So I would like an answer from him. Also on the environmental side, the Deputy of St. John was telling us that driving around in cars on a Sunday is going to be environmentally not very good. I would like an idea roughly of how much carbon dioxide is thrown out by his boat when he goes off to Guernsey on a Sunday. I would say slightly more than the average family car.

2.4.7 The Connétable of St. Saviour:

Just to sort of concentrate people's minds; I may be wrong but I think we are talking about a difference very approximately of the size of this Chamber between the 2 stores. It is quite a considerable difference, so please be aware of that. I think we should protect the small shops. Just one other point, the shop in St. Lawrence was - as far as I remember - not called Benest's convenience store, it was called Benest's supermarket, so we are talking about a large shop. I think I am probably going to oppose this amendment but I will wait to hear the summing up.

2.4.8 Deputy J.A. Martin:

I do not really know where to start, I mean, I did vote against the principles in the hope that we might see that we are exchanging a dog's dinner for some cat's fur ball. I am telling you now this is unbelievable. [Laughter] I am listening to people who do not ... before I really get into it, I want you to forget you are a Constable or a Senator and a Deputy of a district; I do not want Deputy Jeune to give me a note when I mention Iceland at Georgetown but now she has found out Iceland in St. Brelade is okay, it can open under the 500 square metres. She is okay now. Does she know any of her parishioners travel and work in my Iceland in Georgetown? Yes, they do and I know one lady who walks from Georgetown to First Tower in St. Lawrence, past St. Lawrence every night. She weighs about 7 stone and she is really fit and it is very good for her doing it, but it does not affect Iceland in St. Brelade so I can vote for these principles, I can let this law go. How do you know who you are putting out of work tomorrow? Because you will; I have been on the phone to Sandpiper, they rely on the Sunday trading, the workers rely on the wages, it is time and a half or double time so you can work half the time and earn the same money. We are in an economic downturn and you are trying to tell me you are happy? Even if it is one supermarket, I am sorry, it will have a knock-on effect to other stores. One supermarket like Iceland at Georgetown could shut down Longueville, I do not know, it could do. It is really mad. I totally agree with Deputy Tadier, we are not States micromanaging. I have got to support the Constable of St. Lawrence because we lost the principles and I agree, I would say she is not doing it for one shop, she has done a lot of research. This is being micromanaged again by the Constables and it will not be uniformed. The Constable of St. Clement acting as rapporteur told us if he does not like deliveries on a Sunday the permit will not permit deliveries on a Sunday. Well what is the good of selling fresh bread, milk and eggs and things like that if you cannot get a delivery. So to me I cannot agree with the law, I have to support this because, as I say, I know people will be put out of work and to sit here in a nonchalant way and Deputy Fox says: "Well it might open a garden centre" in fact that might be Sunday family entertainment, well it is to some people, they like taking their kids to a garden centre, but only if the mum worked the week before in a supermarket to earn the money. There is no happy Sundays when you are sitting in on a rainy day with no money in your pocket, you are going nowhere, absolutely nowhere and you are threatening to take their jobs away. I find myself probably like a lot of people, I support this because we did not knock out the principles and as to say the Chief Minister standing up and the rapporteur telling us we might as well rescind the whole law or we are going to police the law as it is now and we will be closing down places left, right and centre. Well, sorry, one of the Constables - I will not say which one - said we are not hostage to the Chief Minister and this has been going on, I know this law we have is, as I say, really bad. I think we are replacing it with a worse law or one that is as bad; through the Constable's amendment she picked on one shop but the rapporteur has told the whole House he does not know who this will affect. So be careful what you wish for. Please accept this amendment. If this amendment does not go through the only opportunity - and I think a lot of people would go this time - you have got to vote the whole law out. You cannot put people out of work in this economic climate and you do not know the knock-on effect. You are voting blind, you are thinking about your own districts. I am sorry, I implore for once, think about the Island as a whole. You really must.

2.4.9 The Deputy of St. Mary:

Always a delight to follow Deputy Martin. I want to take more the tack of Senator Le Gresley right at the outset of this debate and just remind Members that 700 square metres is big and if you couple it with Article 10 which is the considerations that Constables must consider when they grant a permit, there is very little there to allow them to refuse a permit; it is very, very permissive.

[15:15]

So if you allow the 700 square metres and the grounds on which they can not grant a permit, which are that they have to have regard to the peace and tranquillity of a neighbour and the avoidance of nuisance to residents, well, any shop can say: "We will manage our deliveries right" which I agree is a benefit of the present law over the previous one. The shop keeper will say: "I will manage my deliveries right" and apart from that, well, what else? There is people going into the shop and going out of it. So I am really concerned that with the 700 metres and those considerations which the Constable has to have, there is very little leeway for not granting a permit. The second subparagraph of that Article 10: "The Constable shall have regard to the kind and size of a shop to which the permit will apply." The kind and size of a shop, it is very, very vague and it will be very hard to turn down a permit. Remember, for any shop in the Island up to 700 metres, in fact that is virtually every shop in the Island. So that is where this amendment takes us. It was not intended, it was intended to cover 2 or 3 shops and that is the thing that I want to emphasise. I believe there should have been a lower threshold in terms of area because my vision of Sunday shopping was always, well, it is the convenience store, it is the St. Mary's garage shop, it is the shop in St. Lawrence by the church and so on, where you pop in and get your household essentials on a Sunday because you could not get them at any other time. You have to go back to what the Dean said and what others have said about keeping Sunday special. This will end up with Sunday not being special. It will be very unspecial. Then my second point is Deputy Tadier - and I am delighted to disagree with him on this occasion - where he says that the logical position is for everyone to open their shops and he will do pretty well anything to get us on the road there and 700 square metres is a good starting point.

Deputy M. Tadier:

Can I correct the Deputy? I said the logical position is to allow every shop the option of opening, not to open every shop.

The Deputy of St. Mary:

Very good, and the paradox is that this is the exact situation where the free market fails and that is why we have regulation. The free market will force everyone to open eventually because they have to get their little share of the little pie that is Sunday shopping. I know, because I surveyed the main supermarkets back in my days on the Amos Committee of Christians Together in Jersey and I surveyed them for that body. They all said: "We do not want to open on a Sunday but we will if the others do."

The Deputy Bailiff:

Can we come back to the square meterage?

The Deputy of St. Mary:

Yes, I can see that the link is getting more tenuous. But the point is that if we go up to 700 metres, if we go up to effectively deregulation, then what will happen is an uneconomic situation. We will have shops opening to get their little share of that seventh day but in fact what will happen is that costs will rise across the board; the retailers will have to open 7 days instead of 6; their costs go up by a sixth but their trading income does not go up by a sixth, it is the same income spread over 7 days instead of 6. That is where this amendment takes us and I would suggest that for that reason and for the other reason we should not go there. We should look at a system with a smaller threshold and then exceptions along these lines, community benefit, where is the nearest alternative

convenience store, if it is too far then that exception could be dealt with in a slightly different framework from what we have here.

2.4.10 Deputy T.M. Pitman:

Just a few lines; I think we do have to support the amendment for the pure reasons that Deputy Martin so passionately outlined to us. I am not really going to say much more than that other than I am teetering and may change my vote when we get to the end of the final piece of legislation; for no other reason than Deputy Martin scared me.

2.4.11 Deputy A.E. Jeune:

I think Deputy Martin should take up a career in journalism or broadcasting as she is certainly well able to get things out of context. **[Members: Oh!]** I was able to clarify to the Deputy the St. Brelade situation because my Connétable very quickly clarified the square footage for me this morning of the areas that I was querying. But I believe we should not unnecessarily bring in legislation and control. We have heard a lot this morning and this afternoon about keeping Sunday special. Well, I believe I decide if Sunday is special, not the shops.

2.4.12 Deputy G.P. Southern:

Whether or not it is 700 square metres or 500 square metres, it seems to me that the assurance that we have been given by the proposer of the main proposition says that this will not increase Sunday trading and this from the Assistant Minister who said that we ought to lift this proposition off the running order because it was not going to take very long because it was not controversial. I, for one, have some doubt that this will not increase Sunday opening. He then goes on to say: "We tried to measure it by the size of these shops by the rateable value and we found an 80 per cent error on it" and yet this man wants to put more power in the hands of the Constables who are in charge of rating. Then finally, and this is the gem, this is the Assistant Minister who time and time again has come to this House and said: "We will do away with red tape. We must do away with red tape" and yet is immensely proud that he has moved from 8 Articles to - was it 20 or was it 25 - 25 articles; more red tape. Thank you very much, Constable of St. Lawrence.

The Deputy Bailiff:

Was that on the amendment, Deputy? **[Laughter]**

Deputy G.P. Southern:

Yes, amended or not it is a reason not to vote for this proposition.

The Deputy Bailiff:

Can I please ask Members to stick to the amendment?

2.4.13 Deputy D.J. De Sousa:

I really want to echo the words of Deputy Martin. If we do not pass this amendment brought by the Connétable of St. Lawrence then basically inadvertently maybe not knowing, the Minister for Economic Development possibly could have brought a law to this Chamber that may inadvertently grow unemployment. If this amendment is not accepted, I will have to change my vote on the Second and Third Reading as to whether I can support this proposition or not.

2.4.14 The Deputy of St. Martin:

It just goes to show, as I mentioned earlier on today, how difficult the Sunday trading debates have been in the past. I think the present House has been very fortunate; it must be the first time this particular House has discussed Sunday trading but we have been there before and we are going there again, simply because we bring our own feelings to it without really consultation. One of the sad things has been, and I can speak for St. Martin, I probably speak for Trinity, I probably speak for all the Parishes, that how many Connétables have had a Parish Assembly to discuss this? This

is probably one of the sad things about it; there has not been the consultation. Yet there are so many occasions in the proposition that we talked about 500 square metres and yet we have the Connétable of St. Lawrence, almost at the eleventh hour, coming to the States with an amendment because she has discovered, quite rightly, there is a problem. What is going to happen is that by bringing in this law we are going to inconvenience people who have been using that convenience for so long. It is a shame that this was not brought out or thought out before it came today, but let us look at it. If we propose this today we will close a shop which the people - and I have no reason to disbelieve what the Connétable is saying - that this market has provided a useful service for those years. Probably people know us there. If it was causing an inconvenience it would have been closed down, I am sure, but what we are going to do if we do not approve this today and give our support to the Connétable, it will be defeated. The other is - and I am rather disappointed - I know that one Deputy is ill, but I was hoping that we may have had some support or at least an opinion from the other Parish Deputy to hear what that Parish Deputy has to say. He may have a completely opposing view but I would like to have known what it was. Can I just ask maybe, is it possible, because I think what I feared, if we do not approve this today we are going to close a shop. Now, I do not know whether, when a shop no doubt is licensed according to its square footage or square metres, whatever it is going to be, if indeed this is defeated this afternoon and that closes would it mean an opportunity for that shop to open half its shop? I do not know whether the Attorney General can give a view but it seems crazy to close a premise down when it is already operating. So, could I maybe ask the Attorney General of a view, is it possible to have a shop which is licensed for 700 square metres to be open to only use part of it on a Sunday?

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

I think the answer to that is no, it is not. The retail sales area generally for a shop which would receive a general permit would be the sales area that it applies for the rest of the week, not just on the Sunday.

The Deputy of St. Martin:

I am grateful for that because it really reinforces what I am saying and when I spoke this morning and said what we are trying to do really is to stop this nonsense about what you can sell on a Monday but you cannot sell on a Sunday. I really do not have much more to add other than the fact that I think if we do not support this proposition today a way of life will go. If that is what we want, okay, let us oppose it but I will be giving my support to the Connétable.

2.4.15 Deputy I.J. Gorst:

I have tried to be quiet because I have spoken quite a lot in this meeting already. If I understand it correctly, the reason we arrived at 500 square metres was we were trying to provide a solution which allowed all shops which currently open to continue opening. In the process of that consultation and the bringing forward of that law we see that at least one - there is some debate about whether the other 2 - of the 3 has extended and therefore no longer complies with what was consulted upon the 500 square metres. If we were to accept the new limit of 700 square metres, the question I would ask is what happens when the next retail area which currently opens wishes to extend, do we then have to amend the law because we would not want to close that shop down as well, and I believe that we would? We would see amendments coming forward to this Assembly to ask us to extend that even more. I have been a little surprised at the apologetics for large retail multiples that have been described by some Members. We might be putting people out of work. These are people who are employed by large, multiple retailers. They have other outlets which they will continue to open on a Sunday. They do that now, they will be able to do that under the 500 square metres. After all, let us remember these are the same retail outlets that are continually knocking on one's door asking for non-local licences and telling us how difficult it is to get local people to work in retail and that happens all across the retail sector. So just exactly what is it that we would be providing for them? I think we have to have a large element of realism and

sometimes scepticism when people put forward arguments because we have to ask what the benefit is for them as a retailer and perhaps sometimes read between the lines. So, the other reason I cannot support this amendment is I believe that Senator Le Gresley, quite wisely, has seen through exactly what is going on with this law. It seems nice and reasonable. I arrived today wanting to support at least the original size limit but as I heard a number of Connétables speaking about the original law and it applies even more with the extended square meterage ... I think it was the Connétable of St. Helier who said that yes, he wanted to see town open because he wanted to access the tourist's pound - the European traveller's pound. That, to me, rang alarm bells because I do not believe that we should be simply making these sorts of decisions, and therefore an extension, in light of the tourist market.

[15:30]

Jersey has many attractions and I do not believe that we want to add to that list of attractions the fact that we are open for business on a Sunday like any other day. I believe that we must be extremely careful and I, therefore, cannot support this amendment.

2.4.16 Senator A.J.H. Maclean:

I just wanted to comment on a few points. First of all, Deputy Martin; I agree with most of what she said earlier on and I think it is worth just clarifying the point that when this law was being brought forward there was no intention at all to seek to shut down any establishment that is currently working. It is very difficult getting a mechanism put in place to achieve that but we did work hard. A lot of research has gone into this. A lot of consultation has gone into this, not just for the Constables but on a much wider sphere, including business groups such as the Chamber of Commerce, and we have tried to assess and balance all the views in order to get a position where we were not shutting down businesses if we could possibly avoid it because yes, there is a very real risk that jobs will be lost. I have no doubt that if we did not increase and accept this amendment, and I have already stated to Members that both I and my Assistant Minister support this amendment. We understand the rationale behind it and if I could just clarify to Members where this came from; we assessed the reasonable level of 500 square metres and at that level it did not appear that it was going to be closing down virtually any of the existing shop stores that were open in the Island. The difficulty that arose was that the information and the data that was available in part was inaccurate and quite simply the Sunday trading rates return that the Parish had was inaccurate. It gave the impression that this store in particular and, as it turns out, 2 others, had inaccurately posted their size for retail space and because of that it was not included in the original data. So, it is as simple as that. That is what the facts are and clearly it is disappointing that that information was not available before but nevertheless as I have said we do support the Connétable's amendment as brought forward. Now, Senator Le Gresley, who I like a lot, and I still like him, it is just that I would point out he did make a couple of comments and I understand exactly where he is coming from with regard to his frustrations. He gave the impression that this was just a crackpot idea at the last minute to support an amendment and that we should not be going down that route. I hope, having given the rationale for the inaccurate data that was collated, that gives him one reason why we are prepared to accept the Connétable of St. Lawrence in her amendment. I would also like to just clarify a point; earlier on I stated that there are 50 shops. This comes from an Experian study that was carried out a few years ago on size and impact of Sunday trading. There are 50 shops over 500 square metres in the Island and 14 of those fall between the 500 and the 700 range, not under, as I think the Senator suggested I had said before, it is over just to be absolutely clear with that. The current law, and I have already pointed this out, as it stands, which is difficult and is hard to enforce, would in fact allow an awful lot more stores to open if they so chose. This is trying to get us into a position with a simpler law, a workable and enforceable law that I think makes sense. It is unfortunate that we have to go down the route of an amendment in order to achieve that but I do not think we are in a position where we cannot accept, in my view, the reasonable

amendment in the circumstances being brought forward by the Constable of St. Lawrence. The Deputy of St. Martin was saying he wished a St. Lawrence Deputy was available to speak on this matter to get their views, he would like to know what the Parish Deputy thought. Well, if it is of any comfort, I am a Parish Senator and my view is that from a Parish point of view it is a very reasonable and much used facility at Benest's; I use it regularly myself and I know that many other Islanders, not just Parish residents, use it because it is so centrally located. But that aside, we have to base decisions on fact and I hope that the Members are given the fact behind this proposition and great real risk to jobs, which clearly concerns me. One other point that I will just briefly make, and I think it was a point raised by Deputy Gorst about the fact that all shops who can currently open would still open, and that is exactly the base we have worked on. He talked about tourism and the fact that we cannot make legislation based on tourist requirements. The list of permitted items was extended because of tourism. That is why it was extended in the first place, to support our vitally important tourism industry, because tourists are coming to the Island and they want to have the ability to buy basic items. That is how the permitted list began to have its creep, creep, creep and it is now at an unmanageable, unenforceable level. That is why we need this change and I would urge Members to support the Connétable of St. Lawrence with this amendment.

2.4.17 The Deputy of St. John:

Until I heard the Minister speak I was minded to be supporting this. As a former rates assessor, I sincerely hope that the Minister is not going to be condoning an offence of falsifying rates returns - let me finish, please Minister, I will not give way - because it is an offence under the rating law to put in returns knowingly to be incorrect. If somebody has put in a return because a building has increased in size and by the sounds of things several of these buildings have been increased in size, and that is probably one of the reasons why we have not been given the report that has been done by Planning, but I do not know. If the Minister is supporting this amendment and there has been either a breach in the Planning Law or in the Rates Law, I think we should not be supporting it, because I have got real concerns on those premises that we have been told about. They have increased in size and the Minister was blaming the Connétables for the return forms not being ... that is what you said, because I made a note "Minister blaming Constables". **[Laughter]** I have got real concerns. It is not for the Constables to be checking the rates returns; it is the rates assessors and they take it at face value. They do not go and do a measurement every year; they do it over a number of years. They may go around every 5 years and re-check what has been declared. I have some real concerns here. As I say, I was going to support this but I have got concerns that these companies may be operating illegally because they have falsified their rate returns.

Senator A.J.H. Maclean:

I really do not think that the Deputy can make allegations in that way. Suggesting companies are falsifying returns is really not appropriate.

The Deputy of St. John:

I am not giving way at this time. The Assistant Minister can challenge me when he sums up.

Senator A.J.H. Maclean:

Sir, I think he really needs to withdraw that statement, frankly.

The Deputy of St. John:

If we have to go back to Hansard ...

The Deputy Bailiff:

Would you both sit down.

The Deputy of St. John:

Yes, Sir. [Laughter]

The Deputy Bailiff:

Deputy, I do not believe you intended to accuse the Connétables themselves of falsifying the returns; that being so, there is nothing to withdraw.

The Connétable of St. Clement:

A point of clarification which really might help the Deputy if he would just allow me; the Minister did make a mistake in the phraseology he used. The figures we looked at were not on the rates returns but were on the application for Sunday trading permits as they currently exist. So, there is no question of the rates returns being wrong.

The Deputy Bailiff:

Connétable, you can make a speech in a moment if you choose to.

Senator A.J.H. Maclean:

There is just one point.

The Deputy of St. John:

I will not give way any longer.

The Deputy Bailiff:

What is your point?

Senator A.J.H. Maclean:

A point with regard to the clarification you just made, Sir. In fact, the Deputy was suggesting the shops themselves were falsifying their returns, not the Connétables and I think that is what needs to be withdrawn, because it is inappropriate.

The Deputy Bailiff:

If I may say so, that was his inference from what you said and it was a possible inference from what you said. I thought he was not out of order in saying that. You may not have intended to say that.

The Deputy of St. John:

Thank you. The other thing was that Members should take note; 700 square metres equates to approximately 2,310 square feet and 500 square metres is 1,650 square feet.

Male Speaker:

Not square feet.

The Deputy of St. John:

Sorry, you have got me confused now. [Aside] No, it is not difficult at all; not at this time in the debate.

Senator B.I. Le Marquand:

If I can assist, I think the multiple is closer to 11 times; something like 10.5.

The Deputy of St. John:

Sorry. Thank you, Minister for Home Affairs. I was taking it off my young colleague here and I took the notes off his ... [Laughter] Thank you. But that is a huge increase in size, because if you look at the average bungalow at 1,500 square feet is a big bungalow and something that is 2,300 is large. So, therefore, we are talking about a big increase in size. I can understand where the proposer of the amendment was coming from about forecourts and the like and the Connétable of Grouville but will this be retrospective within buildings like garages, which are currently operating,

and I would like that answered when the Minister sums up. Will this affect them because will this be a retrospective given that they have been operating for many, many years and that needs to come out when he sums up. But I do not withdraw the remarks I made about the Rating Law, Minister.

2.4.18 Senator T.J. Le Main:

I did not support the principle because I just do not like further red tape. I think we should be working towards getting rid of some of this red tape. In my view I would scrap this altogether and, in fact, I would allow the willing seller and the willing purchaser to meet in the middle and allow that to happen. But I am also a bit worried that again we have a veto given to the Connétables. Over the years that I have sat in this Assembly we have had some weird and wonderful Connétables and [Laughter] probably more to come. I dare not say we may have some at the moment but I am worried that some of the decisions are made not only by Connétables but also by Members, sometimes on other grounds than commonsensical grounds, particularly sometimes on religious grounds and some Members have very firm views on various issues.

The Deputy Bailiff:

Is there anything about the Connétables that makes them unable to exercise judgment in relation to 700 square metres but able in relation to 500 square metres, because that is what the amendment is about?

Senator T.J. Le Main:

They are able, we are advised, to put conditions on in certain conditions and some of the conditions could be absolutely horrendous that it would not even be worth the while of the shop to open. But anyway ...

The Deputy Bailiff:

I see that it might relate to premises of 500 squares metres just as easily as 700 square metres so would you please address the amount?

Senator T.J. Le Main:

Because I want to explain that I am like Deputy Martin; I supported very much what she said on this. I intend to vote for the 700 square metres but I do believe that this will affect many people. I know I have got some people alongside, living 2 doors away from me, that have arranged their family life that the wife works on Saturday and on a Sunday, very much needs the money. I also believe that shops like Iceland down at Georgetown, which I frequent quite often to get my eggs at £1.50 for 20 and I can assure Members that that shop is truly valuable, particularly on a Sunday.

[15:45]

You can go in on a Sunday from 8.00 a.m. until 8.00 p.m. and there are streams of people. Many of these shops that are up to 700 square metres, particularly that one which I am told is 650 square metres, that low income families shop on a daily basis. They shop for food on a daily basis. They cannot go like all of us on £45,000 a year plus, being able to shop once or twice a week with a super trolley full of food. They shop every day. I do not like these laws. I can hear the Constable of St. Clement, I can hear his Minister, when they were all standing on the election platform: "Let us get rid of some of this bureaucracy. Too many laws." and quite honestly, I do not need Government to tell me that I can shop or I cannot shop where I want on a Sunday and I think that the proof is in the pudding, whereby most of the shops in King Street, although they can open now, they do not open. Well that is fine but it should be allowed. It should be freely available to those who want to open who treat their staff and the staff with good protection to give an opportunity to have some work and quite honestly it is absolute lunacy all this. We are just going down. We are like the old Russian countries of years ago; more laws, more laws, more laws.

2.4.19 The Connétable of St. Clement:

Just very, very briefly; I just want to respond to what the Deputy of St. John had to say. When he says he does not want an increase in size of shops opening, well this amendment does not do that. It maintains the status quo; Benest's is currently open, Iceland at Georgetown is currently open and if I had known what I know now and only found out a couple of weeks ago, what the situation is with those 2 stores, 700 square metres would have been in our report. There was no question of the rates forms being incorrect. What happened was we checked the Sunday trading application forms and Benest's, if I remember correctly, had put down their size as 4,000 square feet, which is under 400 square metres, and Iceland had put down a similar figure, so we recognised from that, that there was no problem with 500 square metres. It was only when we had a call from Sandpiper saying: "Oh, we have made a mistake" that we realised that there was a problem here which would inconvenience a lot of people if this amendment is not approved. It would put some people out of work which would be most unfortunate and it is not necessary because we are not changing anything. Those shops are open now, have been for quite some time and will continue to do so if the States so allow. Is it retrospective? Well, I do not know, because the permits that currently exist all expire at the end of this year in any event and if these regulations are adopted today and the stores themselves decide to continue with those permits and not apply for the new ones that will be available, they will continue in operation until the end of the year but if the 500 square metre rule is applied then they will have to close at the end of the year. It is as simple as that. I am certainly not aware that if the 700 square metre amendment is adopted that it would impact on any other units at all being forced to close. I am not aware of that. The amendment is quite sensible and pragmatic and I believe should be supported.

Deputy A.T. Dupre of St. Clement:

Could I just ask a point to the Constable? How does that affect something like the farm shops? Does that mean that they can still carry on as they are?

The Connétable of St. Clement:

What it means is that any retail unit under 700 square metres will be able to apply to the Constable for a Sunday trading permit and if they meet the criteria it will be granted, providing the Constable takes into account all the things he is required to take account of in the regulations.

Deputy A.E. Jeune:

May I just ask a point of clarity from the speaker? Is it just a case of the Connétable of St. Lawrence beat the Assistant Minister to it and brought the amendment?

The Deputy Bailiff:

I think the Assistant Minister has made his position perfectly plain.

2.4.20 The Connétable of St. Peter:

I just stand very quickly to say really the whole object of this amendment that the Constable of St. Lawrence has brought is to stop shops that are currently open from having to close because of this legislation. It does nothing more than that. **[Approbation]** It is not intended, it is not her intention nor mine - as I am going to support the amendment - to allow more shops to open. The Connétables are probably the most accountable Members in this Assembly who are accountable by their Parish Assemblies and if the Constable does allow, as Senator Le Gresley rightly says, the shops to open which they should not do, the Parishioners have the right to challenge their Constables decisions by the Assembly. Within the regulations the shops themselves have the right to complain or to seek redress with the Comité des Connétables. If they are not satisfied then, they come and take it to the Royal Court. That was encompassed within the regulation. There is a lot of protection in there for both the shopkeeper and the Parishioners and I believe for the Connétables and the Royal Court subsequently.

2.4.21 Senator B.I. Le Marquand:

I will make my main speech under the next article to explain why I voted against the principles and will vote against the entire law but the purpose of my intervention now is to correct the arithmetic in relation to the size. 500 square metres by my calculation is just under 5,400 square feet. That is a huge area and the increase to 700 would be an increase to 7,560 square feet. So we are already, with the 500 limit, dealing with a huge size.

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

I was not going to speak on this amendment but I do just to appease the Deputy of St. Martin. Of course I support my Connétable. The store in question is also my closest convenience store as the Connétable and I live merely 100 yards apart from each other. This really is about not closing something that already is open. It is quite simple. I would just like to point out to Senator Le Marquand, this is not really about the size of the store; this is making sure that we do not impinge on something that is already open and I wholeheartedly support my Constable in trying to achieve that aim.

The Deputy Bailiff:

If no other Member wishes to speak then I call on the Connétable to reply.

2.4.23 The Connétable of St. Lawrence:

Will someone remind me next time never to bring an amendment to something being proposed by the Constable of St. Clement when he stands to say it should be brief. **[Laughter]** I think I have counted over 20 Members having made a contribution to this debate and quite rightly so, because we are all here to air our views. But many Members expressed concern that my amendment aims to increase the retail area from 500 square metres to 700 square metres. They are concerned about that and the point is, yes, they are absolutely right. That is what I am seeking to do and it is to keep open at least 3 trading enterprises of which I am aware, which if we do not accept this amendment will be forced to close, resulting as Deputy Martin and others have said, not only of jobs that are in some cases very important to the employees but there is always a knock-on effect and that knock-on effect will be that local companies and suppliers will be affected by the closure of these 3 shops. The other point I wish to make is that we have heard about creep. In fact, this is not allowing a creep; this is putting a ceiling on shops that will be permitted to open and trade on a weekly basis on a Sunday. We have all heard the Constable of St. Clement tell us that the current law allows any shop to request permission from the Constable to be allowed to trade on a Sunday and, indeed, the Constable of St. Helier and others have spoken about the many shops that could, in fact, be open on King Street and Queen Street regularly on a Sunday. By supporting this amendment we place a ceiling on the size of any shop which will be able to open on a Sunday. We will also be protecting, as we have heard, the jobs of a number of people and we will be retaining for everyone the convenience that they have at the moment. I am sure Members will be happy to know I am not going to address the 20-plus comments that I have received but I do want to address one that the Constable of St. Mary said. She stood and said: "It is not a convenience store" and I quite agree. But it is a convenient store and it is convenient for me because I live in the area of Benest's and it is convenient for me when I drive to my mother at St. Clement to be able to shop on a Sunday at the Iceland at New Era and it is convenient for me to drive to any other shop that is open on a Sunday, albeit not with perhaps the goodwill of the Deputy of St. John, but it is my choice. What we will be doing today by approving this amendment is ensuring that we all have the choice that we currently have. That probably sums everything up and I ask for the appel.

The Deputy Bailiff:

The appel is called for. The vote is on the second amendment of the Connétable of St. Lawrence. I invite Members to return to their seats and I ask the Greffier to open the voting.

POUR: 31		CONTRE: 11		ABSTAIN: 0
Senator T.A. Le Sueur		Senator B.I. Le Marquand		
Senator P.F.C. Ozouf		Senator F.du H. Le Gresley		
Senator T.J. Le Main		Connétable of St. Saviour		
Senator A. Breckon		Deputy J.B. Fox (H)		
Senator A.J.H. Maclean		Deputy of Trinity		
Connétable of St. Helier		Deputy I.J. Gorst (C)		
Connétable of Trinity		Deputy of St. John		
Connétable of Grouville		Deputy of St. Mary		
Connétable of St. Brelade		Deputy M.R. Higgins (H)		
Connétable of St. Martin		Deputy A.K.F. Green (H)		
Connétable of St. Clement		Deputy J.M. Maçon (S)		
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy T.M. Pitman (H)				

Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy D.J. De Sousa (H)				

2.5 Draft Shops (Regulation of Opening) (Jersey) Regulations 201- (P.95/2011): third Amendment (P.95/2011 Amd.(3))

The Deputy Bailiff:

Very well. We now come to the third amendment, lodged by Deputy Green. I ask the Greffier to read the amendment.

The Deputy Greffier of the States:

Page 21, Regulation 6. In paragraph (6)(a) after the words “Christmas Day” insert the words “or 26th December”.

2.5.1 Deputy A.K.F. Green:

You will be pleased to hear I am not going to speak for very long. I think we can do this in a couple of sentences. People will have already made up their mind, I think, about which way they want to vote. This is about keeping the real Boxing Day, that is the day after the day that we celebrate the birth of Christ; this is about keeping the real Boxing Day as special as we can for families. It is as simple as that. So, you either agree with me or you do not; we do not need to have a long argument about it.

The Deputy Bailiff:

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

2.5.2 Senator A. Breckon:

I have just a few words. I welcome this amendment because I am aware a couple of years ago where the bank holiday changed and there were some workers in Jersey who were forced by a national chain to work on Boxing Day. It was worse than that because they had to go in at 5.00 a.m. because there was a sale on that started early. So, anything that gives those who perhaps are not unionised, do not have much protection to having a bit of a break - especially with the run up to Christmas trading where there has been some Sunday opening and there have been some late nights - I think is welcome. I do not think this is a step too far; I think it is a step in the right direction.

2.5.3 Deputy T.M. Pitman:

Just to support Deputy Green. This is essentially what Deputy S. Pitman tried. Perhaps Members find Deputy Green more cuddly. I personally find Deputy S. Pitman more cuddly, although he is pretty cuddly, I must admit. It is a good amendment. It is about keeping a day which, for me, is just an extension of Christmas; it is very special and I think it totally deserves support. When we heard what happened last year with people; notices on staff walls, et cetera, being forced to come in at 6.00 a.m. or being sacked. That is not the way we want to run this society so please do support Deputy Green.

[16:00]

2.5.4 The Connétable of St. Helier:

I would be grateful to hear from the Deputy what consultation he has done with retailers before bringing this amendment. I certainly have in my mind the phrase “Boxing Day sales”. It is a

phrase that means something to me. It is not something I partake in because we are just recovering from Christmas but it does seem to me that the concept of a Boxing Day sale is important to some people who like to go with their family into the shops and look at bargains, particularly in department stores that are looking their loveliest at Christmas. I am just curious to know how much consultation the Deputy has carried out, particularly with our department stores that put such a lot of work into their window dressing and things like that. Are they happy that they will not be able to have Boxing Day sales anymore if this amendment is approved? I accept his idea that Christmas and Boxing Day are essentially family days but I would make the point that some families choose to have walks on Boxing Day, some families choose to go shopping and look at the sales, so I would just like to have that query responded to, please.

2.5.5 Senator T.J. Le Main:

I truly support the words of the previous speaker, the Connétable. All I can say is that I disagree totally with this amendment and I totally disagree with the words of Deputy Pitman supporting Deputy Green and I shall be voting against.

The Deputy Bailiff:

You do not think Deputy Green is cuddly then?

Senator T.J. Le Main:

I am the cuddly one here. [Laughter]

2.5.6 Senator F. du H. Le Gresley:

I would just like to remind Members that those who just voted for shops with 700 square metres can open; if they obtain a general permit they will be authorised to open on 26th December, so when the Deputy says: "This amendment seeks to preserve 26th December as a special day for as many families as possible by limiting the opening of shops to these smaller, convenience stores" well, the smaller ones are now 700 square metres if they have got a general permit.

2.5.7 Deputy M. Tadier:

While I have sympathy for the position of the Constable of St. Helier, this really follows on from the fact that we have not got a consistent approach in that shops are open all the time. We already have agreed that there should still be restrictions on opening hours and trading for some shops, and I think that Deputy Green's amendment simply follows on to recognise that Christmas Day is essentially to be treated as a Sunday, that Boxing Day is a holiday - it is part of the festive period, which I think should also be noted - and I think that the reason there is so much confusion, and there has been in the past is, as I said earlier, there seems to be tension between those who want to, on the one hand, provide the optimum amount of convenience for the public and also allow traders to trade freely, while wanting to protect the right for those who can reasonably expect to have certain days off in a year. Now, the way to do this ultimately is to have adequate Employment Law and if there are inadequacies those need to be addressed to make sure that nobody is forced to work on a Boxing Day or that people can have Boxing Day off and if they do work they must get extra time or time in lieu or both. These are really the issues that need to be addressed, but in the absence of that I think it is perfectly correct to support the St. Helier Deputy's proposition here.

2.5.8 Deputy A.T. Dupre:

I am afraid that this idea of Boxing Day sales has come from England. It was not ever done over here. Boxing Day was always a special day over here and it should be a family day.

The Deputy Bailiff:

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

2.5.9 Deputy A.K.F. Green:

I will deal with the question from the Constable of St. Helier in a minute although he is not here at the present time. I did wonder when I brought this amendment whether we would not leave things alone and just bring an amendment saying that if you want to open a shop on Boxing Day then the owners and the directors have to be present in the shop when it is open. But it is normally the workers that have to be there; the family people and it is just a chance once a year to have 2 days together for ordinary working folk. Now I accept that some are working in the hospital, some are working in essential services but do we really have to open up our department stores? Answering the question to the Constable of St. Helier; I cannot claim to have had a full survey but I certainly spoke to one of the major independents in this Island and he said to me that no, he does not want to open Boxing Day but if the others do he will have to. That was his answer. But I also got stopped a lot by staff in the supermarket saying they do not want to be at work on Boxing Day. They have less of an objection to being at work on Sunday on a rotational basis but on Christmas Day and Boxing Day they want to be with their families. This is our chance to give them that opportunity.

The Deputy Bailiff:

The appel is called for on Deputy Green's amendment. I would like Members to return to their seats. I ask the Greffier to open the voting.

POUR: 32		CONTRE: 8		ABSTAIN: 0
Senator A. Breckon		Senator P.F.C. Ozouf		
Senator B.I. Le Marquand		Senator T.J. Le Main		
Senator F.du H. Le Gresley		Senator A.J.H. Maclean		
Connétable of Trinity		Connétable of St. Helier		
Connétable of St. Brelade		Connétable of Grouville		
Connétable of St. Martin		Connétable of St. Clement		
Connétable of St. Saviour		Deputy R.G. Le Hérisssier (S)		
Connétable of St. Lawrence		Deputy A.E. Jeune (B)		
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				

Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

2.6 Draft Shops (Regulation of Opening) (Jersey) Regulations 201- (P.95/2011): amendment (P.95/2011 Amd.)

The Deputy Bailiff:

We now come to the amendment of Deputy Gorst and I ask the Greffier to read the amendment.

The Deputy Greffier of the States:

Page 21, Regulation 6; in paragraph (6)(b) for the word “10” substitute the word “5”.

The Connétable of St. Clement:

If it helps the Deputy, we are accepting this amendment.

2.6.1 Deputy I.J. Gorst:

Thank you, I am pleased to hear that. This quite simply deals with those other shops that do not fall under the requirement for a general permit, that is, those over the now 700 square metres. There can be issued a single permit by the Connétable to allow shops to open for a number of Sundays throughout the year. The original suggestion was 10, I am saying that 5 is more reasonable which will allow those larger shops obviously to open in the run-up to Christmas and perhaps at the same time to have one or 2 days over that they might wish to open either over the summer period or perhaps even Easter.

The Deputy Bailiff:

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

2.6.2 Connétable J.L.S. Gallichan of Trinity:

I fully support this amendment, basically because at the present time we have the Fête dé Noué also and with a fête where there are already openings, if we had gone on to the proposition of 10 openings, plus those where there is a special fête on, we could be running to 13 or maybe 14 openings. I just feel that if we are going to keep the Fête dé Noué as it is, the Fête dé Noué sometimes becomes a problem for outlying Parishes where they want to have extra days on so what they do is they decide to have a fête or do some special events in their businesses. This way you will still keep the Fête dé Noué plus they could have 5 other openings during the year which they so request. I am quite happy to support this amendment.

The Deputy Bailiff:

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

2.6.3 Deputy I.J. Gorst:

I ask that Members might support my amendment.

The Deputy Bailiff:

Would all Members in favour of adopting the amendment kindly show.

Deputy I.J. Gorst:

Please could I have the appel?

The Deputy Bailiff:

The appel is called for. I invite Members to return to their seats. I ask the Greffier to open the voting. The vote is on the amendment of Deputy Gorst. If all Members have had the opportunity of voting I will ask the Greffier to close the voting. I can announce the amendment has been adopted: 31 votes in favour, 7 votes against.

POUR: 31		CONTRE: 7		ABSTAIN: 0
Senator A.J.H. Maclean		Senator P.F.C. Ozouf		
Senator B.I. Le Marquand		Senator T.J. Le Main		
Senator F.du H. Le Gresley		Senator A. Breckon		
Connétable of Trinity		Connétable of Grouville		
Connétable of St. Brelade		Deputy R.C. Duhamel (S)		
Connétable of St. Martin		Deputy J.A. Martin (H)		
Connétable of St. Saviour		Deputy A.E. Jeune (B)		
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				

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

2.7 Draft Shops (Regulation of Opening) (Jersey) Regulations 201- (P.95/2011) - as amended

The Deputy Bailiff:

Very well, we now return to the debate on Regulation 6 as amended. Does any Member wish to speak? No Member wishes to speak. Would all those in favour of adopting the regulation as amended kindly show? Those against? The regulation is adopted.

2.7.1 The Connétable of St. Clement:

If I may propose the rest of the regulations, I shall just say a brief word about each if that is in order. Regulation 7 provides, except where the shop is a vehicle, the Constable of the Parish in which the shop is situated is the authority for granting a permit. In the case of a vehicle it would be the Constable in which the owner of the vehicle lives. Obviously we do not want ice cream vans having to get a permit in every Parish as he travels around. Regulation 8 provides that an application in respect of a general or single permit is to be made to the Constable of the Parish that sets out the requirements for an application. Regulation 9 enables a Constable to require an applicant to provide additional information and to arrange for an inspection of the shop. Regulation

10 is very important. That requires the Constable - as I said earlier, a number of times it seems today - when they decide whether to grant a permit or not to have regard to the peace and tranquillity of the neighbourhood and the avoidance of nuisance to residents. Regulation 11 requires the Constable to notify the applicant in writing of the decision. Regulation 12 sets out the conditions that apply to every general permit and enables the Constable to impose other conditions in granting a general permit. Regulation 13 does the same with a single permit. Regulation 14 just applies to the issue of the permits. Regulation 15 is about blanket permits and empowers the Constable to put a notice in the *Gazette* to grant a blanket permit that had been designated a special occasion by the Minister after consultation with the Comité des Connétables. Regulation 16 is very important; a power which the Constable does not have now is to vary a general permit either on application to the permit holder or at the Constable's own initiative. Regulation 17 provides that a general permit or any permit ceases to have effect if the holder ceases to occupy the shop for which it is granted. Regulation 18 - a very important one - enables the Constable a general or single permit under certain circumstances. One of those things would be if a shop under 700 square metres has a general permit and it extends to over 700 square metres, then the Constable obviously will be bound to revoke that general permit immediately because we have now put a cap on the size of the shop which may have a general permit. It is very important to have that ability also if there is nuisance or a series of complaints, which is a power that the Constables do not have at the moment; once they have issued a permit that is it for the rest of the year. Regulation 19 requires a Constable to give his or her reasons for refusing to grant a permit or for varying or revoking a permit, which is quite reasonable. Regulation 20 introduces the right of the shopkeeper who is aggrieved by a decision of the Constable either not to grant or to vary a permit or to put conditions on a permit, to be reviewed by a panel from the Comité de Connétables. If the shopkeeper is still unhappy about that, he will then have recourse to the Royal Court. Regulation 22 sets the fee that is payable for an application and that is set at £50. Regulation 23 requires the holder of a general permit or a single permit to produce it within 7 days when required by the Constable or his representative. Regulation 24 is a transitional arrangement which I referred to briefly earlier. That means that there are permits currently in operation and they will exist until the end of the year. If a shopkeeper wishes to retain that permit he may do so under exactly the same conditions, in other words with the Government approved list but he can also, if he wishes to apply under the new scheme and then be able to sell whatever he normally sells on a Sunday, he can apply for a new permit under these new regulations. So those are transitional arrangements. Then we have the schedules and of course the citation. I propose the regulations.

The Deputy Bailiff:

Do you propose the regulations and the 2 schedules not yet? Is that seconded? **[Seconded]** Does any Member wish to speak?

2.7.2 Deputy T.A. Vallois:

I would just like to ask the Assistant Minister in relation to Articles 12 and 13, with regards to conditions on permits. I know he said that there has been consultation with Constables with regards to this legislation. How do they intend to enforce this and will it be removing any resource away from the Honorary Police in terms of enforcing this and ensuring that any conditions placed upon permits are properly adhered to, because I know that Economic Development in themselves have problems enforcing their own conditions on permits.

[16:15]

2.7.3 The Deputy of St. Martin:

I note this is regulations and not law, so therefore I stand corrected but I understand there is no need to make a human rights statement that the particular regulations are human right compliant, but I would like to draw the attention of Members to Article 20 on page 27 and in particular

subparagraph 6: “A person seeking review of the decision shall give the panel and the Connétable whose decision is the subject of a review a statement in writing on the grounds in which the review is sought and the panel shall review the decision and confirm, reverse or vary the decision.” What I would like to know; is there no right of appearance? Is there no right of the individual who has been refused an application the right to appear before the panel to put across its views and maybe answer any questions that the panel may have? It would seem to me that would be the right way of doing it. It may well be that that is the intention but it does not say so within Article 20 subparagraph 6. I would hope it is the case but maybe the Connétable can confirm to Members.

2.7.4 Senator B.I. Le Marquand:

I said I would make my main speech on the first article and I am very grateful to the Connétable of St. Clement taking all the articles together because that now enables me to outline the problems which I have. I have no wish to make the department’s task more difficult. We all know that the current law is unworkable. We all know of the struggles over very many years to come up with a balanced, workable arrangement so I make these comments with apologies to the Connétable and to the Senator in relation to the difficulties which I have. I came today thinking that on balance I could support this legislation but here are the difficulties which have arisen in my mind. We are all aware of the major factors which come into play in politically seeking to decide what is the right balance in relation to such a law. They include factors such as this; the desirability of keeping Sunday as a special day for the family, for recreation, for St. Helier to be quieter than normal and for those who wish to attend Christian worship to do so in the morning. Secondly, the aspirations of those shopkeepers who wish to open on a Sunday to ply their trade. Against that, of course, has to be balanced what was said - very eloquently if I may say so - by the Deputy of St. Mary, who pointed out the difficulties of the open market functioning in this type of situation in which, although shopkeepers may not want to open, if one of them does then the others feel compelled so to do. That is why, in my view, one needs to have regulations. So that is the second factor with a counter balance to it. The third factor and a very important factor is the need to protect employees from being pressurised to work on Sunday, thus damaging family life, et cetera. Against that there is a counter factor of those employees who may wish to work on a Sunday and that has to be taken to effect. There is also the desire of some people to have the choice to shop. So, all those are the major political factors which we have to consider in considering such legislation. But in my view they are also major factors which ought to be considered when making individual decisions in relation to this area. The big challenge is to strike a fair balance. Now, the current proposals leave that important balancing exercise to the individual Connétable under Article 8. That is where I have a difficulty. The only criteria which are set out to assist the Connétable are those set out in Article 10 but those criteria do not touch upon the major factors which I have already outlined. They talk about having regard to the peace and tranquillity of a neighbourhood and the avoidance of nuisance to residents. They talk about having regard to the kind and size of shop and noise and traffic and things of that nature but they do not talk about this important vital balance which has to be struck in making any individual decision between the 4 factors which I have outlined. They leave that decision to the individual Connétable. Now, today I regret to say that the Connétable of St. Helier alarmed me. He does not normally alarm me; sometimes he puzzles me, [Laughter] sometimes I admire the wonder of his speeches but today he alarmed me. I trust that he will return to the Assembly to put my mind and the minds of others at rest in relation to the issues that I am going to raise, because what he said very clearly, which has already been outlined by Deputy Gorst because he was very keen to see French people come over and spend their money on a Sunday. That sent massive alarm signals through me because it seemed to me that what he was saying is: “I am going to give priority to the aspirations of shopkeepers to open on a Sunday in order to ply their trade.” Now, what really alarms me is if that is going to lead to a situation in which we are going to get wholesale granting of licences. French people might want to buy toilets, French people might want to buy clocks, French people might want to buy perfume, they might want to buy anything. Where is the safeguard going to be if the Connétable of St. Helier decides to have a completely

open policy in relation to granting of licences to whoever may so wish? But let us say I have misunderstood here. Let us say that, in fact, he did not intend to indicate what I fear he might have been intending to indicate and I think he was being very honest and open with us on this. Let us say that that is not his position; that the next Connétable of St. Helier takes that position. Where are the safeguards in relation to that? I thought, when I first glanced at the law that the position in terms of central policy would be an agreed central policy among the 12 Connétables; that they would come together, they would seek to resolve this difficult balancing exercise in 4 different directions, which I have described. But on talking to the people today I discovered that is not so. That is not so; they may have particular views as a group but nevertheless the individual Connétable is the licensing authority. He can do whatever he thinks appropriate for good or for ill. Of course the arguments that I am saying could work entirely the other way. Those who are in favour of having a complete open situation might come across a Connétable who took a very narrow view and has allowed nothing to open whatsoever. In relation to that position there would, of course, be safeguards because in relation to that position there is a right of reference to the Comité des Connétables and that I accept. But there is no such right of reference the other way around. In fact, the only rights to appeal which are granted here are in favour of the shopkeeper. So, although there are safeguards against a - dare I say it - narrow-minded in these terms Connétable not granting, there are no equivalent safeguards against a liberal Connétable who would grant to everybody thus creating a situation on Sundays which none of us want, because none of us frankly do want to have that kind of total open situation. That is my problem. I thought this was going to be a decision reached collegially and I was happy to leave that decision collegially to the 12 Connétables but I find, in fact, that is not so. I also find that there are no effective rights of appeal against people offended by the decision to grant against next door neighbours or whatever or people who might take a ... I am pleased the Connétable has returned, because I really do not want to be misrepresenting what he was saying to us earlier and I trust he will explain to us what he was saying earlier. So I find myself with a situation where the actual decision on the very core issues is not guided in the legislation and it is left entirely to the individual and that, in my view, is not a satisfactory state of affairs. I therefore believe that this needs to be looked at again and that what we should have is a situation in which there is a clear mechanism by where there is a collegial responsibility of the Connétables, either by setting policy in these areas I am talking about or in terms of there being a right of appeal by individuals who are not shopkeepers against the decision to open, because without that we are entirely dependent upon the views of the individual Connétable and I find that very unsatisfactory. That is the reason why I cannot support the legislation. If, as I say, there were safeguards in terms of collegiality or appeals to Connétables against licences being granted when perhaps they should not be, then I would not have a problem. That is where I thought we were at the start; that is why I thought I would support this but without that I am afraid I cannot.

2.7.5 Deputy S. Power:

My question, I think, will be a lot easier to answer and it comes under Article 7 on page 22, subsection 3. My question really is for clarification. If the proposed retailer is neither a shop nor a vehicle but a vessel, I wonder how that is handled under the Draft Shops Regulation? For instance, if the master of the vessel were not a ratepayer in any Parish, particularly St. Helier, would he have to apply for a licence under this? So the question really is can a vessel come in and operate as a shop? I am thinking particularly of a converted car ferry where it might have 5,000 square metres on a one-off basis, or on a regular basis. I wonder if he could answer the definition of a shop that is neither a shop nor a vehicle but a vessel.

2.7.6 Deputy M. Tadier:

I think I will be coming from the same angle that Senator Le Marquand was, although we did talk previously. The bottom line - I think this is essentially where the Senator is coming from - is that the flaw in this law is that it is administered by the Constables. The proposition was brought

forward by the Minister for Economic Development and the rapporteur happens to be a Constable but he is speaking of behalf of Economic Development. So the first thing to say is that is there a conflict of interest here because obviously we have, first of all, a Constable presenting the law who has had very many dealings, presumably, in shaping the law, as he has told us, and we have 12 Constables sitting here voting on this law, making the law, essentially agreeing it, and they are going to be administering the law at Parish level. Now, I do not know why or what the rationale is for it logically falling to those Constables. Had that not been the case, had it been administered essentially from an Economic Development point, we would not have the very problems that Senator Le Marquand has been talking about where decisions are quite arbitrarily down to the individual Constable of every Parish. They all say, of course, they can consult with their Parishes. Well, that may or may not be the case in one individual instance. There is nothing in the law to say that the Constables have to consult and call a Parish meeting before approving any contentious, or otherwise, trading body in the Parish. The other curiosity is that when there is an appeal the recourse in the first instance is not ...

The Deputy Bailiff:

I am sorry, Deputy Tadier, I must ask you to go and sit down for a moment. Can I invite Members who are listening to the debate in the precinct to return, we are not currently quorate. Thank you. Deputy, you may continue.

Deputy M. Tadier:

So, to deal with the appeals process is that we have said that is a ... if we have agreed that it is important that the Parishes determine exactly what goes in their own Parishes, why is it that in the first instance for appeal, rather than going, for example, to a Parish Hall Assembly for an appeal or to a Parish body for an appeal, or to a committee which is comprised of the Constables and the Parish Deputies, which would seem logical if it is relating to the Parish, no, what they are saying is the appeal needs to go to the 12 Parishes which are represented by the 12 Constables. Essentially they are saying the appeal needs be made by representatives of the whole Island. Now, it seems to me it would be much simpler if Economic Development simply took responsibility for the regulation of this, for appeals, for issuing permits, and that it was clear cut in the law so there was not the discretionary element. Because, it seems to me, on a superficial level, like a complete contradiction that we spent hours today debating regulations and who can and cannot receive licences under what circumstances, only to say: "But the ultimate decision lies with the Constables" and they can say: "Well, I do not want you to do that because I have had a complaint from 10 residents, all of whom happen to be the 10 that come to my Parish Hall Assembly and form a majority.

[16:30]

So, we are either not going to let you have a trading licence or, conversely, we are going to let you have a trading licence, even though we do not know what the rest of the Parish thinks about that." I think that it is a blunt tool at the very best to say it should fall to the Constables and the Parishes and so I will be asking for all the articles that relate or mention the Connétables in it, which I think all the ones that have been mentioned, apart from 17 and then 21 and 22 onwards. So, basically everything up to 22, but not 17, I will be asking for a vote on and I would encourage Members who have the same unease, I think, as has been mentioned by Senator Le Marquand and myself, to vote against this. Of course, it will not stop the regulations going through; it will not stop the law going through, but just to send a message out that perhaps this is not the best way. There is a conflict of interest, there is certainly a perceived one and that this is not best practice and it does not make sense, there is no reason why this should be falling to the Constables of each Parish. I am sure they will have something to say about that now.

2.7.7 Senator F. du H. Le Gresley:

I just wanted to pick up also from where Senator Le Marquand left with regard to the issue of general permits by the Connétables, in particular, the Connétable of St. Helier. We now know for a fact, I believe, that there will be 36 shops left in Jersey which cannot apply for a general permit because they are over 700 square metres. There is no definition in the interpretation of what a shop is but I have extracted from that 36, 5 out of town major supermarkets, 2 garden centres and 3 D.I.Y. stores. That is 10 gone. So we are left with 26 shops in St. Helier which could not apply for a general permit. We have just voted on an Island Plan where we have agreed to concentrate our housing for the next 10 years in St. Helier and increase the density. We were very concerned to make the quality of life better for St. Helier residents. I fear that if we have a Connétable of St. Helier who allows all these shops - I do not know the number, but we only know that there are probably 26 shops left in St. Helier which could not open - to open on a Sunday, what quality of life will be left for our St. Helier residents.

2.7.8 The Deputy of St. John:

Yes, another one that the Assistant Minister commented on, on vehicles being issued a permit from where they live and which Parish they live. Now, given many of these mobiles are a trailer or a static unit but not a van, or the like, the unit may be left on site for several weeks or months. That being the case, who issues the permit? Will it be the Parish where the unit is left on site or will it be the Parish where the owner lives? That is all I have to say, so one for the Minister, thank you.

2.7.9 The Connétable of St. Helier:

I am always concerned when I alarm the Minister for Home Affairs. I have not spoken very much on this matter and I was trying to work out what I had said that could have alarmed him and I thought it might have been 2 things: first of all, and most recently, I commented that there were some people in this world who enjoy Boxing Day sales and that clearly alarmed him, even though, of course, they will not be able to enjoy them because we have approved an amendment by Deputy Green and, subject to the law going through, larger shops will not be able to open on Boxing Day. So, that should not alarm him because that has been squared away. The other thing I said was that tourists like to come to Jersey to shop and they have money that is not going to be spent on any other day because they will not be here. I have also consistently argued in the Assembly - I think against a background of a loss of interest in tourism by the States of Jersey as a whole, but the Minister may correct me - that tourism is important to Jersey because we believe in diversifying our economy. I know there are other things to do in the Island apart from shop and, of course, it remains true that even under the existing law there are quite a lot of shops that the tourists can and do go to. So, again, I was simply trying to show that there is a balance here to be struck between the States strategy, which is entirely dependant on financial services, in which case we can more or less forget about the tourists because it does not matter if there is nothing for them to do on a Sunday because we are going to get most of our retail money from people who work in the financial services industry. I do not agree with that. I think that we do need to think about tourism. We do need to think about what tourists do on a Sunday and if we are not going to have a lot of shopping for them to do then we need to make sure there are other things to do. The Senator also said that I was liberal and I have been very struck by this because - I suppose you could say it is a compliment - certainly the Constables are acting, to use his word "collegiately" in the last few years, have resisted applications for shops to push the boundaries. It is simply incorrect to say that the Committee of Constables do not discuss these things and do not adopt a consistent approach, that is exactly what they do and we do not go out on a limb and do things, in particular with regard to big supermarkets. Certainly in the long period of consultation that has brought us where we are, one of the factors we have come back to time and time again are the problems that we have, particularly in our housing estates which surround or are near big supermarkets, and we have continued - there is nothing in the law that allows us to - perhaps successfully to keep closed the large supermarkets on Sundays. We have a couple of big ones in St. Helier and, of course, they are in other parts of the Island. As I say, the consultation has really been making us focus on not doing

anything that would allow big supermarkets to open as they do in many other parts of the world. Deputy Tadier also does not seem to like Parish organisations very much and he said that E.D.D. ought to take this on, which would give Sunday trading administration to Economic Development. I suppose when we have done that we can give firearms to Home Affairs and we could give driving licences to T.T.S. (Transport and Technical Services) and there would not be much for us to do in the Parishes any more. It would be a bit like being a Connétable in Guernsey where most of their powers have been given away to the States of Guernsey. I happen to believe that the Parishes are best placed to administer Sunday trading licenses, they are best placed to administer firearms, they are best placed to administer driving licences and they might have been best placed to administer welfare, but I will not go there now. So, I am a bit concerned. Essentially this is the Assistant Minister's law to carry through with its amendments and there are clearly Members who are unhappy and certainly one of the things we said often, and this has come back to the Constables' table in the last decade: "Well, what is wrong with the current system? We know it is faulty, it is inconsistent, it is unfair, but it seems to work?" That argument has been made on several occasions. What we are doing now is bringing forward a law which will admittedly allow quite a lot of shops to open that cannot currently. A shoe shop, for example, at the moment cannot open whereas a jeweller can. That is not fair but does it matter? I suppose one of the questions Members have to ask themselves is would they rather continue limping along with a faulty law which appears to work or do they want to put this law into action, which will be fair and will treat all retailers the same but possibly may lead to more shops being opened? I say to Senator Le Gresley that it really is not up to the Constable of St. Helier who is allowed to open. This law does give more general permission for smaller shops to open with safeguards, which I would argue are much stronger than the current situation, much, much stronger, and we need to see those tested. But the Constable is not the authority in the Parish, it is the Parish Assembly. I know that Deputy Fox in an earlier debate suggested that the Parish Assemblies can and do get hijacked by interest groups, and I have seen it happen too. But I am afraid that is a matter of how you organise your Parish Assemblies and I think that local democracy in Jersey is about the Parish Assembly as the absolute authority and I do not want to see that changed. Certainly, in my situation at the moment, I am quite happy to bring these things before the Parish Assembly. Recently I brought a number of things to the Assembly which I did not need to but I thought it was better to get the public's view of them. So, I say to Members who are concerned, there is the status quo at the moment; these are the regulations, we have already voted the main law in principle. I suggest to Members that the Island cannot continue with a law which is unfair, which is not enforced, and which really does not give any kind of clarity and certainly, I think crucially, does not give the power to the Constables to close down a business on a Sunday which is causing harm and the new law will give us that power. I think that is very important so that if there is a concern that a certain part of town, if that is what we are talking about, has become too busy then the Constable can consult with his or her Parishioners, can call a Parish Assembly and can do something about it and that is not the case at the moment. So, I believe that while not perfect, far from perfect - we have just stopped Boxing Day sales and I am not pleased about that - but, on balance, this law, if we accept it, will be much better than what we have at the moment. The regulations will be capable of further discussion, further amendment in due course. I do not believe it is a liberal charter, I believe that things will find their level, as they currently do at the moment, and I think that this will be an improvement so I do support the regulations.

2.7.10 The Deputy of St. Mary:

Just one point I want to address, Article 20. The Deputy of St. Martin is the only person who has talked about it so far and he has mentioned one point - this is all about the review of decisions taken by a Constable. The Deputy pointed out that there would be a written submission by the retailer who was appealing and that was all and he wanted to know whether there would be a right of appearance. My question is probably more fundamental, it is about the fact that the appeal is from the decision of a Constable to a panel of 3 Constables. That sort of leapt out at me from the report

and then I checked in the articles. So my question is to the rapporteur. I have several questions: one is has there been concern expressed during the consultation about this from any quarters and if so how much. My second question is how does he feel personally about an appeal from the decision of a Constable going to a panel of 3 other Constables with no other input or moderation from another source? It certainly seems to me that there are problems but I would like to hear - problems *affero*(?), you know, if you have that set up it is automatically problematic - hear his view on that. Thirdly, in case he says that there is a right of appeal to the Royal Court, which there is, I would ask a further question just how likely is it that a retailer will use this right of appeal to the Royal Court, considering how much that might cost. An additional question to that is if the only right of appeal is to the Royal Court, that seems to me to be completely biased in favour of large - now up to 700 square metres - stores or chains even, like Spar, who would have legal resources at their disposal to write submissions and challenge things in the Royal Court, and away from the small convenience store who, when faced with the prospect of an appeal to the Royal Court, would probably not even consider the option. So I would like you to comment on those things under Article 20.

2.7.11 Deputy R.G. Le Hérisier:

Just a quick statement. I do not spend my time involved in 24-hour shopping or 24-hour drinking, and so forth, but I get this underlying feeling there is this sort of dichotomy that is drawn that if you are at home enjoying a happy family life this prevents you from going shopping where you would be participating in the collapse of western civilisation. I have always found this a difficult one and, of course, psychological studies, as Deputy Green knows, have shown that the bringing together of the family, often in close proximity during the Christmas period, is one of the most stressful occasions that families face during the year.

[16:45]

So I am not sure a lot of them are desperate to go either to the Boxing Day sales or hunting perhaps, or whatever. That is the one thing that strikes me, this notion that we must not have people enjoying themselves, somehow this will be seen as terrible and, as I said, it will lead to the collapse of civilisation. I have noticed it is ever present in these kinds of debates.

2.7.12 The Connétable of Trinity:

All I wanted to bring to Senator Le Marquand was worry about all the costs of the opening. Could I just say about 4 years ago an out of town jeweller was open on a Sunday because of the tourist business and coaches went around to that part of the Island and sales were sold there and receipts were received and they were brought to the Connétables as evidence that trading was going on on a Sunday, which was illegal. So what did we do? We brought it and we added it to the list. How many jewellers' shops open in town? None. So I would say what you have not got to fear ... at the end of the day, the idea of opening a shop is to make money and hopefully to get good commerce. If it does not work they will not open. I am afraid we could go on for ever but getting rid of the list is really a major way forward for all the Connétables. It has not been an easy one. If we put "flowers" on, where would we end? I know it is nothing to do with the regulations there but I just wanted to say to Senator Le Marquand: "Do not worry, shops will not open and I am sure St. Helier will hopefully stay the same even if they have a change of Connétable."

2.7.13 Senator P.F.C. Ozouf:

I have not intervened in this debate yet but I rise to put a counterview to my right neighbour here, Senator Le Marquand. I am pleased to follow Deputy Le Hérisier because I do find the whole debate on Sunday opening extremely curious. I am not a prohibitionist and I do not believe on a complete ban on shopping on Sunday. I think it is completely unrealistic and I think the Constable of St. Clement and the Minister for Economic Development ... I did not manage to solve Sunday trading when I was at E.D. (Economic Development). It is a longstanding problem and we have, I

think, got an appropriate balance of the respective interests. I understand there needs to be controls; I do not want Sunday like the rest of the days of the week but I think that people, within limits and within controls, should be allowed to do some retailing on a Sunday. We also should allow that retailing to operate lawfully, which is the reason why we need to take this and sort this out today. The Minister for Home Affairs raised the issue about the Constables individually and collectively being responsible. I think the Constables who are getting out of these regulations significant responsibilities are, as other people have said, getting some directly accountable in a way that other Members of this Assembly are not and only in a 3-year or, in our case, still a 6-year, but I regret that. Constables are accountable to their Parish Assemblies and they are going to have their very strong views of their parishioners known, with the ability of calling Parish Assemblies, et cetera. I do not believe that you can and could treat the Constables as a committee of the States. We have this in relation to the whole issue when we set up the new States of Jersey Law and we did the whole reform of the Parishes. I wanted to call the Constables the Conseil des Connétables but you could not because they could not be collectively thrown out as a body. I still have views about how we can still put more responsibilities on the individual Constables and there is some work to be done on that. You could not have, I do not think, a policy - I am not asking for a legal point here - set by the Committee of Constables because there would be no redress in the ultimate sanction of removing them because they are there on an *ex officio* basis. I do think the Constables, and I hope that the Constable of St. Clement in his capacity as rapporteur, not raconteur, for this will say that there will be a requirement on the Comité to be a consultative body. They should publish guidance among themselves in relation to this issue and if an individual Constable wants to not adhere to the guidance which has been set out by the balance of the Connétables on the Comité, then he or she will publish their own guidance about how they will apply the up to 700 square metre arrangements. So, the Constables will be absolutely accountable and transparent in their arrangements in how to administer their very important responsibilities under this law. I have heard nothing, if I may say, from the opponents of the regulations to mean that I should vote against them, or any other Member should vote against them unless, of course, there is a requirement, perhaps, of people to have even more draconian close downs - which some people may want to do - in relation to them. I think this is an appropriate balance; it is accountability at the Connétable level with appropriate checks that have been set out in these regulations and I warmly congratulate the Assistant Minister for having resolved what has been a very difficult issue and urge Members to support the regulation.

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

Just very briefly. I supported the principles of this new law and also the extension to the size, although there was an element of doubt in my mind about that because always I have been concerned about the impact of people who live in St. Helier. I have listened to the arguments today and I have swung one way and then swung back the other. But I am happy with the decision I have made and I was comforted by the fact that the Connétable of St. Helier has said that he will bring these applications to a Parish Assembly, which is the correct place for them to be discussed and agreed. So, I am content with the decision I have made today.

The Deputy Bailiff:

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

2.7.15 The Connétable of St. Clement:

It was a long time ago but I think Deputy Vallois was the first to rise and ask how the conditions would be enforced. As I said earlier, and it is very important to remember this, that both Economic Development and the Constable recognise that having a Sunday trading permit is a privilege not a right and there are sanctions under the law and under the regulations that if any retailer contravenes the conditions that have been placed on the permit, such as the hours of opening, or delivery times, or whatever, the Constable, at the end of the day, has the final sanction of being able to remove that

Sunday trading permit and if Sunday trading is of value to that retailer, that is not a risk he will be prepared to take. Of course, people will be aware of the conditions on the permit because the permit will be on clear display in the shop and if other Parishes are like my parishioners, then if there is a breach of the conditions then I will soon be told about it, I am sure that will be the case. The Deputy of St. Martin, yes, of course, it is the intention that any appellant would be heard by the triumvirate of Constables at an appeal, that will be included in the guidance notes which will be published very shortly, and those guidance notes will include not only procedures about appeals but on the general principles of how to go about it and how Constables will deliberate on any decision, because what is so important is there is consistency and fairness throughout the system. It was Deputy Tadier who seemed to be supporting Senator Le Marquand who said the weakness in the law is that it is administered by the Constables. Absolutely wrong again, Deputy. It is the strength of the law that it is administered by the Constables. We had this debate when we passed the law and it was agreed then that the Constables would be the administrators, be the permit issuers, be the licensing authority. Exactly as they are now but give them more authority, more ability to vary those licences, put conditions on those licences and, if necessary, amend those licences and revoke them because it is so important that there be consistency and fairness. Every situation within a Parish and within different Parishes can be different. A supermarket in the middle of a housing estate can be different to a supermarket in the equivalent of an open field with no domestic situations around it. So in that case there might be different conditions, different hours of opening, different delivery arrangements and that would be quite reasonable for a Constable to consider and it would be quite reasonable if the shopkeeper was not happy with those to appeal to Constables who have the experience. I think to have the licences or the permits issued by a civil servant in Economic Development who has no knowledge of the environment of any particular Parish except, perhaps, his own where he lives, and perhaps sometimes not even then, has no comeback from any individuals within the Parish because, as somebody pointed out, if someone is unhappy with the Constable's decision they can go the Constable and complain to him and then he take action or they can call a Parish Assembly and force the Constable's hand, if they are not happy, because a civil servant, for example, issuing these permits there will be no accountability. The Constable has the greatest accountability, I think, of any politician, of any Member of the States because they are subject to the wishes of a Parish Assembly and a Parish Assembly can be called by a very small number of parishioners to put the pressure and to force the Constable to make decisions in a certain way. There is no more democratic process than that. Senator Le Marquand was right, there is nothing in here about third party appeals and, bearing in mind the difficulties that Planning have, that probably was a good decision not to put that in. But if the Constable does get complaints about a decision that will affect how he analyses the tranquillity of a Sunday and so will enable the Constable to consider the variation of the permit or even the revocation of the permit. Deputy Power raised the question of how would we treat a vessel. Well, I have absolutely no idea but I think if it came to pass we would initially say it was a vehicle and see if we could get away with that and if we could not then we would bring in some amending legislation to get that sorted out. The Deputy of St. John also spoke about vehicles and it is quite simple, if the shop is static it, the licensing authority, the permit giver, is the Constable in which it is situated. If it is a moving vehicle then it is the Constable in which the vehicle owner resides. But, of course, under the guidance notes there will be consultation with other Constables before a permit was issued. The Deputy did not give way to me but I am a much nicer chap so I am quite happy to give way to the Deputy.

The Deputy of St. John:

Will the Assistant Minister explain when a vehicle is not a vehicle?

The Connétable of St. Clement:

Yes, when the wheels have been removed. Deputy Le Gresley **[Laughter]** ... Senator Le Gresley, I beg his pardon, sorry, I was thinking about after the elections. Senator Le Gresley, I do beg his

pardon, spoke again, as he did previously, about the number of shops that can open and particularly in St. Helier. I remind him and I remind the States again that under the present law, the law as it is now, the vast majority of shops, particularly in the shopping area, can apply for a Sunday trading permit now and would probably get one and there would be no restrictions, they can open 24/7, 24 hours a day on a Sunday, have no restriction on deliveries, no concern about the tranquillity and peace of the neighbourhood. What these regulations have done is to put those restrictions on and also to cap the size of shops that can open. The Deputy of St. Mary, no, I have had no concerns expressed to me. I am aware that there is one retailer who did complain about the right of Constables to issue permits but that was about one individual Constable who had issued a permit to a competitor and the retailer did not like that. So that is not unreasonable. In fact, the majority of people that we have consulted with are pleased that there is an appeal process because there is not one at all at the moment. Quite honestly, who knows better about the administration of the Sunday trading permit scheme than the Constables and if the individual is not satisfied with that decision they do have a right to appeal to the Royal Court. How likely that would be, will be totally dependant on what value the retailer thinks he would get out of an appeal and whether he thinks he has got a particularly good case. It would be totally his decision. But I know that the triumvirate of Constables appointed will be fair, reasonable and honest and guided by the guidance notes, which will be published fairly shortly. I think that is all of the questions, all the comments, and I maintain the articles and the schedules.

[17:00]

The Deputy Bailiff:

Deputy Tadier, did you say you asked for us to take each regulation individually?

Deputy M. Tadier:

I did not say that but what I would like is for 7 to 16 to be taken together and then for 18 to 23 to be taken together and voted on.

The Deputy of St. Mary:

May I ask for 20 to be taken separately, Sir?

The Deputy Bailiff:

Very well, the first vote is on Regulations 7 to 16. All those Members in favour of adopting ...

Deputy M. Tadier:

The appel, please.

The Deputy Bailiff:

The appel is called for. I invite Members to return to their seats. The vote is on Regulations 7 to 16 and I ask the Greffier to open the voting.

POUR: 38		CONTRE: 6		ABSTAIN: 0
Senator T.A. Le Sueur		Senator A. Breckon		
Senator P.F.C. Ozouf		Senator B.I. Le Marquand		
Senator T.J. Le Main		Senator F.du H. Le Gresley		
Senator F.E. Cohen		Deputy G.P. Southern (H)		
Senator S.C. Ferguson		Deputy I.J. Gorst (C)		

Senator A.J.H. Maclean		Deputy M. Tadier (B)		
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy of St. John				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				

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

The Deputy Bailiff:

We now come to Regulations 18 and 19. Is the appel called for? No. All Members in favour ...

Deputy M. Tadier:

No, sorry.

The Deputy Bailiff:

It is called for?

Deputy M. Tadier:

Yes.

The Deputy Bailiff:

Then Members are probably still in their seats ...

The Connétable of St. Clement:

Did we do 17, Sir?

The Deputy Bailiff:

I am so sorry, thank you, we did not. Is 17 important? **[Laughter]** Very well, thank you, Connétable. The vote is on Regulations 17, 18 and 19. It was a cunning trick to allow the Greffier to reset the system.

Deputy M. Tadier:

Sorry, Sir, I do not have a problem with 17 because it is not that important as maybe someone inferred.

The Deputy Bailiff:

We are still going to vote on it, Deputy.

Deputy M. Tadier:

Okay, but I will ask for the appel on 18 to 23, if that is okay.

The Deputy Bailiff:

All Members in favour of adopting Regulations 17, 18 and 19, kindly show. Those against? Those regulations are adopted.

Deputy M. Tadier:

Sorry, I asked for the appel on 18 to 23.

The Deputy Bailiff:

Then you changed your mind a moment ago.

Deputy M. Tadier:

Sorry if it gets confused, Sir, but that is what I said.

The Deputy Bailiff:

Very well, the appel is called for. We will take the votes again. The appel is called for and we are going to put it on Regulations 17, 18 and 19, unless any Member wants to say otherwise. I ask the Greffier to reset the system and the Greffier will now open the voting.

POUR: 38		CONTRE: 6		ABSTAIN: 0
Senator T.A. Le Sueur		Senator A. Breckon		
Senator P.F.C. Ozouf		Senator F.du H. Le Gresley		
Senator T.J. Le Main		Deputy J.B. Fox (H)		
Senator F.E. Cohen		Deputy G.P. Southern (H)		
Senator S.C. Ferguson		Deputy I.J. Gorst (C)		
Senator A.J.H. Maclean		Deputy M. Tadier (B)		
Senator B.I. Le Marquand				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisssier (S)				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy of St. Peter				

Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy of St. John				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Deputy Bailiff:

We now come to Regulation 20. I ask the Greffier to reset the system.

The Connétable of St. Clement:

Could you just remind Members, this is the one about the appeal.

The Deputy Bailiff:

As there is a reminder I say to Members it is about a review because it is not the appeal to the court. It is the review by the Comité des Connétables, Regulation 20. I invite the Greffier to open the voting.

POUR: 29		CONTRE: 15		ABSTAIN: 0
Senator T.A. Le Sueur		Senator A. Breckon		
Senator P.F.C. Ozouf		Senator F. du H. Le Gresley		
Senator T.J. Le Main		Deputy of St. Martin		
Senator F.E. Cohen		Deputy R.G. Le Hérissier (S)		
Senator S.C. Ferguson		Deputy J.B. Fox (H)		

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

The Deputy Bailiff:

We now come to Regulations 21 to 23. The Greffier has reset the system. I will ask her to open the voting.

POUR: 39		CONTRE: 6		ABSTAIN: 0
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Senator T.A. Le Sueur		Senator A. Breckon		
Senator P.F.C. Ozouf		Senator F. du H. Le Gresley		
Senator T.J. Le Main		Deputy G.P. Southern (H)		
Senator F.E. Cohen		Deputy I.J. Gorst (C)		
Senator S.C. Ferguson		Deputy M. Tadier (B)		
Senator A.J.H. Maclean		Deputy of St. Mary		
Senator B.I. Le Marquand				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisssier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				

Deputy K.C. Lewis (S)				
Deputy of St. John				
Deputy A.E. Jeune (B)				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Deputy Bailiff:

We are now left with Regulations 24 and 25 and schedules 2 and 3. Those members in favour of adopting those kindly show. Those against. Those regulations and schedules are adopted. Do you move the regulations in the Third Reading?

2.8 The Connétable of St. Clement:

Yes, I do, Sir.

The Deputy Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak in Third Reading? Deputy Southern.

2.8.1 Deputy G.P. Southern:

Let this be a reminder to all, the next time the Constable of St. Clement asks you to move something up the batting order because it is not controversial, do not believe him.

2.8.2 The Deputy of St. Martin:

I would just like to echo again and remind the Minister for Economic Development that I am concerned about Article 20. It is not an appeal, it is a review and I do believe that everyone should have the right of appeal not a right of review. I would hope that the Minister will look at that and maybe, I think, strengthen that to be a proper appeal so people have the right of appeal rather than a right of a review. I do generally support the principles; however, I do feel uncomfortable with Article 20.

The Deputy Bailiff:

Does any Member wish to speak? If not, I ask the Assistant Minister to reply.

2.8.3 The Connétable of St. Clement:

Certainly, as the new regime develops we will keep everything under review, including the part that the Deputy of St. Martin is concerned about and I think Deputy Southern's intervention, I think his words were extremely wise. **[Laughter]** No buts at all. But as I stand here, and before I ask for the final vote, could I just give my heartfelt thanks to the members of the department and law draftsmen who have done a tremendous amount of work on these regulations and also, if I may,

thank my Minister for the support he has given me in this particular project and, indeed, the free hand he has given me and I hope with the vote he has had today he has realised that his faith was not misplaced.

The Deputy Bailiff:

All Members in favour of adopting the regulations in Third Reading kindly show. Those against. The regulations are adopted.

3. Draft Shops (Regulation of Opening and Deliveries) (Jersey) Law 2010 (Appointed Day) Act 201- (P.96/2011)

The Deputy Bailiff:

Now linked to these regulations is the Appointed Day Act P.96 and lodged by the Minister for Economic development. I ask the Greffier to read the citation.

The Deputy Greffier of the States:

Draft Shops (Regulation of Opening and Deliveries) (Jersey) Law 2010 (Appointed Day) Act. The States, in pursuance of Article 12 of the Shops (Regulation of Opening and Deliveries) (Jersey) Law 2010, have made the following Act.

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

This Act brings into force the law passed last year and the regulations passed this afternoon in 14 days time. The draft permit applications and permits themselves will now be finalised as a result of the amendments that have been made today and will be in the Parish Halls imminently, which will give the Parish Halls time to get the administration in place so that the law can come into effect in 14 days' time.

The Deputy Bailiff:

Is the proposition seconded? [**Seconded**] Does any Member wish to speak? Those Members in favour of adopting the proposition kindly show. Those against. The proposition is adopted. Now, I received yesterday a notice from the chairman of the Education and Home Affairs Scrutiny Panel that he wished to make a statement and, chairman, perhaps this is a convenient time.

STATEMENT ON A MATTER OF OFFICIAL RESPONSIBILITY

4. Statement by the Education and Home Affairs Scrutiny Panel re resignation of panel

4.1 Deputy R.G. Le Hérisier (Chairman, Education and Home Affairs Scrutiny Panel):

It is slightly lengthy but I shall speak fast. The remaining members of the Education Scrutiny Home Affairs Panel have decided to announce their intention to resign from the Scrutiny Panel once the ongoing review of the issues surrounding the financial management of Operational Rectangle has been completed. The members fully support the action taken by Deputy Tadier in announcing his immediate resignation in the States following the debate on P.84/2011 on the composition of the Prison Board of Visitors. We wish to make it quite clear that we feel strongly about the Minister's conduct in this debate, which was the culmination of 2 years of unreasonable delay and stonewalling. It appears to us that the never-ending saga of the wait for legal advice has shrouded the failure on the part of the Minister to examine the case for change brought forward in our review. This has been symptomatic of an attitude towards Scrutiny which borders on disrespect, which is not confined to this Minister. Hence we are calling for a long hard look at the role of Scrutiny in general and the value that should be placed on its worth. We believe that the proposal laid before the States in P.84/2011 was straightforward and quite clear. Consequently, we are surprised at claims by some Members after the debate that our recommendation regarding the Jurats was confusing. Our proposal sought to open up the board to lay people while retaining the possibility for a limited number of Jurats to remain on the board. This mirrors the model of the independent monitoring boards in the United Kingdom and reflects modern best practice. Given

the representations made on behalf of the Jurats, the panel attempted to combine the best of the current and proposed board. The Minister, in his response to our original review presented to the States in August 2009, agreed with our recommendation that the role of the Prison Board of Visitors should be reviewed yet has delayed taking any action on this on the basis of the need to seek legal opinion on a single issue of the retention of the Jurats on the board. The panel chairman made several requests to the Minister seeking progress on this matter through oral and written questions in the States and through both formal and informal approaches over this period from the panel. Given the inordinate delays that were occurring in receiving the Minister's response to the sub-panel's recommendations, it was suggested to him several times that if the compromise solution was unworkable then the sub-panel would consider dropping it and instead present the Assembly with a choice between an entirely independent lay panel and the current board. The report of the proposition also invited the Minister to bring amendments if he thought that the proposition was not viable. In the absence of any clear answer, the main panel decided to move an amendment which would bring matters to a head. The panel never saw the advice obtained by the Minister but his comments presented to the States on 11th July 2011, 2 days before the debate, implied support for the proposition based on legal advice. It then appears that the Minister obtained further legal advice which led to the quite extraordinary situation of the Minister, during the course of the debate, calling on the Solicitor General to lay this advice before the Assembly. The Minister then drew the conclusion that this advice allowed him to propose the retention of the Prison Board of Visitors. Ironically, follow-up questioning of the Solicitor General suggested that the approaches of both the sub-panel and the Minister could be supported by the legal advice. It seems to us that the Minister was opposed to our proposition either way and simply used the legal advice to back his position, even when the legal advice proved to be more balanced. It became clear in the debate the Jurats were not supportive of the recommendation brought forward by the sub-panel for a mixed Board of Visitors. The Minister appears to have allowed himself to give the Jurats a veto on this issue and to ignore the evidence presented in our report that the current system is not an appropriate or proper means of monitoring the state of the prison. We believe that the implications of the Minister's stance warrant our stated intention to resign once the current scrutiny on the Operation Rectangle financial report is concluded. This unfortunate episode has come on the heels of the Minister's attempt to derail this latest Scrutiny review by removing 2 members from the sub-panel on the grounds that they had already expressed trenchant views on matters relating to the subject under review. In our view, the Minister has misinterpreted the repeated search by these members for answers to questions on a significant issue as a pre-determined bias. It is vital that members are free to persist with probing lines of questioning when they believe that the responses they have received have been unsatisfactory. We believe that Scrutiny members are fully capable of leaving aside preconceptions and looking at evidence in an objective fashion when they commit to a Scrutiny review. Members approach issues in Scrutiny with a range of views gathered from various sources, whether from the media, personal contacts or their own research. It would be impossible to find members without previous knowledge and views on issues under review. The process of gathering evidence through public inquiries and submissions is transparent. In addition, panel membership imposes its own checks and balances and conclusions can be tested and challenged. This is, of course, the approach followed within Select Committees at Westminster and we believe this fact speaks for itself. Our examination of the evidence to date for this latest Scrutiny has already revealed significant questions about the way the review of financial management was carried out and we are determined to pursue the matter to the end.

[17:15]

This is an example of the way we believe Scrutiny should operate - responding to concerns from members of the public, asking awkward and challenging questions, seeking to penetrate beneath the status quo and laying out the evidence before coming to considered conclusions. The panel is very disappointed that this position has arisen whereby we feel that we must tender our resignation as a

panel. There have been good examples of Scrutiny done in co-operation with the Minister. However, these recent episodes demonstrate that Ministers have yet to face up to the fact that Scrutiny has, at times, to be uncomfortable and challenging. We call on Members of the States to reflect seriously on the role Scrutiny is playing at present and how it can be better supported. Thank you. [Approbation]

The Deputy Bailiff:

Chairman, I am afraid this is perhaps my fault in that I did not pick the matter up earlier, but in the penultimate paragraph you indicate the panel is tendering its resignation as a panel whereas in the first paragraph you say you intend to resign once the review of issues around Operation Rectangle have been completed. Could you just clarify for Members which it is?

Deputy R.G. Le Hérissier:

Yes. Clearly it would have been better to have resigned if we were going to take a stand but obviously we do not wish to offer discourtesy to the House or to people involved in that Scrutiny. We will resign when the Scrutiny is completed.

The Deputy Bailiff:

So it is not at present a resignation. Thank you. Right, there are 10 minutes of questions, Mr. Chairman. Senator Ozouf.

4.1.1 Senator P.F.C. Ozouf:

Would the chairman accept that many Members felt compelled to vote against the proposition, which appears to be at the heart of this statement, because of the summing up and because it appeared to suggest that they were wanting to coerce the Jurats to serve on a mixed board? Would he accept that there is a view among Members that this does need to be solved, that the proposition did not solve the problem and would he also accept ...

The Deputy Bailiff:

No, Senator, you cannot have 5 questions.

Senator P.F.C. Ozouf:

I was going to say if a Minister were to do this we would be regarded as petulant and does he not think that he is being petulant?

Deputy R.G. Le Hérissier:

I totally refute that. This was done, as I made clear in the statement, the panel looked at the issue because representations were made, there was a lot of confusion at the end. We believed the issues were laid out; they were laid out in the body of the proposition, in fact, and there was a further email from the Assistant Minister for Home Affairs which laid it out very, very clearly.

4.1.2 The Connétable of St. Lawrence:

I congratulate the panel on the amount of work that they have produced since 2009. But 2 questions: the first is there is no evidence of who the members of the panel are so could the chairman please name those people who intend to resign from it? Will he accept that a Minister may have a different view to a Scrutiny Panel?

Deputy R.G. Le Hérissier:

Yes. The members are myself, Deputy Maçon and Deputy Pitman. Absolutely, a Minister should have a different view. The whole point of what I have laid out here is that we would have wished that different view to have come out very clearly at the beginning and not have been subsumed under an interminable wait, ostensibly centred around a wait for legal advice. No problem with different views; let us have healthy argument.

4.1.3 Senator B.I. Le Marquand:

In relation to the allegation that I attempted to derail the Scrutiny review, would the chairman please indicate did I ever object to the conducting of the review or indicate other than that I would fully co-operate with the review and have I fully so co-operated?

Deputy R.G. Le Hérisier:

Indeed, in those terms the Minister was fully co-operative and, indeed, it gives me a very heavy heart to have to respond to him because he has been, in many respects, an excellent Minister to work for. But the point is the interminable delays that occurred, the sudden U-turn that was performed on the basis of receiving yet another further set of legal advice, quite frankly, amounted to a very - to put it mildly - strange turn of events and I do not think they fall under the meaning of the term "full and unequivocal co-operation".

4.1.4 Deputy J.A. Martin:

Would the chairman not agree that the confusion did not lie in the summing up; the penny dropped when the majority of people realised that it was not mandatory that 3 Jurats had to sit on the panel and that Jurats would not work with lay people? My understanding of a Jurat is they are a lay person.

Deputy R.G. Le Hérisier:

Obviously there can be confusion and obviously it can be our fault, I do not deny that for a moment. But in a sense, while that may indeed be the case - certainly that is what we were trying to put across - there is a much bigger picture and this statement is about putting the bigger picture forth.

4.1.5 The Deputy of St. Martin:

The Members may well recall there was a very late introduction of legal advice by the S.G. (Solicitor General) who I did compliment. I thought it was a very good human rights opinion. But would the chairman not accept that with hindsight it was a mistake not to have included the independent human rights opinion from an eminent human rights lawyer from the U.K. and that should have been included in P.84?

Deputy R.G. Le Hérisier:

Perhaps it should have been but, of course, it was laid out in the Scrutiny report itself. But, yes, maybe it could have been re-emphasised. But I think the speaker has to take note of the fact that there was what you might call evolving legal advice and, of course, the Solicitor General did say he had access to a case which had not been considered earlier. I have got no problem had the whole lot been laid out; one has to remember that Scrutiny Panels operate with an arm behind their back. They cannot see the original, authentic legal advice.

4.1.6 Senator T.A. Le Sueur:

This resignation statement deals with one issue by one particular Minister in respect of one particular panel. Could the chairman, therefore, reconcile his penultimate paragraph when it states that these recent episodes, whatever they were, demonstrate that Ministers have yet to face up to the fact that Scrutiny has at times been uncomfortable and challenging? I believe that Ministers have faced up and I ask what evidence he has to suggest that Ministers have not, talking collectively about Ministers, rather than one particular Minister?

Deputy R.G. Le Hérisier:

The Chief Minister has chosen to place his own interpretation on and reach conclusions based upon a faulty analysis. It may not be crisis point but there has been, as he well knows, a series of incidents where it has been reported to him by the Chairmen's Committee that relationships are not good and that there needs to be a much different approach taken to Scrutiny, most importantly, an

acceptance of the fact that Scrutiny can be uncomfortable and challenging. So his notion that this is just one, it is not one incident and, indeed, I would not wish to single out the Minister for Home Affairs who, in many respects, I have to say, has been an excellent Minister. But in terms of this and the major report on Operation Rectangle, there were very serious issues arising which had to be addressed.

4.1.7 Deputy P.V.F. Le Claire:

Would the chairman not concede that some Members - I for one - was confused by the wording of the debate and only found at the last moment myself in a dilemma as to supporting the principle and then having to abstain? In the third paragraph the panel's statement is that the Scrutiny Panel was surprised by: "... claims by some Members after the debate that our recommendation regarding the Jurats was confusing." Will you not accept that on certain occasions some Members are generally surprised at the last moment, as I certainly was?

Deputy R.G. Le Hérisier:

Yes.

4.1.8 Deputy R.C. Duhamel:

I thank the panel chairman for his early warning of his intention for himself and the panel to resign but he does state in his first paragraph that: "... this is only after the ongoing review of the issues surrounding the financial management of the Operation Rectangle has been completed." Would the Deputy inform the House of the final date at which he hopes to have this work completed?

Deputy R.G. Le Hérisier:

Well, I am not the chairman but one would hope by the end of August.

4.1.9 The Deputy of St. John:

Would the rapporteur please confirm that he was in the House at the time of the debate and that at the 11th hour and 59th minute there was confusion between one of the panel members and the chair and thereby that confusion led to myself, for one, not abstaining but voting against because of the confusion that was across the 2 Members on the floor of this Chamber was too great and needed resolving.

Deputy R.G. Le Hérisier:

That may well have been the case but I do not think it provides exoneration from all the issues raised in the statement.

4.1.10 Senator B.I. Le Marquand:

This is a question which was not answered in relation to the correct matter of the first one, it is a question, just to make it clear to the chairman, it does relate to the issue to do with BDO, which was not answered by the chairman's first answer, did I, in my letter to the Chairmen's Committee and to P.P.C., raise objections to any member sitting on this group, other than Deputy Trevor Pitman, and that upon any grounds other than that he had twice expressed a clear view in relation to the matter which was going to be reviewed?

Deputy R.G. Le Hérisier:

Yes.

4.1.11 Deputy M. Tadier:

Does the chairman accept that while some Members may have been confused, that confusion arose because it was that those Members had not read the wording of the proposition or the report or the reports of the review of Scrutiny and that this is further evidence that Members do not pay sufficient attention to the work that Scrutiny produces?

Deputy R.G. Le Hérissier:

That may well have been the case but I do not necessarily agree with the speaker's conclusion.

4.1.12 Senator P.F.C. Ozouf:

Could he confirm that while he has cast his net wide on Ministers, he has no reported issues in relation to the relationship between Treasury Resources and Corporate Services?

Deputy R.G. Le Hérissier:

If there are issues I am sure they will come via the Chairmen's Committee. I cannot speak directly.

The Deputy Bailiff:

The 10 minutes has now expired for questions.

Deputy T.M. Pitman:

Could I just on point of clarification ...

The Deputy Bailiff:

As to the date on which your panel is going to report?

Deputy T.M. Pitman:

I can say that. We hope it will be done before September but the Minister has not been correct in what he said, he did object to Deputy Tadier, he objected to Deputy Wimberley being on the panel and he was upset that apparently Deputy Maçon had been excluded, none of which was true.

Senator B.I. Le Marquand:

On a point of order, may I point out that my question was very clear in relation to 2 specific letters and the answer from the chairman was, yes, he agreed with me.

Deputy R.G. Le Hérissier:

Yes, I certainly did agree with the Minister but, of course, there are other aspects to the picture.

5. Draft Income Support (Amendment No. 7) (Jersey) Regulations 201- (P.107/2011)

The Deputy Bailiff:

We now turn to P.107, the Draft Income Support (Amendment No.7) (Jersey) Regulations 201- lodged by the Minister for Social Security and I ask the Greffier to read the citation of the draft.

The Deputy Greffier of the States:

Draft Income Support (Amendment No. 7) (Jersey) Regulations. The States, in pursuance of Articles 3, 5 and 18 of the Income Support (Jersey) Law 2007, has made the following Regulation.

The Deputy Bailiff:

Minister, you wish to propose the principles?

5.1 Deputy I.J. Gorst (The Minister for Social Security):

Yes, if I could. This deals with changes in the component rates and employment initiatives within income support. With regard to component rates, my written report takes a number of typical families and shows how their income support benefit and total household income has been increased since 2008. Balancing the needs to support low income households and the requirement to achieve C.S.R. savings in 2012, I am proposing increases in selected component rates from October 2011. The housing component will be increased by 2.5 per cent in line with a 2.5 per cent increase in Housing Department rents. With regard to childcare components, I am proposing a 5

per cent increase for the youngest age group and 2.5 per cent increase for children aged between 3 and 11. Childcare components ensure that parents with young children can continue to work, keeping their skills up to date, and adding to the general economic activity of the Island. I am also proposing to increase the clinical cost components by 2.5 per cent; this gives a small extra weekly sum to people who have a long-term chronic medical condition that needs regular monitoring through their G.P. (General Practitioner). I am also proposing to increase the allowance available against pension income for people aged 65 and over, this rate is set to a ministerial order and I will finalise the amount at the end of August when the increase in the Jersey old age pension is known.

The Deputy Bailiff:

Could Members please not speak across the speaker ...

Deputy I.J. Gorst:

The combination of increases, already implemented in June and these proposals for October, ensure that the great majority of income support claimants will have seen an increase in their total benefit during the year. The second part of these regulations relates to the treatment of income support claimants who are out of work. It is very important that job seekers have access to good quality, appropriate support to help them find work and I have made substantial improvements in these services in the 2 years.

[17:30]

It is also important that job seekers understand their responsibility to seek work and take appropriate actions to help themselves get back to work as quickly as possible. The second proposal in this proposition strengthens the obligation of the job seeker to take on that responsibility. Under the current regulations an individual who does not undertake appropriate job seeking activities can only be subject to a financial sanction after a period of 8 weeks, my proposal would reduce this period to 3 weeks, an initial 2-week period after which a warning letter will be sent. If the individual continues to neglect their job seeking responsibilities then one week later they would be subject to a financial sanction and the value of that sanction is the subject of P.109, which we will go on to debate next, if Members approve this. I also wanted to briefly summarise 2 other initiatives that I refer to in my report of 107 that I plan to undertake during the summer. The first is with regard to under-19s. I am proposing to change the income support rules so that a young person aged under 19 who is living at home and is job-seeking will be included in their parents' household. This will put them in the same position as a young person who remains in full-time education at that age and removes the perverse incentive that currently exists. This change will create a saving and I intend to recycle these funds into additional schemes to assist jobseekers. I am already working closely with my Skills Jersey colleagues to identify schemes that can be set up quickly and will help individuals reclaim their confidence and gain skills to get them back to work. The second elements that I will be making decisions on over the summer are in regard to those individuals giving up work. Under the current legislation there is nothing to stop someone from voluntarily leaving a job and then immediately claiming income support. Many other countries impose a waiting period to prevent people from receiving benefit immediately. My proposal is to create a 13-week period during which an individual who has left employment due to their own actions will not be able to claim the full value of income support. I commend the regulations to the Assembly.

The Deputy Bailiff:

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

5.1.1 Deputy G.P. Southern:

It has been a long day, it has been a long week, it is getting worse. The first question is childcare. Does it cover the actual costs of childcare on the Island because my understanding is that the sum

allowed only partially covers the cost of childcare and therefore makes it very difficult for some households to get out and seek work and to work. On the clinical component I am pleased to see that it has been raised and this enables people who need lots of attention from their G.P. to be able to afford it. However, it has come to my notice over the last few months that the number of people who are entitled to a Household Medical Account, which effectively is the way of delivering Clinical Cost Benefit, have been substantially reduced by reviews that have taken place in Social Security and I wonder if the Minister can report how many people now have an H.M.A. (Household Medical Account) compared with the end of 2008, say, for example some time ago, because I know that they were substantially reduced and there are many people who under the rules may not be eligible for the clinical component but really ought to be covered. Then in terms of this move to tighten up from 8 weeks to 3 weeks the period before which you can have your benefit docked for not obeying the rules. This sounds all well and good if you are confident that your communications systems are working properly and that messages left by people who cannot attend because of illness or other reason a particular interview do not find that their message has disappeared into the ether and nobody knows that they have apologised, nobody knows they have made contact, and they end up getting their benefits docked through no fault of their own, through miscommunication and bad communication within the department and I know it happens. It happens, I believe, all too often. If you are going to reduce the slack down to 3 weeks then it is likely that many more people will see themselves having their benefit cut and suffering some hardship through no fault of their own. So, I would like some reassurance that your communications are up to scratch and that messages will get passed on in the new system because it is going to become increasingly important. Now, in terms of this comparison between those who stay at school and those who seek work I have to comment, and I know this is coming, you did mention it, I have to comment that once again this appears to be something that is done in the name of fairness and equity but is a saving and it is a levelling down, and I think the Minister will have to find really serious justification for taking such action.

The Deputy Bailiff:

Deputy, the Minister went off-piste, you have just joined him briefly, but can we go back to the principle?

Deputy G.P. Southern:

I have a comment down here that says 13 weeks. Thirteen weeks for leaving a job that does not suit you or you did not get on or you were being bullied or whatever, 13 weeks with a reduced benefit is something that will cause hardship and certainly again the Minister will have to return to the House with serious justification for taking such draconian action. I do not believe that sounds to me like the right way forward. Certainly on the first 3 points I want answers now. You can give the answers later on the other 2 points because he went off-piste.

The Deputy Bailiff:

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

5.1.2 Deputy I.J. Gorst:

If I might just come to the defence of the Deputy, I know that it is not in these regulations but I, on purpose, put it in the report and I purposely mentioned it.

The Deputy Bailiff:

That is why I did not stop him earlier.

Deputy I.J. Gorst:

Indeed, because it is something that can be undertaken by a Ministerial Order and it is only fair that I am upfront and open with Members of the Assembly and that is why it is right for the Deputy to mention it. From the shaking of his head I am quite prepared to sit down with him and discuss that before a decision is made.

Deputy G.P. Southern:

The look of horror that the Minister might have caught on my face that this is an order and this is the sort of move that certainly should be on regulation, should have to come to this House. I do not think the Minister should be able to do things like that without referring it to this House.

The Deputy Bailiff:

Well, Deputy, it is obviously available to the chairman of the Scrutiny Panel to decide to scrutinise anything.

Deputy I.J. Gorst:

If I just return to that, Sir. It is quite a simple change whereby somebody under 19 will be returned to the household exactly like somebody in education is. Those who are in low-income households will continue to receive the same amount of benefit, that £92 will become part of the household income. Those who are not in households who are low-income will see that they are no longer able to receive that £92 and I have to say, the Deputy might nod his head, I have had many, many representations about this particular element of income support. So, that is where that comes from. Likewise it cannot be considered to be fair that an individual can make a unilateral decision to leave employment and then expect the community through their taxes to automatically, straight away deliver income support to them. I believe that those measures are enhancing the contract which I have spoken about many times between those who should be and are entitled under the law to benefit. We should not begrudge them. We are legally entitled to it. But there is a responsibility with that entitlement to make sure that the taxpayer is fully supporting and understands that there are responsibilities on behalf of the recipient and that should be that they should not make decisions and we must try and ensure that income support enhances that contract between those 2 elements of benefit. With regard to the uprating of the childcare component, we do do that in conjunction with the Jersey Childcare Trust. They do research into what the costs of childcare are across the community and they fully support the increased proposal which I have before Members today. The increase in clinical cost component I do recognise that members of our community do sometimes struggle with the cost of G.P. visits. This in a way is another short-term measure because what I expect to see when we see the transformation of Health and we see the delivery of services out in the community and we see we at Social Security able to contract with primary care providers we should see as a result of those contracts many services provided in a much more cost effective way to those with long-term, chronic conditions. That is the real area where we are going to see results and that is the real area where people are going to see reduced costs when they visit their G.P. but in the meantime this hopefully will go some way to helping those who are low-income now. The Deputy is right, we do review claims within the department and we have reviewed the H.M.A. I seem to recall only recently responding to a written question and if I recall what I said in that written question off the top of my head I think there are probably about 2,600 H.M.A.s remaining. I cannot remember how many there were in 2008. I could have asked the previous Minister but it is probably a bit late for that now. I recognise also the need to be careful when reducing the number of weeks from 8 to 3 but Members may or may not have had time to read some of the suggestions, the report from Stafford and his looking at the relationship between seeking work, getting into work and income support and he talked there about strengthening those provisions which mean that individuals should not be given an indefinite length of time in which they are not looking for work when they should be looking for work. Again it comes back to this contract, those who are receiving income support are saying: "Yes, I am available for work. I am actively seeking work." Therefore they should be shown that they are doing that. I have introduced enhanced support in the

department to ensure that they do have personal advisers, that there is support there, that they are encouraged to overcome their barriers, that they have a responsibility to attend in the department, to attend essential skill courses, to attend interviews, to show themselves to be fit for work, to look at their presentation, to update their C.V.s (Curriculum Vitae). They have the responsibility to do all these things and we cannot just ... what we have been finding is that the current timescale of 28 days is too generous. We need to make sure that they are intensively, actively seeking work because we know that it is that intensity and that continual activity which will up their confidence and mean that they can get the jobs that are there. I should say, just to make it clear, that it is only the adult component that we are talking about which will be reduced and I am also proposing that is reduced more quickly, and that is P.109. So, I do hope that Members will see that these are an enhancement and a renewal of the contract with the taxpayer that is providing these benefits to be satisfied that those individuals in our community who are receiving income support are doing so legitimately and they are playing their part to try and get back into work. I ask Members to support the principles.

Deputy G.P. Southern:

If I may, the Minister did not address the issue of bad communications and making sure that messages get passed on so that people do not get their money docked under 3 weeks through no fault of their own.

The Deputy Bailiff:

Anything to add, Minister?

Deputy I.J. Gorst:

Of course I would not want anyone to have that to be the case were it no fault of their own if they are actively seeking work and for some legitimate reason, perhaps a message does not get through, then I hope that that will be made clear to the department.

The Deputy Bailiff:

The principles are proposed. All Members in favour of adopting the principle. The appel is called for. I ask Members to return to their seats. The vote is on the principles of the Draft Income Support (Amendment No. 7) (Jersey) Regulations 201- and I ask the Greffier to open the voting.

[17:45]

POUR: 29		CONTRE: 5		ABSTAIN: 0
Senator T.A. Le Sueur		Senator A. Breckon		
Senator P.F. Routier		Deputy G.P. Southern (H)		
Senator P.F.C. Ozouf		Deputy S. Pitman (H)		
Senator T.J. Le Main		Deputy M. Tadier (B)		
Senator S.C. Ferguson		Deputy T.M. Pitman (H)		
Senator F.du H. Le Gresley				
Connétable of St. Helier				
Connétable of Trinity				

Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy A.E. Jeune (B)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Deputy Bailiff:

Deputy Southern, chairman of the panel, do you wish to scrutinise these regulations?

Deputy G.P. Southern (Chairman, Health, Social Security and Housing Scrutiny Panel):

I would love to scrutinise these regulations. However, the Deputy of Grouville has pointed out that if I were to I would end up instructing the next Scrutiny Panel and therefore it cannot be done. We do not have the procedures in place to enable at this stage Scrutiny to work.

The Deputy Bailiff:

So, the answer is no, very well. Then, Minister, presumably you wish to propose Regulations 1 to 3 and 4 together, do you?

5.2 Deputy I.J. Gorst:

If I could, Sir, yes. The first one is the interpretation, the second is the amendment to the days where one must show willingness to be actively seeking work and the third is the uprating of the housing component and the fourth is the citation and commencement.

The Deputy Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak on any of these regulations? Members in favour of adopting the regulations kindly show. The appel is called for. The vote is on Regulations 1, 2, 3 and 4. I invite Members to return to their seats and I ask the Greffier to open the voting.

POUR: 32		CONTRE: 3		ABSTAIN: 0
Senator T.A. Le Sueur		Senator A. Breckon		
Senator P.F. Routier		Deputy G.P. Southern (H)		
Senator P.F.C. Ozouf		Deputy S. Pitman (H)		
Senator T.J. Le Main				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator F.du H. Le Gresley				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérissier (S)				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				

Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Deputy Bailiff:

Minister, do you propose the Regulations in the Third Reading?

5.3 Deputy I.J. Gorst:

If I may, Sir, thank you.

The Deputy Bailiff:

Seconded? [**Seconded**] Does any Member wish to speak in the Third Reading?

5.3.1 Senator F. du H. Le Gresley:

I rise to point out to those Members who voted against these regulations that they would have voted for ... a lot of these people on income support had less benefit, which I find very strange. Because a lot of those people who voted against it would normally be trying to increase the benefit that people receive. I would just point that out. I would also like to say that these draft regulations were lodged on 7th June and the Minister's intentions were quite clear in the report and he did have a meeting for Members so that he could explain his proposals. So, I find it rather strange that Deputy Southern shakes his head and looks in despair when he hears what is in the paper. I would suggest to him that he has not done his homework.

5.3.2 Deputy P.V.F. Le Claire:

Just echoing the words of Deputy Tadier, who voted against this, sometimes we do not have time to read everything. Obviously that might have been the case here. But I think that while we need to tighten up on measures when people have to get a fire underneath them I think we also need to recognise that there is a body of work to do now that the levels of unemployment are such as they are in terms of controlling inward migration and ensuring that people who have no work have access to a limited job pool.

The Deputy Bailiff:

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

5.3.3 Senator A. Breckon:

If I may, Sir. Just something that the Minister might be mindful of, and I am aware of this because in the course of the last couple of years I have had 5 trainees on the Advance to Work scheme

under 19, just for the Minister to be mindful of, these are young people who are seeking work and they are not sitting at home watching Sky TV or anything like that, so we must be careful where we draw the line between assisting these people and penalising them by taking benefits away so I would just ask the Minister to be mindful of that.

5.3.4 Deputy M.R. Higgins:

After the following speaker I would like to reinforce that message. No one wants to provide money for people who have no intention of going out to work and they are just sponging off the income support system, no one. But at the same time there are people who are actively trying to get jobs. They may not appear to be but there are not the jobs out there for some of them and some of them do not have the skills. So, I am very, very concerned about what the Minister is talking about here and I dislike the fact that it is coming in by Ministerial Order, and I would have liked to have seen a bit more debate on actual proposals.

5.3.5 Deputy T.A. Vallois:

Understanding what the Minister is trying to achieve by tightening up the reduction in days I would just like to ask, from the report that was put forward, whether these regulations come from that report R.87 and whether he could just quickly touch on the tension between Work First versus Human Capital Development and where we need to be focusing on, as policy-makers for that.

The Deputy Bailiff:

Deputy, Members have already adopted both the principles and the regulations. This is in the Third Reading. Does any other Member wish to speak? I call on the Minister to reply.

5.3.6 Deputy I.J. Gorst:

Yes, if I pick up on ... sorry, I am not a very good note-taker. Deputy Le Claire was talking about immigration and he makes a very good point. Another Member wrote to me earlier this week having read the report from Professor Stafford saying it was all fine and good but what about the number of individuals coming into our community? That is one of the reasons why I personally spoke so strongly about putting the Population Office with Social Security. Members did not agree with that and I understand why they did not, but I do think there is a great correlation there between ensuring there are appropriate controls over non-local licences so that there are jobs for most of those who are locals. He makes a very good point. I really would not ever want to hear a Member in this Assembly using the words that Deputy Higgins used with regard to those people receiving income support. We have moved from the welfare system, we have taken that money, we have combined it with what was Housing Benefit, we have combined it with Disablement Benefit, we have combined it with Family Allowance Benefit and we now have an entitlement system. People should feel that we as an Assembly, as a Government, decided that these individuals are entitled to it. What I am doing here is making sure that there is not opportunity for individuals perhaps to take it easy and not to comply with their responsibilities to be actively seeking work. That is what it is about. We should not refer to individuals who receive benefit in those terms and I would not wish to do that. If I just briefly pick up on the comment of Deputy Vallois because it was a very valuable one and it is one of the tensions that we providing social benefits and skills do have to hold in tension when it comes to trying to get people to work, and that is Work First and Human Capital Development. The Skills Executive have worked a lot on Human Capital Development. I have put another half a million in the department into Human Capital Development earlier this year. This is a little bit of Work First, so it is trying to not say either/or but bringing them both together so that people do get back into work. Finally I just wish to thank Senator Le Gresley and Senator Le Main who helped me to develop some of these proposals that Members are supporting today and the other ones that I will be taking further forward in the summer. So, I ask Members to maintain their support in the Third Reading, thank you.

The Deputy Bailiff:

I would like to make it plain I was making no comment about the merits of what Deputy Vallois said but just the timing. The regulations are proposed in the Third Reading. Those Members in favour kindly show. Those against. The appel is called for. I will ask the Greffier to open the voting. Members are asked to return to their seats. The vote is on whether to adopt the Draft Income Support (Amendment Number 7) (Jersey) Regulations 201- in the Third Reading.

POUR: 34		CONTRE: 2		ABSTAIN: 0
Senator T.A. Le Sueur		Senator A. Breckon		
Senator P.F. Routier		Deputy S. Pitman (H)		
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Brelade				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisssier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				

Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy A.E. Jeune (B)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Deputy Bailiff:

I can announce that various reports have been lodged. I am not sure whether Members were advised yesterday of the lodging of the Delegation of Functions - Chief Minister - authorisation of non-Contentious budget transfers R.94. Today, Sexual Offenders (Jersey) Law 2010: Jersey Multi-Agency Public Protection Arrangements - Guidance 2010 R.95 lodged by the Minister for Home Affairs, and the States of Jersey Police: Annual Performance Report 2010 presented by the Minister for Home Affairs R.96.

Deputy I.J. Gorst:

I do wonder if I could just take P.109 as well because it really just gives effect to the decisions we have just made.

6. Draft Income Support (Special Payments) (Amendment) (Jersey) Regulations 201-(P.109/2011)

The Deputy Bailiff:

Well, I am in the hands of Members. There seems to be a consensus to take P.109, the Draft Income Support (Special Payments) (Amendment) (Jersey) Regulations lodged by the Minister for Social Security and I ask the Greffier to read the citation of the draft.

The Deputy Greffier of the States:

Draft Income Support (Special Payments) (Amendment) (Jersey) Regulations 201-. The States in pursuance of Articles 8 and 18 of the Income Support (Jersey) Law 2007 have made the following regulations.

The Deputy Bailiff:

Minister, do you propose are the principles?

6.1 Deputy I.J. Gorst (The Minister for Social Security):

Yes, in effect what this does will allow us that once those 3 weeks are over that we have now approved we can reduce that adult component at a quicker rate so if Members support this it will be reduced by 50 per cent in the first week and then 100 per cent in the second week. Currently it is 25 per cent per week. Of course that is a quicker cut but by the reverse it will be reintroduced by that same speedy method so after that second week if an individual then fulfils their actively

seeking work criteria it can be reinstated at a faster pace as well. I ask that Members support the principles.

The Deputy Bailiff:

Are the principles seconded? **[Seconded]** Does any Member wish to speak? All Members in favour of adopting the principles kindly show. Those against. The principles are adopted. Vice-Chairman of the Health and Social Security Panel, do you wish to scrutinise these regulations?

The Connétable of St. Lawrence (Vice-Chairman, Health, Social Security and Housing Scrutiny Panel):

Thank you for the offer, Sir, but no.

6.2 Deputy I.J. Gorst:

The regulations are just as I have described, Sir.

The Deputy Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak? You are proposing the regulations together, 1 and 2 on the citation. Those Members in favour of adopting Regulations 1 and 2 kindly show. Those against. The regulations are adopted. Do you propose them in Third Reading, Minister?

Deputy I.J. Gorst:

Yes, if I may, Sir.

The Deputy Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak? Those Members in favour of adopting the Regulations in the Third Reading kindly show. Those against. The Regulations are adopted in the Third Reading.

Senator T.J. Le Main:

I would like to now propose the adjournment, Sir.

Senator P.F.C. Ozouf:

Before doing so can we just be clear about what business we are doing tomorrow? I have had a Draft Order Paper which says that, for example, P.81 is being moved until 20th September and I just make the observation that I know it is a continuation sitting but it is right in the middle of an election. We cannot do anything on this in relation to the Budget anyway, and I just wonder whether or not consideration could be given as to when this is taken. It appears curious that it is now pushed to 20th September.

The Deputy Bailiff:

Chairman, are you able to make any comment on this?

The Connétable of St. Mary:

As I informed Members this morning, Deputy Pitman had requested that the proposition be moved back, Sir. The 13th September is for the Business Plan and already has enough ancillary business to keep us busy for that session. There is a scheduled sitting on the 20th, albeit it does fall outside of the prescribed limit for the election period where we do not sit. It is in order for us to sit on that day.

Deputy P.V.F. Le Claire:

Members were requested to review whether or not their propositions needed to be debated and Deputy Pitman moved after that request had been made.

The Deputy Bailiff:

That is your answer, Senator. The adjournment is proposed. The States therefore stand adjourned until 9.00 a.m. tomorrow morning.

ADJOURNMENT

[17:59]