

STATES OF JERSEY

OFFICIAL REPORT

TUESDAY, 16th JUNE 2009

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

QUESTIONS

1. Written Questions

1.1 DEPUTY P.V.F. LE CLAIRE OF ST. HELIER OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE BOND FOR THE DEVELOPMENT OF THE WATERFRONT BY HARCOURT:

Question

In view of the recent down grading by the credit rating agency Standard and Poor's of the Irish Governments ability to pay its debts, would the Minister confirm whether the bond to be given by Harcourt will be rated by Standard & Poor's, Fitch or Moody, in order to give the independent assurance required to progress the project and ensure that the highest standards of fiscal probity are being met?

Answer

WEB has asked Harcourt to provide, by the end of this month, written confirmation that it will be able to procure delivery of a bond in accordance with the terms of the draft development Agreement. WEB will undertake the necessary due diligence to ascertain the acceptability of any bond provider and this may include taking information from internationally acceptable rating agencies. I will inform the Assembly as soon as I am able, of any progress in this matter.

I would remind the Deputy that in any event, I am maintaining the commitment to bring any contract with Harcourt to the States for approval.

1.2 SENATOR B.E. SHENTON OF THE MINISTER FOR HOUSING REGARDING THE REGULATION OF HOUSING TRUSTS IN THE ISLAND:

Question

Does the Minister plan to bring in regulation of Housing Trusts at least equivalent to UK regulation and, if so, when?

Given that many properties were transferred into the Trusts at a discount – what happens to any increase in value that accrues during the trust's ownership of the property?

What rights, if any, do the States have to nominate tenants for Trust properties?

Do the States have any controls/powers in respect of composition of the Trustees and/or powers to remove Trustees?

Answer

The Whitehead Review of Social Housing will be issued as a Green Paper for consultation in mid July 2009. Members will recall that one of the key terms of reference for that review was 'to analyse the present regulatory structure, compare it with regulation in other jurisdictions, and recommend a suitable framework'. I have therefore not reached any conclusion about the form that regulation should take and will await the outcome of the consultation process before bringing specific proposals to the house for debate.

Where public assets were transferred to Trusts often at nominal value the Trusts have had to invest in those properties to make them viable homes. Where the cost of developing those homes has proven less than the projected rental yield over a 25 year period, payments have been made by the Trusts to reflect the residual value of the land transferred. All trust properties are assets of the Trusts and the Trusts will benefit from any increase in value just as they will have to deal with any decrease in value. In any case the Trusts are limited to using their properties for social rented purposes only, so cannot realise any uplift in value except to provide for additional social rented housing.

The nomination rights to Trust homes enjoyed by the States vary from Trust to Trust. Generally though, where the Public is providing a letter of comfort in respect of interest subsidy payments the States will have nomination rights to 80% of the new homes, reducing to 50% on subsequent turnover.

At present, the States has limited powers in respect of the composition of the Trustees. All nominations have to be approved by the Minister for Housing before being registered in the Royal Court. There are no specific powers conferred on the Housing Minister to remove Trustees, however, the Minister could if there was sufficient concern, apply to the Attorney General to make a representation to the Royal Court who have the power to regulate the Trusts under the Loi (1862) Sur Les Teneures en Fideicommiss et L'Incorporation D'Associations. Current policy states that the membership of an Association/Trust shall normally be not less than five or more than nine in number, members are responsible for managing the affairs of the Association/Trust, although may appoint staff or agents to carry out the work on their behalf. As I have said, these are issues which I intend to address following the consultation process on the Whitehead Review of Social Housing.

1.3 DEPUTY P.V.F. LE CLAIRE OF ST. HELIER OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING THE PROTECTION OF VULNERABLE CHILDREN:

Question

Is the Minister committed to ensuring that vulnerable children such as the X children continue to receive effective representation so that their voice is heard and their interests safeguarded?

Answer

The health, safety and welfare of vulnerable children such as the three children of Family X remain a fundamental and non-negotiable responsibility for me. I am not prepared to compromise in this important field – nor would I expect Members to accept anything less than my full and vigorous support of vulnerable children and their families.

As we know, Andrew Williamson enquired into Children's Services here in Jersey. He declared that Children's Services in Jersey were 'safe' – a declaration he made before his Report was concluded and placed before the States. Notwithstanding this, the Andrew Williamson Report identified a number of recommendations which would significantly strengthen and improve Children's Services. These recommendations are central to the Williamson Implementation Plan which will shortly be debated by the Assembly. My Assistant Ministers and I are fully committed to obtain States funding in order that the plan can be made a reality in full and in a reasonable timescale. I trust that all of the Members of the Assembly will support us in this endeavour.

The States has benefited from the appointment of Professor June Thoburn who has chaired the Jersey Child Protection Committee (until the appointment of Mr Michael Taylor as Chairman of the

JCPC a few days ago). The Jersey Child Protection Committee's remit is to ensure that all children are safe and we can all be grateful that under Professor Thoburn's chairmanship the Jersey Child Protection Committee has modernised and transformed itself to such an extent that it can now exercise the highest level of surveillance over child protection matters.

In this context, it is my intention to introduce a number of further measures which will ensure that the voices of vulnerable children are heard and acted upon. These measures – again, central to the Williamson Implementation Plan – include independent inspection of Children's Services and the creation of advocacy services which will be accessible (in every sense of that term) to vulnerable children and families.

It may well be that implied in the Deputy's question is a reference to deliberations which took place in the Royal Court on 12th June following an initiative by the Attorney General. I have yet to be fully briefed on the deliberations in the Royal Court last Friday but will follow these matters with interest – bearing in mind my responsibilities for children which, to repeat, are of fundamental importance to me.

1.4 DEPUTY P.V.F. LE CLAIRE OF ST. HELIER OF THE CHIEF MINISTER REGARDING THE LEGAL AID SYSTEM:

Question

Is the Chief Minister confident that there is equality between the state and other litigants when the Law Officers act in a criminal or civil case, either in person or through a Crown Advocate, and when the other litigants involved might have to be represented by an assigned and unfunded lawyer under Jersey's legal aid system?

Does the Chief Minister agree that there should be a funded legal aid system, such as that which exists in Guernsey which permits a greater choice for litigants and encourages specialist lawyers to be matched to particular types of cases?

What investigations, if any, has the Chief Minister made as to improving the current legal aid system and ensuring that it complies with the European Convention on Human Rights and, if none, does he intend to request any investigation of the current system?

Is the Chief Minister concerned as to the workings of the current unfunded legal aid system in Jersey, which operates on a rota basis with lawyers being assigned cases in turn, irrespective of their particular area of expertise?

Answer

To the extent that this question raises legal issues of whether the present system of legal aid enables the Island structurally to meet its obligations under Article 6 of the European Convention on Human Rights, I believe the undoubted answer is that it does.

Meeting the legal threshold is only part of the answer. I and the Council of Ministers are aware that the provision of legal aid raises a number of practical issues both for the profession and the public and discussions with the Law Society have been underway for some time and are ongoing.

I should add that the Legislation Advisory Panel has a legal aid group and I have asked them to consider whether and, if so, how the Legal Aid system should be reviewed to ensure that it remains fit for the future.

1.5 DEPUTY R.G. LE HÉRISSEIER OF ST. SAVIOUR OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE ASSETS OF WOOLWORTHS:

Question

Will claims by the States of Jersey upon the assets of Woolworths be directed to a Jersey or United Kingdom entity and are the Jersey assets of Woolworths ringfenced for sole use on the Island?

Answer

Claims which the States of Jersey has against Woolworths Plc (the “Company”) in relation to its business and affairs in Jersey have been filed with the Viscount in accordance with the procedure set out in an Act of the Royal Court dated 2nd March 2009. Pending the adjudication by the Viscount of all claims thus filed and the resolution by the Royal Court of any issues or disputes arising, the net sale proceeds of the Company’s immovable property in Jersey are, or are to be, held by the Viscount. Because the above processes have not yet been completed, it is not presently possible to give further clarification.

1.6 DEPUTY R.G. LE HÉRISSEIER OF ST. SAVIOUR OF THE MINISTER FOR SOCIAL SECURITY REGARDING YOUTH UNEMPLOYMENT:

Question

What steps, if any, will the Minister be taking to obtain a more accurate picture of the rate of youth unemployment?

Answer

The Chief Minister responded to a question (4555) from Deputy Higgins on 2nd June 2009, as follows:

“Information on people who are registered as unemployed in Jersey is compiled by the Social Security Department. The independent Statistics Unit is currently liaising with this Department in order to produce a monthly publication on registered unemployment in the Island. The first issue will be available as soon as is possible.”

I can only reiterate this information and confirm that the Social Security Department is actively working with the Statistics Unit on this project which will include information on youth unemployment.

1.7 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE REMOVAL OF PROTECTED PAYMENTS FROM THOSE IN RECEIPT OF INCOME SUPPORT:

Question

Will the Minister explain to members why the number of households on transition payments in Income Support (IS) has fallen to 2,734, according to answers given to the Assembly on 28th April 2009, when the report “Distributional analysis of income support households” of June 2008 showed 3,559 households in receipt of such protected payments?

Will he further state how many of these 800 plus households have had their protection payments removed due to the practice of treating any change of circumstances as a new application for IS which does not qualify for protected payments?

In addition, will he explain to members how this practice fits with his commitment to extend 100% transitional protection from October 2009 to January 2010 and then to October 2010 through the Economic Stimulus package as revealed in his answer on 28th April 2009?

Will he also give members an estimate of how much money has been cut from benefit support through this practice over the past year?

Answer

The number of households receiving protected payments is affected by a number of factors, and was always due to steadily decrease following the introduction of Income Support.

Inevitably, some claimants will die and others will leave the Island. Other claimants will experience a change of circumstances which improves their financial position. If the change of circumstances is such that they would no longer have qualified for the benefit that they received prior to Income Support, then the protection in respect of that benefit is removed. This is no different to what would have happened if the previous benefit were still in place.

All these factors were anticipated, and, prior to the introduction of Income Support, it was stated that the transitional phasing would be adjusted, in line with the actual cost, once the full effect of these factors was understood.

Two factors were not anticipated in advance. Both factors have led to the number of households needing protected payments falling more quickly than expected. The global recession has led to a decrease in income for many local families and this is reflected in higher Income Support rates. In general, if the Income Support entitlement for a household exceeds the value of the protected payment, then the protected payment falls away as it is no longer needed, but has been replaced by Income Support. This leads to an increase in the cost of Income Support and a decrease in the cost of protected payments.

Income Support components and incentive rates have also increased faster than was originally predicted. This is mainly due to the additional funds provided following the acceptance of P.163/2008 (the Le Fondré proposition) at the end of 2008. Each time that Income Support rates or incentives are improved, a number of households previously receiving a small amount of protection, will no longer need that protection as their Income Support benefit rises above the protected level.

The question refers to the "practice of treating any change of circumstances as a new application for Income Support which does not qualify for protected payments". This is not an accurate statement of the terms under which protected payments are provided, as set out in the Income Support (Transitional Provisions) (Jersey) Order 2008.

Households receiving Income Support with or without an additional protected payment are required to notify changes of circumstance to the Department in a timely fashion. The Department will recalculate the Income Support entitlement and adjust the protection as necessary. In the majority of cases, there is a small adjustment up or down and the protected payment will continue to be paid at a revised level, reflecting the change in the Income Support entitlement.

However, as explained above, if the household circumstances change such that the household would no longer be entitled to the previous benefit (as if it still existed), then the protection in respect of that previous benefit is removed. A simple example is that of Family Allowance. This was available in respect of a child up to the age of 18 (in education). If a child of an Income Support family reaches the age of 18, then that family will no longer receive protection in respect of the previous Family Allowance benefit.

In some cases the change of circumstance will increase the Income Support entitlement of the household to such an extent that a protected payment is no longer necessary as the Income Support amount is higher than the protected amount.

For example, a household previously received £50 per week rent abatement and now has an Income Support entitlement of £20 per week. The household therefore receives £30 in protected payment. If an adult in the household is made redundant and the household income drops significantly, then their Income Support entitlement will increase to, say, £300 per week. This household no longer needs to receive any protected payment as the Income Support they receive is now greater than the legacy benefit of £50. If the household subsequently has a further change of circumstance and the household income increases, then the Income Support entitlement is adjusted according to the circumstances at that time and no longer relates back to the protected payment that was originally provided.

One of the major aims of protected payments was to provide a smooth transition for households with little opportunity to increase their household income, such as pensioners and individuals with disabilities. These household groups are less likely to be subject to the fluctuations set out above and are currently benefiting from the extension of 100% protection.

Members will be aware that the Department has successfully bid for additional funding for protected payments in the 2009 Business Plan and has submitted a further bid for additional funding in the Economic Stimulus programme. The original budget for protected payments of £22.5 million has now been increased to £28.25 million with a further £1.44 million requested.

The total Income Support benefit budget has increased from £74 million in 2008 to £80 million in 2009. A further bid for up to £2.3 million is included in P.83, to meet the additional costs of Income Support benefits during the recession.

It is not practicable to track the benefit costs associated with individual families experiencing particular changes in circumstances. However, as shown above, both Income Support budgets and protected payment budgets have grown considerably since the inception of Income Support.

1.8 DEPUTY S. PITMAN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING INCOME SUPPORT ASSESSMENTS:

Question

Would the Minister inform members how much it would cost the Department if, when assessing people in receipt of Long Term Incapacity Allowance (LTIA), Short Term Incapacity Allowance (STIA) and Invalidity benefit for Income support, this was not classed as income? Further, what the breakdown of these costs would be?

Would the Minister inform members how many times he has exercised his incumbent powers of discretion on decisions affecting applicants for special payments and childcare costs? What were these special payment applicants applying for? What was his decision on each case?

Would the Minister inform members how many recipients of LTIA have been informed by the Medical Board that they are able to work (thus receiving less benefit) but contrary to this decision have been informed by the recipient's GP that they can not work?

Would the Minister explain the logic as to why when a recipient of LTIA, STIA, and Invalidity Benefit receives an increase on this benefit, their Income Support is lowered?

Answer

The Deputy has covered three completely separate topics in this question. The first and fourth paragraphs relate to the relationship between contributory benefits and Income Support. The second paragraph relates to the discretionary powers of the Minister under the Income Support legislation. The third paragraph relates to the relationship between Long Term Incapacity Allowance and Short Term Incapacity Allowance. I will address these topics separately.

Relationship between contributory benefits and Income Support (questions posed in first and fourth paragraphs)

It is difficult to assess the cost of excluding Short Term Incapacity Allowance from the income calculation of Income Support as, by definition; it is a short-term benefit which many individuals will receive for a few weeks at a time. However, it is possible to identify the cost of excluding Long Term Incapacity Allowance and Invalidity Benefit, and this is estimated at £10 million per annum.

If these benefits were to be disregarded, individuals receiving contributory benefits and Income Support would be much better off than those on Income Support who were employed.

The concept of Income Support is to support the household income of families who would otherwise have difficulty in meeting basic living costs. In order to provide the appropriate amount of support, an assessment is made of all household income and assets. As household income increases, the amount of Income Support required to meet basic living costs reduces. In order to provide incentives to encourage individuals to take up paid employment and to save for retirement, some income from earnings and pensions is disregarded in the Income Support calculation. There are also disregards against other types of income including a 5% disregard on LTIA income. As income rises or falls, the Income Support benefit is adjusted to meet the new circumstances of the household and ensure that a basic income level is maintained

Ministerial discretionary powers under Income Support legislation (questions posed in second paragraph)

A similar question (4351) was asked by Deputy Southern with an answer tabled on 24 March 2009. Since that time the Minister has approved one further discretionary payment in respect of mortgage costs.

Relationship between LTIA and STIA (question posed in third paragraph)

LTIA is a benefit that is paid to working age adults who have suffered a long term loss of faculty. The benefit is payable irrespective of whether the individual is working or not working. A Medical Board assesses the loss of faculty of the individual, not the ability of the individual to work. The loss of faculty is expressed as a percentage and the benefit is paid at that percentage of the full rate of Social Security benefit (currently £172.83).

STIA is a short-term benefit that is paid to an individual who has been certified by their GP as being unable to work for a limited, fixed period of time. Someone receiving STIA is not permitted to undertake paid employment. STIA is paid at the full rate of Social Security benefit.

It is possible for an individual to have an LTIA claim and an STIA claim at the same time. For example, an individual with a partial amputation of one leg is entitled to an LTIA award of 50%. Their GP signs them off work for two weeks because they have a bout of bronchitis, and during that time they will receive a full rate of Social Security benefit (the equivalent of STIA, but made up of 50% LTIA and 50% STIA).

1.9 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE IMPACT ON DAILY BENEFIT RATES FOR THOSE NO LONGER RECEIVING PROTECTED PAYMENTS UNDER THE INCOME SUPPORT SYSTEM:

Question

Following his announcement on 28th April 2009 that the period of Income Support (IS) transition protection was to be extended, will the Minister give a detailed breakdown of the amounts of daily benefit (in real not percentage terms) banded in £10 intervals which protected IS claimants will lose when protection is removed over the 3 to 5 year phased reduction period?

Answer

In the time available to prepare this response, it has not been possible to prepare information to the standard that the Department would normally provide.

While the information set out below does include assumptions for benefit rates and income levels in future years, it has not been possible within the limited time available to fully incorporate the proposals set out in P.93 for increases to Income Support rates and incentives in October 2009.

The underlying data used was extracted on 31st March 2009 and it would be preferable to use a more up-to-date data set.

The phasing used to calculate the transitional reductions in this answer matches that submitted as part of the Economic Stimulus Bid. When the bid was made, it was noted that the phasing was indicative and it would be refined if the bid was successful and taking into account more up-to-date data that will be available later in 2009, including the effect of the up rate in October 2009. This refinement has not yet been undertaken.

The question requests detailed information over the full length of the transitional period. The information provided is dependent on a large number of variables which cannot be forecast with a high degree of accuracy. In reality, the only fact that can be stated with confidence is that the actual figures in future years will be different to those stated in this answer.

The figures given below are subject to these caveats and should be treated as a broad indication of the actual reductions that households will experience over the transitional period.

As is more fully explained in the answer to question 4588 (also tabled today), there will be a natural reduction in the number of households requiring protected payments over the length of the transitional period. This will include claimants who die, those who are no longer eligible for the benefit on which their protection is based, and those whose Income Support entitlement increases

above the value of the protection due to an increase in IS rates or incentives. The numbers in each category are therefore theoretical maximums and the actual number of households receiving reductions at each level will be less than the estimate given.

As noted by Deputy Southern in Question 4588, the number of households requiring protected payments has already fallen from 3,559 in June 2008 to 2,734 as at 31st March 2009.

The following table sets out a detailed breakdown of the amounts of daily benefit which protected IS claimants will lose when protection is removed over the 3 to 6 year phased reduction period. It is based on the phasing proposed in the Economic Stimulus bid, on the assumption that the bid will be approved. Depending on the outcome of the bid, the exact phasing will be agreed later in 2009.

Year	2009	2010	2011	2012	2013	2014
Number of households receiving protected payment for year leading up to 1 October	2734	2620	2223	1799	959	147
Number of households experiencing increase/no change to daily benefit on 1 October	2734	338	46	19	4	0
Number of households experiencing decrease in daily benefit of up to £1 per day on 1 October	0	427	321	526	159	2
Number of households experiencing decrease in daily benefit of between £1 and £3 per day on 1 October	0	1444	1047	970	612	29
Number of households experiencing decrease in daily benefit of between £3 and £5 per day on 1 October	0	235	458	209	156	101
Number of households experiencing decrease in daily benefit of between £5 and £7 per day on 1 October	0	148	140	29	17	9
Number of households experiencing decrease in daily benefit of between £7 and £10 per day on 1 October	0	17	173	19	6	6
Number of households experiencing decrease in daily benefit of more than £10 per day	0	11	38	27	5	0
Number of households receiving protected payment from 1 October onwards	2620	2223	1799	959	147	0

It must be emphasised that these numbers are extracted from a computational model that relies on a number of economic parameters that cannot be accurately forecast several years in advance.

The Department holds a ring fenced budget for protected payments and will continue to adjust the transitional phasing from year to year to provide the maximum protection within the budget available. This is very likely to result in a different transitional phasing from that shown above.

1.10 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE FINANCIAL BENEFIT FOR INCOME SUPPORT CLAIMANTS TO SEEK EMPLOYMENT:

Question

Can the Minister confirm whether a single person with monthly earnings of around £1,200, with no dependants and receiving Income Support of around £40 per week towards rent of £650 per month for a 1-bed flat, will have this support removed following the removal of transition support and, if so, would the Minister demonstrate whether such a person will be better off in or out of work at current rates following this removal?

Answer

Given that gross monthly earnings of £1200 equates to a gross weekly income of £276.92 and a monthly rental of £650 is equivalent to a weekly rent of £150, the Income Support calculation is as follows:

Components:

Adult	£90.30
Household	£46.20
Accommodation	£148.82 (1 bed flat rate)

Maximum IS payable £285.32

Income

Gross earnings	£276.92
Less	
Social Security	£16.62
Earnings disregard	£27.69

Net income £232.61

Income Support is calculated as difference between components and net income

IS benefit: £285.32 - £232.61 = £52.71

On the assumption that the £40 identified in the question related to a “legacy” benefit for the individual (for example, rent rebate), the Income Support benefit is now in excess of the value of the legacy benefit and this individual is not receiving any protected payment. Therefore, the removal of transition support will have no effect upon their benefit level. The Income Support benefit of £52.71 represents an increase of over 30%, compared with £40.

Using the example suggested by the Deputy, this individual has a net income of £313.01 whilst in work (and having paid Social Security contributions). If the same individual was unemployed, they would receive a total of £285.32 per week, as long as they satisfied the actively seeking work conditions imposed under their jobseeker’s agreement.

1.11 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE SUBSIDISATION OF SUB-MINIMUM WAGE RATES FOR WAITERS BY THE USE OF TIPS IN RESTAURANTS:

Question

Following the moves by the United Kingdom government to eliminate the widespread practice of subsidising sub-minimum wage rates for waiters by the use of tips in restaurants, will the Minister state what research, if any, the Social Security Department has undertaken to determine the extent of this practice locally, and if none, will he agree to investigate such practice?

Answer

The independent consultation body, the Employment Forum, has a statutory duty to make recommendations relating to the application and operation of the minimum wage, as provided by the Employment (Jersey) Law 2005.

The Forum’s 2008 recommendation to the Social Security Minister, which was presented as an Annexe to Proposition P.180/2008 (lodged on 9th December 2008), recommended that further consultation should be undertaken during 2009 regarding the use of tips, gratuities and service charges as payment towards the minimum wage.

In that recommendation, the Forum stated; *“The Forum considers that more information is necessary regarding the payment, collection and distribution of tips and gratuities, and consultation is required with relevant industries, such as restaurateurs. The Forum considers that there are issues regarding enforcement of tips and their redistribution that would require further research as the issue is likely to be more complex than it appears.”*

The Forum noted that the UK Government intended to consult on the matter, and the Forum will take into account the outcomes of that consultation (which were released in May 2009) during the public review to be undertaken this summer. The resulting recommendation will be presented to the Social Security Minister in October 2009.

1.12 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING THE CD FULFILMENT MARKET:

Question

Will the Minister inform members of the extent to which foreign registered companies are still using Jersey's tax status to exploit the de-minimis CD fulfilment market?

Answer

There are no foreign registered companies on the UK Import VAT Accounting Scheme – the scheme which enables companies to benefit from Low Value Consignment Relief.

All members of the scheme are required to hold a Licence under the Regulation of Undertakings and Developments Law, the policies of which clearly support the local fulfilment and online retail industries, and are applied to limit the use of Jersey as part of any selling structure based solely on Low Value Consignment Relief.

1.13 DEPUTY M.R. HIGGINS OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE COST OF G.P. VISITS IN 2008:

Question

Would the Minister please advise:

- (a) how many general practitioners are licensed in the Island under the Health Insurance Fund;
- (b) the number of patient visits in 2008 for which money was paid to supplement the cost of medical advice and assistance to patients;
- (c) the amount of money paid to general practitioners in 2008 by the Social Security Department in respect to these visits; and,
- (d) whether his Department collates information from general practitioners on the amount that each patient had to pay for doctors' consultations in 2008 (broken down for consultations, cost of injections etc) and, if so, will he provide a breakdown for members?

Answer

Under the Health Insurance (Jersey) Law 1967 (rather than the Health Insurance Fund), a medical benefit may be claimed by an insured person for any "proper and necessary" medical service provided by a GP. Such services include visits by a GP and letters of referral. The medical benefit arising is the property of the individual and the current level of benefit is £15 per consultation, irrespective of place/length of consultation or services provided.

- (a) There are currently 96 approved doctors in active practice who provide medical services under the Health Insurance Law. The Minister for Social Security may licence (or approve) a doctor to deliver medical services provided they satisfy the vocational GP qualifications set by the legislation (Health Insurance (Conditions For Approval OF Medical Practitioners) (Jersey) Regulations 1993).
- (b) The number of patient visits in 2008 for which money was paid to supplement the cost of medical advice and assistance to patients was approximately 350,000.
- (c) The amount of medical benefit claimed for GP visits and services in 2008 was approximately £5.3 million.

- (d) General medical practice in Jersey is a private enterprise and there is no contract between GPs and the States. GP consultation and service fees are set by individual practices and governed by market forces. Patients are not required to register with a practice and many GPs discount within their fee structure depending on the patient's circumstances. Whilst the Department collects information on gross fees paid for a consultation, it does not collate information on the breakdown of specific charges for GP services.

1.14 DEPUTY M.R. HIGGINS OF ST. HELIER OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING THE RECIPROCAL HEALTH AGREEMENT WITH THE UNITED KINGDOM:

Question

Following allegations by a retired civil servant that successive Health Ministers and Chief Officers of Health have deliberately manipulated the figures in returns to the United Kingdom regarding the cost of services provided in Jersey under the Reciprocal Health Agreement, would the Minister advise the Assembly whether the allegations are correct; and, if so, identify the persons responsible for providing misleading information to the United Kingdom?

Answer

Due to the thirty three year time period involved it is extremely difficult to give precise, unequivocal and comprehensive comment about every single conversation, meeting or arrangement that may have occurred during the period of 1976 to 2009.

I can confirm though that my Department is committed to ensuring maximum benefit for our island residents at value for money in regard to their receipt of health care services in the UK.

Importantly I can also confirm that all financial allocations over this thirty three year time period associated with the Reciprocal Health Agreement have been undertaken in partnership with the UK DoH and agreed by the appropriate DoH representatives or civil servants. Opportunity was available and occasionally taken to question each jurisdiction's respective figures and until 2008 there is no record of the arrangements between Jersey and the UK DoH being in doubt or deemed unacceptable to the UK.

On the basis of there not being a recorded unresolved dispute I can only assume that the UK was satisfied with the information provided. Further evidence to support this is that funds would not have been made available to Jersey if the UK DoH were dissatisfied with the level of information provided or if due diligence and appropriate checks had not been undertaken.

Accordingly, until the Channel Islands were given notice by the UK DoH, the financial transactions between the jurisdictions were always dealt with in a mutually satisfactory way and this can be demonstrated by a specific UK DoH Allocation Working Paper (AWP) which is an official document produced by the UK DoH to confirm financial allocations.

1.15 THE CONNÉTABLE OF ST. HELIER OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING OFF-STREET PARKING SPACES UNDER THE ADMINISTRATION OF THE STATES OF JERSEY:

Question

Would the Minister provide a breakdown of all off-street parking spaces under States of Jersey administration (including Jersey Harbours and companies wholly owned by the States) within the Parish of St Helier, together with an explanation of under what terms these spaces are given or leased to staff or private users?

Answer

The listing (which has been circulated separately - *see below*), comprising 10,259 parking spaces, has been compiled from the property information held by Jersey Property Holdings, as informed by those States departments and other organisations responsible for the management of the spaces within their span of administration.

2. Oral Questions

2.1 Deputy T.M. Pitman of St. Helier of the Minister for Economic Development regarding the working party looking into the issue of allotments:

Would the Minister advise the Assembly who is on the working party looking into the issue of allotments, to which he referred in the States on 28th April 2009, who is the Chairman and what progress, if any, has been made?

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

Can I ask my Assistant Minister, the Constable of St. Clement, to answer this? He has been dealing with the matter.

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

The working party is made up of a representative from each of the Jersey Farmers' Union, R.J.A.&H.F. (Royal Jersey Agricultural & Horticultural Society), the Jersey Organics Association. It is chaired by an independent, Mr. Jeff Hathaway, and is supported by an Honorary Minute Secretary and a States Horticultural Adviser. The group is in the process of producing a report and recommendations, which I hope to receive by the end of June.

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

At the risk of ploughing the same furrow, I wonder if the Assistant Minister could tell us what lessons were learnt by what appears to be the aborted attempt to set up a series of allotments in St. Lawrence?

The Deputy Bailiff:

I think that goes beyond it, does it not, Deputy? [Laughter]

Deputy R.G. Le Hérissier:

I wonder if I could rephrase it? In selecting these members, was a conversation held with them about the lessons learnt of the previous attempt? [Laughter]

The Connétable of St. Clement:

When the working group was formed the application for the St. Lawrence field had not yet been determined by the Planning Minister.

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

Given that the season is getting well advanced now, for planting seeds, *et cetera*, would the Assistant Minister be able to tell us whether or not we will have any allotments for this year? Time is ticking on and he is now telling us it is going to be the end of the month before we get any results. Could he please try and get things out earlier so that people who are waiting and would like to get, shall we say, winter crops in can do so.

The Connétable of St. Clement:

Until I receive the report I could not possibly comment on a timescale.

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

It was just a point of detail. I did not quite catch after the Honorary Minute Secretary who the other member was of the working group. I am sorry; I just did not catch it.

The Connétable of St. Clement:

I said that the group was supported by the States Horticultural Adviser.

2.2 Deputy F.J. Hill of St. Martin of the Minister for Health and Social Services regarding Verita's Terms of Reference:

Further to her answer on 2nd June 2009 when the Minister said: "In the beginning my highest priority is safety of all patients and all procedures and things that were involved in that tragic day will be reviewed" will she explain who will be investigating the actions of all persons present in the operating theatre, given that Verita's terms of reference specifically avoid acts and omissions of individuals involved with the tragic operation?

Deputy A.E. Pryke of Trinity (The Minister for Health and Social Services):

As I said then, my first priority continues to be maintenance of patient safety and that is why the investigation being undertaken is so important and must be allowed to continue. This independent investigation will provide an explanation of events that occurred in October 2006 and will review the organisational systems, processes and everything else that were in place. The prime objective is to learn from this tragedy and to do everything possible to avoid any reoccurrence in the future.

2.2.1 The Deputy of St. Martin:

Again, I will repeat the question because it was not answered. If indeed Verita's terms of reference are specific that they avoid the acts and omissions of individuals - that would obviously be in the operating theatre - who will be investigating them?

The Deputy of Trinity:

Verita is an independent company - independent of the departments - and I want the truth of what happened that terrible, terrible day. Verita, in the terms of reference, is looking into detailed events on that day, including who did what and what happened, also in the context of hospital systems, procedures and patient safety.

2.2.2 The Deputy of St. Martin:

Could I just press the Minister and ask in actual fact the answer that was given to this House on 2nd June was not an answer as a supplementary but a prepared answer given, no doubt, or I would assume ... maybe I may do an injustice to the Minister, but it was probably prepared by an officer for the Minister. So, how can a Minister say this morning that they will be investigating, when in actual fact only on 2nd June, in a prepared answer ... again, I will refer to it; it says: "The terms of reference specifically avoid acts and omissions of individuals."

The Deputy of Trinity:

The terms of reference start from when the patient was first referred to the hospital by the G.P. (General Practitioner) to the end to when the police investigation commenced. As I have said, everything in between that, including hospital systems, procedures, patient safety, and the terms of reference which, as I said, will not be engaging ... they are not there to engage in any type of disciplinary. If a disciplinary or whatever comes out of that, that will be a separate issue once the report has been given to me.

2.2.3 Senator S. Syvret:

The terms of reference are in fact in the comments that are on Members' desks this morning and those are the same terms of reference as we produced in my report and proposition. I thank Senator Perchard if he could ...

Senator J.L. Perchard:

Question ...

The Deputy Bailiff:

Senator Perchard, it is for the Chair to decide whether it is a question, not individual Members. Thank you very much.

Senator S. Syvret:

The actual terms of reference in the Minister's own set of comments state: "The investigation has no disciplinary remit and will not consider the acts and omissions of individuals." So, the question to the Minister is how can her vowed ambition of getting to the truth possibly be met if the acts and omissions of the individuals involved in the entire affair are expressly excluded from this inquiry?

The Deputy of Trinity:

As I have just said so, where the terms of reference ... that means: "Not consider acts and omissions", it is totally meaning that it will not be engaging in any type of disciplinary. That is a separate procedure. I stress that is providing a full account as possible of who did or did not do what or why.

2.2.4 The Deputy of St. John:

Will the Minister confirm who wrote or advised on the terms of reference? Could the Minister also inform Members if a member of the medical staff who was in the theatre at the time of the tragic death were part and parcel of the persons who drew the terms of reference together?

The Deputy of Trinity:

The terms of reference were drawn up by the Minister at that time with Verita. The Health employer was not involved in drawing up the terms of reference.

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

Will the Minister inform the House whether the terms of reference will establish the facts around the acts and omissions of individuals, accepting that this is not within a disciplinary remit?

The Deputy of Trinity:

As I have said, I am very, very emphatic that patient safety is paramount. The truth of what happened that day ... the truth has to come out and I am absolutely adamant that the truth will come out of exactly what happened on that day. As I have said, Verita are an independent company, independently appointed by the Minister of that time, and they were independent of the health departments. They will provide as full an account as possible of who did or did not do what or why.

2.2.6 The Deputy of St. Martin:

No doubt we will return to this this afternoon, but maybe just as a precursor, could I ask the Minister who prepares the answer for her this morning and is the author of the answer the same person as the author of this report that we have now had presented on our desks this morning for comments?

The Deputy of Trinity:

As with anything, it is officers of the department that prepare answers and reports for me, I sign them off; I was part of that preparation. That is it.

The Deputy of St. Martin:

Can I press for the names? Is it possible, please?

The Deputy of Trinity:

No.

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

I wonder if the Minister could please get in touch with Verita and ask them what other work they have done in this regard in their experience and whether or not they have similar terms of reference,

or terms of reference that they would be able to share with Members so that Members would be able to see whether or not this type of term of reference is suitable and fit for purpose?

The Deputy of Trinity:

I have spoken to Verita and the director many times independently of the health departments. They have a good website; they have a very good track record. The Minister at that time went to the National Audit Commission and I think that is ... the National Clinic Assessment Service to get recommendations independent of the health departments.

Deputy P.V.F. Le Claire:

With respect, that really was not my question. I would like to ask the Minister again if she would please contact Verita and submit to Members similar terms of reference in relation to inquiries that they have conducted in the United Kingdom so that Members can be satisfied that the terms of reference that they have helped to formulate with the previous Minister are fit for purpose, please.

The Deputy of Trinity:

I have been through it with Verita and I asked them to come and do a States presentation, of which they agreed, and they have agreed to come next week. Because I think there are many issues here and it is important that States Members understand exactly that Verita is an independent company.

2.2.8 The Deputy of St. Mary:

I am a bit troubled by this whole business of these terms of reference. The Minister assures us that the truth will be found and that there will be a narrative explanation of the incident; that is what is in these terms of reference. But unfortunately, mistakes do happen; people do make mistakes in whatever way. Yet, we were told that there will be a narrative explanation of the incident, but the investigation will not consider the acts and omissions of individuals. Could the Minister explain how the investigation can produce an accurate, narrative explanation of the incident without considering the acts of individuals?

The Deputy of Trinity:

Under the terms of reference, they will not be able to engage in any type of disciplinary. In the recommendations they might suggest whatever; I will not prejudice any recommendations that Verita might come out with. That is not my remit; that is for later on. From that, whatever and if ever any further on is needed, it will be done.

2.2.9 The Deputy of St. Martin:

I think the answer really is complete in itself. What we are having is an investigation but not into the acts and omissions. I would put it to the Minister, does she not think it is appropriate to have the acts and omissions investigated at the time of Verita doing it, rather than wait until October or whenever, when Verita has finished this investigation?

The Deputy of Trinity:

They are covering everything from when that patient ... the terms of reference say they will be covering everything from when the patient is referred to when ... a police investigation. There has been a police investigation; there has been a Royal Court case too. Once the Verita report is finalised, a copy will go to the Deputy Viscount when there will be a re-adjudgment of the inquest, which still has not been completed. So I will leave it there.

2.3 Deputy G.P. Southern of the Minister for Treasury and Resources regarding the growth of the Social Security budget:

Will the Minister detail for Members the growth of the Social Security budget which has led to a total budget exceeding that of the Health and Social Services Department, as he stated in the debate

on the Strategic Plan, and indicate the extent to which the various sectors of the budget are affected?

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

The prime reason why Social Security's budget is expected to exceed Health and Social Services is because of income support. There are 3 reasons why the income support benefits have increased, (1) housing benefits are now funded through income support, having been transferred from Housing at a cost of £24 million; (2) transitional relief has been provided to those who would have lost benefits at the introduction of the new income support at a cost totalling £9 million, which is effectively - another way around of putting that - new money into the new benefit system; and (3) the States now have on 3 occasions decided to enhance income support payments to insulate those on lower incomes at a cost of £12 million, including £5.8 million for the Le Fondré G.S.T. (Goods and Services Tax) propositions, £4 million for the 2008 budget changes, and the original insulation of £1.75 million.

2.3.1 Deputy G.P. Southern:

Will the Minister then detail for Members what the size of the predicted budgets are in Social Security and in Health and Social Services?

Senator P.F.C. Ozouf:

Members will have received - and I hope examined in detail - the 2008 States accounts, which have a full service analysis of both of those departments. The total budget for Social Security's information in the public domain for 2008, the final approved budget spend was £146,371,000; Health and Social Services, £148,583,000. These figures, as far as Social Security, are expected to be higher, obviously, this year for various different reasons, but of course that will be disclosed in the Business Plan when it is lodged.

2.3.2 Deputy G.P. Southern:

Does the Minister have an estimate for the 2009 figures, or 2010 in fact?

Senator P.F.C. Ozouf:

I think it would be most inappropriate for the Minister for Treasury and Resources to put into the public domain at this stage plans for cash limits for next year when they are still under discussion.

2.3.3 Deputy G.P. Southern:

Will the Minister inform Members what the expected growth currently is in the supplementation required from the taxpayer?

Senator P.F.C. Ozouf:

The growth in supplementation for 2008, the budget for supplementation rose from £58.6 million in 2007 to £61.8 million, an increase of 5.5 per cent. Of course, the Deputy will be aware that supplementation accounts for a significant proportion of the overall Social Security budget. The Council of Ministers has committed to reviewing it, but I must remind the Deputy before he thinks that there is some sort of problem here, that supplementation is used ... the money is taken from income tax revenues to supplement lower income people for their Social Security contributions; a benefit for lower-income families.

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

The Minister said that new monies were in the income support budget for £9 million for transitional relief. Is the Minister convinced that this £9 million is effective in this new - targeted - benefit system and how long is this money going to be injected into a system that really needs a revamp?

Senator P.F.C. Ozouf:

This is quite a difficult thing to explain, but the new income support measures effectively completely recast our entire benefit and former welfare system. All recipients - as the Deputy will know - that received benefit under the previous systems - disability, transport allowance, all the other benefits that were in place - because of the transitional arrangements, kept all of those benefits and they were expected to be withdrawn over a period of 2 or 3 years. In order to ensure that income support started and paid the benefits, the new benefits, to single-parent families and other low-income families in the Island from day one, the new money was put in there. So when I describe the fact that there is new money, there has been a real investment of new money into the new benefit system, while the transitional period of the old benefit system is withdrawn.

2.3.5 Deputy J.A. Martin:

Just supplementary - so I totally do understand and the Senator knows that - my point being it has now been so long that people who were in the old system, fair enough, are keeping transitional money. There are many single parents, elderly, who he has just referred to, and people needing a housing benefit, who have entered the system since it began and they are sometimes up to £100 worse off a week than someone in exactly the same position. Is he using this transitional £9 million in the correct place?

Senator P.F.C. Ozouf:

The transitional payments, which have been approved, of course, by this House on a number of occasions ... and of course the Deputy is quite right that there are some recipients of previous benefits that would not be entitled to benefits under the new system. I think that the Deputy - and I would be interested in her view - would agree that some of the benefits that were in place previously were not fit for purpose and were not targeted to those real low-income families and to those people with particular circumstances that needed that benefit. The Assembly decided that, however, those benefits would be withdrawn over a period of years and I am looking at the moment at the case whether or not the transitional payment should continue. But she is absolutely right to say that there are some families that do get the old benefits that were under the old system and I would venture to suggest that those are people on relatively higher incomes, particularly in the housing benefit system.

2.3.6 Deputy M. Tadier of St. Brelade:

The Minister mentioned that one of the reasons for the increase in the budget of Social Security was to do with the rent rebate being transferred to income support. Does the Minister concede that it would be in the long-term best interest to increase the social housing portfolio of the States, rather than hand over public - that is taxpayers' - money to private landlords, many of who may not even live in Jersey and do not contribute tax to the Island?

Senator P.F.C. Ozouf:

A little bit outside of the Treasury world, but a very good question, if I may say. I am absolutely at one with Deputy Tadier and others to say that the well-intentioned policy of putting money into private sector rent rebate ultimately did not benefit people in housing. It ultimately gets capitalised in the value of housing and effectively boosts housing prices. The benefit goes entirely into the pocket of landlords. That is why we have reformed income support. That is why we have made a complete change in doing away with the well-intentioned policies of private sector rent rebate and reform is underway. It is going to be difficult though to withdraw that benefit from people as there is going to be an adjustment for those people who are going to go to their landlords and say: "This is what I can pay for that accommodation" rather than the landlord effectively getting a circuitous route of getting subsidy from the States. That must be withdrawn, but it is difficult to withdraw such benefits.

2.3.7 Deputy M. Tadier:

Hence the first part of my question about investing in social housing and increasing the portfolio. Could the Minister comment?

Senator P.F.C. Ozouf:

I am very happy to comment. I agree absolutely with the importance of having a strong, large, social housing, not-for-profit; some in the States and some in housing associations. That is why I am in the process, with my Assistant Minister, of discussing with Constables of exactly how we can further improve the social housing stock, particularly for the senior citizens and other people; further improvements for housing associations which are underway. I completely agree that the public investment in social housing and other ways of getting people into affordable housing must be one of the key priorities of this Assembly.

2.3.8 Senator P.F. Routier:

Does the Minister agree with me that the increased value of spend on income support and social security generally demonstrates the commitment of the States in supporting people on low incomes?

Senator P.F.C. Ozouf:

Absolutely. That is the point that I was trying to make. While there is, of course, cause among Members to increase social contribution and increase income support payments, I am wanting in this answer to get a very clear message across, and in the States accounts today, that we are rightly investing millions of pounds - new pounds - into improving income support systems and he is absolutely right.

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

In view of the Minister's ethos of saving, would he not agree that an appropriate benefit fraud system should be in place before throwing more money at the system?

Senator P.F.C. Ozouf:

I completely agree that we need to do more in terms of also unifying States departments in the battle against those people who do get benefits inappropriately and we are going to do everything we can to departments. There are discussions I do not want to reveal today, but there are some discussions at the Council of Ministers' level of how we can put in place better arrangements to ensure that every pound of taxpayer's money is going to the right recipients and that those people who defraud the system are identified and their benefit is withdrawn.

2.3.10 Deputy G.P. Southern:

Since the Minister strayed on to the ground, does the Minister not accept that the biggest problem with any benefit system is not the degree of fraud entailed in that system, but the fact that in many cases people do not claim? Will he take equally steps to ensure that publicity and advice is readily available to make sure that all people who are in need of and eligible for benefits do claim? Because at the moment it is woefully inadequate.

Senator P.F.C. Ozouf:

Two questions. First of all, of course everybody is not defrauding the system, but also, equally, with a budget of some £146 million, of £76 million worth of benefits, other benefits within the Social Security system, other benefits given by other departments, there is going to be, unfortunately, a cohort - a group of people - who will try and trick the system. We need procedures in place to identify those. In his comment in relation to getting recipients - potential recipients - the right information to claim their benefits, I would have thought that he would have welcomed warmly the bringing together of income support in one place to ensure a much more easy entitlement system, an automatic entitlement system, a one-stop-shop for benefits, but which is being brought in as a result of income support; a much better arrangement to identify those that can

get benefits and to direct it towards them. There is no effort of the Council of Ministers to not target benefits to those that should have them.

2.4 Deputy M. Tadier of the Minister for Education, Sport and Culture regarding the fairness of the grant system for higher education:

Is the Minister satisfied that the grant system for higher education is fair and, if not, what steps is he taking to make it fairer?

Deputy J.G. Reed of St. Ouen (The Minister for Education, Sport and Culture):

I believe the current arrangements are generally fair in that the scheme of means-tested support against gross family income ensures that the financial support offered to students is distributed according to need. As with all such schemes, however, improvements can be made. I am aware, for example, that some parents are disadvantaged in the support they receive when compared with the support given to parents who claim single-parent status. I intend to make improvements to the current scheme in this respect once the research findings are available. I have also ensured and asked for a review to be carried out into the level of student grants for 2009 and will be looking to see if support can be increased later this year. Thank you.

2.4.1 Deputy M. Tadier:

I have had a lot of correspondence in the last 2 weeks on this issue. Can the Minister comment specifically whether he thinks it is fair that some wealthy parents who may be separated are abdicating their responsibility and are playing the system, in some cases, to get a full grant for their children while not paying anything in maintenance?

The Deputy of St. Ouen:

I have already highlighted that this area is to be addressed to endeavour to find a more equitable solution.

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

I have a number of constituents whom I would refer to as professional, whereby due to financial constraints only the first child may go to university. My question, is the Minister pursuing the United Kingdom educational authorities to achieve parity in university fees with their U.K. (United Kingdom) students? Thank you.

The Deputy of St. Ouen:

I am constantly in discussion with the islands of Guernsey and the Isle of Man to look at the way that this Island and others are treated in relation to the charging of university fees. Clearly, there are some discrepancies, which I believe, personally, are unfair and I will be aiming to raise these issues yet again in conjunction with the other islands to the U.K. Government. Thank you.

2.4.3 Senator J.L. Perchard:

Does the Minister agree that it would be just and fair if his department assessed the joint income of a student's biological parents, a student who is seeking to access a grant for further studies at university? Does the Minister agree that it would be just and fair to assess the joint income of a student's biological parents?

The Deputy of St. Ouen:

That is just one of the options that are open and available to me and we will be looking at that and the issue of considering household income as an alternative.

Senator J.L. Perchard:

I wonder if the Minister would answer the question whether he considers it just and fair that the joint income of a student's biological parents should be assessed when that student is seeking funds for university grants?

The Deputy of St. Ouen:

As I said before, we are considering this matter at the moment. I have not come to a conclusion.

2.4.4 Senator S.C. Ferguson:

With regard to separated parents or divorced parents where one is the one responsible for paying maintenance and is very well off, as Deputy Tadier referred to, has the Minister considered discussing this with the Law Officers to ensure that such provision is made when the orders for maintenance are paid in the court?

The Deputy of St. Ouen:

No, not as yet.

2.4.5 Deputy M. Tadier:

Simply to re-ask the last part of my question, what concrete steps does the Minister for Education, Sport and Culture envisage to make the system fairer?

The Deputy of St. Ouen:

I have committed to reviewing the system and I will aim, by the end of this year, to have new and hopefully more equitable provisions in place.

2.5 Deputy R.G. Le Hérissier of the Minister for Economic Development regarding procedures to ensure current Sunday trading laws and regulations are applied with consistency:

What procedures, if any, are in place to ensure current Sunday trading laws and regulations are applied with consistency?

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

Can I ask my Assistant Minister to yet again step into the breach? He has been dealing with Sunday trading laws.

The Deputy Bailiff:

He has an interesting portfolio.

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

Indeed, varied. Sunday trading is currently regulated by the 1960 Sunday Trading Law, which establishes a system under which shops are generally not allowed to trade on a Sunday unless a permit to do so is issued by the Constable of the relevant Parish. As the Constable is solely responsible for the issue and revocation of permits, the Constable is therefore also responsible for the consistent application of the Law within his Parish. There are no provisions in the current law to ensure that consistency is established across Parishes and the Minister for Economic Development is not involved with the granting of permits or the regulation of the Law. However, the Deputy may have heard that a new law has been drafted and hopefully will be lodged in the next few days and, if approved by the States, will not only introduce a new permit scheme to allow the Constables greater flexibility in issuing permits, it will also remove the list of permitted goods and establish the Comité des Connétables as an appeal body. This should remove any current inconsistencies which may exist in the operation of the current Law.

2.5.1 Deputy R.G. Le Hérissier:

Would the Assistant Minister, in his dual role as both a Constable and indeed a person with notional responsibility for the policy, not admit that there are grave discrepancies occurring in the Island and that in some Parishes the rules are applied with literalness and rigidity and in others goods that are apparently forbidden in one Parish are allowed in another? Would he not say that this makes the whole thing farcical?

The Connétable of St. Clement:

I would agree that the current Law is very difficult to administer and even more difficult to police. Certainly, as a Connétable, if I received a complaint of a breach of the Law, clearly it would need to be investigated. I have only been in office for 6 months and so far I have had no such complaints.

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

Will the Assistant Minister undertake, as he guides the new Law through, to look at the protection of those workers in the retail industry who for conscience clauses feel that they cannot work on Sundays and who in other jurisdictions have then been unfairly discriminated against in matters like promotion?

The Connétable of St. Clement:

Yes, absolutely, as far as that is practical. I do not honestly think there is a great appetite for Sunday trading in Jersey among either the public, or indeed the retailers, but there is an appetite for an improvement in the very difficult and out-of-date Law that we currently have to operate.

2.5.3 Deputy R.G. Le Hérissier:

I am reassured by the Assistant Minister's views on reform, but what advice would he give to someone who believes they are the subject of major inconsistency in the way the Law is applied? What would he suggest that that person or that retailer does - or indeed, a member of the public does - in the circumstance?

The Connétable of St. Clement:

As the Constable of each Parish is responsible for the administration of the current Sunday Trading Law in his or her Parish, any individual who has a complaint about the administration of that Law, I believe, should in the first place address that complaint to the Constable.

2.6 The Deputy of St. John of the Minister for Economic Development regarding consultation with the Marine Traders on the Draft Shipping (Safety of Navigation) (Jersey) Regulations 200-:

I sincerely hope it is the Minister that is going to answer the question and he is not going to delegate it.

The Deputy Bailiff:

Well, you had better ask it first. [Laughter]

The Deputy of St. John:

Given that during the debate of P.48/2009 Draft Shipping (Safety of Navigation) (Jersey) Regulations 200- on 19th May 2009, the Minister maintained that the legislation had been circulated to Marine Traders for consultation, could he confirm the list of those consulted, given that the Traders' names do not appear on the consultation document issued by Regulatory Services on 19th May, and, if not, could he explain why?

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

I shall be answering this question, although I am always loath to answer any questions from the Deputy of St. John. The initial consultation list contained 2 marine traders: Bluewater Supplies and H2O Sports. Marine traders were also part of the Marine Leisure Port User Group, where Solas was discussed. Further marine traders were specifically consulted in January and February of 2009, after I agreed to extend the consultation period. Traders included were Iron Stores Marine, South Pier, Sunseeker, Fairline, Princess, C.I. Marine and Freeport Marine.

2.6.1 The Deputy of St. John:

Given that the Minister has explained in part, at the time of the question, from myself on the day of the debate, I asked if the marine traders had been consulted and he said yes and I asked for details. Given that they had been consulted, which I am pleased to hear they had, I am concerned that we did not have it on our original document that was circulated as part of the report and proposition, because then if it had been it would not be necessary for me to put this question today because the Minister fluffed the answer he gave us on that particular day, as he is inclined to do on a number of times when he is questioned. But that said, I will not labour it any further, just as long as he knows that I am on his case.

Senator A.J.H. Maclean:

I think there was a question, so I will answer it, if that is all right? **[Laughter]** I would just point out that during the debate I did refer back to *Hansard* and the Deputy did remind me that I had not completely answered his question in relation to the marine traders. At the time, I had initially said that I think the Deputy was referring to marine traders. I cannot immediately see them on the list, but there are 27 organisations that were consulted - he will remember that. He further came back and asked for ... sorry, at the end of the debate I confirmed having referred to the notes that I had available, and I will quote: "Could I also clarify for the Deputy of St. John, I have just noticed on the list here, I had missed it when I read it briefly before, the marine traders were in fact included just for his information." Indeed, the initial consultation to which he refers to did in fact list 2 marine traders and many others that I have just mentioned have also been consulted fully. Thank you.

2.7 Deputy G.P. Southern of the Chief Minister regarding the areas of public sector services which could be subject to more private sector involvement or outsourcing:

Will the Chief Minister inform Members what consideration, if any, has been given to which areas of public sector services and might be subject to more private sector involvement or outsourcing, as agreed within the Strategic Plan? When will he inform the Assembly of any such plans and advise what numbers of public sector workers he expects to be subject to these processes in the coming 2 years, along with any associated expenditure targets?

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

All organisations and activities change and adapt as technological improvements, economic conditions and other innovative opportunities arise. The public sector must change and adapt, particularly in the current challenging economic conditions. I expect all departments to keep the provision of their services under constant review, which must include whether there are more commercial ways of working or opportunities for wider private sector involvement. As such opportunities arise I expect those departments to implement them as a means of improving efficiency and keeping costs down. A good example of this is the recent exercise tendering for the improvement and upgrading of the States website. As a result, a consortium of private companies successfully bid for and are now undertaking not only the development but also through to the provision of web facilities. Although this work could have been done in-house, we believe, and the open bidding process confirms, that there are some areas such as this where the States can benefit from private sector expertise. I informed States Members of that change and when other significant

changes were implemented I expect that I, or other Ministers, would likewise inform the States. But not all areas of the public sector have the same levels of opportunity and I do not believe that it is realistic to set targets on this matter, either for money or manpower savings. Rather, we should regularly review our activities and seize worthwhile opportunities as and when they occur.

2.7.1 Deputy G.P. Southern:

The Chief Minister has pointed to individual departments and Ministers in saying that they are responsible for any such privatisation and outsourcing issues. Is he informing the House that such issues, which have a serious impact on the public sector workforce, will not be coming before the Council of Ministers for some form of agreement at that level?

Senator T.A. Le Sueur:

The Deputy speaks on hypothetical matters. I have no idea whether any particular operation would include significant impacts on the workforce. If that were to happen, certainly it may well be that we would discuss it, certainly with the States Employment Board and possibly with the Council of Ministers. As I said in my original answer, we take every single case on its individual merits.

2.7.2 The Deputy of St. Mary:

On this matter of privatisation and outsourcing, has the Chief Minister undertaken any high-level appraisal of ... in what circumstances in general this can work and in what circumstances have real problems been found to happen elsewhere? There are plenty of examples of banana skins in this area and I just wonder whether the Chief Minister has conducted any proper appraisal of the pros and cons in this area.

Senator T.A. Le Sueur:

No, I think the Deputy seems to believe that we would look at this at a general basis and I am trying to emphasise that we look at each case as a specific entity. I am well aware of the potential for banana skins in this one and that is why I think it is important that we look at each item on its merits and not have a general, blanket approach, which in many cases would not be appropriate.

2.7.3 Deputy G.P. Southern:

So can the Minister just confirm for Members that there are no targets, either for workforce reductions via privatisation or outsourcing, or for financial targets met by those sorts of moves?

Senator T.A. Le Sueur:

Yes, that is what I said in my final paragraph.

2.8 Deputy C.F. Labey of Grouville of the Minister for Housing regarding sheltered housing on re-zoned land:

Following claims of an urgent, desperate need for sheltered housing during the debate to re-zone 60 vergées of countryside in 2008, can the Minister advise what work, if any, he has undertaken with the Connétable to develop a coherent criteria for admittance on to the waiting lists, whether the lists will be held in the Parishes or centrally, and explain how many homes have been built or the building works commenced?

Senator T.J. Le Main (The Minister for Housing):

I met with the Comité des Connétables on 9th March to discuss these issues and we have been able to make some good progress. We are working together to improve our application procedures in order to eliminate any potential duplication in our respective figures on housing need. However, I have long had the view that the allocation of all affordable housing schemes should be via a gateway under a common waiting list with defined criteria. This concept would require anyone wishing to access any form of affordable housing to register and be assessed through the gateway

where a master list would be maintained. Not only would this ensure that all our affordable housing is used to its maximum potential, it would of course provide constantly up-to-date and accurate figures in respect of demand. Subject to the approval of the Minister for Planning and Environment, who brought the rezoning proposition to this House, I accept that there will continue to be occasions when the Parishes would wish to deviate from set criteria. Should this be the case then clearly the Parish concerned would need to demonstrate and explain the reason behind their decisions if challenged. For the avoidance of doubt I can confirm that on 1st June my department had 306 applicants on the list for one-bedroom sheltered accommodation. These are real people, all visited and assessed as being in need of such accommodation now regardless of whether or not they appear on any other list. This is a minimum number as opposed to a maximum. In response to the Deputy's final question, my department has been able to complete 18 one-bedroom flats at Les Petits Hinguettes at Le Marais which will soon be fully occupied. In respect of all other developments I will of course continue to work with the Minister for Planning and Environment. I alone cannot build a single unit of accommodation on any rezoned sites or land, that remit is with the Minister for Planning and Environment.

2.8.1 The Deputy of Grouville:

Could the Minister explain how he was able to assess the urgent desperate need before the Gateway system was in place and in his answer he said that the Le Marais flats were completed; could he confirm if they were part of the rezoning of the countryside?

Senator T.J. Le Main:

No, they were not part of the rezoning. But can I say that I came to this House with exactly what I am saying this morning, that there is a minimum number of people on the waiting list currently at the moment, 306, but when this came to the Assembly last year it was a higher figure than that and all these people, regardless of what... are in need and have been assessed as in real need. No questions, no ifs or buts.

2.8.2 Deputy T.M. Pitman:

Could the Minister just clarify for me, he may have done this before but I cannot recall, what consultation or research was undertaken in arriving at the age criteria for people trying to get into these schemes, which I think is 55, is that correct?

Senator T.J. Le Main:

I am not quite sure what the Deputy is referring to, but the policy of the Housing Department is that it is an age of 60, but if the need is there before for medical or other difficulties then every case will be assessed and decided on its merits.

2.8.3 Deputy J.A. Martin:

Just to push the point of the question, the Minister says that he has met once with the Connétables and the question the Deputy is asking is when will there be coherent criteria, and when will they also include the Housing Trust because they have not even managed in the last 10 years after millions of pounds of money to get the same criteria for social housing as Housing Trusts, and I know this is urgent on the Minister's list because I heard him banging on about this on the radio about 6 months ago? This is the Gateway scheme he is promising us. It is not in existence and can he put a timescale on when everybody will meet the same criteria for social housing over-55 in all sectors; Parish, Trust and the Housing Department?

Senator T.J. Le Main:

Yes, that is a very good question and I am very happy to advise that I have now received at the end of last week the completed Professor Whitehead report on social housing and that is one of its main recommendations. I have to read it, digest it and comment and make any additions or deletions in it and it will, once I have signed it off - hopefully at the end of this week - then it will go out to all

Members for consultation and hopefully the debate will take place during this year where all those issues raised by Deputy Martin will be hopefully approved and given support by the Members.

2.8.4 Deputy R.G. Le Hérissier:

Slightly on a tangent, would the Minister announce what progress is being made on what was apparently going to be the major part of these developments, indeed the stock development in the countryside? Would he announce what progress is being made on the St. Saviour's development and would he confirm whether or not there are delays there?

Senator T.J. Le Main:

Well there must be delays. As I say, I am the Minister for Housing and certainly my Assistant Minister, Deputy Power, has been working very hard to try to bring together some developments to come online, and all this is in the hands of the Planning Department and I am not aware currently right up-to-date what the difficulties are with the St. Saviour issue. But I have to say that we are very, very desperate to see some of these sites realised.

2.8.5 The Deputy of Grouville:

If I could just say that I am quite disappointed that the first meeting the Minister for Housing had with the Connétables was on 9th March when my proposition to bring this criteria forward was approved on 2nd April last year, so a year before he has a meeting with the Connétables. But on to my question. Could the Minister confirm that 6 of the 8 rezoned sites are either owned by or will be developed by the same person or his company?

Senator T.J. Le Main:

I know that some sites are owned by one developer, I am not sure, I cannot give you any final details on ... I do not involve myself with the applications at Planning. But the Deputy of Grouville is correct, there is one developer that owns several sites.

2.9 Deputy M. Tadier of the Minister for Health and Social Services regarding the pressure on bed space within the Mental Health Service:

Notwithstanding annual fluctuations, is the Minister aware of the pressure of bed space within the Mental Health Service and the subsequent pressure it is putting on staff and if so what steps, if any, are being taken to resolve this issue?

The Deputy of Trinity (The Minister for Health and Social Services):

I will ask my Assistant Minister to answer this question.

Deputy E.J. Noel of St. Lawrence (Assistant Minister for Health and Social Services - rapporteur):

We are indeed aware of pressures of bed space within the Mental Health Service and we are mindful that this pressure must have a negative effect both on clients and on members of staff. The Mental Health Service provides a range of services which range from children and young families through to old age psychiatric. There is a pressure on this range of services as more and more clients are presenting for treatment and, in addition to this fundamental fact, demand is driven particularly by the ageing population, a factor which is placing dementia services under great strain at the moment. While these pressures are significant and will have to be addressed in the near future, it is important to bear in mind that the model of service for mental health clients is a very progressive and modern one. The emphasis is very much upon supporting clients and their families to live in the community for as long as practical and safe for them to do so through a range of measures which include community psychiatric nurses, rehabilitation centres, sheltered accommodation and day centres. The service which is particularly acute at this time is indeed for

the services for dementia sufferers where Rosewood House has an occupancy rate of some 98 per cent, and we can inform the Deputy that there is a significant number of vacancies for qualified nursing staff which we are finding difficult to recruit. Indeed this has been the case for almost a year now.

2.9.1 Deputy M. Tadier:

I thank the Assistant Minister for his answer, and just following on from that last part in particular talking about the difficulty to recruit staff, I think the next question is quite pertinent. Is the Assistant Minister aware that due to the absence of a suitable facility that prisoners with a mental illness are being treated in the mainstream mental health service and that this situation is putting undue pressure on the infrastructure and on the staff, many of whom, I am lead to understand, are feeling the pressure in particular? Would the Assistant Minister comment?

Deputy E.J. Noel:

I am happy to comment. There is quite a great deal of cross-over between the prison service and the health services area and the working party has been set up to look at this and met some 2 weeks ago. So we are hopefully getting some progress in the coming months.

2.9.2 Deputy T.M. Pitman:

Could the Assistant Minister confirm or deny that children have been treated in the adult admissions unit and if the answer is yes, does he feel this to be acceptable?

Deputy E.J. Noel:

I am not aware of any children being treated in the adult unit; that information has not filtered down to me. I am aware that there are some issues with youths and the sentencing regime and this is a cross-over between the prison service and the health service.

Deputy T.M. Pitman:

Could I just advise the Assistant Minister that I can provide evidence to the positive that that is indeed so.

Deputy E.J. Noel:

I would be delighted to see it.

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

Could I ask the Assistant Minister if he can tell the House how many times the police have been called to the Mental Health Unit because the staff have lost control in recent times because of under staffing?

Deputy E.J. Noel:

No, I am not able to give that information, I do not have it to hand.

Deputy M.R. Higgins:

Could I ask the Minister if he would supply it with a written answer please?

Deputy E.J. Noel:

Happy to do so.

2.9.4 Deputy R.G. Le Hérissier:

Given the shortage of mental health staff, would the Assistant Minister outline what steps he is taking to rectify this and is one of those steps the provision of locally-based training?

Deputy E.J. Noel:

As mentioned in the main part of my original answer, the department have been actively recruiting for a year now and it has been proved difficult. New initiatives hopefully will be coming out shortly.

Deputy R.G. Le Hérissier:

Do the initiatives include locally based training?

Deputy E.J. Noel:

Wherever possible we will be using locally based training, yes.

2.9.5 Deputy M. Tadier:

I believe I inferred from the previous answer that the Assistant Minister is saying that cases of mental health illness are going up globally as a trend. Can he also confirm that? If he cannot I certainly will: bed space has been consistently and systematically cut in the Mental Health Service over the last 5 years and how does he reconcile that with the increase in the population that he voted for?

Deputy E.J. Noel:

The Deputy has more information than I have on this, quite obviously. I am not aware that bed numbers have been decreasing over the last few years. I am happy to look into that and perhaps we could have a discussion later.

2.10 The Deputy of St. John of the Chief Minister regarding the Emergency Planning Department:

Given that in the past each Parish had Emergency Planning Liaison Officers at no extra cost, would the Chief Minister explain why it was decided to disband this system 3 years ago and employ additional staff at the Emergency Planning Department, and why no full Island emergency exercise has taken place in the last 3 years to help our emergency services gain hands-on experience with all their key counterparts?

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

The decision as to whether any Parish has a Civil Emergency Liaison Officer is one made by each Parish. It is not a decision to be made centrally and I am not aware any decision has been made to disband the system. The Emergency Planning Department consists of the Emergency Planning Officer and a part-time secretary. Before the advent of Ministerial government, Emergency Planning answered to the Bailiff as President of the Emergencies Council. In 2005 this function transferred to the Chief Minister's Department and the staff and budget were also transferred. No additional staff have been employed. In the 2009 Business Plan the States agreed to an additional member of staff in the Emergency Planning Office to ensure that the States became fully prepared to respond to any emergency and that there would be cover throughout the year. That appointment has not yet been finalised. As far as the Parishes are concerned a representative of the Comité des Connétables sits on the Emergencies Council and there is ongoing liaison with the Parishes. We consider emergency planning exercises to be very important and 4 exercises have been carried out over the last 4 years. The role of the Emergencies Council is primarily a strategic one and I believe that the Emergencies Council is overseeing a professional co-ordinated Emergency Planning Service which involves the Parishes and all emergency services having to prepare for a diverse range of possible emergencies. However, if the Deputy would like to meet and discuss possible improvements I would be happy to meet him.

2.10.1 The Deputy of St. John:

I am pleased to hear the final comments of the Minister. That being the case, I think he has been ... whoever prepared the answer for him, is incorrect. Having been a member of the Emergencies Council in the past myself, albeit as a Vice-President of Public Services, at the time of disbanding the Parish Liaison Officers the original decision in fact was made by the Emergency Council who instructed the Constables to disband. That being the case, I would like to know in future would the Minister please make sure that he is properly briefed before he gives an answer and will he please confirm that the exercises that have been held to date have been table-top exercises and no full Island emergency exercise has taken place in the last 3 years other than table-top and a partial exercise where a hands-on exercise was done at the airport, but not a full Island exercise where all emergency services - honorary and States - are involved? Will he please confirm that that is correct and please tell us when we are going to see a full Island exercise?

Senator T.A. Le Sueur:

If I have not been fully informed I should appreciate a copy of that paper which the Deputy seems to have which gives more information than certainly I have. But I think as far as the Emergencies Council are concerned, it is primarily a strategic operation and to that extent emergencies come in a variety of shapes and sizes, generally not the ones one expects. One can have as many practical exercises as one likes but one really has to firstly devise a proper strategy for dealing with any emergency in a generic form. So I absolutely defend the need for table-top exercises. They can be supplemented by practical experience and where appropriate that would be done as well. It is a question of trying to do both, not just either or one or the other.

2.10.2 Senator S. Syvret:

Could the Chief Minister confirm that the Civil Emergencies Planning Officer works at that job full-time as per States Employment Regulations and is not, in fact, running a multi-million pound private business in parallel to his public employment as did a previous Emergencies Planning Officer?

Senator T.A. Le Sueur:

I cannot speak for the previous Planning Emergency Officer but the present one works full-time for the Planning Board and works extremely hard and diligently in his activities.

2.10.3 The Deputy of St. John:

Will the Minister admit that the cost of running a full Island emergency exercise runs in the region of £250,000 and that is the real reason that we have not seen a full emergency exercise in recent years?

Senator T.A. Le Sueur:

I do not think cost is the driver in this, certainly it will be a factor, but what is more important? Any exercise of that nature has to be realistic, and to the extent it can be done in cheap and other ways I want to achieve it in the best possible way in order that we are properly prepared for any emergency should one arise.

2.11 Deputy R.G. Le Hérissier of the Minister for Treasury and Resources regarding ‘white collar’ unemployment:

Is the fiscal stimulus package designed to deal with the very real possibility of white collar unemployment?

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

The fiscal stimulus package is designed to protect employment across the whole economy and, following the very helpful input from Scrutiny and after discussions with the Council of Ministers

last week, I can say that I will be making the first allocations under the fiscal stimulus package later this week or early next. I can say that I am very supportive of the initiatives that have been put forward by Jersey Enterprise to help businesses to promote new ones: Highlands, to help young unemployed people that may find it challenging to find work and help to retrain people from whatever industry they come from irrespective of any jobs; support to the Careers and Employment Service to advise and support unemployed people. What I should also say is that while fiscal stimulus is important, there are a number of other major initiatives designed to help the whole of the economy; the automatic stabilisers funded from the fiscal stimulus package support the economy by having more money circulating in the economy between businesses and Islanders. Also the co-ordinated actions by government and central banks across the world help to support our economy as well as their own. We have increased the funding for Jersey Finance, put resources into law drafting to develop intellectual property. We have also seen the Skills Board bring forward innovative projects such as the new teacher retraining scheme that was put forward last week. All of these policies and initiatives are designed to help the whole of the economy which helps white collar workers too.

2.11.1 Deputy R.G. Le Hérisier:

Given the very circuitous approach adopted to the problem, would the Minister identify the specific programmes and would he give his analysis of what the white collar unemployment situation is, in his view, at the moment?

Senator P.F.C. Ozouf:

It is good to hear that the Deputy is coming off the fence. Circuitous, I do not think my answer could be described as circuitous. I think my answer could be described as pretty decisive, acting early, designed to ensure that those people who could be unemployed are given every assistance. So I am not going to speculate on the amount of unemployment in the white-collar areas, if you can describe white-collar - I do not particularly like that differentiation between people - but certainly we are expecting there to be a contraction within financial services as a result of mergers of organisations, a result of the very substantial freeze-up of financial markets, that is having an impact on white-collar employment. But also, on the other side, are policies designed to support Jersey Finance, winning business by the creation of new products such as foundations, intellectual property, reaching out to new markets in Asia Pacific and elsewhere, Jersey Finance's visit a couple of weeks ago to European states; all designed to bring business to Jersey that otherwise would not be brought.

2.11.2 Deputy M.R. Higgins:

I would just like to follow up on that. Would the Minister confirm, we have no idea what white-collar unemployment or unemployment is generally because we do not have the statistics?

Senator P.F.C. Ozouf:

Deputy Higgins is getting quite a reputation in asking questions that I think he knows the answer to. I have sat... and he is suggesting that we do not know ... I have sat with the Corporate Affairs Scrutiny Panel and spoken in great detail, off the record and confidentially where commercial confidentiality is necessary and explained what we think is going to be the downturn in certain areas of financial services and what the ranges of jobs under various different scenarios will be. What I can say is that while there was real concern that there could be serious problems in our financial services industry earlier on this year, some of those worst case scenarios are not appearing at the present time, and I would say to Deputy Higgins that he would join me in welcoming that situation that our industry is holding up very strongly against fierce international competition and unprecedented problems in financial markets.

2.11.3 Deputy M.R. Higgins:

I would just like to follow up on that. The question I asked was... the reason I say about unemployment is we do not have the figures. We do not have the ability to collect the figures. For example, people working in the finance industry do not register with Social Security, they go to job agencies. There is no official measure at the present time of gathering that data. So what I am referring to is I do not know what the situation is out there. I hope it is not as bad as people think it might be, but I think it is time we started adopting and gathering data so we know what the true position is.

Senator P.F.C. Ozouf:

The Deputy knows that we are gathering an enormous amount of information. Certainly we did not have the systems to count unemployed because unemployment has not been a problem in the Island. What we do know is that we have some of the best employment data available of any country in terms of the returns from Social Security. I was speaking only to the Minister for Economic Development yesterday to ensure that we were getting up-to-date feedback from, for example, recruitment agencies, *et cetera*, to understand exactly what the areas of problems in financial services in the other service sectors of the economies are. In addition, the Minister for Social Security has already answered a question in this Assembly saying that he is doing work with his department on identifying what the real numbers of Income Support are and he is working with the Statistics Unit too. This is a small Island, we are capable very quickly of getting good information of what is going on, moreover inviting this Assembly to make decisive decisions like the fiscal stimulus package designed to help keep people in work and that is exactly what we are doing.

2.11.4 Deputy R.G. Le Hérissier:

A final question. Would the Minister confirm that other than generating some very general programmes, would he confirm he is specifically looking at issues, for example, like allowing people to have transitional terms at work so they are not immediately made unemployed, where there are expansion projects but a gap in work, he will allow transition support available to employees? Because there is a real danger that there is, according to anecdote, a drip, drip of increasing unemployment in the white-collar sector and we are avoiding that issue in terms of the so-called general programme.

Senator P.F.C. Ozouf:

I would expect that this Assembly would wish Ministers to take decisions, not on anecdote, but good research and proper feedback from industry. We have excellent networks with the finance industry, with Jersey Finance, with all of the different trade associations, we hold regular discussions with all of the key employers to understand what their job recruitment patterns are going to be, whether or not they want a recruitment freeze; there is an incredible amount of information held in the Population Office because every single job is licensed in Jersey, every (j) cat. is issued, every non-qualified license is given, we have a very clear picture of employment with designed, focused and targeted programmes.

2.12 Senator S. Syvret of the Minister for Health and Social Services regarding the Terms of Reference produced by Health and Social Services for the Verita enquiry:

Does the Minister consider that the terms of reference produced by Health and Social Services for the Verita inquiry are flawed as they expressly exclude consideration of the acts and omissions of individuals thus rendering an effective examination of the care and treatment of Elizabeth Rourke impossible given that such care and treatment as she received was the responsibility of a variety of individuals?

The Deputy of Trinity (The Minister for Health and Social Services):

I do not think the terms of reference are flawed. The terms of reference, as it says... there are 5 terms of reference: examine the care, treatment and management of Mrs. Elizabeth Rourke from the G.P. referral up to the start of the police investigation. That is the terms of reference. What the Senator is saying about the acts and omissions is in the preamble of which the Minister at that time set down independent of the department.

2.12.1 Senator S. Syvret:

Supplementary, if I may? Could the Minister explain why the terms of reference, as issued to the media and in fact issued under the name of the Director of Clinical Governance at the hospital, omitted that crucial sentence about the acts and omissions of individuals not being examined?

The Deputy of Trinity:

No, I cannot because I was not Minister at that time.

2.12.2 Senator J.L. Perchard:

Does the Minister hope that Members will take the time to read her comments that were issued late in the day this morning before any debate this afternoon, and does she agree with me that it is very important for a robust inquiry not to take the easy option of highlighting the consultant who had ultimate care for the patient and hold them accountable individually, and that the processes behind that are greater than the omissions of any single consultant?

The Deputy of Trinity:

Yes, the most important thing is to get the truth and making sure that the report that comes out is totally independent, and the first draft of that report will come to me as the Minister and as the Commissioner, and a copy of that report will go to the Deputy Viscount, who has said there still needs to be an inquest, and the chair of the Health Scrutiny Panel.

2.12.3 The Deputy of St. John:

Could the Minister please tell us by title who drew up the terms of reference, please, i.e. by title not the persons' names but their positions, please?

The Deputy Bailiff:

Well, I am sorry, the terms of reference were put forward to this Assembly by the Minister and the Minister must take responsibility for what comes forward.

The Deputy of St. John:

On a point of clarification, we were told by a previous Minister that in fact he drew up the terms of reference. That is what I would like to know from the Minister, who in fact drew up the terms of reference.

The Deputy Bailiff:

The Bailiff has said on previous occasions that questions as to which official did what are not in order because anything which comes to this Assembly in the name of a Minister is the responsibility of that Minister.

The Deputy of St. John:

But given the terms of reference, just for clarification, were drawn up prior to the current Minister being *in situ*, could she tell us which Minister was responsible at the time of drawing them up?

The Deputy Bailiff:

The Minister who was responsible, yes she can certainly say that. Yes, which Minister? The question is which Minister was responsible at the time of the drawing-up?

The Deputy of Trinity:

The Minister at the time was Senator Perchard.

The Deputy of St. John:

That being the case, can it be right that we have a Minister who is, in some respects, an independent person, but in answering the question, she is in fact ... I will draw away from it and I will sit down until later in the day. [Laughter]

2.12.4 Deputy M. Tadier:

Will Verita be commenting on the current practice of States employed consultants being allowed to carry out private work in public time and ...

The Deputy Bailiff:

I am sorry, Deputy, that cannot, or I do not think it relates to the terms of reference of this matter.

Deputy M. Tadier:

I am asking whether that is in the terms of reference and if not why has it not been included?

The Deputy Bailiff:

I see. Well it is a matter of the terms of reference being available to all Members. You have seen the terms.

Deputy M. Tadier:

So why has that not been included in the terms of reference?

The Deputy of Trinity:

As it says there, the first terms of reference, examine the care, treatment and management of Mrs. Rourke from her related G.P. referral up to the start of the police investigation. That will include all hospital systems, procedures, patient safety, as I have said, who did what, when, why and how.

The Deputy Bailiff:

Very well, no other questions? Do you wish a final question, Senator Syvret? Do you wish to ask a final supplementary, Senator?

Senator S. Syvret:

No, we are going to debate the matter later.

2.13 The Deputy of St. Martin of the Minister for Home Affairs regarding the Wiltshire Police investigation into the events which led to the suspension of the Chief Officer of the States of Jersey Police:

Before I start, I know it is on the Supplementary Order Paper that the Minister for Home Affairs will make a statement regarding police activities and above that it says the Minister for Treasury and Resources will make a statement regarding land transactions. I have the copy of the land transactions from the Minister for Treasury and Resources; am I the only Member in the House that has not got the Home Affairs ...

The Deputy Bailiff:

Deputy, could you please ask the question at the moment, Deputy?

The Deputy of St. Martin:

No, it is important so we can have it circulated before we have the answer.

The Deputy Bailiff:

It has not apparently been circulated yet, Deputy.

The Deputy of St. Martin:

It is on its way, is it? Okay, all right, okay.

The Deputy Bailiff:

It is circulated when the Minister says.

The Deputy of St. Martin:

Okay. Will the Minister update Members on the Wiltshire Police investigation into the events which lead to the suspension of the Chief Officer of the States of Jersey Police? Will the report be presented as promised at the end of June and will the Jersey Police Complaints Authority have a role in approving the final report? If not, which police authority will give its approval?

Senator B.I. Le Marquand (The Minister for Home Affairs):

Firstly, no date has been promised for the production of the report. On 10th March 2009 in my statement I indicated that the report would not be available before the end of June 2009. The current expected date for the provision of the report is by the end of July 2009, subject to the contents of the statement which I shall be making shortly. The report will come to me via the Chief Executive to the Council of Ministers. Neither the Jersey Police Complaints Authority nor any other police authority has any role in this matter.

2.13.1 The Deputy of St. Martin:

I am aware that when a complaint is made by a police officer it may well be investigated by an officer outside of Jersey, however the officers do have the protection of knowing that the Police Complaints Authority will have oversight of that investigation. Is the Minister stating that the Chief Officer is denied the same right that would normally be given to his officers of a lower rank?

Senator B.I. Le Marquand:

It is not correct that the Police Complaints Authority have oversight over all investigations. The procedure, as I understand it, is that they will only have oversight where a complaint is referred to them. But it is perfectly possible for a disciplinary complaint to be brought against a senior officer, which requires investigation by a force outside the Island without the involvement of the Jersey Police Complaints Authority. The procedure in relation to the Chief Officer of Police is set out both in the law and in his disciplinary code of which Members should be aware.

2.13.2 The Deputy of St. Martin:

Would the Minister therefore agree that the Chief Officer is being discriminated against because there is no legislation parallel to assist him as there is for officers of other rank?

Senator B.I. Le Marquand:

No.

The Deputy of St. Martin:

Could I ask the Minister to explain why?

The Deputy Bailiff:

Well I think we will come back. You have asked several questions, Deputy, I think you need to allow other Members to ask theirs. Connétable of St. Helier?

2.13.3 The Connétable of St. Helier:

Would the Minister confirm that the Chief of Police has now been suspended for more than 7 months and that this is extremely unsatisfactory both to him and his family, but also to the taxpayer who is presumably paying for that?

Senator B.I. Le Marquand:

I can confirm that the mathematics of the Connétable of St. Helier is correct and I can confirm that such a long suspension without coming to a disciplinary conclusion is highly undesirable.

2.13.4 Deputy T.M. Pitman:

Following on from the Constable of St. Helier, would the Minister concede that a period of 7 months hardly appears to the public as a neutral act?

Senator B.I. Le Marquand:

I have no control over the length of time which is taken by the investigating body. Indeed it would be improper for me to get involved in any way in oversight over the process of the investigation. I am therefore entirely in the hands of the investigating body.

2.13.5 The Deputy of St. Martin:

Final one. Will the Minister explain why there has been a delay to the end of July when we understood that the report would be ready by the end of June?

Senator B.I. Le Marquand:

I do not know the answer to that question for the reasons I have already said, that I am not exercising any oversight in relation to the investigating body. I merely inquire from time to time as to when the report is likely to be available. I want to make it clear the report will come to me and to me only initially in the way that I have indicated, and I will then proceed to make decisions as to whether or not disciplinary matters will proceed.

The Deputy Bailiff:

Very well, we come to question 14. Deputy Le Claire has notified me during the course of this meeting that he wishes to withdraw that question, so we move on to question 15 which the Deputy of St. Mary will ask of the Minister for Planning and Environment.

2.14 The Deputy of St. Mary of the Minister for Planning and Environment regarding proposals within the North of Town Masterplan team to build housing on the Gas Place end of the Millennium Town Park site:

Will the Minister advise whether one proposal being considered by the North of Town Masterplan team is to build housing on the Gas Place end of the Millennium Town Park site and if so does he consider this to be a betrayal of all those who signed the petition for the park's creation?

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

The brief for the North of Town Masterplan allows the consultants not only to produce a plan which accommodates the town park as originally proposed, but also to look at other visions for the area. One of the key objectives of the town park decision was the provision of underground car parking. This will be unaffordable without some development on the edges of the park. Therefore the masterplanners will likely present a range of options and one of those is likely to include the concept of building some housing around the edge of the park. The draft Masterplan will shortly be presented to the Political Steering Group, thereafter a decision will be made on which options are favoured and a presentation will be made to States Members.

2.14.1 The Deputy of St. Mary:

If I may, a supplementary? With respect, the issue is not really about the car parking. The problem is that if we protect the quality of life of one group - that is those who live in the countryside - and we fail to enhance the quality of life of another group - those who live in town - then I think we are engaging almost in social apartheid and I would ask the Minister does he not agree that the park should be the size that everybody who signed that petition thought it was going to be and not reduced for matters of expediency? It appears that people matter less than money.

Senator F.E. Cohen:

That is far from the case. The objective of the North of Town Masterplan is to deliver the best solution for the north of the town and the best solution for the Island. If the Political Steering Group decide that the preferred option is to consider some development on the site, it would only be on the basis that that improves the whole ... the holistic whole is improved. It certainly is not simply just a matter of money.

2.14.2 The Connétable of St. Helier:

Would the Minister confirm that the terms of the petition which I presented in 1999 make it clear that no building will take place on the site and therefore any decision to pursue that would require the States to rescind its approval of the petition?

Senator F.E. Cohen:

The petition which I have in front of me is a little bit confusing, but I do accept that the principle was that the town park should be unencumbered. If the decision of the Political Steering Group was that we favoured some building, then of course the matter would be brought back to the States.

2.14.3 Senator J.L. Perchard:

Does the Minister share my disappointment that Members are already devaluing the work of the masterplanners before the plan has even been presented?

Senator F.E. Cohen:

I think that many Members have a particular interest in the town park and that interest has been held for many years. I do understand that they are concerned when they hear rumours of various different proposals but I would make the point that the Masterplan, as I said earlier, will present a range of options and from that range of options the Political Steering Group will bring forward some recommendations.

2.14.4 Senator S. Syvret:

Does the Minister not accept that the Masterplanners, however marvellous they may be, are the tail attempting to wag the dog here? There is an extant States decision that this park will be created and it will be unencumbered across its surface. Does the Minister not also accept that that part of town is the most densely populated and poorest and neglected part of Jersey and it is quite absurd to start ruining what would be a wonderful green lung for that part of town by building on it?

Senator F.E. Cohen:

That is the whole point. The objective is to present the very best for the north of the town and the very best for the Island as a whole. If the argument put forward is that the park will be better with some development around it then that would be the preferred route possibly of the Political Steering Group. It is a question of whether Members believe that unencumbered space that bleeds into the surrounding area is the absolute imperative or whether Members believe that delivering proper traffic and parking solution to the north of the town is also exceptionally important. If we are to do that it is very clear that underground car parking is far preferable to above ground car parking and therefore some mechanism to deliver underground car parking on the Town Park site will need to be found.

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

The Minister has given 2 reasons for the possibility of building on the park; one that it would improve the aesthetics and the other that it is required for paying for the parking. Would he confirm that all previous discussions on the town park going back now for more than a decade, have assumed that the Car Park Trading Fund will bear the cost of the parking that is going to be provided?

Senator F.E. Cohen:

I think, as many Members may know, the Car Park Trading Fund is unlikely to be able to afford the cost of underground car parking which could be up to double the cost per space of producing above ground car parking.

2.14.6 The Deputy of St. Mary:

Yes, in remembering that the context of having this park is now that we are going to put 7,700 more people into the town area, how does the Minister think that it can possibly be the best solution for the park to consider building yet more housing instead of having the green lung that we only on this site can have for that part of town?

Senator F.E. Cohen:

No one is suggesting there would be no green lung. All that is being considered is the various options relating to how that green lung is delivered and how it is framed. Reverting to the point made by Senator Perchard, I think it would be helpful if Members were prepared to give a little time and wait until they see the Masterplan and then I am sure there will be plenty of opportunity to criticise.

2.15 The Deputy of St. Mary of the Chairman of the Privileges and Procedures Committee regarding the underlying principles of electoral reform:

It is like the buses. Yes, in view of the inevitable arguments over detail which accompany any proposal to change the Island's electoral system, will the Chairman confirm that the Committee has identified clearly the underlying principles of electoral reform and if so, will she advise Members what these principles are?

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

The principles that are underlying electoral reform are set out in P.72 and the process by which the P.P.C. (Privileges and Procedures Committee) arrived at those principles is set out in the accompanying report. In brief, the principles are: provide for a general election, establish more equitable representation between the Parishes, retain link between each Parish as an individual entity and the States, increase voter turnout, increase the term of office, decrease the number of States Members. Although certain clear themes emerge from the consultation work undertaken by the previous P.P.C. and also from past States debates, it was apparent that there was no overall consensus among members of the public or Members of the States about the type of reform that should be introduced. Furthermore, P.P.C. acknowledges that there are often irreconcilable conflicts between different proposals when attempts are made to put together one overall reform package. For example, while there is no denying that the Island-wide mandate is seen by some as important, this has not been included in P.P.C.'s proposals. Currently only 22 per cent of Members have one, only 60 per cent of Ministers have one and only 16 per cent of the Members of the Chairmen's Committee have one. It was clear to P.P.C. that the retention of the Senatorial mandate could frustrate other more meaningful reform. P.72 therefore attempts to find the best workable fit for the principles identified. In addition to the reforms proposed by P.72, P.P.C. is already engaged in other work aimed at increasing voter participation including ways to provide more assistance for

sick vote-type procedures and the possibility of increasing access to pre-poll voting while preserving the integrity of the system.

2.15.1 The Deputy of St. Mary:

I am astonished at the notion that P.72 contains underlying principles of electoral reform and if I can just remind Members of 2 of them and then ask a question of the Chairman of P.P.C.; 2 of these underlying principles of electoral reform are that the Parish Constables should remain as Members of the States and that many, presumably many members of the public, felt that there were too many Members in the States. Could the Chairman confirm that P.P.C. did not discuss what underlying principles of electoral reform should be, because these certainly are not underlying principles?

The Connétable of St. Mary:

I am quite astounded by the Deputy's question. When this was originally written to me some 2 weeks ago, I was confused then as to exactly what the Deputy was getting at. He has had 2 weeks since he did not ask me last time to elaborate. He did tell me that he considered this to be a very simple question and why was I wasting my time working on the answer. So, let us look at the issue of the Constables, for example. The Constables are being retained in our proposals because what we need to do is find effective workable reform which has a chance of support. Apart from the M.O.R.I. (Market and Opinion Research International Limited) poll which showed there was support for ...

The Deputy Bailiff:

I think, for me, Chairman, the question was simply whether you had in fact discussed any underlying principles, so I would have thought either a yes or a no.

The Connétable of St. Mary:

The present P.P.C. committee reviewed all the work undertaken by the previous and did discuss and came forward with this proposition.

The Deputy of St. Mary:

I am sorry, that is not an answer to my question.

The Deputy Bailiff:

I will come back to it, Deputy. Senator Syvret?

2.15.2 Senator S. Syvret:

If I could help the Chairman of P.P.C. For example, one of the rudimentary and obvious underlying principles of electoral reform anybody would look at would be the question of proportionality per the number of elected representatives in the Chamber in respect of the number of seats there are. That is a fundamental underlying principle. On that basis, I find it difficult to imagine that the P.P.C. did consider those type of principles, given that they have come forward with an anti-democratic set of proposals that flies in the face of the principle in that they are seeking to keep the 12 Constables in the States, some of whom represent microscopic constituencies, so there is a great deal of disproportionality there and remove the most democratically accountable Members of the States.

The Deputy Bailiff:

So the question is, Senator?

Senator S. Syvret:

The question is did the Chairman and Committee consider those underlying principles such as the proportionality of representation?

The Connétable of St. Mary:

Yes, I made it clear in my answer, I believe, that one of the things we were looking at was to establish more equitable representation. I also said quite clearly that there were sometimes irreconcilable conflicts between what member of the public and others said they required and how they could be achieved and, as has been stated, P.P.C. did discuss this and attempted to find the best workable fit.

The Deputy Bailiff:

Right, the final question, I am afraid, from Deputy of St. Mary will then bring things to an end. Deputy of St. Mary? Unless you want to defer to Deputy Southern?

2.15.3 The Deputy of St. Mary:

No, thank you. I have got a very good question of my own. No, I would just like to ask a specific question which follows on really from Senator Syvret's. What comment would the Chairman of P.P.C. make when you consider that the Constable of St. Helier represents, I think, 15,000-odd electors and the Constable of St. Mary, just so happens, represents a very, very... in fact a 10-fold smaller number and how does that square with the principle of proportionality?

The Connétable of St. Mary:

Firstly, currently of course so does the Deputy of St. Mary represent the same number of people.
[Laughter]

The Deputy of St. Mary:

St. Helier has 10 Deputies.

The Connétable of St. Mary:

Yes, there are anomalies. One of the ways to address the anomaly is by the creation of constituencies which even out different boundaries for the election of Deputies because, for example ...

The Deputy of St. Mary:

Are we looking forward to the creation of Super Constables?

The Connétable of St. Mary:

I was not aware I was giving way. One of the underlying principles is the retention of the important Parish link. That is an extremely vital thing that came out in the consultation. The link between the Parishes is currently in some Parishes between the Constable and the Deputies and, in some cases, simply between the Constables where the Deputies have different constituencies. There is not necessarily the same clear link although many Deputies do play an active role in Parish life of course. So there are different ways that this imbalance needs to be addressed. Retaining a link with the Parishes, I think, is vital and was shown to be vital in our research in one form or another. I still do not give way, but I think I have said enough.

The Deputy Bailiff:

Very well, I am afraid that brings question time to an end. So then we ...

Deputy G.P. Southern:

May I request that the House considers suspending Standing Orders? We have got one question left, it would seem appropriate.

The Deputy Bailiff:

I fear the Bailiff ruled on the last occasion that that could not be done, Deputy.

Deputy G.P. Southern:

I do not believe I heard the Bailiff saying that could not be done. We are awaiting the institution to our question time in order to finish questions and get proper answers. In principle, I would have thought we could have dealt with one more question.

The Deputy Bailiff:

Yes, I am afraid I am advised by the Greffier that is exactly what the Bailiff ruled. Very well, so we have to move on ...

The Deputy of St. John:

On a point of clarification, as you are Bailiff designate [**Laughter**] could you not waive the rule?

The Deputy Bailiff:

I think there are 2 answers to that, Deputy. The first one is that under Standing Orders the Bailiff's decision is final, but secondly, even if it were not it would be a rash Bailiff designate who would depart from the decision of the Bailiff. Very well, we will come to C, Questions to Ministers Without Notice, and the first period is to the Minister for Housing.

3. Questions to Ministers Without Notice - The Minister for Housing

3.1 The Connétable of St. John:

Given the Minister's enthusiasm in pursuing the early rezoning of a number of greenfields to accommodate over 55s and first-time buyers, can the Minister advise Members of the progress being made requiring Planning Consent for these sites because it is my understanding that the only sites at the moment in front of the Planning Department are the Parish driven site at Trinity?

Senator T.J. Le Main (The Minister for Housing):

I am the Minister for Housing, I am not the Minister for Planning and Environment. That is a question that should be directed to the Minister for Planning and Environment.

3.2 The Deputy of Grouville:

On the same subject, the Minister confirmed in answers to my questions earlier that many of the rezoned sites are either owned by or will be developed by the same person or his company, in fact 6 of the 8 are. Could he also confirm that same person is a friend of his to the point of going on holiday with him and his family, and does he not consider this to be a breach of States of Jersey Law?

Senator T.J. Le Main:

No, that is totally incorrect. I have never been on holiday with anyone that is a developer.

3.3 Connétable G.F. Butcher of St. John:

Given that the number of rezoned sites are in the ownership of one developer, does the Minister consider it appropriate to be attending planning meetings and supporting the rezoning of yet another greenfield site when no action is being taken on the ones that already have been rezoned?

Senator T.J. Le Main:

The Connétable knows very well that I have written to the Minister for Planning and Environment and that, as Minister for Housing, I am approached by people that want either housing, need to be re-housed or in fact have sites that are in the rezoning proposals. I have expressed my view that as Minister for Housing I will do everything with every developer or land owner that has rezoned sites approved by this Assembly for development. I will give my assistance and support in seeing these sites come forward, whoever the developer, the land owner or otherwise will be.

3.4 Deputy T.M. Pitman:

As I understand it, the marriage breakdown policy under (a) to (h) qualification rules was put in place at a time when the standard period for qualifying was much longer than it is at present. Does the Minister perhaps then consider whether the period of residency required under the marriage breakdown policy should be reduced proportionately as well?

Senator T.J. Le Main:

The marriage breakdown policy has been a well defined and well understood policy and, of course, I would always consider every case on its merits, but at this present time I am not prepared to vary that well defined and well understood policy, but if any cases come forward on a breakdown policy where there is real medical or other social hardship, then I will consider them.

3.5 Senator A. Breckon:

The Minister for Housing said this morning that the Whitehead review was with him and would be possibly signed off by the end of the week; in answer to a written question he said it would be available in mid July. Can he say when it will be available and what the delay has been which has taken it nearly a year to be prepared?

Senator T.J. Le Main:

I have explained the reasons why the delay; the delay has been because of the economic circumstances and the difficulties in the housing market within the credit crunch. As I explained this morning, the issue is that I need to sign off this review in co-operation and working together with my Assistant Minister and officers, and the moment that we have done that it will go out to Members for consultation.

3.6 The Deputy of St. John:

In response to the Minister's first response to the Deputy of Grouville; could the Minister tell us what, in his mind, the definition of a developer is and would he wish to review the comments he made because if he has never been on holiday with a builder - in fact builders or developers - would he care to review the answer he gave to the Deputy of Grouville?

Senator T.J. Le Main:

I do not understand what the Deputy means. I go on a holiday regularly. I was on the boat to France on Saturday with a group of pals from the rugby club and there were 2 or 3 builders/developers on the boat. If you are saying I am going on holiday with developers and builders, well, I see them all the time, so I really do not understand what the question is. The issue is that I travel quite frequently, particularly through France, and I see all sorts of people, so does that mean to say that I am in cahoots with a bank manager, with the civil servants?

3.7 The Deputy of St. Mary:

I want to pursue this matter of the 7 sites under the control of one developer. I think I heard it was 7 sites under the control of one developer. There surely will be public concern about this, it is almost a monopoly. Can the Minister explain the exact process by which this came about and when these sites, each of them, were acquired and by whom?

Senator T.J. Le Main:

Can I explain? I am the Minister for Housing and my role does not go into the issues of land development. I cannot build one house. I cannot put any pressure apart from being a normal Member of this Assembly like I did, and upset the Constable of St. John quite rightly I suppose, last Thursday at the Planning Applications Panel. If I am going to make any representations on behalf of anyone, whether they be a land owner who has sites rezoned for social housing for which the Housing Department would like to buy the 45 per cent, and that is why I am pursuing many of the sites that have been rezoned is because the Housing Department desperately want to purchase

homes to house elderly people in particular. I have no role and I have no say in the issue from the Planning Department.

3.7.1 The Deputy of St. Mary:

Can I ask a supplementary to that? But on the other hand the Minister does have a role in bringing propositions to the House which refer to the urgent need for developing these sites, so there is clearly a connection. I wanted him to comment on that.

Senator T.J. Le Main:

That is not correct. The last rezoning ... any rezoning has never been brought by the Minister for Housing and the Deputy of St. Mary is quite wrong, the last rezoning was brought forward on behalf of the Connétables by the Minister for Planning and Environment.

3.8 The Deputy of Grouville:

A change of tack. When Housing delegate parking controls on their estates to third parties, do they accept responsibility for their actions?

Senator T.J. Le Main:

The issue of permits in certain estates is issued on the basis that a payment is made, and the Housing Department do not bear responsibility of anyone that parks on the estates.

3.9 The Connétable of St. John:

I think the general public, and I think some of the Members of the Assembly are getting rather confused with the Minister for Housing. One minute he gets involved and then the next minute he does not get involved. I would suggest that maybe he decides which side of the fence he is going to be.

Senator T.J. Le Main:

This is underhand. That is an underhand comment which unfortunately the Constable of St. John really does not understand planning matters at all, it seems to me. [Laughter] At a Panel meeting last week he had already made up his mind before the applicant even had a chance to put a case. Saying that, the issue is - I have made it quite clear - I have written to the Minister for Planning and Environment and I have sent a copy of my letters to the Chief Minister explaining my position that I will be pursuing on behalf of the people that I represent who need homes, particularly elderly people. I will pursue every site that this Assembly have approved for development for sheltered housing and first-time buyers to try to get these sites approved by the planning process, no question about it and if anyone cares to see a copy of the letter that I have passed on to the Minister for Planning and Environment or the Chief Minister then I am happy for them to do so, and I will continue to do so whether the Constable of St. John likes it or not.

3.10 Deputy R.G. Le Hérisier:

Would the Minister comment, given that the new Tenants Law is only going to apply, as I understand it, to the qualified section of the new Tenants Law, has he checked out whether that Law will therefore be human rights compatible?

Senator T.J. Le Main:

Any issues bringing up the new Tenancy Law that will be coming to the Assembly will be compliant to human rights.

3.10.1 Deputy R.G. Le Hérisier:

Would the Minister, on the grounds of fairness, does he think it is fair that rights are given to one section and not another?

Senator T.J. Le Main:

This is only the first part of what is going to be a fair system. The issue is quite clear that until the migration policy legislation is approved by this Assembly we can only deal with the qualified sector, but the moment this Assembly approves a migration of the new migration policy arrangements and agreements and legislation, then it is really hopeful that we will be able to deal with the unqualified at the same time.

3.11 Senator A. Breckon:

The Minister for Housing said, on a couple of occasions, that he is not responsible for the planning issues but can he confirm that the numbers and the pressure came from him on the Minister for Planning and Environment to re-zone green zone land and fields ahead of the Island Plan review?

Senator T.J. Le Main:

Absolutely; only on the basis that of the exact need that we know we have, and also the need that has been identified by various reports and issues that have been provided for the States by the Statistics Unit, Planning and otherwise. So, it was all done on good, firm information and not on the hearsay or the say-so of the Minister for Housing.

3.11.1 Senator A. Breckon:

Could the Minister for Housing confirm that some of those statistics appeared after the report proposition had been lodged?

Senator T.J. Le Main:

That may be the case but we have been having information on a yearly basis for the last 7 or 8 years and the situation has not changed. The issue is that we are in serious difficulty in being able to house real people. When I say real people; it could be parents, families, senior Members of this Assembly, it could be their parents, it could be their grandparents, and we have a real difficulty and I am going to pursue vigorously, on behalf of those people, the planning process to get some of these sites achieved so we can house the people that I represent and you represent and I hope you support me.

3.12 Deputy J.A. Martin:

Yes, it is a bit of a follow-on from Senator Breckon. I think many of the House were convinced to re-zone land before the debate on the Island Plan or the review of the Island Plan because of the pressure put on by Housing. Can the Minister for Housing confirm that the pressure... and he has just alluded to the elderly, and he has 306 urgent cases, but is there not a trade-off that a lot of this re-zoned land will not just be for the elderly; it will be for category A and B housing as well in all the country Parishes?

Senator T.J. Le Main:

I have got to reiterate I am the Minister for Housing and, you know, the onus is on the ... the land that was re-zoned in July ahead of the Island Plan was land predominantly wanted for sheltered lifetime homes. It is up to... apart from I think Trinity and maybe another site... but the issue is quite clear that it was for people of a certain age and if the Minister for Planning and Environment diverts away from what this House agreed, well, that is the Minister for Planning and Environment, but I need all these sites that were approved by this Assembly last year. I need all those sites to not even reach the demand that I have got with me at the moment, so I need those sites.

3.13 Deputy S. Pitman of St. Helier:

As the Senator knows, Housing's marriage breakdown policy is an issue of policy rather than law. Could he explain to the House when was the last time this policy was reviewed and could he also tell us when next he intends to review it?

Senator T.J. Le Main:

All the policies that are administered under the Housing Law are reviewed on a yearly basis and my Assistant Minister and myself currently, with the officers, meet on a monthly basis - and sometimes more than a monthly basis - on policy meetings and we review marriage breakdown and every other policy on a regular basis.

3.13.1 Deputy S. Pitman:

Could he say when the last time was that he reviewed this policy and when will he review it again, to be specific?

Senator T.J. Le Main:

Well, it is very difficult. I have got a job to remember last week, let alone when I reviewed something else sometimes, but I cannot remember the last time, possibly 18 months ago, but at the moment, under the existing policy, I am not prepared to review it because I think it works well, as I explained a minute ago to Deputy Trevor Pitman. I say that it is working well at the moment and it is consistent and it is well understood and it is fair to everybody.

Deputy S. Pitman:

Would the Minister endeavour to provide me with the ...

The Deputy Bailiff:

Sorry, you have already asked 2 questions.

3.13.2 Deputy S. Pitman:

Sorry, the Minister has said that he thinks he reviewed it about 18 months ago. Could he endeavour to find out for me when it was reviewed and could he give me the actual review?

Senator T.J. Le Main:

No, because I probably could not remember it and I do not suppose the officers remember it either.

3.14 Deputy M. Tadier:

Would the Minister consider issuing a permit system for letting in the private sector so that they might be subject to comparable checks and standards as are in place in the public sector?

Senator T.J. Le Main:

No, that is the role of the Planning Department, to update their building standards and what have you and it should be outside the remit of the Housing Department.

3.14.1 Deputy M. Tadier:

I believe the Minister has misunderstood my question. I am talking about issuing permits so that landlords can be allowed to lease their property. In order to do that, so we will know exactly who is renting out property... and that they may be subject to certain standards.

Senator T.J. Le Main:

Every property is conditioned (a) to (h), (a) to (j) or (a) to (k) and no one can lease a property until they have applied to the department. They have to meet the criteria of the policy of who can be occupying.

The Deputy Bailiff:

Very well. I am afraid that brings questions on the Minister for Housing to an end. We then move on to questions to the Chief Minister.

4. Questions to Ministers Without Notice - The Chief Minister

4.1 Deputy J.M. Maçon of St. Saviour:

Why, in the Council of Ministers' Part A minutes, dated 7th May 2009, did the Council of Ministers need to agree that Ministers should make every effort to be present in the States Chamber during meetings of the States?

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

Because I believe it is important that Ministers set a good example that, wherever possible, they should attend at least those parts of the meetings of the States, which are of an important nature. I believe that that was demonstrated very much in the discussions on the Strategic Plan we have recently had.

4.1.1 Deputy J.M. Maçon:

On a supplementary point, where are the Ministers today and what example are they setting for other Members? [Approbation]

Senator T.A. Le Sueur:

I said the business which we consider to be particularly relevant to their particular areas of expertise. This question period is questions for me and it is important that I be here. It is perhaps more important that they deal with other matters at this stage so that they can be here later on in other sessions.

The Deputy Bailiff:

Chief Minister, I am afraid I am going to have to interrupt you. Apparently we are not quorate. [Laughter] We are just quorate now, yes. Had you finished your answer, Chief Minister?

Senator T.A. Le Sueur:

I think I finished, except maybe to point out it is not just Ministers who are not present at the time.

4.2 Deputy S. Pitman:

As Members are aware, I recently made a complaint about the Minister for Social Security not getting back to me with questions regarding ...

The Deputy Bailiff:

One moment, we are not ... somebody has just left and so we are not quorate.

Deputy J.M. Maçon:

Where are the Ministers?

The Deputy Bailiff:

Very well, the Deputy has returned.

Deputy S. Pitman:

I will start again. The Members will be aware that I made a complaint regarding the Minister for Social Security in asking him questions regarding several constituents who have serious issues with their income support. There is one dating back to January, another going back 2 months and others a month and several weeks. I still have no answers to these questions. I did ask the Chief Minister: "Where do I go next as I am getting no answers?" Could he tell me that and also could he - I have asked him, this will be the fourth time now - provide me with the research that was undertaken regarding 1(1)(j) tax and 1(1)(k)s, and also a land development tax?

The Deputy Bailiff:

That is 2 questions, I think, Deputy. We need to stick to one question at a time, so the first one is in relation to the Social Security.

Senator T.A. Le Sueur:

The first one; I am aware of the concerns of the Deputy and I understood that the Minister for Social Security had endeavoured to respond to the concerns raised by Deputy Pitman. If that is not the case, then certainly, on his return I shall put that to him. But, meanwhile, the Assistant Minister can no doubt assist and, indeed, the officers of the department. I am not aware of any reason why there should be a delay.

4.2.1 Deputy S. Pitman:

The Assistant Minister says that she is satisfied with the actions of her officers regarding these cases but gives no reason, no answer as to why. Still, I am left with no answers. Where do I go?

Senator T.A. Le Sueur:

It sounds to me that the Deputy has an answer but not the answer she wishes to have; that I cannot do anything much about.

4.3 The Deputy of St. Martin:

I remind the Chief Minister, and the House in fact, that it is 6 months now since the States approved my proposition regarding the review into the role of the unelected States Members. Will the Minister give an update on the progress being made into the selection of the chairman and panel and are any adverts going out for recruitment?

Senator T.A. Le Sueur:

I share the concerns of the Deputy of St. Martin. I have been trying unsuccessfully to recruit a chairman for this panel and, of the parties that we have approached to date, I have made 4 approaches and all 4 have successively turned down the position. We are now casting the net wider and I hope to be able to make an announcement as soon as possible but that is the present situation.

4.3.1 The Deputy of St. Martin:

Could I just ask a supplementary on that? Has the Chief Minister given consideration maybe to advertising the fact that the Island would like to look for a possible chairman rather than going out asking people if they would like to do the job?

Senator T.A. Le Sueur:

The chairman of this panel is going to have to have some significant expertise and, while one can advertise, it is a question of trying to ascertain where the most appropriate place to advertise would be, recognising that that person is probably going to come from outside the Island. On that basis, if all else fails, I accept that that will be an alternative solution. I believe that trying to obtain people with the right expertise through the appropriate channels is a better way to proceed in the first instance.

4.4 The Deputy of St. Mary:

My question is about consultation. In the Strategic Plan Members put an amendment, and it was accepted by the Council of the Ministers, for transparency, openness and accountability. My question is does the Chief Minister agree that proper consultation is an important part of the democratic process and an important part of achieving transparency, openness and accountability, and will the Chief Minister give an assurance that the Council of Ministers will consider that all propositions coming from them have a proper consultation report attached?

Senator T.A. Le Sueur:

Yes, I certainly agree that proper consultation on matters of significance is important. It would be rash to say that every proposition that we bring forward requires consultation. Many of the propositions we bring forward are of a relatively simple nature and consultation would not seem to

be appropriate for them. When it is a matter of public policy, then I agree that consultation is necessary and that will be achieved.

The Deputy of St. Mary:

But will it be attached as a part of the report?

Senator T.A. Le Sueur:

Consultation is a process and certainly the outcome of that consultation process may well form a part of the report. I am not quite sure what the Deputy is getting at.

4.5 Senator S.C. Ferguson:

In the 2009 Business Plan the Chief Minister's office was required to bring a plan regarding the application of the recommendations of the Comptroller and Auditor General's report on spending to the House. Would the Chief Minister advise us when we can expect to see this?

Senator T.A. Le Sueur:

Yes, the report prepared by the Comptroller and Auditor General last year on spending focused on areas where he believed that, if the States were so minded, savings could be achieved. That report is being very seriously considered in the context of the Annual Business Plan, which we are now in the course of preparing, and we are reviewing each of the Comptroller and Auditor General's recommendations to see which ones can be implemented and during which period. So, it is an ongoing process and it should be made available at the time of the Business Plan and, indeed, before then because I am sure that the Scrutiny Panel, of which the questioner is a member, will be interested to see just how those are being carried forward.

4.5.1 Senator S.C. Ferguson:

Yes, the Chief Minister presumably is talking about the individual departmental recommendations. What about the cross-cutting recommendations which are the area where we can save considerably more money?

Senator T.A. Le Sueur:

I was not simply talking about departmental savings; I was talking about both departmental savings and cross-cutting areas. I think both of those areas need to be addressed in the Business Plan and both of them will be addressed.

4.6 Deputy K.C. Lewis:

Any person from the British Isles or the European Union with a current passport may come to Jersey in search of work there. However, there are no computer checks with the new European Community countries regarding police records. Will the Chief Minister, in consultation with the Minister for Home Affairs and possibly his U.K. counterpart, establish such a system?

Senator T.A. Le Sueur:

Certainly I believe the matter of cross-border communications and checks of people of different nationalities is receiving greater importance and prominence these days and, indeed, we are in discussions primarily with the U.K. authorities on a variety of such matters to the extent that that can be done in conjunction with the Home Affairs Minister. I am sure that he and I will work closely to try to achieve what we can for the benefit of the Island and, in fact, more particularly for the benefit of the wider world community, primarily in combating matters such as terrorism and other offences of that nature, which we are all anxious to stamp out and avoid.

4.7 Deputy C.H. Egré of St. Peter:

Further to the question asked by the Deputy of St. John, regarding emergency planning, and realising that the original concept of the Parish Emergency Officers was to assist in monitoring any

radiation fallout following a war, would the Chief Minister now encourage and support the development of that role within the Parishes to meet our modern environment?

Senator T.A. Le Sueur:

I think in emergency planning, a variety of bodies have a role to play and I am very appreciative and aware of the importance which can be provided by the Parish authorities as a whole and maybe a designated officer, where appropriate. I believe that what is important is that we have a proper strategy for emergencies, whatever the nature, be that radiation or anything else, and that those policies can be applied to a variety of circumstances. That will require an input from a very diverse number of groups but certainly the Parishes have an important role to play in that and, if there are ways in which that can be strengthened, I will certainly be one to encourage that and I am sure that the representative Committee of Constables on the Emergency Planning Group would do the same thing.

4.8 The Deputy of St. John:

I thought I had been forgotten about, Sir. As the Chief Minister's Department have something like 37 parking spaces allocated to them, could the Chief Minister give us reasons why we have car parking spaces which are available to vehicles for lease and describe what that is all about and, furthermore, do the people who use these car parking spaces - I presume the majority of which are in the middle of town - do they all work for the States and are any of those spaces for visitors?

Senator T.A. Le Sueur:

I am not quite sure which of the 37 parking spaces in question but I will speak primarily about those I do know about and they are all occupied by employees or Ministers of the States. As far as the leased vehicles are concerned, the States do lease a number of vehicles because we find that an appropriate and cost efficient way of providing vehicles, particularly given the high mileage allowance which currently exists for people who use their own vehicles. Where those vehicles are being used by employees of the States departments, it is appropriate that they should park at that department. Certainly there is no question of, perhaps sadly, any space being available for visitor parking.

The Deputy of St. John:

I also asked if they paid for these spaces.

Senator T.A. Le Sueur:

No, at present there is no policy, whether that be for the Chief Minister's Department or any other department. Where staff park at those departments it is generally because they need that parking space in the context of their duties, whereas the policy does get reviewed and we have reviewed it certainly at an Employment Board on a couple of occasions in the past, and it has always been felt it is very difficult to draw a reasonable dividing line between where it is appropriate and where it is not appropriate.

4.9 Deputy R.G. Le Hérissier:

Given the revelation that there are only 3 apprenticeships available in the States, within T.T.S. (Transport and Technical Services) as it happens, would the Chief Minister explain what steps he and his Council are taking to come up with a realistic number, given the looming issue of youth unemployment?

Senator T.A. Le Sueur:

Yes, this issue has become a very real part of the discussions we have been having recently in terms of the use of the fiscal stimulus and certainly matters such as apprenticeships in various directions are being considered as a part of being good use of that money, certainly on a short term basis, to encourage people at this current time. Having said that, I believe that there may well be scope for

apprenticeships on a more ongoing basis in the future as well, but I believe that this can give the impetus just to see how that can be best applied, and I think the department is seeing the benefits which they may be able to get from apprenticeships and will themselves be encouraged to promote them in the future. That would be a matter for each department to decide.

4.9.1 Deputy R.G. Le Hérisier:

Just to follow up, could the Chief Minister confirm that departments have been approached and that, in order to provide seed money, there will be money from the fiscal stimulus to help launch these apprenticeships across the States?

Senator T.A. Le Sueur:

I think, as far as the fiscal stimulus plan is concerned, this is more a matter for my colleague, the Minister for Treasury and Resources. Each department has been approached to see which ways that money could be used to good effect to pursue the aims of their organisation, and I am certainly not going to suggest that they have to apply apprenticeships against their will, but where there is a willingness for that department to see the benefits for apprenticeships then I am sure they will get every encouragement from the Minister and from myself.

4.10 Deputy S. Power of St. Brelade:

I wonder if the Chief Minister could confirm that in any assessment of a potential site for social rented housing, that the commercial return to Treasury has got to be a different proposition to that of a standard commercial site, and can he therefore confirm why there is no representation by the Minister for Housing on P.79, the composition of the States Development Company?

Senator T.A. Le Sueur:

I am not sure I understand the question. Matters of zoning and planning are a matter for the Minister for Planning and Environment and certainly planning considerations should not be swayed by any commercial decisions so, to that extent, I believe that the Minister for Planning and Environment and his department will run a totally independent operation quite correctly. Perhaps the Deputy can remind me what Projet 79 is all about.

Deputy S. Power:

Projet 79 is the regeneration infrastructure of the States of Jersey Development Company Limited, and I wanted to know why the Minister for Housing is not represented, given the property portfolio on the composition.

Senator T.A. Le Sueur:

The aim of the regeneration group is to provide a broad strategic overview and it may well be that that group will call on other people to give advice as and when appropriate, but I believe we wanted to look at a much more holistic approach and if one took the approach of going to this Minister or that Minister you could end up with a far more piecemeal and undisciplined approach. We believe that there are key areas of the Island, and a particular key area is St. Helier, where a proper strategic look can achieve better results and I believe that this proposition has the ability to deliver that. In addition, of course, there will be other groups like the St. Helier Urban Task Force which also have a part to play in delivering some of the detail of underlying that strategy once it is agreed.

The Deputy Bailiff:

Very well, that brings questions of the Chief Minister to an end. Before we move on, can I inform Members that the following matter has been lodged. Public Records (Jersey) Law 2002: report on the work of the Jersey Heritage Trust and the States Archivist during 2008 is being presented as R.65.

STATEMENTS ON A MATTER OF OFFICIAL RESPONSIBILITY

The Deputy Bailiff:

Then, under K; Statements on a Matter of Official Responsibility, the Minister for Treasury and Resources will make a statement regarding land transaction tax.

5. Statement by the Minister for Treasury and Resources regarding Land Transaction Tax

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

I previously announced that I would bring Regulations and an Appointed Day Act for land transaction tax to the States before the summer recess with a proposed implementation date during the autumn of this year. However, in the light of economic conditions, I have decided to propose a delay to the implement date to 1st January 2010. The Regulations and Appointed Day Act will accordingly be lodged before the States in September and I propose that the Assembly considers the Act on 8th December 2009. This will mean that all decisions relating to property tax and stamp duties is debated during the budget and introduced on the same day on 1st January 2010.

The Deputy Bailiff:

Very well, now, does any Member wish to ask any questions on this statement?

5.1.1 The Deputy of St. Martin:

The Minister is holding up a red rag to a very docile bull who is not very happy and very frustrated. It is 5 years ago now that the States agreed to my proposition. In fact, it was a unanimous decision that we should introduce or we should do away with share transfer so all members of the public would pay a share for stamp duty when they purchase their houses. How can the Minister reconcile his decision to continue this unfair practice whereby those who are paying stamp duty will continue to do so but those who have share transfer will not do so?

Senator P.F.C. Ozouf:

If I may say, the Deputy of St. Martin does not have a monopoly on a strong view of the need to sort out stamp duty and to bring all property transactions to the same level of stamp duty. What I will say, in defence of the 5-year delay, is that this has been and remains an incredibly complex law which has required a great deal of work to deal with it. I do not think anywhere else in the world has found the solution to dealing with share transfer in the way that we have here. So, we are as one on the need to deal with it. I do think, however, with the substantial freezing of property markets in the Island, a delay of effectively 3 months and introduction on 1st January... he will be aware that stamp duties have been cut in other places; we have not done that in Jersey. This is one element of potential fiscal stimulus for the property market but I am committed as he is to bringing it in as soon as possible.

5.1.2 Deputy G.P. Southern:

Given the nature of the statement and his decision to delay the imposition of an extra tax, can the Minister indicate to Members how healthy or not our financial position is by giving us some figures?

Senator P.F.C. Ozouf:

I think that is rather off the question. If the Deputy wishes to apprise himself of the strong financial position of the States, then he needs to look and I hope he will, in detail, at the States Accounts that have been published today. What I can say, in relation to an important revenue stream of stamp duty, is that we are expecting stamp duty revenues to be substantially down as a result of the freezing of the property market in recent months. The latest advice I have is things are beginning to work, banks are lending in the Island and all properties will be subject to the same level of stamp

duties with concessions given to first-time buyers, *et cetera*, on 1st January. Of course, that is subject to the States decision at the budget later this year.

The Deputy Bailiff:

Does any Member wish to ask a question? Very well, then we will move on a statement which the Minister for Home Affairs will make regarding police activities.

6. Statement by the Minister for Home Affairs regarding police activities

6.1 Senator B.I. Le Marquand (The Minister for Home Affairs):

I hope that Members have now received a copy of the statement that was being handed out.

The Deputy of St. John:

Not as yet.

The Deputy Bailiff:

The usher is apparently en route.

The Deputy of St. John:

On a point of clarification, it is somewhat discourteous to Members when a statement is being made that we do not have the statement in front of us. Historically, we always have it in front of us. [Approval] I am sorry but we have not got it on this side of the Chamber and I would prefer that we get it before the statement is made.

The Deputy of St. Martin:

I did mention that maybe half an hour ago that we had not got it on our desk.

The Deputy Bailiff:

Here they come.

Senator B.I. Le Marquand:

I had asked for it to be handed out a few minutes ago, anticipating that the length of questioning to the previous Minister would take somewhat longer than it did.

The Deputy Bailiff:

Perhaps, while they are being handed out, I can remind Members what Standings Orders say is that when a statement is made, the Minister or whoever is making the statement will advise the Greffier whether the text is to be distributed to Members of the States before the statement is made or as soon as possible afterwards and the Greffier distributes accordingly, so it is a matter for the maker of the statement as to exactly when the statement is delivered, and that is in Standing Orders. Very well then, Minister, would you make your statement?

Senator B.I. Le Marquand:

It is my duty to inform this Assembly that on 2nd June 2009 I received a formal written report from the Acting Chief Officer of Police, which confirmed to me the details of Operation Blast. I was first informed of the general details in relation to Operation Blast by a letter from the Solicitor General dated 30th April 2009 and requested further information prior to making any decision in relation thereto. I am able to reveal the following information: (1) In February 2006 the States of Jersey Police set up files under the name of "Operation Blast" which contained sections on every elected Member of the States of Jersey, that is on every Senator, Connétable and Deputy. (2) These files do not appear to relate to any actual police investigation. Each section on an individual Member contained a photograph and other generally available information on the Member. It also

contained a full criminal record search on each Member. Some of the sections contained other information on a Member from a variety of different sources, including local police intelligence and national police intelligence and sheets detailing the checks that had been carried out in respect of each individual. The existence and general contents of the files have been independently confirmed to me by the Solicitor General acting upon my request. (3) The files were kept securely within the Special Branch Office. Between February 2006 and November 2008 the files were updated from time to time. The files were not retained under standard arrangements for the retention of intelligence data. Indeed, there are papers within the files which would suggest that efforts have been made to ensure that this information was maintained outside the normal protocols for the management of information. Various members of the police senior management were aware of the existence of the files and directed certain information to be retained therein. The existence of the files was known only to a very small number of officers and does not appear to have been disseminated further. (4) I am not aware of the motivation of the setting up and retention of these files but I am very seriously concerned about their existence. (5) No new sections were set up after the October/November 2008 elections and no information was added to the files after November 2008. Existing or former Members of the States who are concerned by the contents of this statement may wish to contact the Acting Chief Officer of Police, Mr. David Warcup, who has agreed to meet individually with them, should they so wish, in order to discuss the contents of their section of the files. However, I must inform Members that Mr. Warcup will not be able to reveal to them any items which cannot be properly disclosed outside of the police intelligence community. I will, of course, answer questions which Members may have but the answers which I can give will be limited because of possible police disciplinary issues which may arise from this discovery.

The Deputy Bailiff:

Does any Member have any questions?

6.1.1 Senator S.C. Ferguson:

Absolutely. The Minister says that Mr. Warcup will not be able to reveal to them any items which cannot be properly disclosed: well, would the Minister explain why, when this is obviously personal information about Members, why this cannot be disclosed under freedom of information principles? [Approbation]

Senator B.I. Le Marquand:

The fact is that there is intelligence information on individuals which comes to the attention of the police very often via national links and that information cannot be disclosed. It is simply information of such a confidential nature that it would prejudice our ability to access information from the national links. That is the reality of matters. I have disclosed this matter to Members but the fact is there always will be certain information held on individuals.

Senator S.C. Ferguson:

But this is information about, perhaps, me. Really, am I not entitled to know what is on record about myself? [Approbation]

Senator B.I. Le Marquand:

This would be matters which came from a particular confidential source. You must understand I am talking generally here. The concerns in relation to this matter are because matters were grouped together in relation to States Members as States Members but there will always be confidential material held by the police in relation to individual people and the confidentiality of that must be maintained.

6.1.2 Deputy P.V.F. Le Claire:

Regardless of the other questions that may arise, the question I have is in relation to who, if the Minister knows, authorised the setting up of Operation Blast and, from a political level, if anybody?

If nobody politically had the authority to set this up, exactly what authority does the Minister have in respect of taking it apart? If Members of the States of Jersey are collectively analysed and kept on watch by the States of Jersey, what confidence does that give to future people in this community who might wish to put themselves forward for office, knowing that no matter what their backgrounds or their histories... I for one had one that was involved with international intelligence, I am not confident that some of those details are now secure. What confidence do members in this community have of putting themselves forward for public office, knowing that the States Assembly, not the Judges, not the Jurats, not the unelected Members, but the elected Members will have files kept on them and looked at and not shared with themselves?

Senator B.I. Le Marquand:

In relation to the last question, it is precisely because of my concerns, in relation to what has happened, that I am bringing this matter to the attention of the Assembly. [Approbation] I will not be part of any cover-up in relation to anything that may be done which is wrong within any of the agencies with which I am involved. [Approbation]

Deputy P.V.F. Le Claire:

Can I ask the Minister in particular then to address the first part? I appreciate today, I am sure as Members do, his candid statement but can I ask if he is aware as to what political authority was involved with setting up this operation, if any?

Senator B.I. Le Marquand:

I am not aware of that but I have to say that even if there were political authority in relation to this matter, from one of my predecessors, I would consider that improper.

6.1.3 Deputy K.C. Lewis:

I thank the Minister for bringing this to Members' attention. My question is was this Operation Blast internal to Jersey or was it requested by an organisation such as the Home Office and do people outside of the Island have access to this information?

Senator B.I. Le Marquand:

You must understand that the information which I have is limited but, as far as I can see, this is purely an internal operation.

6.1.4 Deputy T.M. Pitman:

I must admit I am almost speechless... absolute disgust. I have to express... Where are we; Zimbabwe or Jersey? I want to know where this was set up, and I know it is not this Minister's fault and I applaud him for bringing this to our attention, but this House really must have that information and I want to know where it was initiated from, who is controlling it and if Senator Syvret is going to stand up and tell us: "I told you so", I for one will be nodding.

Senator B.I. Le Marquand:

Members must understand that this may now lead to a further disciplinary matter and that I am in the invidious position in relation to any such matter, of being the person who has to decide. I therefore have to refrain from expressing a clear view on facts as they may relate to any individual. However, my understanding is that this was set up with the knowledge of the senior management team of the States of Jersey Police.

6.1.5 Senator S. Syvret:

The statement says that some of the sections contained other information on a Member from a variety of different sources, including local police intelligence and national police intelligence. I am assuming that is me because of my work with Greenpeace and Friends of the Earth, who are classified as subversive organisations by MI5 and Special Branch. My question is twofold; could

the Minister inform us and if not, could he find this out, did any of the previous Law Officers know - previous Attorney Generals, Solicitor Generals and so on - of this activity? Secondly, could he say that the files which he tells us we cannot necessarily view in total would be disclosable or discoverable as part of a civil legal action?

Senator B.I. Le Marquand:

The reference to a Member was not intended to be to any individual Member but in relation to a number of different Members, so it is ... I am afraid I am now forgetting what the latter questions were.

Senator S. Syvret:

Did any of the previous Law Officers know about this operation, for example, the present Attorney General, the former Solicitor General; and, secondly, does the Minister accept that this material which he says we would not be able to look at or have copies of, would in the main be discoverable or disclosable as part of a legal action?

Senator B.I. Le Marquand:

The answer to the first question about the involvement of the Law Officers, as far as I am aware, they had no involvement. I certainly have been in correspondence with one of the current Law Officers to seek advice on this matter and if they had I would have expected them to have told me that. In relation to other matters, I am afraid there is this category of highly sensitive data which would not be disclosable in general and, whether it would be disclosable in relation to a specific criminal matter, I am not sure, but I doubt that.

6.1.6 Senator S. Syvret:

A supplementary, if I may just follow up on that? Would that be on crucial, secured, important information of national security relevance, for example, whether I had registered my car address or not?

Senator B.I. Le Marquand:

Yes, the sort of category of information I am talking about is highly sensitive material, as would normally be related to national security or services of that sort of nature but it could be material relating also to suspicions of serious crime.

6.1.7 The Deputy of St. John:

In my time in policing there were files held at Police Headquarters for the antecedence of persons and that used to extend into their families. This being obviously a similar type of file on each one of the Members, can you confirm whether or not they extend into the Members' families please?

Senator B.I. Le Marquand:

I have no information on that.

6.1.8 Deputy M.R. Higgins:

The fact that the files on States Members do not appear to relate to any actual police investigation smacks very much of a police state [**Approbation**] such as that found in East Germany where the Stasi had files on all citizens. The fact that there was no actual police investigation, on what basis do the police hold these files and why can States Members not have access to the files? You can understand, under the Data Protection Law, that they would not have information if it contained actual police investigations and so on - wrongdoing - but any other information should be accessible to all States Members. Would the Minister please answer the question?

Senator B.I. Le Marquand:

Unfortunately that is not so, for the reasons I have said. The purpose of people going to see Mr. Warcup would be so that he could disclose to them everything that he could properly disclose and in a confidential way. I am not here in any way to defend what has happened.

Deputy M.R. Higgins:

If I could just follow up on that; I thank the Minister for his statement today and exposing this but, again, it comes down to what information are the authorities allowed to have on individuals. Now, we know intelligence information in terms of national security; we fully understand that. We understand information in terms of criminal activity, however, many files are kept on people which include innuendo, suspicions, reports and so on and this information, whether it be for States Members or the public at large, should be accessible, and I would like to say that I think we should call for a committee of inquiry into this whole business so that not only States Members but the Island can be reassured of what is going on. [Approbation]

6.1.9 Deputy G.P. Southern:

I do not believe we have had an answer to the previous question asked by Senator Syvret. It states here: "The existence of files were known only to a very small number of officers." I presume that means police officers; does it mean Law Officers as well? Secondly, could he indicate how this set of information - these files - came to light? Was it to do with investigations internally, taken by Members of the force who happen to be in place?

Senator B.I. Le Marquand:

I have already given an answer as well as I am able to in relation to the Law Officers, which is, as far as I am aware, they had no involvement in this matter but there are questions that need to be asked in relation to this. Again, I am sorry, I have lost the second part of the question.

Deputy G.P. Southern:

Can he indicate how these files came to light? Was it as a result of activities by police officers who happened to be ...?

Senator B.I. Le Marquand:

No, they came to light because Special Branch officers decided, after a certain amount of time had gone by from the suspension of the Chief Officer of Police, that they ought to tell the Acting Chief about it.

6.1.10 Deputy R.G. Le Hérissier:

Building on Deputy Le Claire's question, can the Minister confirm that he is taking every step to bring an end to this practice and, where it is possible, to expunge the relevant files?

Senator B.I. Le Marquand:

Absolutely. When I was first told about this, clearly, the first thing that I said in response was: "Are we still doing this?" to which the answer was: "No", matters having stopped in November; and the second question I asked was: "Is there anything more that is currently being investigated?" because I suspected there might be similar files on other people. That is what was being investigated. Obviously the existing files will need to be retained for evidential purposes but I can assure Members that no use is going to be made of them although there may be items of information held in them which can be properly transferred to the normal methods of keeping information.

6.1.11 Deputy S. Power:

The Minister said that the existence of the files were known to only a very small number of officers and does not appear to have been disseminated further. My queries are did previous senior officers of the States of Jersey Police have access to this data? Is he 100 per cent certain that the data was

not copied and does it apply to new Members of the States that have been elected since November 2008?

Senator B.I. Le Marquand:

It does not apply to new Members of the States; that is why I indicated that. I cannot know whether or not information has been copied and, again, I am sorry, I have lost the first part of the question.

Deputy S. Power:

Previous senior members of the States of Jersey Police perhaps have access to this data.

Senator B.I. Le Marquand:

I am trying to avoid referring to individuals but I believe that there are people who were formerly senior members who would have had access.

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

Just before I start or ask the Minister a question, is it worthwhile sensing out the mood of the House to lift Standing Orders in terms of the time limit to the questions in this House? [**Approbation**]

The Deputy Bailiff:

I absolutely understand why Members would wish to do that but I fear my hands are tied. The ruling which the Bailiff made said it was not possible to lift a part of a Standing Order. Now, 68(3) is a part; if you lift the 10 minutes the whole thing falls away so I fear it is not possible. I do not know how much longer we have got, Greffier, but I will disallow the time we have just spent discussing this. I fear then this is the last question.

The Deputy of St. Mary:

On a point of order, could you advise which Standing Order we are referring to?

The Deputy Bailiff:

Yes, 68(3).

Connétable J. Gallichan of St. Mary:

I am sorry Sir, may I just intervene? The Constable of St. Lawrence has been flashing a light for a number of minutes behind me, Sir.

The Deputy Bailiff:

So have many.

The Connétable of St. Mary:

No, Sir, just that I meant I have been masking and I think I may be responsible.

The Deputy Bailiff:

I see. I have been writing down all the Members as I have seen them and I have tried to be as fair as possible but I am afraid we are on to the last one.

Deputy J.A.N. Le Fondré:

Okay, well, 2 questions very quickly. Could the Minister just confirm whether it is just elected States Members this applies to or to any of the non-elected Members of the States or any other Members for example of the judiciary, *et cetera*? Also, could the Minister also just inquire whether this has ever been practised in the past from time to time?

Senator B.I. Le Marquand:

As far as I am aware it only applies to elected Members, hence why I talked about the 3 classes and this appears to have been set up, as I said in the statement, first in February 2006.

The Deputy Bailiff:

As I say, I am sorry, Members but we cannot go on ...

The Deputy of St. Martin:

Can I just make a request? I am sure the Chairman of P.P.C. will have been taking this on board but I do think we are the masters of our own House, or we should be. [Approbation] To me it seems ridiculous that we have got a law that restricts us from doing the things we should be doing so could I request the P.P.C. look into this with a view to maybe amending that Article so, when there are occasions like this, we can lift Standing Orders without impeaching or whatever... of the former Bailiff? Thank you.

Deputy J.A. Martin:

Sorry, did you say we were acting under Standing Order 63, because this is 68?

The Deputy Bailiff:

No; 68(3).

Deputy J.A. Martin:

But the Bailiff never ruled on 68; it was 63 that he ruled on. It is a completely different Standing Order.

The Deputy Bailiff:

That is absolutely right Deputy, but what he ruled was that you cannot lift a part of a Standing Order and that was his ruling. It was in the context of the other one but he having given that ruling, I do not think it is open to any other presiding officer to say that that ruling was wrong. Therefore it is a matter, Deputy, if Members wish to change that which of course they are free to do, it would be a matter for P.P.C. to make any amendments.

Senator B.I. Le Marquand:

Could I make a second statement, Sir, thus allowing the clock to start again on questions? [Approbation]

The Deputy Bailiff:

Well, you cannot repeat the same statement, I do not think.

Senator B.I. Le Marquand:

This one will be a lot shorter, Sir. [Laughter]

The Deputy Bailiff:

I do repeat; I understand Members' sentiments on this but we have to abide by our rules.

The Deputy of St. John:

Could I, on behalf of the Chamber, thank the Senator for having brought this to our attention and hopefully at some time in the not too distant future a report and proposition can be brought so we can take it further? I would like to thank him.

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

Just a suggestion that might be a way forward; if we cannot lift part of Standing Orders, could we lift the whole of Standing Orders until the adjournment and then go back to Standing Orders when we re-adjourn?

The Deputy Bailiff:

You cannot lift the whole of Standing Orders. [Laughter]

Deputy M. Tadier:

In a similar vein to Deputy Green, but what would happen if we just lift the whole of that particular Standing Order?

The Deputy Bailiff:

Then there is no provision for making statements at all so we simply do not have any provision dealing with it. I am sorry, I did consider this. I have every sympathy with Members' requests. If I felt I could go with Members I would, but I do not feel able to and the Chair, like anyone else, must stick by the rules.

Senator S. Syvret:

A point of order on a separate matter; another Member mentioned the possibility of having a committee of inquiry into this issue and another way forward for the Assembly might even be an in committee debate on the matter. I would like to ask where things stand in terms of the States getting into this territory and indeed perhaps possibly agreeing to set up a committee of inquiry, given that I am under criminal investigation of a quite dramatic nature myself, as well documented, and part of my case is that evidence discovered and used against me has been obtained unlawfully and it seems to me that a committee of inquiry would in fact go into that territory, so where does that leave the Assembly and its powers, if it were the will of the House to have such an inquiry?

Deputy S. Power:

With all due respect to Senator Syvret, there are 53 Members in this Assembly and it applies to all 53 of us. He is talking about himself again.

The Deputy Bailiff:

I do not think we can take matters any further at the moment. The Minister has made a statement. He says it is being looked into and it is really for Members, if they wish to see what further steps can be taken later, to no doubt either bring in a proposition or making further inquiries of the Minister as things develop.

Deputy M.R. Higgins:

A clarification; is this action on the part of the police not an attack on parliamentary privilege and should it not be investigated on that basis? So, could you please explain to us how... well, in fact, in that case I am asking the Chairman of the P.P.C. to obviously immediately start investigating this.

The Deputy Bailiff:

Very well, it is clearly a matter for the P.P.C. or anyone else to take such further steps as they think best in the light of this statement and the information which it has disclosed.

PUBLIC BUSINESS

The Deputy Bailiff:

We come to Public Business. The Greffier has suggested we might take 2 short matters before lunch if Deputy Southern would prefer that?

Deputy G.P. Southern:

That would allow me to become a little less discombobulated, Sir. [Laughter]

The Deputy Bailiff:

The 2 suggestions he has put are Projet 70, which is an appointment of a Commissioner of Appeal for income tax; and Projet 80, an appointment of directors to the Waterfront Enterprise Board; or

Projet 92, which is appointments of Members to the Jersey Complaints Panel. So, would Members agree to start with Projet 70? Very well, then I will ask the ...

Senator S.C. Ferguson:

I am sorry, Sir, we will be going into camera as there will be individuals being discussed.

The Deputy Bailiff:

No, we only normally go into camera where there is a statutory provision to that effect. We normally appoint members of different committees in open session.

7. Commissioners of Appeal for Income Tax: appointment (P.70/2009)

The Deputy Bailiff:

Very well. So the matter is Projet 70, Commissioners of Appeal for Income Tax: appointment, lodged by the Minister for Treasury and Resources. I will ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion in accordance with Article 10 of the Income Tax (Jersey) Law 1961, as amended, to approve the appointment as Commissioners of Appeal for Income Tax for a period of 3 years: Mr. John F. Mills C.B.E., Mr. Michael R. Lanyon and Mr. Frank Dearie.

The Deputy Bailiff:

Very well. I understand, Assistant Minister, you will be ...

7.1 Deputy E.J. Noel (Assistant Minister for Treasury and Resources - rapporteur):

I give a bit of background on this. The Comptroller of Income Tax made a request some time ago to increase the number of Commissioners of Appeal. This is twofold; one that there is currently a shortage to see the income tax cases but, secondly, we realise that there is going to a potential increase in the number of cases coming to appeal with G.S.T. With that in mind, these positions were advertised for and we have received applications. Those people were interviewed independently by myself, by the Treasurer and by an independent chair from the Appointments Commission. We believe that we have 3 very suitable candidates going forward. I make the proposition.

The Deputy Bailiff:

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

7.1.1 Senator S.C. Ferguson:

I would be interested if the Assistant Minister would tell us how many replies to the advert he had because I do have problems with this particular list. As we are not in camera and will no doubt be voting *en masse* on this, I am not sure that I can support it.

7.1.2 Senator B.E. Shenton:

Yes, I think I was asking to look at the way he advertises appointments. This seems to be a little bit Civil Service heavy, let us put it that way. Certainly I did not see it advertised and I read the paper every night. I think with P.A.C. (Public Accounts Committee) we ran an article - just a short article - and got 18 applicants for P.A.C. I think there is something that is rather amiss. You do wonder whether these people saw the advert or whether they were just tapped on the shoulder and said why do you not put your name forward.

7.1.3 The Deputy of St. Mary:

Yes, just as a general principle and following on from what I said in questions about consultation. We are given one sentence: "And the selection process was overseen by the Jersey Appointments

Commission.” That is it. That is what Members are asking for. They are asking for more detail. I accept that the proposer did give us a tiny, little view that there was an interview and who was on the interviewing panel. But that is really what is at stake here. It goes right the way through all the appointments we are asked to approve. It is just click, click, click, click, click. Really we do need to be given a bit more of the inside track on these appointments and that is why Members are dissatisfied.

The Deputy Bailiff:

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

7.1.4 Deputy E.J. Noel:

In answer to Senator Ferguson’s question, we only had 3 applicants and these are the 3. In answer to Senator Shenton’s question, these were advertised in the *Jersey Evening Post*. I certainly saw the adverts and they were for a number of nights advertised in the *Jersey Evening Post*. I do not have the precise dates. I would like to remind Members that this is an honorary position. There is no remuneration involved whatsoever. In answer to the Deputy of St. Mary’s question, the chair of the interview panel was an individual from the Commissioners of the Jersey Employment Board. I do not think it is appropriate that I give their name although I am happy to be guided by yourself, Sir.

The Deputy Bailiff:

You want to give the members of the Appointment Board.

Deputy E.J. Noel:

One of the members was myself. Another member was the Treasurer of the States. The third member ...

The Deputy Bailiff:

Was an individual, was he?

Deputy E.J. Noel:

Was an individual.

The Deputy Bailiff:

You can name him. You have to. It is unavoidable.

Deputy E.J. Noel:

The third member who chaired the interview process was Brian Curtis M.B.E. I maintain the proposition.

The Deputy Bailiff:

Very well. So all those in favour of adopting the proposition, kindly show. The appel is called for. I invite Members, therefore, to return to their seats for the vote on whether to approve or not the proposition of the Minister. The Greffier will open the voting.

POUR: 30

Senator T.A. Le
Sueur
Senator T.J. Le Main

Senator B.E. Shenton
Senator A. Breckon

Senator A.J.D.

CONTRE: 6

Senator S.C.
Ferguson
Deputy M. Tadier
(B)

Deputy of St. Mary
Deputy T.A. Vallois
(S)

Deputy M.R.

ABSTAIN: 0

Maclean
Senator B.I. Le
Marquand
Connétable of St.
Ouen
Connétable of Trinity
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)

Higgins (H)
Deputy J.M. Maçon
(S)

Deputy of St. Martin
Deputy R.G. Le
Hérissier (S)

Deputy J.B. Fox (H)
Deputy of St. Ouen

Deputy of Grouville
Deputy J.A. Hilton
(H)

Deputy P.V.F. Le
Claire (H)
Deputy J.A.N. Le
Fondré (L)
Deputy of Trinity
Deputy S.S.P.A.
Power (B)
Deputy K.C. Lewis
(S)
Deputy A.T. Dupré
(C)

Deputy E.J. Noel (L)
Deputy A.K.F. Green
(H)

8. Waterfront Enterprise Board: appointment of Directors (P.80/2009)

The Deputy Bailiff:

Then would Members agree to take Projet 80 next? That is the Waterfront Enterprise Board: appointment of Directors. Then I will ask the Greffier to read the proposition, Projet 80.

The Greffier of the States:

The States are asked to decide whether they are of opinion: (a) to re-appoint Jurat John Claude Tibbo and Mr. Peter Joseph Crespel for a period of 3 years expiring on 31st August 2012 as non-States Directors of the Waterfront Enterprise Board Limited; (b) to request the Greffier of the States to notify the company of the States' decision.

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

For some time now it had been clear that the Waterfront Enterprise Board in its current state needs some revisions to it. I had hoped that earlier this year I would have been in a position to lodge a report and proposition to put the activities of States property matters on a better footing. Unfortunately, the first drafts of the proposition, and indeed the drafts that we saw last year in a proposition which was lodged and then withdrawn following discussions with a Scrutiny Panel, I was anxious to bring forward a proposal to the States for a new body which we now have in Projet 79 - the States of Jersey Development Company - in an acceptable form. Sadly, that has taken rather longer than I would have anticipated. Indeed in discussions with the chairman of the relevant Scrutiny Panel, I appreciate that they have a need and a duty to look at this in a very thorough way. Nonetheless, while it is clear to me that the debate on a States of Jersey Development Company would be premature at this stage and cannot be achieved before 31st August 2009, I, nonetheless, have an obligation to maintain the Waterfront Enterprise Board in existence at least as a temporary measure. That being the case, I have prevailed upon the 2 current non-States Directors to put their names forward on a short term basis. They have indicated to me very firmly that they would only accept nomination on a short term basis. On that basis, I propose the re-appointment of Mr. Peter Crespel and Jurat John Tibbo, both of whom have served the company now for a number of years. For States Members, if the mood of the House is to approve the proposition on the States of Jersey Development Company, either in its current form or in an amended form after the relevant Scrutiny Panel have made their comments on it, whatever that does, the outcome will be that a proper full advertisement process for directors of this company will take place once the terms of reference for those directors is clearly known. At this stage it would not be sensible to advertise for a job, the nature of which is likely to change in a month or 2's time. On that basis as a temporary measure but a very necessary temporary measure, I propose the re-appointment of Jurat Tibbo and Mr. Crespel.

The Deputy Bailiff:

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

8.1.1 Deputy G.P. Southern:

Just while I am thinking about this, I am reminded that the last temporary measure we made with regard to W.E.B. (Waterfront Enterprise Board) was Deputy Voisin who seemed to hang around for a long time before he was removed. So do not hold your breath expecting any action immediately might be the lesson we learn from history. Secondly, I am reminded again that the current States Members on the board, Connétable Murphy, Connétable Refault and Deputy Noel, none of those live in St. Helier where the industrial activity takes place. I just wondered whether either of the 2 non-States members live in St. Helier and are aware of the disturbance and activity that is entailed in W.E.B.'s activities.

8.1.2 Deputy M. Tadier:

I understand, as other Members will, that this appointment is only going to be a temporary one. But that notwithstanding, I would ask whether it is appropriate to appoint a Jurat given that we know that they all work very hard and I know that Jurat Tibbo, in particular, is not just serving in the

Royal Court but also on the Board of Visitors which I am sure keeps him very busy. I would like to know what kind of workload is envisaged in the next few weeks or months, but also the logic as to why somebody who is already very busy and may have other interests is being given yet another job.

8.1.3 Senator S.C. Ferguson:

I would just confirm that I am grateful to the Chief Minister for responding to my request that where I requested that my panel has more time to review the Jersey Development Company. There is no way we could have got a reasonable review done by 14th July. I think this is an entirely reasonable proposition. I think we should be grateful that the 2 existing non-States members are willing to keep their heads on the block for another few months. I recommend this proposition to the House.

8.1.4 Deputy R.G. Le Hérisier:

Slightly off the point and relating to the first debate about the Appointment Commission. In answer to Deputy Tadier's point, if you want something done, give it to a busy person I suppose is the comment. The second point about the appointment procedure. I realise it is not totally germane to this, as in a way the Board is sailing off into the sunset hopefully to a happy and uncomplicated retirement, but the point I would make in terms of these appointments is a lot of us fought for a long time to stop the States being a 53-person recruitment and appointment body, rather like it tries to be a 53-person planning body. But of course the answer is going to be the Appointments Commission. It would be totally independent, it would advise the States and, in a way, when the appointments came here they would be a formality which of course is an issue of some annoyance and perhaps frustration to Members. But the idea of it being a formality is it would be backed up by strong policy. What I have found, and it became apparent in the Remuneration Board which was composed of a certain kind of very fine person, I should add, but a certain kind of person. What I found is sometimes there is a distinct conflict between going for open recruitment and saying anybody who applies through the *J.E.P.* (*Jersey Evening Post*) will be considered and we will make our choice from that group of people - an open kind of competition - and another approach which says we will try and draw from as broad a range of Jersey society as possible so that the boards, the panels, *et cetera* that we end up with, while they consist of people of merit, also they consist of people who represent the broad strata of Jersey society. I do not think at that moment we have got that balance right. That is the next job, in my view, for the Appointments Commission. That is the general comment.

8.1.5 Senator A. Breckon:

Just a couple of comments. I think when people put their names forward... and these 2 gentlemen, in particular, have given service to W.E.B. when everything around them has changed - political opinion, the politicians involved on W.E.B., the officers on W.E.B. have changed - they have stuck with it and gave it some sort of continuity I think. There is a danger if names are given to us for approval and we start maligning people, then we will not get people to come forward because if we stand for election for something then, with respect, it is fair game for us. But people do not put themselves up for this reason. I think it is an eminently sensible proposal to have what is a temporary measure. Obviously we need to keep an eye on that because the 2 people who are proposed are obviously of a calibre that can do this job and hold W.E.B. to move it forward slightly before the bigger change comes. I think we should proceed without too much further debate.

8.1.6 The Deputy of St. Martin:

I just want to add to what Senator Ferguson had to say earlier on. I think the appointment is going to be seen as short term. It is a gap filler, so to speak. Also, I note Deputy Southern is not here, but the 2 people we are talking about come from the premier Parish, of which Constable Yates is the Connétable. So they are good people of St. Martin. I will certainly give them my support.

The Deputy Bailiff:

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

8.1.7 Senator T.A. Le Sueur:

I thank Members for their comments. I think it has been made clear where the 2 proposed directors both live although Mr. Crespel used to live in St. Helier at one time. As far as the appointment of a Jurat is concerned, I think what I am anxious for in any appointment is to get the right person for the job. If the right person happens to be a busy person, as Deputy Le Hérissier says, so be it. I am grateful to Senator Ferguson for the interest that her panel is showing in this proposition. I am happy to ensure that they have all the time that they need in order to deliver this. Deputy Le Hérissier also wonders whether we get a good mixture of broad Jersey society in these sorts of jobs. Frankly, my objective in appointing directors to an important company such as this is to make sure we get the right people for the job. That I think may sometimes mean it is not a natural cross-section but it is the people who are best able to do the job. I thank all the Members who have spoken and I maintain the proposition.

The Deputy Bailiff:

All those in favour of adopting the proposition, kindly show. Those against? The proposition is adopted.

LUNCHEON ADJOURNMENT PROPOSED**The Deputy Bailiff:**

The adjournment is proposed so the Assembly will reconvene at 2.15 p.m.

LUNCHEON ADJOURNMENT**PUBLIC BUSINESS - resumption****9. Public Elections (Jersey) Law 2002: rescindment of Article 39A (P.18/2009)****The Deputy Bailiff:**

The next matter of business is Projet 18, Public Elections (Jersey) Law 2002: rescindment of Article 39A, lodged by Deputy Southern. I will ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion to refer to their Act dated 10th June 2008 in which they approved Amendment No. 3 to the Public Elections (Jersey) Law 2002, and to agree, in principle, to: (a) rescind Articles 39A and 62A of the Public Elections (Jersey) Law 2002; (b) charge the Privileges and Procedures Committee to prepare the necessary amending law for debate.

9.1 Deputy G.P. Southern:

I will try and keep my hands in view during the whole of this debate. It comes as some relief after a length of time to get to this topic which Members will be aware has been concerning me more than somewhat. The first thing to state is that both I and Deputy Shona Pitman broke the law, have been to court and have been punished and that issue, as far as we are concerned, is over. We did not hold ourselves above the law and we accept our punishment full stop. The debate today is about the issue that underpinned that particular court case. The Article in question, 39A, which I still believe is bad law and should not have been passed because I believe it infringes ... disproportionately limits the right to participate in the election process and the right to protection from discrimination. I suppose what I am doing here is asking the question which is often posed in this House which is one of balance. Have we got the law right? Is it proportionate, is it reasonable

and can it be effective? To do that we have to look at a series of arguments and, in particular, the debate in June of last year which brought about Article 39A. Article 39A, for Members who received my addendum ... and I presume Members have all read it thoroughly, all 30 pages of it. I could, should I so choose, make my speech very short indeed and refer you simply to page numbers. However, if Members will bear with me I will take Members through some of the arguments as briefly as I can. But they are I believe complex and subtle arguments and I want to make sure that this time Members understand what they are voting for, which I do not believe was the case last time. I make no blame for that at all, apart from to say it happened. I do not believe it should have happened. Article 39A says then: "A candidate or representative shall not interfere with application for registration. A candidate or representative of a candidate shall not complete, on behalf of a person entitled under Article 38, or assist such a person in completing, any form required to be completed for the purposes of an application under 39(4), an application for a postal ballot; (b) shall not deliver, or cause to be delivered, to the Judicial Greffier, on behalf of such a person, any form or supporting documents required for the purposes of an application under 39(4), a postal vote; or (c) provide transport for such a person so as to enable the person to make an application in person under Article 39(4)." What we have got here then is an Article which prevents any candidate from assisting members of the public who wish to vote by post to do exactly that thing. It is a law which makes it illegal to assist somebody. It is described in 39A as interference. Here we come to the first question that Members have to answer for themselves. Is this interference? Is this assistance? What is going on here? The then Deputy of St. Mary had the following to say during the debate last time and she was very clear about interference or assistance. She said: "Would anyone really expect candidates or their canvassers to be allowed to enter the polling booth with a voter? I think not. Then why should we countenance their presence at the time of completing a postal vote?" This of course is completely misleading. Absolutely misleading because we are talking here about completion of an application form to receive a postal ballot. We are not talking about the postal ballot itself. That comes some time later and the integrity of the ballot and the privacy of the ballot is maintained. The candidate is nowhere near. This law does not address that point anyway. It refers only to the application form. It does not refer anywhere to the ballot paper. She later on maintained her position. On the radio she stated that assistance rendered by a candidate to a voter in applying for a postal vote is like going into the polling booth with the voter on election day. Again not true. That is not the case. Yet those were the statements made in this debate. I believe some Members of this House were misled into believing that it was about the ballot paper and not about the application form and voted following that opinion. In the report accompanying Article 39A, the then P.P.C. stated: "The P.P.C. is concerned that the current provision could be seen to interfere with the fairness of the election process." And: "Significant assistance from a candidate or his or her representative to obtain a postal vote may feel in some way pressurised to vote for that candidate." Is this pressure? Is this interference? Again this question of interference with the vote raises its head. In order to show what impact this has on the human rights implications I need to establish first of all that the registration process is an integral part of the voting process. That case has been made by the U.K. Joint Committee on Human Rights in its comments in February 2005 where they clearly state: "Registration as an elector is a pre-condition of exercising the right to vote." It follows then that any restriction on registration constitutes a restriction on any individual's right to vote. The question is, is this restriction - and it is a restriction I believe and I will show it is - a disproportionate restriction which does not address the issue? When I refer to human rights, I refer to our own Human Rights Law now existing in Jersey. You do not have to rely on other jurisdictions. If Members will turn to items (a), (b) and (c) at the back in the appendix, they will see that Article 3, Protocol 1 - the right to free and fair elections - secures the rights of individuals and also I believe can apply to individual candidates and political parties. Here we are talking about the right of a party or an individual candidate to effectively canvas and participate in the election in that way. It is also clear that a disability constitutes a status covered by Article 14 and it permits and may even require different treatment for those with special needs. If Members will

turn to page 18, item (c), in the appendix to the addendum. It points out the disability protection from discrimination is never used on its own. It is always used in conjunction with another Article and in this case Article 3, Protocol 1. It further goes on to say that disability is a status covered by Article 14 and that different treatment may be required. So the last sentence says: "To have treated A, who had a disability, like any other child would have been entirely wrong. It was right and necessary to treat him differently from other children and in that case to discriminate, albeit in his favour and not against him." So there is an implicit requirement not just not discriminate against somebody but where appropriate discriminate in favour of somebody. Human Rights Law is always constantly evolving. Most recently we have got the arrival of the U.N. (United Nations) Convention on the Rights of Persons with Disabilities which is in my document at item (d). While the U.K. Government has yet to adopt this particular convention, it has come up with no objections in particular to Article 29 of that convention. Article 29 of the U.N. Conventions says, and it repeats it several times: "States parties shall guarantee to persons with disabilities, political rights and the opportunity to enjoy them on an equal basis with others in ensuring that voting procedures, facilities and materials are appropriate and accessible and easy to understand and use, and to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others." On an equal basis with others. Key to the argument I think here - and it is worth pointing out - is that in order for an ordinary able person to vote, they have to get themselves on one register. Getting on the electoral register is something that is encouraged and that everyone - candidate or otherwise - is encouraged to help people with, should they have a problem. If, however, you are a housebound or severely disabled voter, you have to - not wish to; have to - if you want to participate, get on a second register. That is the postal voting register. What 39A has done is to put a barrier in seeking advice and help in getting on that register to a housebound person from the candidate. This is essentially an act, albeit unknowing, of discrimination. That is what I believe and that at the time what I pointed out to people was a risk from this particular piece of legislation. I then go on in my text to talk about what has happened in Northern Ireland where a law which was found to discriminate against the disabled was withdrawn recently - it was repealed recently - in that it was found that the number of people with a disability, the numbers on the register, was falling as a result of the Act. So young people and students, people with learning disabilities and other forms of disability and those living in areas of high social deprivation were less likely to be registered and encountered specific problems with the new registration process. So it is universally accepted that those with a disability find it increasingly ... or find it difficult to get on the register and to vote. Lots of research... and I will quote just one here, Colin Barnes in *Disabled People in Britain and Discrimination* in 1991 points out: "A number of studies of what happens in elections has found that many disabled people are not eligible to vote simply because they do not appear on the electoral register." That is research conducted in the U.K. In fact there are many changes occurring in the U.K. to accommodate disabled people and their participation in the electoral process, not least because of the Disability Discrimination Act in the U.K. For example, individuals, whatever the effects of their disability, are now equally entitled to register and to vote and can be assisted in those rights by the provision of reasonable adjustments described in a particular booklet. If you are blind or have a disability which makes it unreasonable to expect you to go in person to your allotted polling station, you are entitled to a permanent absent vote. People are moving to make it easier for people who are disabled to vote. Even in the U.K. if because of blindness or any other disability you cannot mark the ballot paper yourself, you are entitled now to have it marked for you by a named person. There are lots of other things that are in place to help those who have a disability to make sure that they participate in the vote. The question of the compatibility with human rights is one which has been presumably addressed by the Chairman of P.P.C. at the time via advice from the Law Officers' Department. As ever though, all we can know is that, for example, in answer to me recently, Connétable Gallichan said: "Advice was received from the Law Officers' Department that enabled him [the previous chairman] to be satisfied the projet was compatible with convention rights." As Members know it is usual practice not to disclose the content of legal advice received. So I do not know the depth or the level of the

answer produced in there or the questions that were asked by the then chairman of P.P.C. However, I maintain that my analysis of what is going on suggests that there is certainly a reasonable case that this is a disproportionate limitation on the right to vote. The second question then arises. If there is a barrier put in the way, if there is a disproportionate limitation, how has that been remedied? Did the authorities take extra measures in the light of 39A to adjust the voting process so that the barrier was somehow alleviated? The first thing to remark - as I do on page 7 of my addendum here - is there are 3 bodies who share responsibility for elections. First of all there is P.P.C. who devise the rules, encourage registration and participation through campaign publicity. The second is the Comité des Connétables. They keep the electoral register, they organise on polling day, they collect sick votes and they offer general advice. Then there is the Judicial Greffe who keep the postal voting register. They publicise postal voting and they organise the Autorisé. The first point to note is that in terms of publicity, we all remember these sorts of leaflets floating around in shop fronts and in Parish Halls. This one says, Portuguese: "*Para le table 10 que se registra*". Registration. No mention though of postal voting. "If you care about living in Jersey, vote tomorrow." "Election dates. Now that you are registered. The Parish Halls will be open from 8.00 a.m. till 8.00 p.m. If you care about Jersey, vote." No mention of postal voting at all. "Vote today at various Parish Halls. Now that you are registered to vote." Again no mention of postal voting. If you want advice on postal voting then as ever the facility to postal vote was put in the *Gazette* as it ever is. Although it has been slightly reduced if Members turn to page 20, item (e), they will see under Public Notices a lengthy screed which appears on one page of the *J.E.P.* In this case it is for the Senators, identical to the one for the Deputies. This Article 39A came into force on 31st October between those 2 sets of elections. Absolutely no difference, no further information if you wanted to, about how to obtain a postal vote. I know this is reduced but it is a remarkably tight, dense paragraph that quite frankly anyone with the slightest eyesight problem, or life at all, I do not think would be ploughing through in order to get to paragraph 3 which says: "An application to be registered as a postal voter may be made by post or by attending in person the Judicial Greffe." Now think about it. You want a postal vote because you have got a mobility problem. You cannot get out of the house. But you may attend in person at the Judicial Greffe and say: "Can I have a postal vote? Where is the form?" It does not work. If you can get to the Judicial Greffe, you can probably get to the Parish Hall. Or you may apply by post if English is your second language, if you have a learning difficulty, if you can afford the 39 pence stamp. I know it sounds trivial, nonetheless, an additional cost, an additional little barrier. If you want the postal vote because you cannot vote another way then you are effectively discriminated against. That is if you can read or be bothered to read a notice that looked like that. Exciting, is it not? That is really going to grab people to post a vote if that is what they wish to do or need to do. If Members will bear with me just a second. I have turned over ... so were there any changes put in place to make it any easier? The then Chairman of the Comité des Connétables, Constable Vibert, said in answer to my question: "No changes were introduced to the established practices for assisting the housebound or elderly to vote by post in the last elections. No mitigation was in place to counter any potential difficulties with postal voting following Article 39A." So the publicity that went out was the standard one. Where P.P.C. was involved it was about voting. It was not about postal voting. The Constables took no additional measures because there had been a change in the law between October and November to further assist or cater for those who wish to vote by post. So P.P.C. took no extra action. In answer to a question whether they had taken additional measures to encourage voting by post to inform constituents of the new regulations - constituents not candidates - to display posters advertising a telephone number for those who wish to vote by post. Why can you not just vote up and say: "Can I have a postal vote?" Not advertised. They did not deal with that situation at all. In St. Helier, of particular interest to me because we tend to use a lot of postal votes - I believe there were almost 300 at the last Deputies elections - when asked whether they could have coped with a significant number of those postal voters requesting assistance from the Town Hall, they were told that further additional help was not available in the sense that the electoral officer who had been appointed previously was not given a brief to do that. Had he had a

serious demand, he would have been unable to meet it. The answer that the Constable of St. Helier gave, in item (f), was that: "With one further temporary member of staff for the period following a nomination meeting, we would be able to visit all those requiring assistance." So had they thought about it, yes, one extra member of staff dealing with elections, in particular with the ability to go out and help people, would have been able to deal with it but at the time that was not in place. Next time, the implication is, the Constable will be ready and there will be 2 members of staff; one to man the desk and help people on phone calls and who turn up, and one to go out where postal voting is required and other incidences, whatever, where postal voting is required and somebody requires help, that person will be available next time. The point is that remedy was not in place. There was nothing there to remedy the added disadvantage brought in by 39A. Deputy Le Hérissier of St. Saviour made a great play in June of publicity. He said: "I would like to see much more publicity. I see a programme is being organised at the moment which might eclipse those awful advertisements about Procureurs' actions. I would like to see much more publicity from P.P.C. and the Parishes as to how to go about postal voting because I think the public are going to be rather confused now. They are going to be presented with this form and candidates are going to have to go through this procedure of: "I cannot touch you. I cannot get involved." It is all going to sound terribly sanitised and everything. There really has to be some attempt to: (a) publicise the process; and (b) if at all possible, simplify it. But it really must be pushed home because I think that has to be what will replace the assertive electioneering by Deputies." So his call for additional publicity and a real drive on postal voting, given 39A he could see a problem developing, but if we push it we can make it work anyway, did not happen. His words fell on deaf ears or stony ground, take your pick. They were not heard. No such additional publicity was put in place. I have seen some faces when I have said there is an additional barrier put in the way. How serious is the impact of 39A? In order to assess that, if Members will turn to item (g) which was thoughts prepared by Deputy Green in preparation for this debate and contained in my document in its entirety as item (g). But I will just go to the key element. Deputy Green's speech neatly sums up the problems that Article 39A engenders. Colin Barnes - already cited - points to the need for assistance, highlighted by some research on postal voting for those with a disability. He says: "Research shows that some find applying for postal or proxy votes a daunting prospect. Others do not know how to go about it, find that the process of application is too complex." Furthermore, he quotes a key element: "The Danish representative of the Confederation of Brain Injured Families in Europe states categorically the single biggest obstacle to voting for those with a brain injury was the inability to complete forms." It cannot be stated more boldly than that. Certainly the person that I know with a brain injury in District No. 2 certainly cannot handle getting the postal vote without extensive assistance which I have rendered to him for many years. So where are we? We have this double jump for some people of they have to get on to 2 separate registers; one before the election is called, the electoral register, which they can receive all the help in the world from whoever they like. One which is only called after the candidate has declared and in which the candidate has a clear interest which is the postal register which the candidate who will be calling on people, knocking on doors, canvassing in a healthy way, is not allowed to assist with, even if the person cannot see properly, even if the person cannot move properly, even if the person clearly has a language problem or sometimes a learning problem. It is amazing how many people do not admit that they cannot read to anybody - neighbours, friends, family alike - although sometimes they trust me to admit it to me and ask me to fill in the form. In order to be able to vote in person at an election, a constituent must be on the electoral register of their Parish and district. Assistance with completing the voting registration form is legal by anybody and positively encouraged. Delivering or causing to deliver a voter registration form to the Parish Hall is totally legal and is seen as helpful. I was doing it only last week, registering people. Although it is still 2½ years away you cannot start early enough to register because with a 3-year cull you will still be on the register after 3 years. Provision of transport to enable a voter to attend a polling station on election day. How close to the polling booths do you want to get? Give somebody a lift to the polling booth on the day, that is okay. That is not interference. That is assistance and that is perfectly acceptable in terms of canvassing. As I

said at the time, and no doubt my favourite Constable over there will remember, just because they come in your car does not mean to say they necessarily vote for you. We all know that. It is not undue pressure. In order to vote by post in an election and some people, remember, have to vote by post. That is the key. Not just want to. Not just wish to. Not just lazybones, cannot be bothered to go down. But need to: too busy, handicapped, disabled, away from home. Assistance in completing the postal voting application by a candidate is illegal under 39(1)(a). Delivering or causing delivery of forms to the Judicial Greffier is illegal under Article 39(1)(b). Provision of transport to enable a voter to attend the Judicial Greffe to register their pre-poll or postal vote is illegal, even I believe on election day before noon. A complete difference and perhaps Members are starting to think how did we manage to do that? A complete difference between the 2 systems. Total encouragement on the one for the candidate. Total ban of assistance on the other. Then of course when the postal voting time is over, what happens? Of course it is perfectly open for anybody knocking on a door, seeing that somebody cannot get out to vote to get them a sick vote. Three days before the election, right, I can get you a sick vote. That sort of assistance, again perfectly acceptable. "I will phone up the Parish Hall and get you on the sick vote list. Somebody will come round and make sure you can vote because we want you to vote. Not necessarily for me. But there is no pressure but please vote." That is the key. That is legitimate canvassing. The question is this barrier that is put in place by 39A, is it disproportionate or does it depend on the margin of appreciation offered to government in the balance between individual's rights and the powers of the government in order to legitimately govern? In justification of a limitation to the right to vote contained in 39A, the P.P.C. appear to claim that it was done so in pursuit of 3 legitimate aims in relation to the integrity of the voting process. At various points they said it was to prevent undue influence in voting. Undue influence in a process that takes place days, weeks, before the ballot. To ensure the secrecy of the ballot. Again we are back to this, is the ballot paper present when the candidate is? No, it is not. Nonetheless, they use the argument that it maintains secrecy. Then to prevent fraud. Is there any chance of fraud involved in this? Absolutely not. In fact one has to ask the question is this law, or its equivalent, in existence anywhere else in the democratic world? Unfortunately, certainly for the Commonwealth, certainly for the U.K. and I believe anywhere, nobody else has this restriction and this limitation making assistance with an application form illegal. The A.G. (Attorney General) confirmed that in a question to Deputy Shona Pitman quite recently. He said I am not aware of any other Commonwealth countries which have similar legislation. One has to ask why. One has to ask why nobody else does this. What we have to judge here is where something is prescribed by law, is it necessary in a democratic society? Is it proportional? Is it in pursuit of legitimate aims? What is the margin of appreciation? Is it justified? We have had some time spent on whether it is a question of undue influence. Is it undue influence? The answer must be no. However, Senator Vibert made a very strong speech back in June suggesting that it was. He said... and I believe he influenced some Members: "Deputy Southern made a spirited defence of collecting postal votes. From what I could understand, the main thing was to encourage voting, which I totally agree with, but not at any cost. If he wants to encourage voting, I am sure handing out £1 notes or £10 notes to voters might help but that would be bribery." Well spotted, Senator Vibert. "What this amendment is seeking to do is to ensure there is not any undue influence." I remind people what undue influence means. Undue influence: "A person is guilty of undue influence if they directly or indirectly make use of or threaten to make use of force, violence or restraint or inflict or threaten to inflict injury, damage or harm in order to induce or compel any voter to vote or refrain from voting. A person may also be guilty of undue influence if they impede or prevent a voter from freely exercising their right to vote." Yet Senator Vibert, then a member of P.P.C. and backing up his chairman, suggested that this law prevented undue influence. Simply not true. As for the Attorney General, again, recently confirmed on 28th April, in answer to a question from me: "I think it is quite clear that Article 39A is not to do with undue influence." What a pity that was not made clear back in June 2008 during the debate. Senator Vibert - and I will refer to him again because I believe he had the most misleading statements - was obviously under the impression, as were many Members I suggest, that

Article 39A is concerned with a ballot paper because he has then said in the debate: “What we need to do is protect the integrity of the poll. It really is a case of it should be done in secret and without interference. Not that it might happen, but we should not allow a candidate the ability to stand over a voter with a postal vote.” What arrant nonsense. The then Minister for Education, Sport and Culture had not recognised the fundamental flaw in his argument that the ballot paper was nowhere present. We are talking about an application form again, so the secrecy of the ballot is not affected. The integrity of the ballot is not affected. There is no ability to stand over the voter with a postal vote. Absolutely, and again, clear, bang, wrong. Again, and here I must turn to the piece of evidence that was submitted by P.P.C. and given in the bundle of documents for Members as item (k). This was the *pièce de la résistance* because these principles that surround this code of conduct - and it is a code of conduct for the political parties, candidates and canvassers, on the handling of postal vote applications and postal ballot papers - it was suggested that Article 39A was a reflection of these guidelines. I will just go through some of them with Members because she said: “Following the scandal of postal ballot fraud in the U.K. local elections of 2004, the Electoral Commission produced a Code of Conduct for political parties, candidates and canvassers which provides guidance on the handling of postal vote applications and postal ballot papers and advises candidates, among other things [and here it is straight forward] not to handle or help voters complete their postal ballot papers.” Postal ballot papers? The ballot paper. Not the issue. Article 39A does not address the ballot paper. “To encourage voters to post or deliver ballot papers themselves [again, not an issue; not addressed by Article 39A] and not to solicit completed postal ballot papers from electors.” Again, not an issue. No one has been doing that. No one has been accused of doing that. Nothing to do with the application forms. The applications forms, if Members will turn to page 29, are addressed in item (4) and the papers in item (5) of the Code of Practice and here is the key. Why is this comparison with the U.K. scandal and Jersey Practice completely and utterly inappropriate? The start of (4) says: “If you develop a bespoke application form it should fully conform with the requirements of the electoral law, including all the necessary questions and the options open to electors.” That first phrase: “If you develop a bespoke application form ...” In the U.K. you can design your own postal application form along the lines of guidance given and the difference between here and there is that you can put your party headquarters or your own address on the application form. That is clearly open to fraud and that fraud did happen in 2004 in the U.K. because of this ability to create a bespoke application form, which you can have the ballot paper sent to whatever address you wish; your party headquarters. That is where the system went wrong. Article 39A does not address that because it does not exist in Jersey. The address, always, on the ballot paper, is please return to the Judicial Greffier’s address. That is the way our system works completely different. So, to pretend that Article 39A somehow was related to these guidelines, which refer to the ballot papers, by and large, and barely at all to application forms, except the bespoke application form, is entirely and utterly misleading. It then goes on to normal rules: “Electors should be encouraged to ask for postal vote to be delivered to their registered home address. The local electoral registration officer’s address should be the preferred address given for the return of the application forms [but not compulsory; preferred]. If any intermediary address is used, like your party headquarters, the forms should be despatched, unaltered, to the relevant electoral registration officer’s address within 2 working days of receipt.” Again, not relevant in Jersey. If you are given a completed application form you forward it directly, without delay, to the local electoral registration officer, but that would be illegal in Jersey, according to Article 39(1)(b). That is an illegal act in Jersey, rendered illegal by Article 39A. What sort of nonsense are we getting into here and, again, in (5) referring solely to postal voting ballot papers: “You should not touch or handle anyone else’s ballot paper.” Fine. Not addressed by Article 39A. “Wherever practical, the voter should be encouraged to post or deliver the completed ballot papers themselves.” Ballot papers; fine. No interference by any candidate anywhere in Jersey. If you are with a voter when they complete their ballot paper, remember it should be completed in secret. Equally, you should ensure that this voter seals the envelope personally and immediately. Commonsense rules, commonsense guidance around

candidates if you should happen to be there as the voter gets out his ballot paper and says: "I am going to vote now." Ooh, I would be running a mile. The overall guidance given in this Code of Conduct is, if you are in any doubt about the probity or propriety of your actions you should ask yourself the question: "What would a reasonable observer think?" That Code has been prepared by the third report of the Committee on Standards in Public Life. What would a reasonable observer think? Would the reasonable observer think that I am somehow interfering with a ballot if I help somebody with the application form for a postal ballot? I do not believe so. I do not believe any reasonable observer would suggest that was interference in any way, shape or form or any undue pressure. If Members will bear with me. I am coming to the last thing I want to say but I cannot say it if I cannot find it. So, is Article 39A justified in any way, shape or form? I do not believe so. If people are concerned about fraud, if they are concerned about undue inference, inducements or threats or any interference with the poll, they simply have to look not to Article 39A, which is directed as the wrong place for those sorts of offences, but to the Articles contained in Part 11 which talk about actual offences, inducements and threats, Article 62, a perfectly adequate piece of legislation to deal with that. Behaviour inside a postal station, Article 63, interference with a poll, Article 54, perfectly adequate prevention of that. Voting without the right, Article 65 and the various offences like aiding and abetting, listed under Article 66 and 67. So, the issue of fraud and the serious offences about vote rigging all dealt with in Part 11 of the Public Elections (Jersey) Law. No need for Article 39A, which has been put in the wrong place. How crazy are we? Then, finally, I wish to address the issue of what members of the public out there have suggested and what they think of this law and the practice that I have followed for the last 7 years of assisting people, wherever it is necessary, with filling in an application form. One of my constituents writes: "Subsequently, in the November election for Deputies, Deputy Southern returned to canvass my vote. He brought a postal voting application form which I filled out and signed. I asked him to pop it into the Town Hall for me. My ballot paper arrived within a week and I duly voted." This is a person who had developed severe arthritis in her 50s and who met me first in 2005 when she was not even a candidate of mine but she was able to vote for another candidate. "At no stage in any election have I felt that the assistance rendered by Deputy Southern could constitute undue pressure or interference with my vote as, I understand, is suggested by this new law. On the contrary, it has enabled me to vote despite my disability in a manner that retains both my dignity and the secrecy of a ballot which would otherwise be difficult or impossible for me." Then, finally, I turn to witness statements and point out that even those who bore witness against me after questioning by the police - which upset many of them more than my actions - in most cases their reaction is positive. Just a short selection; Miss. S.: "I was surprised but pleased with the idea of a postal vote." Miss. V.: "He asked me if I had voted in the past. I said: 'No.' He asked whether it would make a difference if I could vote by post and I said: 'Yes.' I did receive my postal vote and I did subsequently vote." Mrs. F.: "I had voted in the past but my husband had never voted before. My husband told him he was always too busy. Mr. Southern explained that we could vote by post and we were happy to hear that. It was easy, like he said. We both voted." Miss. G.: "I have seen the original form and confirm that it has my signature on it although the rest is not completed in my handwriting. I would add, I was not feeling well at the time and appreciated that Mr. Southern did complete the form for me." Standing on somebody's doorstep, they are clearly unwell, quickly complete the form, get them to sign it. Yes, I did that. My conscience is clear. Mrs. G., her mother: "There is no physical reason why I could not have filled out the form myself, however, I would have found it difficult to deliver it myself due to my disability." On that same occasion, I remember it well, one was ill and one clearly in her wheelchair would have problems delivering it herself. That is the reality of the sort of actions that Article 39A makes illegal. I believe it was a bad law, I believe it unfairly discriminated against those with a disability. I believe that this House was misled, when it voted for this law, and did not fully understand it. There is no shame in that. We often vote without fully understanding all of the issues - including me - from time to time, but I present an opportunity to this House to make amends for that error back in June and to rescind this Article 39A and I look forward to the contribution from Members. I maintain the vote.

The Deputy Bailiff:

Is the proposition seconded? **[Seconded]** Now, I have seen first Senator Ferguson and then the Connétable of St. Helier. Senator Ferguson?

9.1.1 Senator S.C. Ferguson:

In 1904, Joseph Rowntree stated in the founding documents of the Joseph Rowntree Reform Trust: "... and by all lawful means to promote or endeavour to secure security of election for parliament and for all municipal and other public bodies in the United Kingdom and by all lawful means to influence public opinion in favour of all such legislative or social reforms shall, to the company, appear desirable." So, what is this to do with the subject matter of today's debate, P.18/2009, rescindment of Article 39A of the Public Elections (Jersey) Law? We are, in fact, talking about aspects of postal voting and I think, certainly as the Deputy has recognised, most places have trouble with the implementation of postal voting. There has been concern in the U.K. on the implementation, definitely. In fact, the Election Commissioner in the U.K., Richard Morley Q.C., has stated in one of his judgments that postal voting on demand is fatal to the democratic process. Well, I think we all recognise that it is needed but there must be safeguards. This concern has led to a number of reports on the subject of postal voting. The Rowntree Foundation itself commissioned their report to review the extent to which there is evidence of electoral principles and processes being undermined in the U.K. While this report refers to the U.K. many of the conclusions drawn I think are equally applicable to Jersey. Postal voting on demand was introduced to make voting more convenient and, hopefully, increase turnout. Unfortunately, a lot of politicians do have this belief that if voting is easy turnout will increase. In fact, experience in countries where voting is not compulsory does not corroborate this. In fact, the report by the Rowntree Foundation - Purity of Elections in the U.K., Causes for Concern - they say: "The benefits of postal and electronic voting have been exaggerated, particularly in relation to claims about increased turnout and social inclusion." They also comment that the causes of low turnout are far more fundamental than the extent to which voting procedures are modern or convenient. I suppose we have to consider what people want of the voting process. There was a recent poll and the main factors were: voting being private, 33 per cent; voting being safe from fraud or abuse, 30 per cent; voting being convenient, only 20 per cent; voting being easy to use, 15 percent; and do not know, 1 per cent. So, the main concern is not convenience but privacy, safe from fraud or abuse. We have implemented a law, including Article 39A, which was clearly aimed at satisfying those types of concerns by voters. At the same time we must remember that, as States Members, we are expected to be like Caesar's wife, above suspicion. Because we legislate we are expected to comply with the law. If we disagree with it then, unlike other members of the public, we have a rare privilege; that of being able to bring propositions to change the law. There is no need for us to transgress. We can, if we have a reasoned argument, change the law. We must also ensure that not only should we comply with the laws of the Island but there should be no perception of non-compliance and, in fact, as the Code of Conduct of the U.K. Electoral Commission states - and I did not hear the Deputy actually quote this: "No candidate or supporter should place themselves in a situation where their honesty or integrity, or that of their party or candidate, can be questioned." In fact, in their report, they also recommended the urgent introduction of primary legislation to give effect to an updated offence of undue influence in relation to postal voting and a new offence relating to fraudulent completion of postal vote applications. Now, as the Deputy has already said, there are differences between our postal vote applications and those in the U.K. and I am certainly not accusing the Deputies of fraudulent completion of applications. But I would remind Members that no candidate or supporter should place themselves in a situation where their honesty or integrity, or that of their party or candidate, can be questioned. Like Caesar's wife, we must be above suspicion. The Deputy also claims that this Article infringes human rights. Now, the human right has been developed in the Declaration on Criteria for Free and Fair Elections adopted by the Inter-Parliamentary Union in 1994. The Declaration specifies a number of things like: "Elections should be held at regular intervals based on principles of universal suffrage, the quality of the vote

and the secret ballot, governed by impartial procedures for registering voters, managing elections and counting votes which also guarantee the security and transparency of the process, free from all forms of violence, fear and intimidation and secure from fraud and other forms of malpractice, supported by wider freedoms of assembly, association and speech, along with open access to the media and underpinned by legislative policy and institutional frameworks which provide for fair and open competition between political parties, including regulation of party funding and election spending.” These are principles, I think, which we can all support. Yes, everybody has a right to vote and should be helped, if necessary, but using processes which ensure that there is no perception of gerrymandering. I would venture to suggest that the whole fracas over Article 39A might have been avoided if the Deputies had made sure that the Connétable of St. Helier and his elections officer were apprised of the situation which they maintain existed. I am sure the Connétable can comment - and I hope he will - on this. In fact, I hope all the Connétales will confirm that they do have procedures in their Parishes to help the old and infirm to vote, if they so wish. If the systems were not in place then the obvious thing to do was to rattle the Connétable’s cage, call in the media, call in the cavalry and make sure that it was an issue. This process preserves the human rights of the voter and ensures that there is no perception that anyone - in particular, the integrity of the candidate and the party - can be compromised. I ask Members to reject this proposition. **[Approbation]**

9.1.2 The Connétable of St. Helier:

The Deputy came, I think, the closest he has ever come to paying me a compliment when he said I was his favourite Constable and I am going to pay him a compliment, at least at the outset, by commending him for the research that he has put in to these propositions before the House. **[Approbation]** He has produced, I think, excellent arguments. He has laid out his arguments very well. I wish he would present them in the States in a somewhat more concise fashion, but I am sure that will come with time. **[Laughter]** I do commend him for his work.

Deputy G.P. Southern:

I challenge the Constable to make that many points in the same time.

The Connétable of St. Helier:

I am going to go on and do that now, I hope. I would also like to deal with a couple of issues that he has raised. First of all, the letter that I wrote at the time of the court case, which he has reproduced as item (f). I think, if it had been me, I would have left this out of the bundle today because it does seem to me, and here I am really picking up the closing words of Senator Ferguson, that the last paragraph of that letter which he has emboldened - those are not my bolds, those are Deputy Southern’s - the last paragraph does seem to make a very good case for not changing the law at the moment but simply giving more resources to those electoral officers that are doing what they can to get the messages out to the public. Here again, I am going to pay the Deputy another compliment because it is only because of the several years of strictures, of criticisms about how awful the Parish of St. Helier’s electoral system is that, at the end of the last election in which I stood, I pledged to appoint an electoral officer and that was done very quickly, within about 10 weeks, and I know the Deputy has been very impressed with the work of this particular individual. I was quite surprised when I conferred with the electoral officer in St. Helier and he told me that just one more temporary member of staff would make sure that there was no one left at home unable to vote. Clearly, we would prefer people who are disabled to use the sick vote because that is my understanding of what it is for. I have always understood that a postal ballot is by people who believe they are going to be away at the time of the election or students who are at university. So, in any case, I am not saying that is wrong to use a postal ballot but, certainly, our electoral officer has indicated, and it is in black and white, that all we need to do next time is put more resources, on a temporary basis, to address this problem and that is what we will do. So, I am grateful to the Deputy for that work. It does seem to me that rather cuts away the grounds of his

argument because if the busiest Parish, in electoral terms, can deal with this problem with that simple measure, then why rescind the law with all the other problems that I am sure other Members are going to talk about. There are a few other ... I think - I am afraid - that they are red herrings. We are all, I am sure, determined to make the electoral process accessible and so we want people who are not in good health at election time or who have a chronic illness which prevents them from getting to the polling station, we want to help them access the electoral process. But is the answer to give the candidates more of a role in getting people to access the process. My belief is that it is not and that when I next canvass the voters of St. Helier's, if that is where I am doing it, I expect to put my manifesto forward to the potential voters and I expect to ask them to vote for me and to say there are these various ways you can vote, but that is as far as I will go because I will expect the Parish and, indeed, the Judicial Greffe, and it would be good if the States had an electoral officer - they seem to have an awful lot of other officers, surely they can afford an electoral officer - if the States were to do more to publicise the various ways that people can access the voting process. I think we have moved away from the U.K. and I do not want - the Deputy gave us a lot of examples of how the U.K. do this - I do not want to copy the U.K. when it comes to postal votes. I want to continue to move towards the process which is really free from influence and, certainly, I have a problem with the fact that voters have to run the gauntlet of supporters. I think that is something we are going to have to tackle. I am also not convinced that offering people lifts to the poll and: "Can I help you with your shopping on the way?", sort of thing, is very good either. I think these things need to be tackled but the answer, surely, is not to go back and rescind this law but a move forward and to see how we can improve the process that we have already got. So, unless I hear some very strong arguments from the Deputy and his supporters I must say that, in this particular occasion, the *status quo* is probably worth sticking with.

9.1.3 Senator P.F. Routier:

The Deputy suggests that those who did vote the last time we debated this Article, when we voted in favour of it, that we had probably been led astray or we did not know what we were doing. For my part, I certainly understood what we were talking about and voting for because I believed that what we put in place was very important. The reason I say it is very important is because the Deputy majored big time on people with disabilities and the need for them to be able to vote. It is right; the Deputy is quite right. It is very important that people with disabilities must be able to participate in the democratic process and he quoted from human rights. It is their right to be able to vote. Some Members may be aware, may remember, that I brought forward an amendment to the electoral legislation which ensured that people with learning disabilities were able to vote because it was not so long ago that they were not able to vote. They were barred from voting and I managed to get the legislation changed so that they were able to vote. People with learning disabilities do want to vote. They look at the television and they like the colour of a suit or they like somebody's new tie and they will make a decision about the reason. They do it on policies as well, about bus passes, and all sorts of good reasons for them why they want to vote, as many people do. When I think about what the Deputy is suggesting, about doing away with this part of the legislation, I am not sure that we really want to go backwards and use legislation which is perhaps in other jurisdictions. If you think about other jurisdictions about the way they are held, whether they are held in high esteem about their electoral process, I am not going to mention any particular jurisdiction but if you look at your national news and international news, you will see that there are question marks about the way people do hold elections and I think we should have legislation which we want, legislation that Jersey wants. I hope that Members will reject this proposition because I believe that what we have is appropriate. Deputy Southern claims he is trying to help people with a disability and others who have other difficulties to vote. The opportunity for people to vote already exists as has been highlighted by the Constable of St. Helier. I know from personal experience that if I have encountered someone who has wanted assistance in voting, I ensure that somebody else does that. I ensure that I tell them: "You can achieve that somewhere else" or I might perhaps ask the Parish Hall: "Please get in touch with that person

because that person does need assistance” or there are other opportunities as well. There are social workers; there are people within the social care environment who can assist people. It is really important that a candidate takes a backward step when he identifies that somebody is vulnerable in the community who can be influenced. They should deliberately take a step backwards to ensure that there cannot be any question of them influencing the person in any way. I think the law, as already written, is about as much for the protection of the candidate to ensure that there cannot be any suggestion that there has been any undue pressure on them. So for my part, I am pleased this legislation is here because it can provide not only protection for the voter but also protection for the candidate. I suggest that we reject this proposition and show the world, show other jurisdictions, that we want our election system to be beyond suspicion.

9.1.4 Senator A. Breckon:

I just want to say a few words. When the House approved this, it was due to come in between elections and I was a little bit uncomfortable with that because I had some experience of the practical problems that it would create, which I think has been explained by Deputy Southern. Also, not that long ago, certainly Senator Ozouf, who was then Deputy Ozouf, did a lot of work on this to encourage more people to get on to the electoral roll in the first place. That was the initial stage and then the other part of the process was to get people perhaps more interested and to get them to vote and surveys done over the years show that there are still many thousands of people who are not, so I do not think we should be doing anything that disconnects people. The thing is now we talk about technology and people doing things on line, using text messages and things like that, and there was this: “Oh, no, no, somebody is going to be doing this for you.” There were instances of electoral fraud which were investigated in different areas but I do not think we are anywhere near that here. Although the Constable of St. Helier has left, an excellent job was done in the Parish of St. Helier by the Electoral Roll Officer who was working very enthusiastically to get people on the roll and investigate and also to assist candidates. A couple of other Members have touched on why somebody might want a postal vote and it could be somebody who is at home. Not many years ago, they would have seen a milkman. You do not see a milkman any more. Perhaps they do not get much mail delivered so there is no postman that they regularly see and unfortunately statistics show that many elderly people living at home do not get many visitors either. Some do not have a large circle of friends and sometimes they are a bit isolated. The reason I say that is what would a candidate do knocking on the door: “I would like a postal vote.” “Whoa, do not go there. I cannot even give you an envelope with a stamp, nothing at all.” That has got to be a nonsense. People say: “Well, hang on, I thought you wanted to be in the States. How come you are disengaging so quickly?” “You do not want to know” and that, I see, is a very real problem and one I must say that I have experienced. The Governor has just left but in my former District in St. Saviour, Government House was in Sous l’Eglise, St. Saviour No. 2, and I had a conversation with a former Governor when I did say to him: “Well, you can use a postal vote, you know”, and the conversation was: “Well, would the person who appointed me have a postal vote?” “I do not know, I am not asking her, I am asking you.” So anyway I do not know happened, but there you go, so that was and that is, I think, friendly banter but is that illegal, I do not know, or would it have been illegal? The other thing is if people are away on holiday or at college, then again this system is difficult because I have known cases where people have registered and the information has come too late so, again, what do we do about that? Who is investigating that? Nobody that I know of. So is it a case we are just going to say: “Well, no, we cannot do that” but how effective is the system if somebody is at Cambridge or Newcastle or Edinburgh, how quickly for a student would this stuff go backwards and forwards? When do they find out? Who tells them they can have a postal vote and when? I do not see any effective method. Parents might, they might not. So, again, I think if we can make things easier. There is a difficulty for candidates and I know I have. In the past, when I was a Deputy in the Parish with various elections, people have needed the questions answered: “What happens if ...? How do I do this?” It is better than it was because people can come here, they can come to a voting booth or the equivalent downstairs where a room

was used there for a week or 10 days or so. I know quite a few people that have used that, but I think for me what Deputy Southern is proposing cuts down the amount of stamina that the individual needs to do it because sometimes they are not very well and they are down on us: “Why do I have to do that? Why do I have to go to all this performance to vote? Does anybody want me to vote or do I have to? Are there hurdles and hoops and things like that?” I am not saying it should be in a situation where it is easy to abuse but, at the same time, it needs to be workable and I think what is being suggested is workable. The other thing is sometimes from the Members of the House, some people will have knocked on more doors than other people and this is where you get this on a doorstep. You do not get this in a report or in a leaflet. You get it when somebody says: “Well, how do I do that, how do I do that?” What do you do then? “I will not tell you.” So that is where my support for this is because the reality is you need to engage people and part of that then hopefully things take their place. Somebody will get something, they will look at it, whatever they have got, people’s manifestos, reports in the media, and then make up a judgment. By then, the candidate, whoever it may be, has gone. There are others who have said who people vote for, they have still got that secret but the other thing is sometimes people might have a difficulty getting the thing posted. It is as difficult as that for some people so, having said that, I will support this and I hope Members will give what I have said careful consideration.

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

I am just going to refer to page 2 of the amendment on P.18/2009. Quoting from it: “I reproduce here the basis of my original questions along with subsequent research on the issue of support for P.18/2009. The case starts on the premise outlined in detail below by the U.K. Parliamentary Joint Committee on Human Rights, that registration as an elector as a pre-condition obviously of exercising the right to vote.” That is not what we are talking about here so we are talking about Article 39A. Registration as an elector as a pre-condition of exercising the right to vote is going on here today. The proposer himself said a few moments ago that he had been helping people to register as a pre-condition of exercising their right to vote. I have also been doing that recently because all the registration forms have gone out in the Parish of St. Peter and, I imagine, across the whole Island. I have helped people when they have come into the Parish Hall who have not been sure how to fill them out. I have filled in the gaps that they have not been able to fill in. Those people are now registered to vote. Article 39A does not prevent any one of us from doing that. Article 39A does prevent us from helping them to fill out a postal application form, which is something entirely different. They can only do that if they have already registered as an elector as a pre-condition of exercising the right to vote. In other words, they have filled in their form today for forthcoming elections over the next 2 and, as the Deputy says, up to 3 years. I personally do not believe that Article 39A does prejudice against the individuals and I think too just quoting the proposer earlier on, he said: “A reasonable observer may not be concerned seeing the assistance by a candidate filling out a postal application form.” He may not but if I was that reasonable observer, I would be concerned about the inappropriateness of a candidate to be seen to put himself in a vulnerable position of potentially being accused of compelling somebody to lean in their direction. On that basis, then, I will not be supporting this proposition.

9.1.6 Deputy M. Tadier:

I will try and limit this to a few points and I will try and keep it good-natured although my initial sentiments and passion would normally prevent me from doing that. We heard from Senator Routier about disabled voters and initially I thought it was somewhat patronising. It seemed to be saying that disabled voters look at someone’s tie and decide how they are going vote. Well, I am sorry, we need to give people a lot more credit than that, I feel, although I may have misinterpreted those words. It also seems to me that there are complete double-standards going on here. So, on the one hand, the message I am getting reading between the lines is it is perfectly acceptable for what we will call “establishment candidates” - we all know who they are - to go into old people’s homes, to go into places like Maison des Landes, with a big minibus etched with someone’s name

written on the side and to transport, *en masse*, people to the polling station whereas you cannot even help. Like, you can give someone a postal voting form but if they say to you: "Can you nip this back to the post office for me?" you have to say: "No, I cannot do that" and then they say: "Oh, why can you not do that?" You say: "Because the States of Jersey passed this law last year which says I cannot even do that. I can give you a form. I can register you to vote. I can even take you to the polling station if you like on polling day" and I know some of the Senators do that and that is their prerogative and that is not undue influence, we are told, but you cannot even take a letter and post it for them. What kind of message does this send out to the public about the ludicrous laws that we are passing, and are we trying to make the system less opaque and easier to vote? What are we trying to do? I think we are labouring under the false impression that this House wants people to vote. I think if we work from the premise that and realise that most States Members, I suspect, do not want people to vote because they are quite happy with the normal turnout, then things would start to make a lot more sense because they certainly do not from where I am standing. So basically it seems to me disabled people are allowed to vote as long as they vote for the right candidates. Senator Ferguson talks about postal voting and there is certainly a debate to be had about postal votes. It is interesting to note that certain places, Oregon, for example, in the United States, has a system whereby you can only vote by post so presumably they manage to do that in quite a secure fashion. I do not think there is anything wrong with postal voting and we need to be giving people as many options as they can so long as this can be done securely. We need to be encouraging a voter turnout which tends towards 100 per cent and a voluntary turnout if possible. Constable Crowcroft made the suggestion that this law in itself, this particular 39A, is not the only issue. For example, he, like myself, has issues with dropping people to polling stations. Again, I am not sure why that was not made an issue last time around because it is patently obvious that that would influence somebody a lot more than just dropping something off to the letterbox for them. He seems to say that that is a reason for not rescinding this. It is perfectly simple. You either agree that this law is right or wrong and if it is wrong, you just rescind it and that may be that you put in something else, more stringent measures afterwards. I know that the Constable suggested, from what I can gather, that we have some kind of centralised system that the State controls and it takes care of postal votes and all the mechanics around it. Now, that is fair enough but that is not in place yet and I suspect with all the staffing that that will require, it will not be. So I will jump on to a different point because it is a related point. I think we are missing the amazing resource that we have with candidates when they go round to the door. First of all, you do not have to pay these people to go round because they are doing it anyway, they are canvassing. They may have been registering people to vote in the past. Incidentally, in St. Brelade, I think I registered 40 new electors so there were 40 potential new electors. They may well have voted for me. I hope they did and I will be quite candid. I did it partly because I wanted them to vote for me but I also did it because I think that it is better that they vote than that they do not vote even if they did not vote for me. Again, that is perfectly legal. There is nothing to stop me doing that. There were 8 candidates in St. Brelade. If we each registered 40 new people, that is 320 new people that have got the right to vote that would not have had the right before. If you simply relied on the Parish Hall... and I am not saying they do not do good work because they do - but they cannot cover all bases. Sometimes it is nice to have that personal contact that would just give people that extra bit of encouragement when they have the human contact. So I think that is a resource which we are not necessarily capitalising on at the moment if we keep 39A in place because, as I have said, you do not have to pay all these candidates, and they can go out and encourage people to vote again. They are nowhere near the ballot paper. You can give them a form. You can even maybe help them fill the form in if we rescind this Bill. They sign it, you post it to the Greffe or post it in the letterbox for them and then they can vote. You do not see the ballot paper so to me it is very clear what is going on here, and it is not undue influence. Of course, we could take the whole argument to its extreme farcical conclusion. If you are saying that you are not allowed to unduly influence people, certainly giving someone a flyer or your manifesto, surely that is going to influence them to vote. Similarly, if they see your poster and your big mug on Victoria Avenue on the roundabout every time they are

driving along, that is going to influence them. The more sinister thing about that is that it works on an unconscious level because you are seeing this face all the time. There is no kind of policy there. You are just seeing what Senator Routier might call a nice tie, a yellow flower or a red ribbon, whatever you want to call it. That is constantly being drummed into their unconscious mind so that when they go to the polling station and they see, let us say, Tadier, which has been plastered across the Avenue in 10 foot long letters, that is perfectly acceptable, is it? Well, presumably, it is and but it is not okay to give somebody a postal vote if you have helped them fill it in. It is not okay to take that form back to a letterbox and post it for them. Again, can you understand why the public hold us in contempt? There are all these inconsistencies in the law and they basically just think we are a laughing stock. They do not think that we want them to vote, which I think for most Members in here is probably not true, but I think we do not get that message across. So just to sum up, I think it has been demonstrated that helping someone fill out a postal vote request form if they need one and posting it - and this is all with their consent, of course, I think that needs to be emphasised - to me does not seem like rocket science. It does not seem as if that is anything particularly bad. If we are going to ask serious questions, let us concentrate on whether people can offer lifts to somebody to do some shopping and then: "After that, I will nip you off to the polling booth." I do not know if that happened but it could have happened in, let us say, a District like No. 3 in St. Helier and that could have influenced a decision. It could have won someone a seat just by one vote so surely that is a lot more sinister than what we are talking about here. So I would really ask Members, just because you made a bad decision in the past, you did not understand the facts fully, that is fine, we all makes mistakes and I would really implore the undecided Members on P.P.C. that they do not have to, for want of a better expression, throw good money after bad. They do not have to make a bad decision now just to save face because that is effectively what it would be. You can make the right decision, rescind this 39A. There is no harm in doing that. If we need to take a more comprehensive look, as a Member of P.P.C., I can give the assurance that we will be doing that. We will look at this in its entirety but certainly 39A is not the way to do it. This Article needs to be amended and it needs to be amended now.

9.1.7 Deputy R.G. Le Hérisier:

I think one of the factors perhaps influencing this debate is the conflation of issues. It may be indeed that while Deputy Southern magnanimously accepted his guilt, in a lot of quarters, there obviously is annoyance about the punishment that was applied in the situation and in the eyes of some people, its unfairness compared to other offences. What I would say though on the broader issue, I have to say, as an oligarch leading Member on this occasion, I was attracted to some of the Constable of St. Helier's arguments. I think in a way Deputy Tadier is saying: "Well, look, you have got posters around, we are being influenced all the time so, in a sense, what is the difference between that and another bit of influence?" Well, there is a distinction to be drawn between our role as campaigning politicians and the role of the electoral system in getting people involved and, in that sense, Deputies Tadier and Southern, I think, were right. There is no doubt it would have been easier for me to deal with it had P.P.C. come forward with some really assertive proposals saying: "Look, there are real inconsistencies in the system." Giving people lifts seems very odd when you can be influencing them in the process of giving them the lift yet we have these very tight restrictions on how one may or may not hand over the postal vote application form. So let us come up with a system which really makes all the facets of electoral registration as tight as possible and as available as possible even to the extent that we might ensure that everybody gets mailed with a postal application form if that is the option they wish to exercise, and that the Parish Halls become much more the focus of the administrative system for this and that right from the beginning, the thing is handled much more proactively. I would have been much happier had that proposal been on the table. It would have been the obvious counterbalance to the unhappiness that people are experiencing because there is no doubt we have, in a sense, grown like Topsy. The system has developed in an inconsistent way and it is open to pressure, but I do not agree in that sense with Deputy Tadier that just because there is pressure and there is advertising going on everywhere, we

may as well just accept that it is going on and sort of join the show, so to speak. I am not sure that is the way to go but I will look forward to the chairman's views, whether the committee is going to come up with some really assertive views to reform the system and to give the kind of access and speed which it appears that on the doorstep candidates can give but is not being offered by the official system.

9.1.8 Deputy E.J. Noel:

I will be brief. My sole election promise was to listen to my parishioners and I would like to read a letter from a parishioner which I received in March and which I believe my fellow Parish Deputy and my Constable also received: "Dear Deputy Noel, I am writing to you to express my grave concern at the recent behaviour of your fellow States Members, Deputy Geoff Southern and Deputy Shona Pitman. I find it incomprehensible that they could believe that their actions in assisting with postal voting forms was not a criminal act. They should have been suspended while the matter was investigated."

Deputy S. Pitman:

Is this really relevant to the debate? [Aside]

The Deputy of St. Martin:

Are you going to give us the author of the letter? No?

Deputy E.J. Noel:

No: "I am also very concerned that they are attempting to bring an amendment of the existing postal voting legislation, which permits such assistance. Such an amendment would encourage corruption in our political system, as it would promote unscrupulous candidates approaching the more vulnerable members of our community. I am sure that such vulnerable members could easily be persuaded to vote in a certain way. I note that you did not sign the request to amend the relevant law and I trust you will be exercising your vote to retain the integrity of the postal voting system." I believe that the 2 Deputies went about amending Article 39A in the wrong way. They should have obeyed the law and sought to change it in this House, not break the law and then seek to change it. I will be voting against the proposition.

Deputy M. Tadier:

Could I ask for a point of order just from the Chair. I am quite concerned that Members should not be trying to re-try the 2 candidates who have already been to court. Obviously there may need to be references if it is supporting their arguments but I think ...

The Greffier of the States (in the Chair):

I think the Deputy was in order to read the letter because the letter did go on to say that they urged the Deputy, as a Parish representative, not to support the amendment. The only thing I would say, Deputy, from the Chair, is that perhaps it is unfortunate to read letters and not be prepared to say who they are from.

9.1.9 The Deputy of St. Mary:

Just in response to what we have just heard, I found it slightly odd because we are not discussing the issue of the trial. We are discussing whether to repeal Article 39A and I must say, before starting, I would like to return some of the compliments I have been having from Deputy Southern recently and say this is a very well researched proposition. There is plenty of material here, enough to convince anyone, in my view, that it is virtually impossible not to vote for his proposition. The arguments are pretty conclusive in my view. The first one is the credibility of what we will do if we vote against this. We will be making ourselves a laughing stock basically. I, when I was canvassing, met a man who was fit and healthy. He was not disabled and I do not think he is a voter normally. He said: "Oh, well, I will be away on polling day" just like that, you see, end of

conversation. So I said: "Oh, why?" and he said: "Well, I am going on holiday." I said: "Well, you could always have a postal vote," kind of friendly like, not pushing too hard or anything and he said: "Oh, can I?" and I said: "Yes, you can have a postal vote" and then I said: "Shall I get you one?" [Aside] Yes, exactly, careful, but I am glad that on a careful reading of this document, I find that I was still within the law, that if I had got him a postal vote, I would have been within the law. Then I remembered www.gov.je. I think he said: "Do not go to the trouble" because, after all, he was going on holiday, and I said: "Well, have you got a computer?" "Yes." "Do you use it?" "Yes." "Well, you could always go on www.gov.je" and he said: "Oh, I think I will do that." Little chat over, on I go but I only mention that story because we were within a whisker of making that illegal as well, and I just find it interesting what is illegal and what is not and I will refer Members to the addendum, page 11, to show just how odd it will be if we vote against what Deputy Southern is suggesting. At present, assistance in completing the postal voting application form is illegal. Assistance in completing the voter registration form is legal and positively encouraged. Then we come to delivering the forms. If you deliver the postal voting application form to the Judicial Greffier, it is illegal. If you deliver or cause the delivery of the voter registration form to the Parish Hall, that is legal. If you provide transport to enable a voter to attend a Judicial Greffe to register their pre-poll or postal vote it is illegal. If, however, you provide transport to the polling station it is legal, and it just does not make any sense on any proper reading of how one should go about an electoral system. It just does not make sense. It is crackers and we really should not be putting into effect legislation that does not make any sense if it makes distinctions that do not stand up, and I think Deputy Le Hérisssier referred to that. You know, either we have root and branch and we really look at all these issues properly - and I agree there are serious issues. We still have not got a rolling register, we still have not got a real encouragement of postal registration and so on, run by officials who do not exist. Now, in the absence of that we are indeed discriminating unfairly, and that is my second point about mitigation. As the Deputy pointed out in his opening remarks, we introduced this law - rather, the previous House introduced this law. In the U.K. and in Ireland there are a whole battery of measures to support disabled people, whether they are blind, whether they have other disabilities and whether they are intellectually disabled, and those measures are seen as part of encouraging people to vote, part of the democratic process. Here in Jersey there were no additional measures put in place, so we introduced the law which has had a discouraging effect and I do not think that anyone would disagree with that. Then when you look at the advert in the paper, no change. The answer to the chairman of the Committee of Constables as to whether there was any mitigation put in place for this election. Quite simply, he just said: "No", quite honestly. There was no telephone number in the advert in the *J.E.P.*, there was no temporary member of staff in St. Helier or indeed anywhere else, so there was no mitigation. So, we introduced as law, sorry, the previous House introduced a law and did not then do anything about putting the other balance in place so that people were disadvantaged, who are disadvantaged, could exercise their right to vote. The third issue is the issue of confusion. The last time the House voted on this, there was rampant confusion in the speeches and the Deputy mentioned these. It really beggars belief what people were being told with the confusion between postal votes and the application for a postal vote. I probably should not read those quotations again, but they really are alarming because there is this constant to and fro from the postal vote to the act of registration for postal vote. It was misleading, and I think that Members must have been misled, because they came to the conclusion that they did. So, I would just, in closing, plead with Members to put right a wrong. I think the House misdirected itself, to use a legal term, but there is no court above this House to put it right. In a court of law you would indeed put it right because there was so much confusion in the original debate. The only way we can do it is put it right ourselves, so I do plead with Members to support this amendment and at least get it right *pro tem*, perhaps, until P.P.C. really go for complete reform of how we handle our elections.

9.1.10 Deputy M.R. Higgins:

One thing I have learned since I entered this Assembly is that decisions in many cases are: (1) largely foregone conclusions because of block voting; (2) are not based on a critical analysis of the evidence and facts; and (3) are determined by prejudice and self-interest. I think that Deputy Southern has made his case well and that any objective observer presented with this evidence would recognise the facts and vote accordingly. Unfortunately, for too many Members of this Assembly, to rescind Article 39A means admitting that when they originally voted for it, that they got it wrong and to admit that they were fallible; and that many of them follow the view of many people, many Orientals, and believe that they would lose face by voting for the rescindment. I personally would rather admit my mistakes than permit a wrong to continue or to allow a bad law to be left on the statute books. Now, some Members also believe that it would mean supporting Deputies Southern and Pitman, and the J.D.A. (Jersey Democratic Alliance), and justifying their breach of the law. I do not believe this is the case. While I would not have deliberately broken the law as they did, I also believe that Article 39 is a bad law and should be repealed. I also believe that P.P.C. must revisit the whole of the voting process, as indeed it is, and come back to the House with new and more appropriate legislation. I urge Members to repeal this law and to await P.P.C.'s amendments. Thank you.

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

The proposer spoke at some length about the need for disabled or ill voters to be able to have a postal vote. The Constable of St. Helier then went on to show how, in fact, the system covers this requirement because they can use a sick vote. Having been, before I was elected as a Constable, an Adjoint for at least 20 years, of which probably 10 years was spent collecting sick votes around the Parish, I have some experience of this - probably more than most others in the House here. They were wonderful people. Some people I saw year after year, determined to vote, and the only way they could vote was by using the sick vote. Their interest in politics was just as strong as the interest of anybody else, and there was no reason why they should not vote. All they did was pick up the telephone, ring up the Parish Hall and say: "It is election time. Can I have my sick vote?" "Yes, certainly, I will be around at such-and-such a time" and it was collected. We even have votes on the morning of the election saying: "Somebody is feeling ill, can they have a sick vote?" "Yes." Somebody went around and collected a sick vote, or there were always 2 people, but that brings me to another point. Some of the places we had to go to, people were very vulnerable and very easily influenced in their voting. On quite a number of occasions we had to be quite strict with family members, staff members even, in some institutions, and ensure that they were not influenced, that they had complete privacy and were able to vote on their own. Now had that been a postal vote, I am quite convinced that those vote would have been influenced and there is no way that any of us would have been able to tell. It happened on a number of occasions. I was quite surprised. I do not think that it is a problem when you have a sick vote, because 2 people turn up and they ensure that the vote is done in complete privacy, but that is the vulnerability of the postal vote system. You do not know what is happening in that house, and when you have ...

Deputy G.P. Southern:

Point of clarification, Sir?

The Connétable of St. Saviour:

No, sorry, I am not going to give way. There have been repeated cases in England with postal voting where it is known that the father will tell all the members of the family how they will vote, and this has happened and it has been recorded. Now that ... I am sorry but you do not get that with a sick vote and therefore it is a safer form of voting. The system we have got covers the problems. I do not think we are going to improve it by changing it.

9.1.12 Deputy J.A. Martin:

I did not support this amendment the first time around, but I do not care what number it is to support it. **[Laughter]** I know what I am talking about, excuse me, you want my support, do you, Sir? No. It is interesting to speak after the Constable of St. Saviour because there are some interesting facts. Nobody in St. Helier No. 1 District... because in the Senators everyone was so concerned about all the Island, nobody canvassed anybody for a sick vote, so do you know how many people got one? One person, and there were people sitting in nursing homes asking: "When is the man or lady, or the 2 of them, coming around to take my vote?" because they thought somebody was going to do it for them, somebody had arranged for it. Now, in the Deputies I wrote to all the nursing homes and all the people in them, and I cleared it with the Greffe and the Electoral Officer at the Town Hall, to tell them that there were 3 ways of voting. Firstly, they can present at St. James and I gave them a little map where it was, because even after all these years they go to the Town Hall in District No. 1. Secondly, they could apply for a postal vote or a pre-poll vote if they were going to be out of the Island; same thing, they needed to contact the Judicial Greffe with a name. The third one was if they could not get out and they needed someone to come around, and they could not have it delivered, they would have to do it by sick vote, and there was a much lower percentage of turnout in No. 1, there were 17 people who got a sick vote. I do not know about the pre-poll or the postal vote, but 17 people were then able to vote that were not able to in the Senatorials, so we do have a problem. Now, the Constable of St. Helier has gone and he referred to the letter from our Electoral Officer, who made a statement that was not supported by any financial evidence, that with half a member of staff or one more part-time staff, we could enable all this to be done. Well, I have severe problems with just even the electoral list in St. Helier. The Electoral Officer was very helpful but he seemed under great, great pressure. Now, at P.P.C. we have had the Jurats in and we have had an informal conversation and they said possibly the way to go is sick voting if people cannot get there, but it is going to cost. It is going to cost each Parish and we need a lot more people to participate, and as the Constable of St. Saviour said, he has just given the reason why. I mean, as for the thing of people telling which way their families are to vote. I think when people start off very young and inexperienced they ask someone with experience, and they will ask people which one should I vote for? After they have done it a few times they normally, if they have got any sense, make up their own mind and vote, but that is not a reason. We have not replaced the system. I do not believe it is undue influence. I personally did not give - the Greffe when I contacted him said to me, there is no reason you cannot take out the forms, Deputy, and deliver. I said: "No, I am not even going to go there, but I want to know exactly what I can do." What I could do was very unsatisfactory for me, because people in my district do not believe that people are there. They do not see people from one day to another, and I find it every time. I find a little old lady or man, sometimes not so old but they have a disability and they cannot get out of their flat. They have no family around and I would say to them, well, phone the number there. I would have the number there where they could phone the Greffe and they would send them out. I would tell them, and I know they probably would not have done that, whereas 3 years ago I would have had that form. I would have filled in that form quite openly for them, and at least within a week, or how many days, they would have received a ballot paper. Hopefully, then they could have filled it in and made a phone call, because it is just a matter of who they want to vote for - a cross literally - and make a phone call for somebody to sign that they are actually ... I mean, even that, we really need to look at the whole system of postal voting, and as I say when we discussed this again with the people who carry out the legalese field, they know there is a lot of work which will cost a lot of money to do. So, to say that the system is right at the moment, to me it is right because I did not vote for it in the first place, an amendment is right. The amendment we made last time was wrong and it did ... to me it speaks volumes. Nobody bothered in the Senators to contact anyone in District No. 1 and there was one sick vote, and in the Deputies where lots of us bothered, there were 17. So, 16 people to me, and probably more because of the percentages as I say, were disenfranchised in the Senatorials in District No. 1, and probably if you multiply that up again, it would have been across the Island. So, I would rescind this today. I am on P.P.C. I intend to work. We have a free vote by the way, because we are totally split down the

middle on this, and we will have a free vote anyway. We know there is a lot of work to be done. The Committee Chairman will be looking at this with us, with all the other Members, and we know that there is lots of work to be done, but to keep this in will not spur that work on, and it will not spur on the money that is going to be required for people who are worried about undue influence and anything else, so thank you. That is all I have to say and I hope people really think about the money that is needed and the real reforms. Thank you.

Senator J.L. Perchard:

Sir, it is 4.12 p.m. Deputy Southern made a very comprehensive speech when he proposed the rescindment of the amendment and speeches are becoming very repetitive. I intend to ask you, Sir, to allow me to propose a closure in 30 minutes.

The Greffier of the States (in the Chair):

Given notice, Senator, yes, thank you. Does anyone wish to speak? Deputy Shona Pitman.

9.1.13 Deputy S. Pitman:

I just would like to say before I make my speech, to repeat the words of Deputy Wimberley, in that I feel that the cases of myself and Deputy Southern and people's feelings on that, are going to prejudice their views and their vote on this proposition, and I would ask people to consider who they are representing when they choose to vote on this proposition. Firstly, I would like to say, my reaction to the Constable of St. Helier, I was quite surprised and if he was here, I would like to ask him. He says he would have to employ another officer and more resources to inform the public how and where to vote. Well, informing people, that is great, but throwing resources to appoint somebody to go and collect application forms for a postal vote only to deliver them to the Judicial Greffe, is this really what his parishioners want their rates to be used for? Or to employ an officer to help disabled people fill in postal vote forms? Well, that is great too, but where candidates can do it are his parishioners really going to support their rates being used for this? I would like to begin with the words of the States Member who brought this proposition to the States last June, and I know this does repeat some of what Deputy Southern and others have said, but I would like to reiterate some of the points. This was the former Deputy of St. Mary, the now Constable of St. Mary, who on her opening speech at the debate, stated the following: "Although candidates may believe they are simply assisting electors in these circumstances, P.P.C. is concerned that the current provision could be seen to interfere with the fairness of the election process. Any elector who has received significant assistance from a candidate or his or her representative, to obtain a postal vote may feel in some way pressurised to vote for that candidate." I ask, had P.P.C. consulted any members of the public as to whether or not they may have felt pressurised when a candidate helped them fill in an application form for a postal vote? The answer is no. Had anyone reported any concern to the Committee about a candidate pressurising them? No, they had not. The former Deputy of St. Mary went on to further provide anecdotal evidence from the U.K. She said: "Processes where candidates visit or fill out the form and then know that within 4 or 5 days that ballot paper will be coming back, and then they visit again on the day when that would happen." There was a huge problem in Birmingham elections, even resulting in things as diverse as pillar boxes, where people knew that the ballot papers had been posted. Those pillar boxes were being set on fire by representatives of candidates who had been watching for the ballot papers to be posted. These things are extreme, but they are happening. They are happening, not in the backwaters of some remote nation, but in the U.K. We really have a duty to ensure that they do not happen here and that they cannot happen here. This is the first step in the process. Again I ask, has it ever during any election been reported to the authorities that a candidate has later returned to pressurise an elector into voting for them? No, it has not. To my knowledge, it has never been reported to any authority, in any election, ever, in Jersey. **[Approbation]** I also note that the Deputy of St. Mary refers here to extreme occurrences of pillar boxes containing ballot papers being set alight. I repeat, ballot papers not application forms for registering for a postal vote; a

little confusion here. Another member of P.P.C., former Senator Mike Vibert, the former Minister for Education, Sport and Culture - I must emphasise - enhanced the confusing words of the former Deputy of St. Mary saying: "It really is a case of it should be done in secret and without interference. Not that it might happen, but we should not allow candidates the ability to stand over a voter with a postal vote." Was he arguing that it is wrong of a candidate to fill in an application form for a postal vote or to stand over an elector filling in a ballot paper to be sent by post? This statement gives a very misleading and confusing impression as to why P.P.C. brought this proposition in the first place. It infers that filling in an application for a postal vote is the same as putting a cross next to the name on a postal ballot paper. As we know, these are 2 completely different things. The former Senator continued: "I think when P.P.C. saw the figures it was shown to us that it was time to bring this amendment. I think that we will all be able to know that these things [the former Senator was referring here to the Deputy of St. Mary's speech on pillar boxes containing postal votes not postal applications] cannot happen in the future." Whether they have happened at all is not the point. The point is we need to be seen to be making sure that we operate to the best democratic standards possible. Also, when asked is he saying to the House because it was increasing - that is the number of postal vote application forms - P.P.C. felt they must stop it. The former Senator replied: "After the concerns about postal voting had been expressed to us, we asked for the figures to be prepared." What I was saying is when we saw the figures that helped us know that it was time to bring this amendment. Again, nothing evident to support this argument. Even the former Senator himself identified the fact that P.P.C. did not have the information to demonstrate that any electoral candidate, during any election in Jersey had unduly influenced an elector. At no time during the debate was such evidence presented to the House. Yet the committee were asking States Members to vote without any solid evidence backing their proposition. The only suggestion of any remote evidence or reason why a candidate should not help fill in a postal vote application form was presented by the former Deputy of St. Mary. In her words: "There is a distinction that has been made between helping somebody to register to vote and helping them to register for a postal vote." The answer is registration to be on the electoral register happens at a time when no election has been called. It happened up to the time of nomination. It is a completely separate process from the election itself. Anything that happens after nomination ties directly in with that register and therefore falls into a different level of scrutiny. Yet it is perfectly legal for a candidate or representative to drive and walk an elector to their polling station and arrange for an elector while in their home a sick vote. Where is the consistency? **[Approbation]** Having served on a Scrutiny Panel for 3 years and thus working under Government Standing Orders that stipulate that any review by a Scrutiny Panel should be evidence-based and as a Back-Bencher who has been required to provide information backing propositions brought to the States, I do not recognise any form of scrutiny undertaken by the former Privileges and Procedures Committee to support the implementation of Article 39A. I would like to remind Members at this point that this law or any similar does not exist in any country in the Commonwealth. Indeed, the registering of people for postal votes by election candidates is actively encouraged by the U.K. Government. People do not need a reason to request a postal vote and once they are on the register they do not need to be re-registered. Throughout the debate on Article 39A further confusion transpired. The Deputy of St. John said: "A number of Members have mentioned you do not go into the voting booth with that little old lady that is finding difficulty walking in, you simply do not do it. You have to have the highest of probity. You must not get involved with that process." The Constable of St. Saviour said: "The fact remains we have to be seen by the people outside to be whiter than white." I think if we are seen in any way to have a system that could bear influence on the way people vote, then we are very, very wrong. I am getting the impression here that it is a one-sided view. We must be able to do this. It is easier for the people to be able to vote this way. People have to be able to trust the poll. Filling in an application postal form for a postal vote has nothing to do with the poll. Deputy Hilton said: "As previous speakers have said, the integrity of the poll has got to be paramount." I do not believe in these circumstances that it is. That was the law before the implementation of Article 39A and again, in relation to the poll. Senator Ozouf

refers here to the former Deputy of St. Mary's words on pillar boxes containing ballot papers being burnt: "This to me is clear that at least we are shutting down the opportunity of somebody being involved in the application for a postal vote of which there is evidence from the U.K. elections that it is inappropriate that the candidate is involved in it." So, evidence from the U.K. that the Deputy of St. Mary presented about postal votes. I believe I have demonstrated that the debate and proposition on Article 39A was indeed based, in the main, on confusion and little or no evidence. Something which goes against the philosophy of the States; that any proposal brought to the House must be backed by evidence. To close, I wish to end with 2 quotes. The first is from an email sent to me from a constituent. I should like to point out here that I did not help this person fill out an application form: "I can understand totally how difficult it can be to go out and vote when you have a disability or you are in ill-health. As you are aware, I myself at times am unable to get into town. So far I have been very fortunate that I have been able to feel well enough to get into town and vote. But it is only a matter of time that I will not be able to vote when I am very badly in pain. It seems to me that there are people out there that would have no idea that there are quite a few people in these positions and how difficult these minor tasks can be." That is filling in postal voting application forms. I ask here, for I know P.P.C. did not consult this young man or ask for his view before they brought the proposal for Article 39A to this House, had he and others like him been consulted? I really do question whether or not Article 39A would have become Jersey law. The last quote was made during the debate by Deputy Judy Martin. She said: "If we are trying to encourage people to vote, what harm are we doing?" Thank you.

9.1.14 Senator B.E. Shenton:

I thought I would speak briefly on this because I was one of the minority of people that voted against this law coming in in the very first place. I think there were only about 11 of us that voted against it. It was primarily because when I sat through the debate I could not really see the point of the actual law being brought into place. Now, I fully understand that there are a lot of people out there that think that the behaviour of the J.D.A. over this has been disgraceful. Certainly a number of people have come up to me and said this. But to put that into context, they are the sort of people who think that everything the J.D.A. does is absolutely disgraceful. **[Laughter]** So it is difficult to work out whether they have a strong opinion on this or not. The way I look at it is the fact that we were trying to get people to pre-register; we were not asking them to help with the filling out of the postal ballot. It was just purely the pre-registration form. The J.D.A. do go to a lot of trouble of knocking on doors, going to see people, sitting down, having a cup of tea and talking through policies. This is very important to a lot of people, because it is the only political connection they get, other than reading gloomy stories about politicians in the news. A politician who takes the time to sit with a constituent and listen to what their views are is probably worth a lot more than someone who stands grandstanding about macro issues all the time. It is very important. But what worried me at the time was that there was definitely a political element to the decision of P.P.C. to bring this amendment through. There had been a lot of debate behind closed doors about what were we going to do about the J.D.A. and the fact that they were getting a lot of postal votes in the town area. Now, I looked at it fairly coldly and thought maybe the reason they were getting a lot of postal votes is because they are getting out there, walking round, seeing people and doing the work, rather than sitting back and hoping that the grandstanding macro-vision would get people out to vote. I could not see anything wrong with the pre-registration form. As the previous speakers have pointed out, we will be standing alone on this, because most other countries try and get people to vote regardless of how they do it. Let us be honest, the turnouts in elections are not exactly stunning. Furthermore, I was away on business many years ago before I was in the States, when some clever clogs decided to organise a by-election during half-term week and, as a result, I had to use a postal vote. It is not the easiest thing to organise, especially when you are working in town and you have Parish Halls and all this sort of stuff to work out. Certainly if you are home, if you are elderly, you are sick or you want to vote but you need somebody to guide you through the process, I do not see anything wrong with it. Personally I voted against this law coming in in the

first place and I am going to vote for it to be removed, because basically I think it is wrong. I think we need to try and get as many people out there voting as possible, but I think we have to have a look at the whole postal voting system. Just because we have done things a certain way for hundreds of years does not mean it is right. We have got to make sure that we do get more people out there and good luck to the politicians that do go round and knock on doors, because it is hard work, but I think the people really appreciate it. So I will be supporting this.

9.1.15 The Connétable of St. Mary:

It is quite apt, I think, that I follow the last speaker. I had thought that perhaps I should explore some of what I call the myths that have developed concerning Article 39A. The first one I put down - I was not quite sure I was going to mention it - was that it was introduced simply to thwart the election hopes of the J.D.A. I really did not think that had much credence until I heard the previous speaker. Anyway, let me lay that one to rest. It is simply not true. Explanation was given during the proposal of Article 39A that after lengthy consultation dealing with many aspects of the Public Elections (Jersey) Law 2002 - remember this was just one small part of a much broader amendment - involving people at the sharp end, Jurats, Judicial Greffe, Parishes, *et cetera*, evidence of large numbers of postal votes being applied for which were not being converted into votes in several constituencies was found. One possible cause for this was that perhaps persons were being encouraged to register for a postal vote when really they had no real intention to use one. Not every area involved the J.D.A. candidates. So let me just get that quite straight. In fact, no particular candidate was singled out for the very reason that figures were only available, obviously, in districts where there was an election and therefore you could not attribute this to any one particular candidate. There is therefore no basis for that allegation. The second point often raised is that it infringes human rights or is discriminatory. I have no reason to believe that this is so, for when lodging the proposition which brought in this Article, the chairman of the previous P.P.C. was fully able to make the necessary declaration that the proposal was in conformity with the U.N. Convention on Human Rights. The Article does not call for no help to be given to persons wishing to register for a postal vote. It does not isolate these people from assistance at all. That is a complete fallacy. All that the Article means is that help cannot be given by a candidate or a candidate's representative. There are other avenues available. When passing the introduction of Article 39A, States Members were under the impression, apparently, that they were passing restrictions over the completion of a postal vote and not the application for postal vote. I do not believe there is any substantiation for this. When speaking to the Article, I stated that all aspects of the ballot should be subject to the same levels of security and that the same standards should apply to postal voting as to voting at the ballot box. I went on to say that the application for a postal vote was the first step in that important process. At several points during the resulting debate the difference between applying for a postal vote as to completing a postal vote were highlighted. Once, memorably, by Deputy Southern himself, who clearly understood exactly what Article 39A would be referring to when he said, and I quote: "Remember this is not a ballot paper, this is a form to acquire a postal ballot." There is absolutely no confusion there. The point is that despite steps taken in the U.K. difficulties with the postal votes are still encountered. Several times over the recent months it has been claimed that in excluding candidates and their representatives from being able to help any electors at this first stage of applying for a postal vote, certain sections of the community, for example, the frail, the elderly, the housebound, are being disenfranchised. What has not been explained however is if, as claimed, the candidates and their representatives - please remember we are only talking about candidates and their representatives here - are the only people who can help these sections of the community and if the involvement of the candidates or their representatives is limited solely to the first stage of application - and here I would like to stress that at no time have I claimed involvement further than that either before or after the introduction of Article 39A - if this is the case, then who is on hand to help these vulnerable persons with the latter stages of postal voting? Postal voting, as an entire process, brings a number of challenges in order to ensure that the integrity of the process can be maintained outside the secure environment of the

polling station. This has to be achieved while endeavours are made to make the process as straightforward as possible. Therefore, despite efforts to simplify the second stage of the process, it still involves several complicated elements. There is a ballot paper, a declaration of identity, a ballot envelope and a covering envelope. The ballot paper must be completed in private. The paper must be placed in the small envelope. The declaration of identity must be completed by a third party and must be placed in the sealed envelope along with the sealed ballot paper envelope. If there is no one but the candidate or the candidate's representative to help at the relatively simple first stage of the process, then how on earth does the elector manage to complete stage 2 of the process, when the candidate is not around? Either they do not proceed with stage 2 or they have other persons available to help them. So this argument, therefore, is totally flawed. Apart from candidates and their supporters, we are told, there is no one to help electors with the postal voting process. Again, incorrect. In the run up to the November elections publicity was given, as in every previous election since the main law was introduced, to the process of application for both postal and pre-poll voting. This is extensively advertised in the *Gazette* - although I completely understand Deputy Southern's comments regarding the size of that advert, *et cetera*. That is something that will be revisited. However, this is always also posted on the official notice boards in each area publicity is given. This highlights the availability of sick votes; a separate process where a personal visit from an officer is arranged on polling day, avoiding the necessity for any paperwork at all. We are told that by P.P.C. or generally no extra measures were taken. A leaflet was sent to every household in the Island explaining the composition of the States, explaining what the offices were, explaining the registration process, explaining how to vote, explaining how to find out which district an elector was in, giving the dates of every election, giving a timeline and explaining eligibility. The details of the Judicial Greffe and the times when different categories of voting opened were on that leaflet delivered to every elector. Furthermore, for both elections, before and after this Article was included, the P.P.C. arranged the printing of candidates' leaflets which went into the brochure which went into the *Jersey Evening Post*. On that documentation there was a list of frequently asked questions, including information about pre-poll votes, postal voting, where do I vote, how do I do whatever I need to do and a total list of contacts, every Parish Hall, every phone number, every website, every fax number, every email and also for the Judicial Greffe. That was in the pull-out paper. That was also available for collection at other areas. There was a website. Many people who are physically disabled thrive by using the internet. The website had all this detail and more. To anyone, because of isolation or disability, still not aware of the process after all this the candidates and their representatives still had the perfect entitlement to explain the process to them. They could even leave an application form. I would just like to say that many Members have said in the course of other unrelated debates that often this Assembly is not forward looking enough, it does not see the bigger picture, it does not see where the world is moving. Well, this Article is an instance where the Assembly was acting in advance of need to avoid any possibility of the arrival of various aspects of postal voting fraud, such as I would say granny-farming, which have reared their heads in other jurisdictions, but thankfully of which there is no trace here, as yet. As Deputy Hilton said during that original debate: "Why on earth would anyone object to us being whiter than white?" There are several points that have been raised so far during speeches that I really feel I need to pick up on; the ones that have not been addressed elsewhere. Firstly, of course, the fact that disabled people need to get on to 2 registers; they can choose to have a postal vote, that is true, but it is not their only option, there are sick votes available. The Constable of St. Helier questioned whether disabled people had an entitlement to the general postal voting process. Of course they do. There are 3 categories, I believe, there is absence from the Island, there is sickness and finally a commitment to work. So disabled people do have a perfect entitlement to apply for a postal vote, but they also have the ability to apply for a sick vote. Perhaps they are thinking they have a disability which is better some days than it is on others. They want to go to the ballot, they want to participate, but on the day they wake up and whatever condition they have is particularly aggravated.

Deputy G.P. Southern:

Point of clarification, if the speaker does not mind. Does the speaker believe that the staff at St. Helier Town Hall could have possibly delivered and arranged 291 sick votes on the day? I do not believe so.

The Connétable of St. Mary:

I am going to cover that. The prime purpose for sick votes, as I understand it, is for people who find themselves unexpectedly unable to vote on the day. There is a tradition going to nursing homes, *et cetera*. But anybody who misses the window of opportunity for postal voting, because obviously there has to be a cut off, is still not disenfranchised. They can still apply for a sick note on the day. Do I think that the Parish of St. Helier would have coped? The strange thing is, the flexibility of the Parish system means that on election day there are staff willing to help, no matter what. All I can say is that in my experience, the Parishes cope with very difficult situations very well. In fact, somebody said, I think it may have been Deputy Southern, that no extra steps had been taken and the Constable of St. Helier said that one further temporary member of staff would have coped with visits for the postal voting applications. The thing was, that never happened because the need was not demonstrated during the elections just gone. But had the need been demonstrated, had the number of applications increased beyond expectation, I am quite confident that the Parish of St. Helier, as with any other Parish, would have coped and would have organised staff, diverted from other less important things perhaps, if necessary. Deputy Le Hérisier said that P.P.C. needed to come up with more proposals to ensure that other areas of the Elections Law were all investigated. The only comment I would say to that is, please give us time. We have discussed this matter, but there has not been enough time since the matter was constituted for us to bring forward concrete proposals. But I am confident that P.P.C., which has started work on this, will be addressing this further. The Deputy of St. Mary made several sweeping statements in his speech and I think perhaps I will deal with one, although there were several, in fact; he said that assistance with completing a postal voting application form is illegal; assistance with completing the registration form is legal. As is quite often the case there is a very important thing missed out there; the fact is the word "candidate" is missed out. There are no candidates at the time of registration therefore there is no candidate available to assist. Registration for entitlement to be on the register closes with nomination, therefore before there are candidates, so that was quite irrelevant. He also said, of course, that no telephone number had been given out; again a very sweeping statement. I have already indicated documents on which telephone numbers were circulated. One thing Deputy Martin said, of which I was not quite sure about the relevance - maybe I picked it up incorrectly - she talked about the number of sick votes at the Senatorial elections as opposed to at the Deputies' elections. They are a different breed of election, without a doubt, but also the point is of course that Article 39A was not in force at the time of the Senatorial elections. Just to respond to 2 points at least Deputy Shona Pitman made: I was not confused about the pillar boxes; it was quite clear that that was at second stage. They were only set on fire because the people who had helped the electors in that area to request the postal ballots knew when the postal votes would be delivered and I absolutely make no assertion that anything like that had happened here. I was pointing out how the registration for a postal vote is the first step in a long process. Then, again, the Deputy has asked for proof of why P.P.C. brought this Article in. I have said that the prime reason why we looked at this was because of the disparate number of postal votes being applied for and yet not converted. What I said was: "There is some evidence that in the past persons have been led to apply for postal votes when they have no intention of voting." There were tables in the report to support that. But we heard evidence from the Judicial Greffe that large numbers of postal voting forms had to be returned for correction, which was taking up the Greffe's time, but was obviously worthwhile, because they did not contain the relevant information for the applicant. As for proof, perhaps just one final little thing from someone we miss occasionally in the House, from Deputy De Faye who, during the debate, said something quite interesting. He said: "I do not believe it is for Privileges and Procedures Committee to prove that pressurisation, as so

described, is taking place. It is the responsibility of the Committee to ensure that it does not take place and that the opportunities for it to take place are not there. This is an excellent measure to ensure that the finger can never be pointed at any candidate and no voter can be taken in and we should support it.” I, of course, would agree with that. In conclusion, I believe that there are very few people who would have fallen into the category; no one else was available to help but, nevertheless, I accept that more work can be done in this area. With my P.P.C. hat on, I can advise that the Committee has already begun work on trying to open up the accessibility to postal and pre-poll voting, and possibly sick voting, while still maintaining the integrity of the ballot. There is more progress to be made but nothing that I have heard leads me to believe that this necessarily involves the repeal of Article 39A, and I will not support this rescindment.

Deputy M. Tadier:

Can I ask for clarification, if that is okay, from the previous speaker? I believe she mentioned that the job that was previously legally carried out by a candidate, so helping someone to fill in a form. Are you suggesting that that is something the Parish could do; could take over that role? If so, are you saying that there will be someone dedicated to go round to everyone’s ...

The Deputy Bailiff:

Is the Deputy saying?

Deputy M. Tadier:

Is the Deputy saying, the Constable even. It is all very confusing. Is the Connétable saying that such a person in this new role would go round to everyone who was on the register and ask them if they wanted a postal vote? Because if that was the case, I would be quite happy to support this.

The Connétable of St. Mary:

No, I did not say that at all. What I said was there was help available for people who requested it.

Senator J.L. Perchard:

I gave notice 40 minutes ago of my intention to propose the closure. I do believe that Deputy Southern gave an excellent speech in support of his proposition. Members have spoken consistently and repetitively, therefore, I propose the closure.

Deputy G.P. Southern:

Could I ask, Sir, how many people are still on your list?

The Deputy Bailiff:

Indeed. Just one moment. Is the proposition seconded? **[Seconded]** Very well, then I can inform Members that at the moment I have 4 Members waiting to speak. Very well, then, under Standing Orders that matter is to be put to the Assembly without debate so I invite Members to return to their designated seats to consider the closure motion put forward by Senator Perchard and the Greffier will now open the voting.

POUR: 17

Senator T.A. Le Sueur
Senator P.F.C. Ozouf
Senator B.E. Shenton
Senator F.E. Cohen
Senator J.L. Perchard
Senator B.I. Le Marquand
Connétable of St. Ouen
Connétable of Trinity
Connétable of St. Martin
Connétable of St. John

CONTRE: 24

Senator S. Syvret
Senator T.J. Le Main
Senator A. Breckon
Senator S.C. Ferguson
Senator A.J.D. Maclean
Connétable of St. Helier
Connétable of St. Lawrence
Deputy R.C. Duhamel (S)
Deputy of St. Martin
Deputy R.G. Le Hérissier (S)

ABSTAIN: 0

Connétable of St. Saviour	Deputy J.B. Fox (H)
Connétable of St. Clement	Deputy G.P. Southern (H)
Connétable of St. Peter	Deputy of St. Ouen
Connétable of St. Mary	Deputy of Grouville
Deputy of St. Peter	Deputy of Trinity
Deputy J.A. Hilton (H)	Deputy S.S.P.A. Power (B)
Deputy A.T. Dupré (C)	Deputy S. Pitman (H)
Senator T.A. Le Sueur	Deputy M. Tadier (B)
Senator P.F.C. Ozouf	Deputy of St. Mary
Senator B.E. Shenton	Deputy T.M. Pitman (H)
Senator F.E. Cohen	Deputy T.A. Vallois (S)
Senator J.L. Perchard	Deputy M.R. Higgins (H)
Senator B.I. Le Marquand	Deputy A.K.F. Green (H)
Connétable of St. Ouen	Deputy J.M. Maçon (S)
Connétable of Trinity	
Connétable of St. Martin	
Connétable of St. John	
Connétable of St. Saviour	
Connétable of St. Clement	
Connétable of St. Peter	
Connétable of St. Mary	
Deputy of St. Peter	
Deputy J.A. Hilton (H)	
Deputy A.T. Dupré (C)	

The Deputy Bailiff:

Very well, then. Deputy Green.

9.1.16 Deputy A.K.F. Green:

Before I get into what I have prepared, I will chop quite a bit of it because a lot of what I wanted to say has been said but I would like to just pick up on a couple of points. St. Helier Nos. 3 and 4 is a very, very big district. If you are going to get around that district and knock on as many doors as you possibly can you would have to start well before the nomination day. I did not do this but what I find strange is that the day before the nomination day I can help a candidate complete their application, registration form - whatever you want to call it - to vote. The day after, I cannot help somebody who is in need complete an application form for a postal vote. Yet, on the day of the poll, I can drive them to the poll; of course, I would not dream to influence them, heaven forbid, we do not stand for election to influence people. I would not dream to influence them to vote for me. I find that very strange. We have heard a lot as well about all the paperwork and the all the forms and all the notices that were put out. I know some were bilingual but most were English. Have you ever thought about those that cannot read? **[Approbation]** My best worker in one of my places of employment turned up every day for work on time, did their job better than anybody else; they could not read or write. Others may have suspected that but they went to great lengths to hide it; great lengths. When we went out on a staff do and the menu went round they looked at the menu for the same amount of time as anybody else and then, at the end of it when we would go round: "I will have what Andrew is having." They did not want people to know. Having opened up to a candidate who has knocked on the door that they have a problem, how demeaning do you think it is for them to have to go and tell a second or third person that they cannot read or write? They are just not going to do it. What you are doing is disenfranchising them; preventing them from voting. These people might not be able to read or write and maybe we have failed them in the past in terms of their education but, make no bones about it, they are not thick; they have some learning difficulty. They know what they want, they understand and follow politics and they have every right to participate as much as anybody else. **[Approbation]** I was shocked to hear that we make

the postal voting system as difficult as we do. I was not aware that there were all these other forms after the event. That might explain why postal votes that have registered do not always end up in votes that need to take place. P.P.C. should be ashamed of itself; they should be actively going out there and making it easier for people to vote not harder. I was absolutely shocked to hear. I tell you what, I have got a good idea; I have read Obama's book the other day. He was telling us that in America a few years ago you had to read a paragraph before you were allowed to vote. Why do we not introduce that and make it even harder for people with learning difficulties to vote? I will be supporting this, in case people were in any doubt. I hosted the Confederation of Brain Injury Families in Europe, which Deputy Southern referred to, here in Jersey in April and, coincidentally, it so happened that the European Disability Forum were asking for views on why people with disabilities failed to vote. Why do they fail to vote? We make it impossible for them to vote and I will be supporting this rescindment.

9.1.17 Deputy J.M. Maçon:

After a passionate speech, I will be very, very brief. The issue which has not been touched upon is the issue of education. There seems to be an underlying assumption that the general public understand how all the different systems work and there is a general assumption that a lot of the populace get the *J.E.P.* and read everything through and that a lot of the populace concentrate on the *Gazette*. That is not the case. I went around a lot in the elections and I had to do a lot of explaining about the postal voting form, the registration form; all the different aspects: pre-poll voting and all these different types of things. There is a lot that we need to do on the education part of this. As Deputy Green has said, this whole process is quite hard, is quite difficult but, when you are with elderly people or people with a disability, filling forms is scary, it is complicated and if you say: "Here is a form; fill it out" it is not easy for them. I did not fill forms out but I did hand them out, as was my right, and people were grateful that I did that because they did not know where to go. People did ask me to help them; I did not because I knew it was wrong - and I do think that the J.D.A. should have done that as well because they knew the law - but I think that this law is wrong and I will be supporting the proposal.

9.1.18 Senator S. Syvret:

Could I congratulate Deputy Green on an excellent speech. **[Approbation]** Absolutely sensible, compassionate, straight to the point of the issue. I listened with interest to the speech of the Constable of St. Mary in her capacity as chairman of the Privileges and Procedures Committee and the Connétable did refer to the law having been certified at the time as being compliant with the U.N. Convention on Human Rights. I think she meant to say the European Convention on Human Rights which is the requirement that our laws have to comply with. It is certainly true that sometimes we pass laws in this legislature accidentally, in good faith, that are not compatible with the Human Rights Act and, if that were not the case, then there would be no need for a court to adjudicate on the compatibility of Government's laws with the Human Rights Act. Certainly, I can cite one particular amendment to the States of Jersey Law which sought to repeal a provision in the States of Jersey Law which guaranteed to Members of the States saying: "Human rights as a guarantee to every other person in our society" so this is a provision seeking to delete rights to the protections of the European Convention on Human Rights and it came with a statement of compatibility with the convention. Plainly, it was not because it was going in the opposite direction of the Convention. I really think we have to be more realistic about this which leads me on to another point made by the Connétable which was this: people do not know what the procedures are, as Deputy Maçon just said. Very often, if they do not get help starting the process, then they will never embrace it in the first place, which is why helping somebody to fill in an application form and then them getting the requisite paperwork, that initial step has been taken, they know what the situation is; they are less intimidated about it, they can then either themselves or with the assistance of friends or family or other support go on to complete the rest of the process. As Deputy Green said, what we are dealing with here, basically, is simply enabling and encouraging people to vote

and to make it as easy as possible for people to vote. I just cannot see for one instant what is wrong with that. I certainly will be supporting the proposal of Deputy Southern to rescind this law and I would advise other Members to embrace the rescindment of this law because it is often said by some Members in regretful terms that: "The Assembly is more divided now than it used to be and things are more antagonistic and there is not a kind of willingness to embrace consensus, perhaps, that there might used to have been in days gone by." I would suggest to Members that they reflect upon that fact and think about the extremity and the unusualness of the law that we have before us today and the importance of rescinding it. This is a law that, as far as I can tell, has no known equivalent in any other Commonwealth country. It has no known equivalent; I am not sure it even has an equivalent in any European Union country. The law in question is an extremist law. It is utterly perverse, it is not the kind of law that you find in established civilised democracies. On that basis, if the Assembly wants to be a little more consensual, less politically extreme and divided, then we should do the right and sensible thing: support the Deputy's proposition, repeal this, frankly, bizarre provision that we rushed into introducing and put us back in step with the kind of abilities that election candidates have in other functioning democracies to enable people to become empowered to vote. I would urge Members to support the proposition.

9.1.19 Deputy T.M. Pitman:

I apologise if I jump about a bit but I am conscious of the time and I will do my best not to reiterate matters. I also just have to respond briefly to things I was not going to. I do have to say, with due respect and it is a shame she is not here but that, I think, was the poorest and most confused speech from the chairman of a major committee that I have ever, ever heard. Just a couple of points I would like to raise. The Constable said: "Well, it is not that simple and there were a lot of other issues following on from this application process." Why on earth did not the Constable and P.P.C. put those in place? Something which is very strange, too, but just having a quick head nod among ourselves, we referred to a letter which explains all, which went to every household, yet none of us got that letter; very strange. Many, many people I met when canvassing, they had absolutely no idea about postal voting and what the process was. Again; very, very strange. As to the burning pillar boxes, I still have not worked out how people in the U.K. worked out there was a letter and a ballot slip in there. They must have been camping out, I expect. I move on. What I have to observe, it seems strange that this law came in because when I looked into it, I think it was 1978 that the system was changed and postal voting has been able - sorry, I nearly put my hands in my pocket. I have got a letter, too, here and a relative of mine in St. Helier No. 2 was very kindly helped to apply for a postal vote many, many years ago; certainly long before the present situation and I just cannot work out why it was not a problem then but it is a problem now. So I do not really understand that. I would have to say that this proposition, I believe, highlights both the best and the worst of my colleague and occasion friend, Deputy Southern. The best because, as always, as someone said: "Whether you agree with his views or not, the proposition is very, very well researched"; indeed, to a degree few if any of us could match, I believe, and it is chock-full of commonsense argument. The worst; well, at the risk of upsetting the Deputy and probably being told off by the Dean if he had been here, why the worst? Deputy Southern has been here 7 or 8 years now and he has had a lot of defeats and yet, as I see now first hand, he comes back, he picks himself up and I will tell you, every time you talk to him he still retains that faith in human nature that if he can put his argument across well enough, and he is right, that people will listen and they will vote accordingly. Perhaps I should not be saying it is the worst, but it is; I have been here 6 months and I am already so cynical I can tell him he is kidding himself. That is the way I feel and that is an awful thing for someone like me to say who spent so long working with young people. He is kidding himself. I honestly do not think, and I do not say this as any insult to any individual, but I really question if there are enough people in this House big enough to admit they have made a mistake because we all make mistakes, every one of us. I think it was Deputy Higgins who touched on that very issue. It is much better to put a mistake right than just leave it go out of pride or whatever you want to call it. As I say, this law is so inconsistent. We have heard about it: sick

votes; you can sit in somebody's lounge patting the dog, telling the old lady what lovely children the photos are on the mantelpiece, not that I would ever do such a thing. But that is sorely influenced. You can drive people up to the door, walk them in. That has got to be more influential than helping someone fill out a form and disappearing and then they will get a slip, what, 3 days to a week later. I just want to illustrate a point about flawed law, and let us not kid ourselves that we do not make them. I hope my colleagues on the Education and Home Affairs Scrutiny Panel do not mind me saying this, but we often have a little chuckle when we know that Senator Le Marquand is coming to see us and we do that, nothing to do with the Senator himself, but we know that there are never going to be any new laws coming through with Senator Le Marquand. Why? Because he keeps finding all these flaws in these laws: new ones, old ones, and although we have a laugh, it is a good thing that the Senator is highlighting. He is being thorough and I can only say I really wish Senator Le Marquand had been in the States when Article 39A was discussed because this certainly would not have got through, absolutely not. I am going to cut out most of what I have said because I could never say it was well, certainly, as Deputy Green said it; absolutely brilliant speech, worthy of having the TV cameras in here. Mind you, we are probably being filmed by the secret society anyway so we will be on YouTube by tonight. But this law, honestly, it is a mistake; it is, to borrow one of the terms of the Constable of St. Brelade, who is not here today: "It is bonkers." All this law does is make it more difficult for ordinary people, often needy people, to be able to take part in a democratic process. Please separate it from the issue with my colleagues; this is about the law. It is a flawed law. Let us put it right, please. I will definitely be supporting this.

9.1.20 Senator P.F.C. Ozouf:

I have no doubt that the Constables, that P.P.C. and this Assembly need to do more to increase voter turnout in the Island. The level of voter participation in Jersey particularly, if I may say, in some Deputorial elections is far too low but Senatorial elections, too. Like many Members of this Assembly I have led campaigns to get more people on electoral rolls and I think that I am, I have to say, as disappointed as any Member that we do not yet properly have the promised rolling registers, electoral officers and real efforts to get people to inscribe on voting registers and things like polling cards to engender a sense of information and knowledge to people to take up their democratic right to vote. Having said all of that, I think that we must accept that there are problems in postal voting. I agree, too, that we need to deal with issues such as ending the time-honoured traditional approach of offering electors free cars to the polls. What I will say, and Members have said that there are similarities between offering free cars to the poll and postal voting, but when you do take a candidate - and I have taken candidates to election polls in past elections campaigning for other people and for myself - of course, you drop them off at a polling station. One lady who I saw a number of months later said: "You thought I voted for you, but I did not." The key difference is that there is an independent person who is involved in the taking of the vote when you leave somebody at a polling station because they are interacting with a Parish official, they are receiving information and carrying out whatever they are doing in the voting stations with somebody independent. That is quite unlike the issue of a postal vote where there is not that human interaction with an individual in their living room, either having completed the postal voting form or, at the later stages of filling it out when the postal vote arrives at their home. There is a very clear difference between the way that a postal vote operates and the collection of a sick vote or other area. That is why there are particular controls in place in relation to postal voting, because they are not subject to that third-party involvement by an official. I am quite clear that there should be much greater effort and investment in raising voter turnout and giving people the access to hot-lines for Parishes to come and deliver the arrangements for electoral returns or votes in people's own homes. There needs to be much more to do to improve voter turnout, inscribing on electoral rolls, *et cetera*. But I am afraid that I believe that there should not be any involvement by a candidate in the issue of a postal vote. I agree completely with Deputy Green in the comments that he made about people with learning difficulties, *et cetera*. But I would say to him there is a different way of achieving his objective than compromising the issue of postal voting which, I

believe, and I am seeing Deputy Southern and other people shaking their heads, Members are entitled to their own view and my view is that there should be no involvement at any stage of the procuring or arrangement of a postal vote, from the very start of the process to the end. I am not suggesting there was any involvement in the later stages, of course, but my view is there should be no involvement at any stage in the procuring of a postal vote and hence I would be voting not to support the rescindment but asking P.P.C. and the Constables to review again the procedures that they have got to improve a voter turnout.

9.1.21 The Deputy of St. Martin:

To comment on what Senator Perchard said when he called for the guillotine and I agree with him. He is not here at the moment but he did say that Deputy Southern had made an excellent speech and in actual fact he had; he covered every point there was to cover and what I am surprised at is the difficulty a lot of people have in accepting what he has had to say. **[Approbation]** In fact, when one hears the opposition to what is being said, it just does not stack up and I really, really am surprised at Senator Ozouf's last speech. There was a Member ... really, I know because we got himself involved right from the outset when I came back to Jersey, and I know he is smiling because he knows that we both worked to get a Deputy through the States. It was my first involvement and I am sure Senator Breckon will be disappointed that we did so well, Senator Ozouf and I, because not only that, in fact, Deputy Duhamel as well because we were on the winning side and they did not win. I am rather disappointed that with all the enthusiasm that could be put into finding ways for people to vote he can now find ways of stopping people voting. I just wonder where we have gone. Maybe it is because he has become a Minister or Senator; I do not know. But one should not change one's ideals; if you feel that you want to do something, be positive about it, do not change horses because you have gone into another stable. Maybe that is why I have never moved into that stable because I have always felt that if I am on the right horse, I will stay on it. But really we wonder why we have spent all this time, and maybe Deputy Higgins was right, because there is this prejudice. We have already made up our minds so it does not matter what we say, we have already come in here and our pride will not allow us to listen to the arguments. When one listens to the argument, in particular, I think - again the Connétable of St. Mary is not here - but her speech really could not have persuaded anyone, surely, to believe that Article 39 as it stands now is really something this House could stand for and support; surely we could not do that. I was opposed to Article 39 right from the outset. I think it is an oppressive law and a very unhelpful law. Can I just assure Senator Ozouf that there is no guarantee that anyone filling in a postal vote or application vote will vote. I know, because one of the things I do find as a Parish Deputy, and I know I take pride in going round the Parish on my bike on a Saturday and during the week when I have got time, and I do visit a lot of the Parish folk that I have known from when I was a little boy and I still call "Mr." and "Mrs." because I feel sort of embarrassed to call them by their first name. They are the sort of people I know they are going to vote for me and, yet, when I go round at the election time I can give them the form and even if they can help themselves to fill the form in they can say: "Bob, drop it off for me, will you?" but: "I am sorry, I cannot." Do you know, why? This is what this law is saying; it is saying that I can give them the application form, I can watch them struggle to put their names, and then when they tell me: "Well, you know, can you take it in to town for me?" I have got to say: "No" and I cannot even say: "Well, look, I will send my friend down" because that friend may well be a representative. That is how oppressive this law is. If the Connétables as the mothers and fathers of the Parish can live with this, okay, live with it but please think again. Really, again, we should be a mature Assembly. This is nothing to do with saying that by us voting here that means we are supporting what the J.D.A. did; it is nothing to do with that. This is all about Article 39; an oppressive, stupid law which we should do away with. Let us be mature about it, let us help people to vote, let us not hinder them. Members, please support what Deputy Southern has got for us today. **[Approbation]**

9.1.22 The Deputy of St. John:

I have been working on the computer downstairs but I have been listening to the debate and the for and against, and I have some sympathy for Deputy Southern and Deputy Pitman in what happened to them, but I just wonder if this was, in fact, the right time to be bringing this amendment; so close to the case having been dealt with in court. I have to raise this - and I will ask the Attorney General if I may, and it is difficult when you have got somebody sitting behind you and you do not know who is sitting at any one moment - is the time period closed for an appeal in the case that the 2 Deputies had? Is it closed and if it is closed is there any way that the appeal can be reopened? I am not giving way. Is there any way that the appeal could be reviewed by way of the decision, given what decision may be made here today depending how we vote, could the law be reviewed on an appeal? Could the Attorney General please answer that?

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

Deputies Shona Pitman and Deputy Southern are currently out of time for appealing. The rules do provide for making an application to the court for leave to appeal out of time and it would then be a matter for the court as to whether the court considered such leave ought to be given.

Deputy G.P. Southern:

As a point of information, I cannot afford to appeal.

The Deputy of St. John:

I only asked that for clarification in my own mind and for other Members because, given that we are being asked to alter a law here or to change the law, I am just wondering if by us changing the law it would show to any court, if there was an appeal, that we were not happy with it at this time and that is why I asked if it was too soon. After the response I have had, it has helped me make up my mind which way I will vote on this particular debate. If the debate had come down the road in 12 months' time, possibly I could have supported it but now I cannot support it.

The Deputy Bailiff:

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

9.1.23 Deputy G.P. Southern:

I am aware that many Members of the States will want to get away promptly at 5.30 p.m. so I will do my best not to go over the threshold, particularly for those who have families to care for and need to get away. In response to several contributions what I would ask, with my eternal optimism in human nature which applies not only to my constituents out there but also unsurprisingly, within the House, I would urge Members to consider the issues today and to put aside, as Deputy Noel appears to be unable to do [**Approbation**], the fact that I and Shona Pitman have broken the law. I would say that we have been properly punished for that; that is over. I would also ask Members to put away their dislike or otherwise for our politics and indeed for, it may well be, our personalities which may be abhorrent to many. [**Laughter**] I will say it; please do not let anybody else say it. Vote on the issues. The issues are: is this an appropriate law to be in place and, essentially, is it well directed? All the reasons we have heard and, again, I must mention that the Constable of St. Mary again seemed merely to give a rehash of her speech last time when she confused the issues of the ballot and used the phrase: "The integrity of the ballot must be preserved"; we have got to be whiter than white at all stages, when really the issue is whether you consider that helping somebody fill in an application for a postal vote as a candidate is somehow putting undue pressure on that vote. I do not believe it is and I do not believe anybody else who looked at it with a rational view would think that. Certainly, nowhere else I believe probably in the world - and I will not be gainsaid on that - certainly in the Commonwealth, I suspect in every democratic country, do we attempt to deal with postal voting by attacking the application form. That is not the case. This is misdirected. The aims may be laudable, the aims may very well be laudable and given in the best intentions, but it is run at the wrong place. Deal with the ballot paper not the application form; that is not an issue. I must point out I was encouraged by Senator Ferguson to do what every Member

of the States should, rather than break the law, the past dealt with, is to attempt to change the law and that is exactly what I am doing now. I am doing it at almost the earliest possible opportunity I could because the law was passed in June, it then came into force in October. In that September period - I could not have brought back anything to rescind before that - we were busy with all sorts of things including the first of the elections; there simply was not time. This is the earliest moment and it is, I believe, absolutely timely because the sentence is past and done; that is finished with. There is no chance of an appeal; I can assure the Deputy of St. John about that. Now is the time to deal with it at the earliest possible point of view. Now, the Constable of my own Parish, St. Helier, suggested that: "Well, we can deal with it. We will keep 39A and we will throw some extra resource at it." That is not the argument he usually makes. He usually makes the clear-sighted argument that: "This does not appear quite right and there is no point in certainly throwing my ratepayers' money at it in order to solve it, so we will put a little problem in the way and we will throw some money at it and throw some resource at it to solve it." That is not what I call efficiency, and it is not what traditionally he calls efficiency. The Deputy of St. Mary, again, a wonderful speech. **[Approbation]** He pointed out that we have not got a rolling register; there are all sorts of things wrong with our system and summed it up quite neatly when he said: "39A; it is crackers." It certainly is. The essential things I want to say, yes, let us go straight to Deputy Green. Deputy Green summed up in its entirety the issue that we have. From one day to the next he is allowed to help and not to help. He talks about people admitting that they cannot read or write. You know, you do not do it, you keep it a secret; that is what happens. You talk about people with learning difficulties not voting on the colour of a tie - how insulting was that - but on the issues. They do have issues and they do understand the issues and they vote. The overriding issue of making it easier to allow them to vote. He is talking and he used exactly the right word and almost got it out: "Disenfranchisement." and I almost got it out. Finally, I would just like to point to an issue that has not been mentioned but illustrates how badly directed this law is. In answering a question from me, the Attorney General said that under the terms of the law informing the constituent of their electoral number, so that it can be filled in on a request for a postal vote, seems to me to lie within the terms of the offence. So 39A makes something a lot of us do: Senators, Deputies, *et cetera*, telling people what their electoral number is so that they can go and vote and they feel more comfortable with that, that is rendered illegal, as well as anything else, by 39A. It cannot be right. Finally, this question about people's integrity and honesty and not allowing that to be subject to any possible question, even though it is 3 to 5 days away from any ballot paper. I am aware of that and my feeling is that I have absolutely nothing to be ashamed of. My integrity and my honesty stand unsullied **[Approbation]**, I believe, and I believe there is no interference with the postal vote by assisting people - helping people, for God's sake - to get that vote. I will just finish with another part of the letter that I read earlier and it is about my integrity and my honesty and the integrity and honesty, I believe, of everyone in this House: "I first met Deputy Southern in 2005 when he was canvassing for his re-election as Deputy. At the time, I had just moved to my present address and had not informed the Parish of my change of address for election purposes. In fact, I had not voted for some time due to my advancing disability and my disillusion with Jersey politics. Deputy Southern talked to me about the possibility of voting by post, which I was interested in. Despite my voter registration being in another district, which meant I could not cast a vote for him, he brought the application form", this was back in 2005; it was not an illegal act: "for a postal ballot, which I completed and, very satisfactorily, was able to vote." This is somebody who had not voted for years and who was disabled and could not even vote for me. That is what I mean by encouraging people to use their vote. That is the principle that underlines this notion today to rescind 39A which is an ineffective and misplaced law which, I believe, fundamentally affects people's human rights in terms of Article 3 paragraph (1), the right to participate and the right to be protected from discrimination. It is discriminatory. I urge every Member to put what was a mistake right. Swallow your pride and put this mistake right.

The Deputy Bailiff:

The appel is called for, then, in relation to the proposition of Deputy Southern.

The Connétable of St. Helier:

Could we just ask for corroboration from the Attorney General of a point that the Deputy made in his closing remarks about the illegality of giving the voter number? That would be quite useful to know.

The Attorney General:

I think the point should be seen in the context of Article 39A which is that if you give the voter his voter registration number in the context of assisting that person to complete the form, yes, that would be, on one analysis, assistance for the purposes of Article 39A.

The Deputy Bailiff:

Very well. The appel is called for then in relation to the proposition of Deputy Southern. I invite Members to return to their seats and the Greffier will open the voting.

POUR: 19

Senator S. Syvret
Senator B.E. Shenton
Senator A. Breckon
Connétable of St. Helier
Connétable of St. Clement
Deputy of St. Martin
Deputy R.G. Le Hérisssier (S)
Deputy J.A. Martin (H)
Deputy G.P. Southern (H)
Deputy of Grouville
Deputy P.V.F. Le Claire (H)
Deputy S. Pitman (H)
Deputy M. Tadier (B)
Deputy of St. Mary
Deputy T.M. Pitman (H)
Deputy T.A. Vallois (S)
Deputy M.R. Higgins (H)
Deputy A.K.F. Green (H)
Deputy J.M. Maçon (S)

CONTRE: 27

Senator T.A. Le Sueur
Senator P.F. Routier
Senator P.F.C. Ozouf
Senator T.J. Le Main
Senator S.C. Ferguson
Senator A.J.D. Maclean
Senator B.I. Le Marquand
Connétable of St. Ouen
Connétable of Trinity
Connétable of St. Martin
Connétable of St. John
Connétable of St. Saviour
Connétable of St. Peter
Connétable of St. Lawrence
Connétable of St. Mary
Deputy R.C. Duhamel (S)
Deputy J.B. Fox (H)
Deputy of St. Ouen
Deputy of St. Peter
Deputy J.A. Hilton (H)
Deputy J.A.N. Le Fondré (L)
Deputy of Trinity
Deputy S.S.P.A. Power (B)
Deputy K.C. Lewis (S)
Deputy of St. John
Deputy A.T. Dupré (C)
Deputy E.J. Noel (L)

ABSTAIN: 0

The Deputy Bailiff:

Very well. An adjournment is proposed. Just before we adjourn, I should inform Members of the lodging of a proposition, P.100, by Deputy Tadier entitled: "Television licences for persons over 75." Very well, the Assembly stands adjourned till 9.30 a.m. tomorrow morning.

ADJOURNMENT