

# STATES OF JERSEY

## OFFICIAL REPORT

WEDNESDAY, 18th JANUARY 2023

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[9:30]

**The Roll was called and the Greffier of the States led the Assembly in Prayer.**

**The Bailiff:**

Members not familiar with the excuse protocol, generally speaking if someone provides a reasonable explanation why the Member is not present then they are marked excuse. It is technically correct that that should only happen after the Assembly agrees but I take the view by looking around and nobody standing up wishing to object that tacitly the Assembly has agreed. So I hope that explains the process to people as we go.

## **STATEMENT ON A MATTER OF OFFICIAL RESPONSIBILITY**

### **1. Statement by the Chief Minister regarding the major incident declared following flooding in Grands Vaux**

**The Bailiff:**

Chief Minister, your office asked for permission to deliver a statement. Are you ready to deliver a statement? Has that been circularised to Members?

**Deputy K.L. Moore of St. John, St. Lawrence and Trinity:**

I believe so now, thank you.

**The Bailiff:**

Can we just check that that has happened? We have just received the email, it has not been formatted nor circularised to Members. I will be minded, given the urgency of the matter which relates to the flooding, that we would let the Chief Minister deliver the statement at this point without it being circularised, and it will be circularised as soon as possible. Is there any objection to ... thank you very much, Chief Minister, please do.

#### **1.1 Deputy K.L. Moore (The Chief Minister):**

I thank the Greffe for allowing me to give this statement to the Assembly. Like other Islanders I was shocked by the speed and severity of the flooding experienced in Grands Vaux, and in various locations across the Island yesterday. Over two months average rainfall was recorded in the days leading up to Monday, which escalated as reservoirs and pumping stations struggled to cope. The impact of such extreme rain has particularly impacted residents living in the upper sections of Grands Vaux who were evacuated from their homes by Jersey Fire and Rescue Service and by Andium Homes. The Council of Ministers met after yesterday's sitting. The Island's emergency services and departments across government, who plan and prepare for such eventualities, briefed us that yesterday those plans were quickly actioned to provide urgent support to those affected. The government received 140 calls around drainage issues and 41 callouts were made to unblock the systems. From early yesterday morning the Jersey Fire and Rescue Service and members of the Infrastructure, Housing and Environment Department along with Jersey Water had been on site, supporting affected residents and staff at Grands Vaux School to evacuate and assist with the management of floodwaters. The flooding began with some staff and children already at the school and colleagues from across the Education and Children Department made sure everyone's welfare was looked after. During the day and into the night the emergency services were directly advising and supporting residents to evacuate flooded areas and "at risk" sections of the upper Grands Vaux area because of the ongoing danger from the floodwaters. They made door-to-door evacuation calls in the area starting from Grands Vaux School and running along Les Grands Vaux to Troy Court. Some residents who were asked to leave their properties initially went to St Saviour's Parish Hall, where immediate shelter, advice, hot food and support were available. I want to thank the Constable and staff at St Saviour's Parish Hall, as well as the volunteers from Beresford Street Kitchen, who

provided the emergency reception centre. Affected residents, who were told by emergency services that they should evacuate, were encouraged to stay with friends and family overnight, and for the short term if necessary. Andium secured sufficient rooms for their residents in the “at risk” area and further hotel rooms were made available as back-up or for non-Andium residents. In total, over 58 households have been evacuated and my thanks go to those hotels and guesthouses who provided emergency accommodation for those who have been displaced by the flood. Andium Homes will be contacting residents early this morning to provide an update on the situation and outline when they hope they will be able to return home. The government helpline, which was managed by the communications team who stepped in late last night, is being staffed by C.L.S. (Customer and Local Services) today and is available to assist any affected Islanders on 448844. Grands Vaux School was closed due to floodwater preventing access to the school, and it will remain closed again today. Although it thankfully has not been flooded, it is not accessible. The Jersey Youth Service centre will also remain closed today. The headteacher has been at the school today and, thankfully, it would appear that there are no major structural issues and a reopening plan is underway. That will be agreed with staff and then communicated to parents in the coming day or days. The department is liaising directly with parents, and they will be the first to hear of any plans. I want to reassure Members, and those affected by the flooding, that we will continue to provide support, including emergency accommodation and financial support, over the coming days as they return to their homes and manage the impact. The immediate priority has been to protect the lives and safety of those at highest risk from the impacts of flooding and making sure that they have shelter and accommodation. We have been addressing the need for immediate financial assistance. We will be putting in a form of immediate financial support comparable with that incident, and further details will be announced today. I want to offer my profound thanks to all those emergency services staff, government staff, the team at Jersey Water and volunteers who acted so quickly [**Approbation**] to manage this incident and support the residents of Grands Vaux. I am happy to take any questions from Members.

**The Bailiff:**

Thank you very much, Chief Minister. There now follows a period of 15 minutes initially in which questions can be asked about matters arising out of the statement. Deputy Farnham, you were originally going to ask an urgent oral question so I will give you the first question before moving on to others, if you wish.

**1.1.1 Deputy L.J. Farnham of St. Mary, St. Ouen and St. Peter:**

Can I thank the Chief Minister for updating the Assembly and indeed recognise the work done by the Government yesterday to ramp up the communications, especially to those impacted. I know it was appreciated. I think it is well-known that Grands Vaux is a high flood risk area. What modelling can now be done to ensure - if we can ensure - that this does not happen again or we can ensure that any future problems will be alleviated by being perhaps a little bit more prepared. I understand the main problem was caused by overflow from the reservoir and Jersey Water Works reacted to start moving water to other reservoirs. But the question is what modelling can be done to help prevent this sort of thing happening in that area?

**Deputy K.L. Moore:**

I thank the Deputy for his question. As the Deputy may recall, some modelling was done a number of years ago and this plan has been in place for a number of years as this has been identified as an area of risk. Although the level of rainfall, as I outlined in the statement, has been quite extraordinary and something that is not seen in a decade. This is a one in 20 or maybe even 30-year event. Therefore it is quite an extraordinary event and one that is simply about an accumulation of water. But thankfully yesterday, just at the point that it stopped raining and over the period where the majority of water was flowing down in to the valley from run-off, it just so happened that the tide

was also starting to go out and we saw a very rapid reduction in the water in the area which shows exactly how nature can sometimes work at its very best.

[9:45]

So we are hopeful that given the limited amount of rainfall expected over the next day water should subside and the clean-up operation can begin.

### **1.1.2 Deputy L.J. Farnham:**

Can I thank the Chief Minister for her answer? I am sure she is aware that this is not a problem just that is happening in Grands Vaux but across the Island there are issues. In St. Ouen's, for example, I know of at least 2 homes that have been flooded by waterlogged fields, which is causing the water table to rise. What help is available to Islanders in other parts of the Island who are having problems? Who should they contact and what can be done to help them?

### **Deputy K.L. Moore:**

Yesterday people were being directed not to the police but to the Infrastructure Department who I believe are co-ordinating these efforts. I can ensure that that number is clearly shared with the public who may need to use it. But, for example, as I came into work this morning, I saw the road at Tesson Mill is still closed and of course the Honorary Police Force will have been out there supporting Infrastructure and the Fire and Rescue Service in their works around the Island because this has really put a lot of strain on our infrastructure and its capacity to cope with this amount of water. But as I say, hopefully the rain will abate today and we will see that water dissipating and flowing out to sea.

### **1.1.3 Deputy R.S. Kovacs of St. Saviour:**

I am going to follow the question of Deputy Farnham because yesterday I went to the co-ordination centre at St. Saviour Parish Hall and the residents that were evacuated there were raising concerns that there were ... back in 2017, 2018 flood they were raising these issues and even a few days ago residents that have seen the reservoir almost overflowing they raised it with Jersey Water being worried that this could happen. They also raised along this year problems with the drainage network in the valley. Has this been recorded, has this been looked at to have a proper infrastructure network put in place and try to mitigate this? Can they be assured going forward this will be looked into, sorted to avoid further things like that?

### **Deputy K.L. Moore:**

Thank you for sharing that information with me. I have had brief preliminary discussions with Jersey Water about the management of the reservoir, which they assured me was perfectly normal for this time of year. We do have a plan, as I outlined earlier, but of course it is becoming very evident that as our population, in particular around the town area, but around the Island has increased. There is perhaps now a need to look at capacity issues in our underground infrastructure as well as that which we see above ground. I think that this is now an area of real focus for the Minister for Infrastructure and the Council of Ministers. We will be looking at what needs to be done as quickly as we can.

### **1.1.4 Deputy R.S. Kovacs:**

You said that measures of support will be further announced but also residents from private accommodation that has been affected were asking if someone can contact landlords and go into those properties that were affected to make sure they are still safe to be lived in before they go back. Can that be assured?

### **Deputy K.L. Moore:**

I am very much aware that Andium have been doing a fantastic job once again in ensuring that their residents are well looked after and the information is provided. It is of course a difficult area at the moment to get around. Some drain covers have been removed and, although now I believe that there

is less standing water, the area will have to be carefully entered into. I imagine that the emergency services will be able to support people who need to but we may need to give them a little extra time at this point before people can freely go back into their homes. But it would certainly be an Environmental Health matter, that decision. If floodwater has gone into a home I am afraid it is likely to be a matter of time before people can once again live in those homes because the clean-up operation will have to be done first.

**Deputy R.S. Kovacs:**

Sorry, just a point of clarification.

**The Bailiff:**

No, there is no point of clarification in a question period time, Deputy Kovacs. We are quite tight on time even with an extended period.

**Deputy R.S. Kovacs:**

Just for the private landlord.

**1.1.5 Deputy R.J. Ward of St. Helier Central:**

May I ask the Minister what consideration will be given or what support will be given to those who perhaps do not have contents insurance particularly at the time with the cost-of-living crisis is one of the first things to go? I just wondered if the Minister can give some assurances for people who may be in that situation.

**Deputy K.L. Moore:**

This is a matter that is on our minds and we absolutely think of those people who may be in that position. Of course this is extremely early days and while we have committed to providing some financial assistance we will of course need to understand what the quantum is of that, but we are most certainly focused on being able to do what we can to support residents. But in these early stages, it is a little too early to give exact specifications.

**1.1.6 Deputy R.J. Ward:**

I thank the Chief Minister for her answer. Can I ask as well, one of the issues that we come across a great deal in St. Helier is Andium Homes often given loans for carpets and do not carpet homes? There may be some residents who are in this situation where they have now lost those carpets and are paying a loan. Will some action be taken to help those individuals, and I take this opportunity as well to urge that that system does not happen anymore anyway because I do not think it is the right thing to do. But in this situation in particular where people may be paying for those.

**Deputy K.L. Moore:**

I think that it is a very valid point to raise and I am grateful to the Deputy for doing so. I will ensure that that is part of our discussions with Andium going forward.

**1.1.7 Deputy M. Tadier of St. Brelade:**

In due course it would be helpful to know what the split is between private tenants homeowners and Andium tenants. I know that a lot of focus has been on Andium tenants at the moment, quite rightly, and one feels sorry, I think in particular for Andium and what they are going through, as well as their tenants. My question relates to a potential disparity between private tenants and Andium tenants. While this is a difficult period for all of them, Andium tenants know that they will at least be rehoused by their landlords. There is nothing in the law that requires a private landlord to rehouse a tenant. There is nothing that requires a private landlord to have insurance that covers the eventuality of fire or floods which renders a property or a home uninhabitable. Indeed, under the Residential Tenancy Law, all that is required under Article 9 is for the tenant to stop paying rent for a period where their

property is uninhabitable. This is something I have raised with the previous Government. Is it something that the Chief Minister, along with the Minister for Housing and Communities, will be sensitive to in the rehousing of tenants both in the short term to resolve any loopholes but also to make sure that the law is made more robust for these kind of eventualities in the future?

**Deputy K.L. Moore:**

That was a wide-ranging but pertinent question and of course it identifies some short, medium and long-term actions. The long-term will be the legislation and I am very happy to discuss that with the Minister for Housing and Communities, as I am sure the Deputy will endeavour to do so also. In the short term, let us remember that this is an emergency response to a major incident and therefore we are very grateful to those hoteliers and guesthouse owners who have helped us provide homes to those people who have been affected and evacuated from their homes overnight. We will look to ensure that everybody is as well looked after as we can in the coming days.

**1.1.8 Deputy M. Tadier:**

Would the Chief Minister consider a mechanism for those in private tenancies who are not being rehoused or offered rehousing by their landlords access to legal aid, irrespective of whether they would normally qualify, if they need it or some form of legal advice other than Citizens Advice that they may need in order to find suitable accommodation from the person off whom they are renting?

**Deputy K.L. Moore:**

I think it is better that we take a case-by-case situation and we will need to quickly quantify where any issues may lie. I would expect that the majority of landlords would have the relevant insurance in place, and they will be good landlords and undertake their duties to their tenant.

**1.1.9 Deputy S.Y. Mézec of St. Helier South:**

When Grands Vaux used to be in my old constituency in 2017 I attended down there and there were floods at that time, which were described as one in 100-year floods. Shortly after that a flood plan was put in place and that plan said that the plan ought to be updated again in 2021. Could the Chief Minister inform us whether that update did happen; and if so, what it included?

**Deputy K.L. Moore:**

I am not aware of the update because I was not in Government in 2021, and that is a matter for the previous Government and any subsequent actions that they may or may not have taken.

**1.1.10 Deputy S.Y. Mézec:**

Last night, I attempted to find evidence of an update of it and could not find any. Once the immediate need has been resolved from this, could the Chief Minister give her assurances to the Assembly that if that plan is now out of date, it being clear that it may well be given that what was called a one in 100-year flood turned out to be a one in 5, that that plan will be updated as soon as possible so that our Island is well prepared in the future for these kind of eventualities.

**Deputy K.L. Moore:**

As I said, the Minister for Infrastructure is most certainly focused at the moment on matters below ground and capacity issues that we are experiencing around the Island.

**The Bailiff:**

That brings us to the end of the first 15 minutes. A number of people still wish to ask questions. May I assume, there is one opportunity to extend ...

**Deputy S.Y. Mézec:**

Sir, I propose to extend it.

**The Bailiff:**

Excuse me. There is one opportunity to extend by 15 minutes under Standing Orders. Can I assume that that is proposed and seconded and passed? **[Seconded]** Very well. Yes, we will extend by a further 15 minutes.

**1.1.11 Deputy A. Howell of St. John, St. Lawrence and Trinity:**

I wish to say thank you to everyone who has been helping with this. A follow-up from what everybody else has said. It has been brought to my attention that it is not just household contents that people have not got insured; I think some people do not have household insurance for their homes. I just wondered if the Government may consider encouraging Islanders to take out insurance because I think we are going to have, sadly, more of these things with extreme weather and our climate and I just wondered what she might think.

**Deputy K.L. Moore:**

I thank the Deputy for the question and householders are of course encouraged to take out insurance for both their buildings and contents, and that goes to whether they are owner-occupiers, landlords or tenants. We all have duties and responsibilities, as members of our community, to take such relevant action and of course we hope that those who are able to afford to do so do so. In future perhaps, as a Government, we can look to extending such methods to Islanders who may struggle with the affordability of such vital parts of their house.

**1.1.12 Connétable K.C. Lewis of St. Saviour:**

May I add my congratulations to the emergency services who did an exemplary job? **[Approbation]** I thank the Chief Minister for her kind words regarding the Parish of St. Saviour staff, many of whom went home after their work day finished, got changed and immediately came back to the Parish Hall and worked until 10.00 p.m. I would also like to thank Andium who do not always get good reports; they did an exemplary job. Many of them were in Grands Vaux all day absolutely soaking wet looking after people and working from St. Saviour's Parish Hall to relocate everyone they could to ...

**The Bailiff:**

Connétable, I appreciate the sensitivities at the moment but you have not asked a question yet and there are lots of people who have questions to ask.

**The Connétable of St. Saviour:**

Very good, Sir, indeed. Members are aware that I have had experience of floods in Tewkesbury, which was a one in 100-year event and it has happened, I think, 13 times since, so Mother Nature wins.

[10:00]

The real work begins now with the clean-up and, as has been said, with the repairs of the housing. Does the Minister not agree?

**Deputy K.L. Moore:**

Sorry, I lost the thread at the end. Could the Deputy repeat that part of his ...

**The Bailiff:**

Do you not agree the real work begins now in preparation for such events in the future?

**Deputy K.L. Moore:**

I think I have outlined that already this morning. We are focused on issues below ground and most certainly.

**The Bailiff:**

Do you have a supplementary at all?

**The Connétable of St. Saviour:**

No, thank you.

**1.1.13 Connétable A.S. Crowcroft of St. Helier:**

Does the Chief Minister endorse the Minister for Infrastructure's pledge to put Grands Vaux, and I quote: "Front and centre of infrastructure improvements"? Does she further recognise the vital role played by the Cavern in making sure that the flooding was not worse, particularly given the amount of political fallout that was created when the Cavern was created and now, clearly, it is fulfilling its use?

**Deputy K.L. Moore:**

I thank the Constable for his question. I was reflecting just yesterday on that issue of the Cavern. It is sometimes really difficult as a politician to take some decisions and some at the time will particularly receive flak and intense heat, which will sometimes cause politicians to question why they do the job that they do. But, yes, yesterday I was thanking those people who bore the brunt of that decision because it has to be said that the Cavern was full yesterday morning early and that was showing exactly how and why it was built and delivered, and it did exactly what it was intended to do. To answer the first part of the Constable's question, of course I would agree with the Minister for Infrastructure and he has not only my support but that of the rest of the Council of Ministers in undertaking the work he has ahead of him.

**1.1.14 The Connétable of St. Helier:**

Perhaps a minor point but in the statement the Chief Minister did not refer to the Honorary Police, although she did subsequently refer to them and will she join with me in giving thanks once again to the Honorary Police, some of whom are still helping in Pier Road in the aftermath of the tragedy there in December, that they were out again yesterday from not only St. Helier but other Parishes? Will she join me in thanking the Honorary Police? **[Approbation]**

**Deputy K.L. Moore:**

The Honorary Police are one of the finest examples of why Jersey, as a small community, responds so amazingly well in times of crisis. I am exceptionally grateful to every person who gives up their time voluntarily to support their community and sometimes undertake the unglamorous work that the Honorary Police do. We simply would not function as an Island as we do without them and I thank them wholeheartedly. **[Approbation]**

**The Bailiff:**

Deputy Ozouf you indicated a desire to ask a question and I noted your name down but of course holding Ministerial office it would not normally be open to you to ask a question of the Chief Minister when other Members who do not have direct access have questions to ask.

**Deputy P.F.C. Ozouf of St. Saviour:**

My actual question was exactly what the Constable of St. Helier was doing about the Parishes, about the Honorary Police because I visited that last night, so it has been asked.

**1.1.15 Deputy M.R. Scott of St. Brelade:**

A very brief thanks and sympathy to those who have been affected by this. But other Members have mentioned, and we should be aware, about climate scientists saying that extreme weather events will probably increase flooding in lots of areas. Personally I am aware of areas where the water table already is low, such as Goose Green and Marais, and there are other areas next to reservoirs. I just

wondered in terms of when the Chief Minister said that underground infrastructure would be looked at, bearing in mind the link to density of housing in different areas, whether she could give the assurance that this is something that is not going to just be focused on one particular area, such as Grands Vaux that showed this emergency it has created, but all areas across the Island.

**Deputy K.L. Moore:**

Thank you, Deputy, for the question. I think members of the Planning Committee, in particular, will be aware that water resource issues are very much becoming a feature of planning decisions and this is something that we are most certainly focused upon. I will not interject too much on matters that I know the Minister for the Environment is fully seized upon but we are most certainly focused on the impact of changes in our environment and how we, as an Island, need to stand ready and prepare for them.

**1.1.16 Connétable D.W. Mezbourian of St. Lawrence:**

The first sentence of the Chief Minister's statement refers to her shock by the speed and severity of the flooding experienced in Grands Vaux and I can only join with her to endorse that. My sister called me at about 6.45 yesterday morning to show me the floodwater outside of her home and it rose during the day and she was traumatised and in shock. She has been rehomed for the night and, again, I would like to take this opportunity to thank the Fire and Rescue Service who took her from her home in one of their R.I.B.s (rigid inflatable boat). She never thought she would leave her home by boat but that is what was the reality yesterday. My question to the Chief Minister is whether counselling will be provided, if necessary, to those who have suffered trauma and shock. It was shocking; she is still in shock this morning. On a more practical issue: will Andium Homes be providing their tenants with sandbags for possible future events such as this?

**Deputy K.L. Moore:**

I think as an Island we have become so aware of the issues of shock and the need to access counselling and quickly during the difficult weeks that we have experienced in the past month. Just as we did last month, I am sure that we can ensure that the Listening Lounge is most certainly available to those residents who may need to talk that through and to come to terms with what has happened. Because I can completely understand that it was a terrible shock to watch those events unfold and be so unsure of what was going to happen next. All I can say is to reassure Islanders that how very fortunate we are to have the emergency services who were there and showed their preparedness and their ability to deal with the situation as it transpired. One thing that they did say to me yesterday was that it was one of those situations that looked as if it was manageable and okay but then all of a sudden it moved into the not okay situation. I think that we should all be mightily proud of them all.

**1.1.17 The Connétable of St. Lawrence:**

Just to remind the Chief Minister of the second part of my question, which was whether she would recommend to Andium that they provide their tenants with sandbags for possible future events such as this.

**Deputy K.L. Moore:**

The Constable is quite right of course and sandbags were an issue that we were questioning yesterday and we will ensure that those are provided to all residents who should need them.

**1.1.18 Deputy L.V. Feltham of St. Helier Central:**

I have been contacted today by one of the affected residents in the area and, as Deputy Tadier mentioned earlier, there are a number of people that are living in private rentals and obviously homeowners as well in the area. We have heard about the advice and support that has been made available to Andium residents but my understanding is that those that are in private rentals, and perhaps homeowners as well, are feeling that the advice has not been given to them on such a practical

level. Will the Chief Minister commit to providing practical advice for both private tenants, private landlords and homeowners about the steps that they should be taking at this point in time and the help and support and, potentially, financial support, I heard her mention earlier, that will be available to them?

**Deputy K.L. Moore:**

Most certainly. Last night our communications team stayed in the office until extremely late to man the call centre. We set up a phonenumber immediately and communicated that to people. I am really grateful to the team who did that. Today we have got the COVID helpline going again and that is now a free phone number for Islanders who do need help and support, whatever their circumstances. That is available to them and that is what I would urge them to do if they need help or support or advice.

**1.1.19 Deputy L.V. Feltham:**

Has the COVID helpline ... have the staff already been given that practical advice in order to give out to people or are they at this moment in time still just taking people's contact details?

**Deputy K.L. Moore:**

I was aware that just already last night the essential information had been provided to those people who were answering the telephone so that they could provide some level of advice. Of course there will be technical questions that they may not be able to answer immediately and I would always urge people who do not have the exact correct advice to take someone's details and to get back to them with the correct advice, rather than giving them advice that may not be correct. But there certainly is information at hand to those who are answering the phonelines this morning.

**1.1.20 Deputy G.P. Southern of St. Helier Central:**

The Chief Minister appears to have ample planning in place to mitigate this sort of event. Will she assure the House and that she will return to the Assembly with a plan to prevent a reoccurrence of this sort of thing?

**Deputy K.L. Moore:**

As I think I have outlined earlier, the Minister for Infrastructure is fully sighted and focused on this at the moment. I think this will probably be a matter that will come back to this Assembly in the coming months so that we ensure that, as an Island, we are properly able to deal with capacity issues in our infrastructure.

**1.1.21 Deputy G.P. Southern:**

Could the Chief Minister firm up on possibly?

**Deputy K.L. Moore:**

I am not sure I said possibly on that occasion. I think I said that the Infrastructure is fully focused on this matter at the moment. [Aside] Okay, got you. Yes, okay, so he will, I have no doubt, be coming to the Assembly in the near future to ask for their views.

**The Bailiff:**

There is time for one further question.

**Connétable A.N. Jehan of St. John:**

I would just like to raise the *défaut* on the Constable of St. Peter, sorry.

**The Bailiff:**

That is quite an easy matter to deal with. The *défaut* is raised on the Constable of St. Peter. Possibly time for a very quick question.

**1.1.22 Deputy S.G. Luce of Grouville and St. Martin:**

We know that extreme weather events are going to be occurring more often. We know that Grands Vaux and Town Mills area sits at the bottom of our largest valley, which starts on the north coast up at Les Platons. We know it to be at times of high-tide events and the Cavern being full that there is an ongoing risk. Does the Chief Minister accept that due to the topography of the Island that at times like yesterday water in Jersey in those areas just has nowhere to go?

**Deputy K.L. Moore:**

I think the Deputy's description is exceptionally accurate and we were extremely fortunate yesterday that, as I said, just as the rain stopped the tide was falling and that was a very fortunate set of events.

**The Bailiff:**

Thank you very much, Chief Minister. That brings the second question section and final section to a close.

**PUBLIC BUSINESS - resumption**

**2. Reinstatement of Senators (P.108/2022) - resumption**

**The Bailiff:**

We now move on with Public Business. The debate, therefore, resumes on Re-instatement of Senators, P.108. We are now debating the main proposition and I have next listed to speak Deputy Alves.

**2.1 Deputy C.S. Alves of St. Helier Central:**

As one of the members who worked tirelessly on the last electoral reform proposals, alongside the previous P.P.C. (Privileges and Procedures Committee) chair, Deputy Russell Labey, before becoming the P.P.C. chair myself for the last 15 months of the last term, I want to make new Members aware and remind previous Members that that process and those proposals was not something that was done lightly. It took about 3 years and a whole array of different proposals, calculations and consultations. As well as the Parish roadshows, which have been previously mentioned, focus groups with the public were also conducted by a professional body, the results of which were shared in the accompanying report to the proposals and we liaised numerous times with Members before we were able to get something over the line. I would like to take this opportunity to thank the previous P.P.C. chair, Deputy Russell Labey, for his efforts, passion and knowledge and most of all the support and guidance he gave me in the last term. Although the loss of the Island-wide mandate was definitely not the most talked thing on the doorstep during my election campaign, it did come up a few times. When it did come up I asked the question: why do you want the Island-wide mandate back?

[10:15]

Many of the reasons were similar to the ones that have already been mentioned in this debate but the issue is that many of these reasons are based on inaccurate information or misunderstandings. For example, the misunderstanding that being able to cast fewer votes makes the system less democratic; the number of votes versus equity argument. We have never had a more equitable voting system in Jersey ever. During our consultation period the public favoured equity of voter representation over number of votes cast, as did Members when it came to voting on one of those in the first iterations that we proposed. The Constable of St. Mary yesterday mentioned that voters wanted to have a say into those who end up in high office roles. Voting for the Senators does not achieve this. The

Assembly decides who becomes Chief Minister and all the Ministers, not the public. Although it has been convention that the Chief Minister candidates came from the Senatorial benches, this has never been written into Standing Orders and anyone from the Deputies or the Constable benches could contest this role, as happens for the Ministerial posts because the Assembly makes the final decision. In fact this was something that the Democratic Accountability and Governance Sub-Committee, chaired by the previous Senator Vallois and Deputy Gorst was a member of, included in their report at the end of last term as a key finding and put forward a recommendation. That finding was number 6: “Accountability of the role of the Chief Minister within the public arena is lacking, as voters do not have a say on who should be elected to the role.” The recommendation was: “Voters should be provided with the opportunity to indicate their preferred candidate for Chief Minister during the voting process.” This is something that could have been implemented in the election, along with a number of other recommendations in that report, but we simply did not have the time to do it. Now we have made the system simpler and more equitable, the main thing for me that was missing from the last election was the work from my Political Awareness and Education Sub-Committee that we had planned to roll out. Why was this work not rolled out fully? COVID happened. We had a number of members with great ideas, and I would like to thank those members for being part of that sub-committee last term and the new members who have joined this team this term. But it was extremely unfortunate that that work, essentially, came to a complete halt due to COVID. I would also like to highlight the fact that we have a newly constituted and fantastic team in the Greffe that did not exist before, the Digital and Public Engagement team who are dedicated and have the resources to implement our ideas and to engage and raise awareness in the public. Previously we only had one person working on this, our now Greffier, who did a fantastic job but had limited resources and time. Now we have a whole team who have not really been able to release their full potential or carry out the work they wanted to, again, because of COVID restrictions in the run up to the elections. I think this just highlights and shows again the importance of what many have said about giving time for this system to bed in. We need to increase voter turnout, there is no doubt about that. Changing the system again will not help, if anything it will do the opposite. It will cost more time, money and resources to go backwards as a number of workstreams are already in train; time, resources and money that would be better spent looking into ways of getting voters out, now that we have a much more equitable and slightly simpler system, things such as a centralised voter register, for example, something which just this week the Consumer Council has put out a call for. As I am sure we are all aware, many Islanders are facing difficulty applying for credit cards and this would prevent further credit card companies from pulling out of Jersey, an automatic voter registration system, no more wiping of the registers and having to fill in forms every year, exploring different voting methods such as preferential voting, as well as more accessible and mobile polling stations, among other things. Although I commend Deputy Gorst for not turning his back on his electorate and standing by one of his election promises, which is something we should all be doing, I cannot support this and I would urge Members to vote against it.

### **2.1.1 Deputy J. Renouf of St. Brelade:**

Thank you. Back in 2012 my father sent me an email when I was living in London. It referenced an article in the *J.E.P. (Jersey Evening Post)* saying that an Electoral Commission was being set up in Jersey and in addition to on-Island membership the aim was to appoint a member with a Jersey background who lived offshore. My curiosity was piqued and I applied and I ended up as a member of that commission that was chaired by Deputy Bailhache. In that capacity, I first attended this Chamber sitting in the gallery above us; not quite as impressive a record of attendance as the chair of P.P.C.’s. In fact involvement in that Electoral Commission set in train a course of events that eventually led via a very circuitous route to my election to this Assembly. Deputy Bailhache may still be rueing his inadvertent role in setting that chain of events in motion. Since then I have made interventions in the debate over electoral reform and if those interventions have taught me anything it is the need for humility. There have been times when I was sure that I absolutely understood the

public mood and other times when I absolutely sure that mighty moral principles were at stake. I cannot now say that my certainties were justified. I, therefore, come to this debate with humility, I hope. I have to say that this proposition does not display humility. This proposition is based on an assumption, it assumes that alone of all the questions and uncertainties that surround the question of electoral reform one question is already settled with absolute certainty, namely that the Senators should return to the Assembly. "Islanders want a return of the Island-wide mandate" Deputy Gorst said in his speech without qualification. That is an attempt to assert that the Island-wide mandate is a settled question to which all other questions of electoral reform should defer; that question is not settled. It is not settled. Let us examine the claim more closely. Deputy Gorst asserts that his constituents in the fair Parishes of St. Ouen, St. Peter and St. Mary were overwhelmingly in favour of the return of the Island-wide mandate, perhaps the ones he spoke to were but perhaps not. We are all subject to a singular psychological failing, it is called confirmation bias. As a cyclist and a driver, I am convinced that the traffic lights always turn against me just as I am arriving at a junction. Every time it happens my theory is confirmed. The trouble is I do not really count the times it does not happen. They do not register because I am not primed to notice them. I only notice that which confirms my theory. It is striking that many of those who claim that there was overwhelming support for the return of the Senators are in many cases those who have always believed that the Senators should be in this Assembly. It is fair to argue that they may well only be paying full attention when they find evidence to back up their point of view; confirmation bias. I accept that there is overwhelming evidence that those who support the return of the Senators found overwhelming evidence to back up their case; that does not constitute an objective case in support of the proposition. But let us assume for a moment that Deputy Gorst is right, out west most people he spoke to were for the return of the Island-wide mandate. What about those he did not speak to? What of other districts? What of St. Helier and other urban areas where the proposer of this proposition did no canvassing at all? Removal of the Senators meant that previously under-represented areas were able to achieve greater representation than in the past. The great win of the current system is that it achieves much fairer representation. That is partly because the new districts are better designed to reflect voter representation. But there is another reason why there is better representation through the present system than with the Island-wide mandate. An Island-wide mandate disadvantages areas with low turnout. If you have one big constituency where you know that the greatest turnout is in the countryside; that is a bias against the low-turnout areas. Now maybe there are those for whom this sounds like a good idea; I am not one of them. It is not a more democratic system to bias your electoral system against low-turnout areas. Can the supporters of this proposition be sure that all those voters who would be disadvantaged by the return of the Island-wide mandate will be happy with that? What of the couple I met while out canvassing in St. Brelade who told me that they had refused to vote since the referendum on electoral reform in 2013 because of the betrayal of the States Assembly in refusing to implement that referendum result? Let us remember, as many people have pointed out, that 80 per cent of voters in that referendum chose options that removed the Senators from the Assembly. I know that it is fashionable among those who support the return of the Senators to try and rubbish that referendum, and I do not blame them because it is a pretty powerful piece of evidence. However much people try and rubbish it the fact is that if people were desperate to keep the Senators above all else they had the option in that referendum. But people did not support keeping the Senators as their first and overwhelming priority. Deputy Gorst makes other claims: "The office of Senator is the most democratic of all the elected officers that have existed in Jersey's electoral history." This is a myth. It is simply not true, for the simple reason that there is no single way of measuring the quantum of democracy encapsulated in each class of States Member. It depends entirely how you define democracy. I understand that it is good propaganda but it is not true. Reality is much more complex, as democratic systems tend to be. For example, if you stand for election in an Isle of Wight mandate you will need to spend a lot more money than in a district or Parish election. It provides a barrier for entry based on income or wealth that will restrict the number of people able to stand. Is that more democratic? Another point, an Island-wide election gives greater weight to

existing politicians, name recognition. It is easier for a new politician to make a mark locally in the electoral districts than in an Island-wide election. Is the greater weight to name recognition that is implicit in an Island-wide mandate more democratic or less? It depends on what you prioritise. Another claim: “The existence of Senators gave every Islander a greater direct influence over the make-up of their States Assembly and, albeit more indirectly, their Government.” Several Members have argued that the reduction in the number of votes you cast is a reduction in your democratic power. But as Deputy Alves has just said, this is not true. It is a beguiling claim but not correct. In crude terms, the correct way to phrase this is that having lots of Senators elected on an Island-wide mandate gives every Islander a smaller say in electing more people is not more power. Smaller districts may mean that you vote for fewer representatives but you have a greater say in electing them. Another consideration here is that if this proposition was accepted it places a very particular lock on any electoral reform proposals for the next 3½ years. When a lock as strong as this was proposed in the past regarding the role of the Constables it was put to the public in a referendum. That was a recognition that placing such a significant restraint on what the Assembly and, in particular, P.P.C. may even consider as part of its deliberations is a matter of great gravity. There is one more point to make and it concerns turnout. The point about bedding in, which many people have used, is not just an abstract point. It reflects something important, namely that electoral turnouts tend to be a lagging indicator. People vote on their past experience. They were cynical leading into this election, I think we all recognise that; certainly the overwhelming feeling I got on the doorstep. Many people did not want to vote, they were so disenchanted. Now they will have seen that elections can lead to change, lets us see how that plays out at the next election. Of course I do not want to say there are no advantages to an Island-wide mandate; of course there are but there are also negatives. In this Assembly we champion the principle of evidence-based decision-making or at least I hope we do. There is simply no objective evidence to support the basic assumption behind this proposition, namely that the Island has come to a settled view on the question of the Island-wide mandate. In fact I would say even if you support the return of the Senators you can still vote against this proposition. There will be plenty of time to consider this question when we have all the information we need at our disposal. Let us canvass public opinion in a structured and comprehensive fashion. As the chair of P.P.C. has eloquently argued, let us give P.P.C. the freedom to approach this with a blank sheet of paper.

[10:30]

In other words, start with evidence, not anecdote. Let us integrate the question of the possible return of the Senators with an understanding of how it might affect voter bias. Let us understand what has been gained with the current system, as well as what might have been lost. Let us remember that we spent more than 10 years trying to change the previous system because it was so widely considered to have failed. Let us show some humility. Let us admit that we do not know the will of the public on this issue. Let us investigate the issue properly in full without preconditions, able to investigate all the complex interlocking ways in which different factors of electoral reform play off against each other. Let us trust P.P.C. to do their job. There is no need for this proposition now.

### **2.1.2 Deputy L. Stephenson of St. Mary, St. Ouen and St. Peter:**

I could just stand up and say “hear, hear” but having spent many, many years sat up in the public gallery and now finally having the opportunity to say something myself I am going to take that opportunity. Also, I do feel quite strongly, as obviously Deputy Gorst but also Deputy Farnham, who is mentioned within the proposition, talk a lot about what people in my constituency said during the campaign, I would feel it is my duty to say something as well. It is human nature that we do not like change, we like what we know, appreciate patterns, routine and stability and often resist and sometimes even fear change. With that in mind, the new electoral system was always going to be a subject of conversation ahead and during the election. A bit like the story of Deputy Tadier’s dad’s beard, we notice change and we are very quick to comment on it. Such reactions during a time of

change can be amplified. I respect Deputy Gorst a great deal and have spent many, many of those years sat up there listening to him talk during his time in Government and certainly, as others have said, do not criticise him for bringing a proposition to the Assembly which seeks to fulfil one of his election commitments to voters. But what I do take issue with are some of the arguments being used to try to advance this proposition. An argument based on principle is one thing but that is not what we are seeing here. In his report Deputy Gorst says that both he and Deputy Farnham referred to bringing back Senators in their speeches at all 3 hustings and asked the public to vote for them as a means of bringing back Senators. I also made my position on this subject clear during the hustings, that I was not in favour of another electoral reform so soon and specifically that I would not support the return of Senators in this way. I was elected second in that poll, 30 or so votes ahead of Deputy Gorst and more ahead of Deputy Farnham. Should we take that as evidence that no change should be made or has evidence ever split a view in the constituency? The reasons that people voted for us are to do with many reasons and they are about more than simply whether we supported the reinstatement of Senators or not and rightly so. The fact that Deputies Gorst and Farnham were re-elected is not evidence that a majority of the public want Senators returned. In fact, as we have heard repeatedly, there is no clear evidence that Islanders as a whole want the return of the Island-wide mandate at all. Yet we are being told - and I have heard other Members repeat it during speeches this week - that this is what the public want. Conversations on doorsteps of the kind conducted during the campaign are a type of evidence and a valuable form of engagement but they are not the entire story. I knocked on many hundreds of doors myself and do like to reflect on those conversations in this Assembly from time to time but we cannot base policy just on a few conversations on doorsteps. As we have heard from other Members, evidence about the public's views on electoral reform does exist, although perhaps it is not the type of evidence which would support this proposition. I can recall one email that has arrived in my inbox and it was sent to all States Members lobbying on this proposition; just one. One example of where I am particularly uncomfortable with the sweeping claim that this is what people want is around those Islanders who do not feel strongly about the shape that the political system itself takes and so do not choose to go out of their way to talk about it; those who did not collar Deputy Gorst or Deputy Farnham on this subject because it simply was not on their agenda. Are we only taking into account the views of those who are engaged in the details of the electoral system or prioritised it in their conversations on their doorsteps if they happened to be in that day that is? Also, more complex than the issues before us today are our challenges as an Island with low-voter turnout and civic engagement. I would go as far as to say that the way the States Assembly has approached electoral reform in the past, not least the failure to enact the results of the referendum on reform, has made those challenges worse. The way to build trust and enhance engagement is not, in my view, about how we are elected but what we do individually and collectively once we are, and that is the way that it should be. I would also like to ask Deputy Gorst, so I am in no doubt because I think his report alludes to this, can he confirm that it is his view that Ministers should only be elected from the Senatorial benches? Would he consider under a system with 3 classes that Senators have a greater right than Deputies or Constables to be part of the Government and to lead it? His report certainly suggests so and I can see he is gently nodding over there. In which case, can he confirm that he was a Deputy when he was appointed Minister for Social Security and was he less effective than your Senatorial colleagues as a result? I will leave that; the comments to come from Deputy Gorst in his summing up. But moving on to one of the main concerns I do have with this proposition, there are others but others have covered them in detail but I would just like to take a moment to talk again about diversity. Because let us not forget, as others have said, that we do sit here today as the most diverse States Assembly in history. It is not a coincidence that a new system helped to contribute to that increased diversity. It was one of the arguments for change in the system and we have now got the evidence that it has been successful. More women than ever before were elected on 22nd June. We had a 50 per cent rise in female representation, so that today we have got 21 female States Members out of a total of 49. In the previous term there had been 14 female politicians, prior to that 12. Yesterday Deputy Labey seemed to refer to incremental progress in this

area but I would argue this was a major jump. In my own constituency one of the 3 Parishes had never had a female representative; it has now got 2. We also have a more diverse Assembly in many other ways, not just in terms of gender, and I strongly believe that diversity around the decision-making table leads to better outcomes. Again, there are a number of contributing factors which led to this increase in diversity but the new system is one of them. As others have said, more diverse candidates were encouraged to stand or felt able to stand because of the changes to the system; I am one of them. Challenging an incumbent single Deputy in a country Parish, if you have not served in the Honorary Police, is a daunting prospect. So too would it be to challenge former Chief Ministers, Ministers, Bailiffs even on an Island-wide platform. I would also have been daunted by the potential cost that can come with Senatorial elections. We should not take the diversity of today's Assembly for granted; it still feels fragile. This proposition could be a risk to that and that is just one of the reasons I cannot support it. I am a member of P.P.C. and I want to see the committee spending its time over the next 3½ years continuing to work on the development of our political system and the support around it, which aids diversity, improves openness, transparency and accountability and builds trust deeper and more broadly than just because someone can vote on an Island-wide basis rather than in constituencies. No one is, as far as I am aware, claiming that the current system has in any way failed and needs urgently reviewing, and there is no evidence that there is overwhelming public interest in the return of Senators. I cannot, therefore, sensibly and rationally vote to fundamentally change a system which was introduced democratically, which has delivered the most diverse Assembly in history and before even a single year, let alone term, has been completed.

### **2.1.3 Deputy S.G. Luce:**

I am only going to make one speech in this debate because regardless of the amendments and other things that people have said this is just fundamentally about the return of Senators. We have heard a number of very good speeches on both sides, some excellent speeches against this proposition but some have tried to lead us down a path to confuse us slightly. But this is not about if Senators come back whether they have Deputies or Constables or either of those 2 officers removed. This is just about the return of Senators. I accept that different people in different parts of the Island campaigned before the last election and they may well have different views to mine. They may well have spoken to parishioners who expressed different opinions. But I was so relieved when Deputy Labey got up to speak yesterday because I was starting to wonder if I was in some sort of parallel universe where things happen differently. Because when I knocked on the doors of St. Martin and Grouville earlier last year there was overwhelmingly one subject that people wanted to talk about, above hospitals, above healthcare services, surprisingly in some instances, but I got berated continually about the loss of Senators. The chairman of P.P.C. said in her speech that she wants to make sure that parishioners are not ignored. Senator Ozouf told us that he wanted to do what the people who put us here want us to do. I have to say to Members of this Assembly I am going to do what my parishioners want. I am not going to ignore them. I am going to do what they want me to do and I am going to vote in favour of this to return the Senators and work out the detail later.

### **2.1.4 Deputy S.Y. Mézec:**

I have the results of the 2013 referendum in front of me and I think Deputy Luce will find that a majority of parishioners in both Grouville and St. Martin voted for the electoral system we currently have in that referendum. The point I am going to come back to - several points in my remarks here - is that I am sorry but anecdote is simply not as good as empirical data and I really hope that the proponents of this proposition can start to understand that. In June 2018 when I was sworn in to office after that election in the Royal Court, I chose to take the affirmation, rather than the oath and so I was taken into office as Senator after the other 7 Senators, which means, I think, I have the right and, hopefully, will maintain the right to have etched on to my gravestone one day, here lies Sam Mézec, the last Senator. Because I hope to never see a return of that office because the entire existence of that office never made any sense. It made no sense when the British Home Office

recommended it for Jersey and it made no sense in 2018 when the last elections took place there. Because it simply does not offer this Assembly anything beneficial in the way that we work. It creates an us and them divide and it does not provide for the public to have a greater say in the makeup of their Government. I will explain why, although Deputy Renouf, I think, gave a good explanation for that. I listened to Deputy Gorst's opening speech and he referred to those he spoke to saying that they regretted, and I made a note of his exact words here: "They regretted losing their greatest ability to shape the Government and the Assembly." That may well be what some people feel but it is not true. Deputy Gorst is an accountant by trade and understands numbers and I think that we have a duty to our electorate to be factual with them when we have discussions. Not simply because it is convenient to do so, nod our heads whenever they say anything and go: "Yes, that sounds good, I agree with that" because politically it is an extremely convenient thing to do because it leaves an impression on that voter that you just agree with them on everything and, therefore, more likely to vote for you. But when somebody says: "I regret the loss of the office of Senator because that was my greatest ability to shape the Government and the Assembly", they are wrong and they are wrong because it is a basic matter of mathematics. The larger your constituency, the weaker your vote. When you turn out to vote in an election where 16,000 people or whatever are turning out to vote, the power of your vote is nowhere near as strong as when that takes place in a smaller district; that is simple mathematics.

[10:45]

When those people were going out to vote in a Senatorial election they were really not exercising that much power in shaping the Government. In fact they were exercising no power at the last election in shaping their Government because the makeup of the Council of Ministers and who was elected Chief Minister in 2018 was decided by the Deputies, it was not decided by the Senators. Because 4 Senators voted for one candidate, the other 4 voted for the other. It was the Deputies that held the balance of power there. If it is going to be that way you have to ensure that the distribution of Deputies in this Assembly is done on some proportional basis to ensure that they are as representative as possible of the electorate. The voting system that we have now for the first time in our history provides some mechanism to ensure that this Assembly is more representative of the people of Jersey. That has been done not just in the demographics of those who make up in this Assembly but in other ways as well. In terms of how we move forward on this, if this proposition is adopted there is no clarity as to what we get. In the corridor yesterday I even heard one supporter of this proposition say that they would like to see us go back to having 12 Senators who are elected for 6-year terms. I would say to Members, if that is what we get the quid pro quo there is that the rest of us go back to 3-year terms; that would be a consequence of that. Is that what is in the wording of this proposition? No, it is not. There are all sorts of unintended consequences that arise from it. When I heard Deputy Labey yesterday say that she thought that if there were going to be referendums on this that they ought to be framed in questions like: "Do you want the Island-wide mandate? Do you want super constituencies? Do you want to keep Constables?" I felt that I was hearing one of the worst ideas I have ever heard in this Assembly because that idea does not understand that in coming up with a decent electoral system for Jersey we have to make trade-offs. There is no perfect system and there is no system that everybody is going to buy into. You have to make compromises and you have to balance some desire you might have to see in one part of the electoral system with another one. It is very clear on records that I do not support having multiple categories of Member of this Assembly and that means that I would like to see the Constables as no longer Members of this Assembly. But I voted for the last package of electoral reforms which kept the Constables here because more important than my desire for a simplistic voting system is voter equity and this voting system that we have now provides much greater voter equity. I decided it was worth it to make that trade-off. I compromised on one thing I believed because I thought the bigger picture was more important and the progress we got from it was worth it. Those who want to see a return to Senators have no concept of these trade-offs. They want to go backwards to that system given to us by the

British Home Office in 1947 on the basis of no mathematical argument in support of voter equity, they have nothing to say on that whatsoever, on the basis of no empirical data. They simply say a few people on the doorstep told me this, despite the fact that even in those constituencies where they say they spoke to me about this on the doorstep, when there was an actual opportunity for them to have their say, the data is clear, this is the system that they voted for, 80 per cent of people who voted in that referendum voted to be rid of the Senators. They will have each had their own reasons for that but I am sure that they would have made those trade-offs in their own minds as to what they thought was worth it. This proposition risks seeing us go backwards on this, rather than forwards. If there are to be further tweaks to the electoral system it is much better than rather than tying hands behind the backs of P.P.C. is to give them a blank canvas, allow them to go out and do that work in the way that they see most appropriate and ask the electorate all of the other questions that are relevant to why they might not vote or what they would like to see to enhance democratic representation and allow that to happen. When at the end of that they have a package, we can then determine does that whole package meet that balance of trade-offs in our own minds to be able to be worth supporting, knowing that not one of us will get the perfect system that has every element to it that we want to see? I hope Members will vote to reject this proposition and allow me that opportunity I so desperately desire to have those words etched on my gravestone.

### **2.1.5 Deputy K.L. Moore:**

I greatly valued the endorsement of holding the Island-wide mandate after the elections in 2018. But after my rather uncomfortable, frustrating and unpleasant experience of holding that high office, I was left, sadly, with the impression that the role was largely pointless in practice. I canvassed, along with Deputy Stephenson, in the west and made it very clear that I would not support the reintroduction of Senators. I do not think that the voters who changed their support for both of us in that election in that district will be surprised at all by a vote against this proposition today. I accept and understand that some people do have a historical affinity with the role and many kindly profess their desire to vote as non-westies for myself or for others who stood for election in my district or in others. I did canvass in other districts, I enjoy canvassing. I think it is one of the highlights of the term in many ways because we learn so much, we gain so much and I enjoyed supporting my Better Way candidates and others, who I felt I was able to do as an independent candidate who was known in many parts of the Island. But I think now is the time to allow P.P.C. to let this new system bed in and there are many things that, as Deputy Alves reminded us, the Democratic Accountability report has identified that we can do that will improve our engagement and our representation of the people. Because largely one of the resounding messages from the doorsteps across the Island at the last election was that people were craving engagement. Essentially, we are them sitting here in this Assembly and in any meeting room that we take part in. We are here to represent those people who put us here and we are their mind and their mouthpiece in those moments and we take decisions on their behalf and we all do so humbly. I would encourage Members to support P.P.C. in their further work and particularly I really encourage Members to support us in delivering the much needed constituency offices in each of our districts. Because it is through offering that connection with our constituency that we will truly be the proper mouthpieces of our constituents and we can listen and engage. But at the moment the way our Assembly and our Government structure is constructed, there is support for our Assembly work, which is of course of critical importance. There is support for those in Government in their government work and policy-making. But for constituency work in fact there is absolutely no support whatsoever. I think the C.P.A. (Commonwealth Parliamentary Association) benchmarking that Deputy Alves and others pointed us to during the lifetime of the last Assembly is something we need to refer back to and we need to better think how we deliver that constituency work. Because that is the most critical part of our role in representing the public. I think it is something sometimes that we do off the side of our desk and it leads to us not being as responsive as we could and we should be to our constituents. I would certainly support an Island-wide poll for Chief Minister. I think that was one of the items identified by the Democratic Accountability group

and I think that may help Islanders to have a bit of a say, if that is what they want to do about who leads the Assembly in the next Assembly or perhaps if this term of office sees a change of leadership, perhaps it might happen before that; we never know. But it is for those reasons that I will not be supporting this proposition, well-meaning as it is.

#### **2.1.6 Deputy P.M. Bailhache of St. Clement:**

I agreed with a great deal of what Deputy Mézec said but I think he was wrong to suggest that Senators were imposed upon the Island by the British Home Office. If Deputy Mézec rereads the minutes of evidence which were given to the Royal Commission in 1946 he will see that the suggestions which led to the creation of the office of Senator essentially came from those who had given evidence to the commission. It was a trade-off, it was the means of removing the Jurats from the States. Those of us who have been in this Assembly before, we all carry baggage in this debate. We have all listened to too many of these debates as a matter of fact. Mine is the same perhaps as that of Deputy Renouf and it is the report of the Electoral Commission which reported in 2013. The last Assembly did in effect achieve the recommendations of that commission by bringing in the removal of the Senators and the substitution of larger districts with a number of Members representing them. Of course, the change that was brought in by the last Assembly was not exactly that recommended by the Electoral Commission. That, I must say, I regret because what was brought in was a larger number of districts and the consequence of that was that the equality of voting, which was one of the important principles espoused by the Electoral Commission, was destroyed, so we now have a situation where we do not have equality of voting. If you live in Grouville or St. Martin, you elect 3 representatives to the States. If you live in St. Saviour, you elect 5, and so on, and that is inequitable. I hope it is a matter which the Privileges and Procedures Committee might look at. Even so, the changes brought in by the last Assembly and the changes which have brought about the election of this Assembly were, in my view, enormously beneficial. There was no district, as other Members have said, where there was no election for a Deputy. The former Deputy of Grouville, Deputy Labey, maybe former Deputy of St. Martin, Deputy Luce, have benefited from in the past being nodded in as a Deputy because they were clearly effective Deputies and nobody thought that it was appropriate or possible to challenge them and that is not democratic. We have a much better system today where in every district in the last election for Deputies there was an election. Deputy Gorst says that he does not want to bind the hands of the Assembly but of course that is exactly what he does want to do. Deputy Renouf made a very powerful speech, I thought, about the issue of whether the reinstatement of Senators was a settled issue. It certainly is not a settled issue and why on earth should this Assembly tell the P.P.C. to go away and consider something with their hands tied behind their backs in relation to Senators?

[11:00]

My manifesto, which was the same as that of Deputy Luce, said that we would keep an open mind on the question of the introduction of Senators and to an extent my mind is open. I think it might be possible to reinstate Senators by reducing the number of Members of each district. Whether that is a desirable thing to do is another matter but what is absolutely clear to me is that the Privileges and Procedures Committee should have a clean slate and that when it looks at these issues it should do so without having any inhibitions and without having its hands tied behind its back in relation to the question of Senators.

#### **2.1.7 Deputy T.A. Coles of St. Helier South:**

I would like to start by congratulating Deputy Gorst for bringing this proposition before the Assembly. It is important that when talking about our voter engagement that we commit to our manifesto pledges, no ifs, no buts. So congratulations to Deputy Gorst for seeing through your manifesto pledge because this is what I believe we need more from this Assembly, is people who are going to keep the promises that they bring on manifestos and take more time to engage with the

public and follow up on the promises that they make. It does not mean that this Assembly is going to agree. Obviously I am standing here with Reform Jersey who have kept the same pledges over and over again. We bring the same pledges, term on term, to try and improve the equality for Islanders on many, many occasions. I do not believe this improves the equality of voting rights. We are hearing that certain districts now the balance is not right, so St. Saviour gets 5 votes but Grouville and St. Martin only gets 3. Well before, certain parts of St. Helier with the Senators would have had maybe 15 votes and Grouville would have still only had 11, so the balance is still not right and bringing back the Senators will not bring back this balance that is so desperately craved. There are other methods that may do this but unfortunately that might sacrifice a different role within this Government which some people want to see and some people do not want to see. But I am going off on a tangent; I did want to keep this brief and I am still capable of doing so. We need to engage with voters better and an Island-wide mandate struggles to make that possible. You are dealing with 103,000 people that are trying to select between Island-wide people that they may feel represents them, may have time to see them, may not have time to see them. The way it is constructed now allows people to know who represents them in their areas. They now have more choices in these areas. Grouville and St. Martin - I will use that example because this is where I live - if I was not elected I would have 3 people that I could choose. If I cannot get hold of Deputy Labey, I could get hold of Deputy Binet. If I cannot get hold of Deputy Binet, I could get hold of Deputy Luce and eventually the Constable, as he is making gestures towards me. You would be of course my first port of call but you are a very busy man and he in fact distracted me, so apologies. So at least with this new setup, people have more options of people that they can engage with. They have their Constables, they have their Deputies. This is what I believe P.P.C. needs to focus on, is how to get better engagement and better reaction from the public to encourage them to vote. Removing the Senators did not dramatically drop the number of people who turned out to vote, it also did not dramatically increase the number of people who turned out to vote, so maybe people's ability on how they vote is the problem, not the roles and positions that we hold within this Assembly. As has been pointed out, every person in here has one vote. That one vote goes to a consensus for what this Chamber is designed for. Does it matter then if we are voted for our Parish, for an area or just to represent an equal number of people? That was something else that was mentioned by Deputy Millar, that the district of Trinity, St. John and St. Lawrence is a very large one but it is about the number of people that live within that area. I ran in St. Helier South. Though linearly I did not have to take that many steps, vertically I had to go up quite a few which also meant having to go back down them as well, and so it is about the number of people we are representing. We all have our share of people that we are looking after and we can represent and they can approach us, and I think that is important for us to remember. As the Chief Minister mentioned with the constituency officers, once these are all set up and running properly and balanced for every single constituency, people will have a single place of contact where they can go to meet us. But when you take away 8, 9, 12 of these representatives to be Senators again, that becomes diluted, there are less options for people to get in touch with a representative in a specific place at a specific time. I believe that is what we should be focusing on rather than the positions, so thank you very much.

### **2.1.8 The Connétable of St. Lawrence:**

I am sure Members will have made their minds up about which way they are going to vote on this proposition but I do feel that it is my duty to stand up and speak for the parishioners of St. Lawrence about this. Because we are criticised very much by the public for not listening to what they say, for not listening to what they want us to do and we have proven that by ignoring the results of 2 referenda. When Deputy Russell Labey, who has been referenced in this debate, undertook his Parish roadshow, in St. Lawrence it was absolutely clear that what was being proposed by the then P.P.C. was not what was wanted by those who attended the roadshow and it was a good turnout there. So we do not listen very often to what we are asked to do or to what we are in fact told. But I committed before the election to supporting the return of the Island-wide mandate, that is in my manifesto. Health reasons

last year prevented me from knocking on as many doors in the Parish as I had done in the past; however, most of those doors that were answered, people told me that they wanted us to get on with the hospital. Get on with the hospital, and many people said to me that they were not voting in the forthcoming election - which is disheartening when you are knocking on someone's door to seek their vote - but they were not going to vote in the forthcoming election because they had lost the Island-wide mandate. That is not anecdotal, that is evidential to me, because that is what I was being told by my parishioners. I have to act as their voice in this Assembly, so what we are asking P.P.C. to do if this is carried today is to engage again with the public and with Members. Yes, groundhog day, but I was vice-chairman of P.P.C. some years ago when the then Constable of St. Clement chaired it and we have been through this. I know for the now Constable of St. Martin it is not an easy job to chair P.P.C. and to deal with changes to the makeup of the Assembly. However, I am committed to support this proposition because that is what, when I door-knocked, I was asked to do; to support the return of the Island-wide mandate and the position of Senator. So that is what I will be doing today.

### **2.1.9 The Connétable of St. Saviour:**

In a very similar vein to the Constable of St. Lawrence, I did extensive door-knocking when I stood for Constable of St. Saviour and a high number of people were quite irritated by the fact and quite angry that Senators had been done away with. Many people said: "No disrespect, but I am not going to vote at all for anybody, so upset am I that this has happened." I did point out that I wanted to keep Senators but obviously I respect their decision. The overwhelming majority of people that have spoken to me, my parishioners, would like Senators reinstated, and I will be voting accordingly.

### **2.1.10 Deputy M.B. Andrews of St. Helier North:**

During the election I probably knocked on about 2,000 doors and I would often just ask the question: "What are your priorities that you would like to see be addressed?" Many people would respond by saying: "Well I want to see a reintroduction of Senators." Now there were a few members of the electorate who were quite specific in saying they would maybe want 8 Members, there were a couple who said they would prefer an Island-wide mandate where it is only all Senators for 37 positions. I have to listen to those members of my electorate. I would probably say there were 6 to 7 households every single day who were telling me this, that they missed not having Senators in this election. They were only able to vote for potentially one candidate for Connétable and also up to 4 candidates for Deputy. I also mentioned briefly yesterday about my views in terms of constitutional reform and I do believe that there should only be one position in this legislature and that should be for Senators to be given the sole position in our legislature. I think that is because the main reason being that we need to have Members who are more politically broad and who are also able to really focus on Island-wide issues. However, as it currently stands, we have Connétales, for instance, who are really decentralised from legislative assemblies, say if we are looking at the role in other jurisdictions, however they sit in our legislature. So, again, it is rather convoluted that position with the Connétales remaining in office. I think that is something potentially that needs to be looked into maybe later on in this term. However, I also have to acknowledge as well the amount of people who informed me they wanted to vote for Deputy Kristina Moore and they wanted to vote for her because they believed that she was the right choice for Chief Minister. There was probably about 60 or 70 households who mentioned this to me. There was also about 5 or 6, maybe 7 households where the response was for Deputy Philip Bailhache to be Chief Minister. I thought that was very interesting that in both cases those candidates, my electorate were unable to vote for them, and I think that was a great shame. One of the benefits, I believe, in having Senators be reintroduced, members of the electorate will have a say in potentially voting for up to 13 candidates in St. Helier North and if there is potentially the second perspective where if it is going to be an Island-wide mandate, there is going to be one Connétable candidate and also 37 candidates for Senator that the electorate can vote for. I think again it is allowing members of the electorate to have more say in terms of who represents them

in the legislature. At the moment what we do see is in St. Helier North the electorate can only have a say for 5 Members within the legislature in terms of who they want to have represent them and I think that is very much limiting when we have a legislature where there are 49 Members. I think it is also quite important moving forward that we focus on Senators who are going to be in a position to focus on Island-wide matters but also we do see a devolvement of powers. This has also been something that the U.K. (United Kingdom) Labour Party are deciding upon at the moment for the next general election and it is something that I have always really believed in that should happen here where Connétables have a role decentralised from the Assembly but also there will be a greater head count at a decentralised level at Parish level where there would be councils in place. Therefore, it means constituents will have more people representing them and it also allows for Members within this national unicameral legislature to really focus on the politically broad issues moving forward. Those are the views I have and I must thank Members for listening to me, so thank you.

#### **2.1.11 Connétable P.B. Le Sueur of Trinity:**

Just briefly, I feel that my position here is to represent the electorate of Trinity and, like the Constable of St. Lawrence, when we had the roadshow visit Trinity to look at the proposed changes that were brought in during the last Assembly, there are clearly people in my Parish who were happy with those changes but unfortunately out of the about 160 people who turned up to that meeting, about 10 of them tops were of that mind. The remainder were in favour of maintaining the status quo and since that time I have had nobody come to me and say what a good job we did making those changes. Everybody that I have spoken to has said: “We still regret the loss of the Island-wide vote which enables us to have a greater influence on the totality of who sits in this Assembly at election time”, so I am afraid I will be supporting this proposition.

[11:15]

#### **2.1.12 Deputy P.F.C. Ozouf:**

I spoke earlier in one of the amendments in saying that I would not be supporting this proposition. There have been a number of contributions about the fact that many of the elected Members in the Assembly had in their manifestos that they would pledge to reintroduce Senators. I am often asked as the Minister for External Relations and Financial Services about human rights and of course human rights are numerous in their requirements. Article 21 says: “Everyone has the right to take part in government of their country, directly or through freely chosen representatives. Everyone has the right to equal access to public service in their country. The will of the people shall be the basis of authority of government that will be expressed in periodic and genuine elections which shall be by universal and equal suffrage and should be held by secret vote or equivalent free voting procedures.” So those are the words in the human rights statement and I agree with them absolutely. We know that democracy is the best form of running an organisation, running an administration, a dependency, a country or whatever. It is also about prioritisation. What I totally respect, Deputy Gorst and I have worked well together in the past and we are working well as Ministers in our respective different roles as being Deputies. I heard also in St. Saviour ... and I tried to ask a question and you were quite right asking me not to ask a question as a Minister. I am a Deputy of St. Saviour. I have been a Deputy of St. Helier and a Senator and now I am a Deputy of St. Saviour and when the facts change, I change my mind. The facts are that this is, as far as I can see, the most democratically-elected Assembly we have ever seen. As Deputy Bailhache said, there were free and fair elections among all of the Deputies seats which were not the case in the past and whether or not the size of the constituencies are right or wrong, we had free and fair elections which works. What I heard from the people on the doorsteps that I knocked on was an absolute exasperation to press the “no” button to a Government, in their view, that they felt was failing. The people of Jersey felt in the last election that the best was in the past and the best was definitely not in the future. Now we have an Assembly led by a Chief Minister with powerful Scrutiny, with Connétables in a different composition that is now attending to what are a series of events that is a world in crisis and we need to prioritise our

work in this Assembly about what we do. I understand that there is a latent view about Senators and I have been one of them. In fact, I did the eulogy for a Senator that was pretty controversial. Deputy de Carteret, who caused a right kerfuffle with the then great Senator Le Marquand, et cetera, who brought a proposition to this Assembly as a St. Lawrence Deputy to bring down the Postal Administration Committee of which the late Senator Le Marquand was the chair. That Deputy brought it down and when he stood for Senator, there had not been a series of Senatorial roadshows, he said: "I am going to have in my Senatorial election a hustings at every single Parish." That is the nexus, that is the reason why we ended up with the Senatorial roadshow. I have been through those roadshows and I have been part of them and I was once a poll-topper and one that came number 6. When I hear Members very respectfully saying about the Senators, about an Island-wide mandate, and 18 people being chosen, I have to say the mathematics of that is that you will not get legitimacy in terms of when we look at expert bodies of which we have had a number - and Deputy Renouf and Deputy Bailhache have both been part of it, as have other Members of this Assembly - there are a number of issues about the legitimacy of elections and one of them is the amount of people that you can reasonably choose in an election. I have to say, and I do not wish to cast any negativity towards our sister Island, but I question whether or not a system in Jersey, or anywhere, would be possible to have a legitimate election with more than 6 or 7 people on it. I know that there was a view, and I was part of a Senatorial system when they were merged with an 8-seat Senatorial system, there is an issue of how many people the electorate can choose from and how democracy works. That might be really uncomfortable, and it certainly speaks to a world which I think the Island has rejected comprehensively, which is that they do not want party politics. I may well anger some Members about that but my sense is, is that on the one side people wanted to express their view of the elected membership of this Assembly, that they were not doing what they wanted in terms of all of the issues that we decide in terms of both the legislature and the Government, and they wanted better results for themselves on house prices, on recruitment issues, on public finances, on tax, on the hospital. I think that this Assembly is getting on with the tasks and the jobs in hand that need to be the priorities about what a democracy results in which is a Government, and then a Government being held to account and overseeing a civil service and all the rest of it. I have to say to Deputy Gorst, I thank him for bringing this proposition, but this discussion about ourselves, again, having spent hours, man, woman months of time, about electoral reform, simply is not something that we should be taking up time. I have spoken for nearly 6 minutes and 12 seconds. This is not something that I am hearing now that people are clamouring for. I do not know whether to abstain or vote against but what I do know is that this issue of Senators and whether or not they come back, there are hard questions about the legitimacy of previous Senators elections compared to the Deputorial elections which I went through and saw in the various different constituencies. Every person in this Assembly, every Member that got here went through an election or through their Parish process, it is legitimate, it is better, and it is working. I think we should improve the issues about electoral turnout, I think we should see how the responsibilities of Deputies with multi-Parishes should work, and we should not look backwards with rose-tinted spectacles on, that have got barnacles on, that Senators were the single solution to everybody's problem. Because I happen to think that what Deputy Andrews said about their expressions of personalities that, yes, Deputy Moore was incredibly popular in lots of Parishes and she topped the poll in her constituency and then we ended up voting her as Chief Minister and so somehow democracy is working, and it is working without Senators. So, if we now send a message out where we are going to go back to the past, we are going to reopen all the debate about whether or not we are going to have an Island-wide mandate, I cannot change the past but we can make decisions today about what we know. What we know is that we have got a better and democratically-accountable Assembly; the public have said they do not like parties, I think. They have said they want change and they want us to get on and deal with the things that they are worried about and that means putting off, I am afraid for P.P.C., more tortuous discussions about electoral reform in the sense of Senators and Deputies. So, I think Deputy Gorst's proposition is respectfully the right thing to do because he put it in his manifesto but where we are today I cannot think of one

good reason why the resources of our public sector, and I include the P.P.C., should be spent on rehashing within the timetable that this proposition asks us to do about the issues of Senators. There may be a time when we do need to, in maybe one or 2 years' time, after the work and the results of this composition of the Assembly and Ministerial Government, et cetera, look at further issues about boundaries and composition of the States but I say very clearly that this is not a priority. The Members that used to sit where the Constables are today, putting them back, and then moving the Constables back here and having more Deputies there, I am afraid that this is not an issue that the people want us to deal with, certainly the voters of St. Saviour. I stood in St. Saviour unexpectedly as a Deputy and I got in, and I am very happy as a Deputy of St. Saviour. I want to work hard as being a Deputy of St. Saviour and a Minister, and working with what I think is the best Assembly that we have been, diversity, all the rest of it - and Members know that I am diverse in one respect but I do not normally talk about it - and we should get on and deal with the important issues the public have put us here to do and we should reject this as an Assembly and stop talking about ourselves.

#### **2.1.13 Connétable M.K. Jackson of St. Brelade:**

Well I for one am on the fence with regard to this proposition because, as my other colleagues on the Constable Benches have mentioned, several of us have been addressed directly on the doorstep while electioneering on this very matter. There is no doubt about that whatsoever. One has to listen. Having been in the States for several years, I have seen various machinations come forward and I think sometimes we need to learn from what has taken place in the past and decisions which have been made which have not, dare I say, always been the right ones. I think that the abolition of the 12 Senators and the 3-year recycling, if you like, was probably a mistake. It worked, and I do not think there is any reason why it should not have continued. I also feel that sometimes we tend to be led by the nose by outside influences and, with all due respect to the Electoral Commission, they do not always understand what works best in Jersey. I think we as a Chamber know what best works in Jersey, as do the electorate, and why should we be continually cajoled into making decisions which are not always the best and are now proven not to be the best? I do not think this present system is a bad one. I would prefer to allow P.P.C. to have a free hand to do what they wish. The detail of the proposition is such that it is a little bit tying. I would rather it did not have a date on it because I do not think July 2023 is a realistic date for P.P.C. to achieve what is being proposed. It may be for P.P.C. to come back with a counterproposition or maybe for the Deputy when he sums up to comment on how that might be achieved. One other thing, in response to the last speaker, I am quite happy to keep the seat warm for Deputy Gorst should he wish to return to this side of the Chamber. I realise it is something which some former Senators may be concerned about but we were always unsure, as Constables move seats if required. I do not think the general electorate are terribly interested in that but we have flexibility. So, while I would dearly like to support P.P.C. on this, I do not really feel I can in the face of what the electorate are telling me.

#### **2.1.14 Deputy G.P. Southern:**

I will try and be brief despite over 20 years in this Chamber discussing and debating this particular option. My starting point is very clear, very simple, I think we should not vote for this amendment. I think it takes us backwards and not forwards. It is not about progress, it is about returning to the past, a past which I would argue did not work very well for democratic purposes and we have improved on it in our last moves. So I just address some of the words of the P.P.C. as follows: "The committee believes that it would be beneficial to let the new system bed in following significant changes that were made to the electoral system during the last term." So a plea, calmly and collectively to carry on with their work: "Let us do some more improvements, we are getting somewhere with this." "The changes follow the 2018 Election Observers Mission which found that the electoral system was overly complicated and cumbersome."

[11:30]

External advice that we have sought about what is wrong with our system, it is cumbersome, let us have a listen. “Following significant work undertaken by the P.P.C. sub-committee, P.P.C. proposed moving to 2 categories of Member in order to simplify the system for the electorate.” So a simpler system, again, the right move. “This was accepted by the Assembly and the changes were implemented in time for the 2022 election.” So this Assembly listened and agreed with a move to simplicity. Later on P.P.C. say: “In the 6 months since the elections there has been no discernible impact on the work of the Assembly from the so-called loss of the Senators.” So is the system working as it is, the new system? Yes, it is. They go on to explain: “One consequence of the revised system is that the public have a wider choice of constituency representation than previously existed, as it was rare for Senators to engage with parochial issues.” So there is a significant weakness being highlighted by P.P.C. It is all very well to praise the Senators but they rarely get involved in the dirty stuff, as it were, sorting out other people’s problems. It is rare to see a Senator engaged in that way whereas Deputies do, and do regularly, as I know full well. So over 20 years debating this particular issue and why is it I feel that in those 20 years, or 20-plus years, I have got nowhere? Here we are debating this issue again, it feels like I am back on square one. It feels like I have been playing the longest game of snakes and ladders in the world, 20-odd years, and we have just got over the last little ladder to get on the top rung of the board and we are getting somewhere but, look out, the slimiest, horriblest, longest snake is not very far away. If we vote for this proposition we will be voting for the snake, and it will take us all the way down, curly-wurly, to the back row. It will be like starting again. Please, please do not have me start again on this particular issue.

#### **2.1.15 Deputy H. Jeune of St. John, St. Lawrence and Trinity:**

I know I will be brief because we have discussed this lots and lots. Many people have said many different things but I just wanted to express that I have found this really difficult to find where I should go with this debate and where I should fall. Because on one hand, as many of my fellow Deputies in District 3 and some of the Constables have said that, yes, on the doorstep I did hear that there was dissatisfaction with not having Island-wide votes. On the other hand, and it is good in a sense to follow Deputy Southern, is that I only came back to the Island in late 2018 and I have not been following Jersey politics for many, many years since I left when I was a teenager, so was not really of course very interested. So I only saw what happened in the last States Assembly and I saw exactly what our Chief Minister has explained in, for example, her situation where you had Senators who, some were chosen to be in Ministerial roles, others were ignored, even though they were given the most popular votes or they were given the big amounts of vote, so I really did have to question what was the point of the Senator’s role. It seemed to be a lot of work from outside to be a Senator but then for not much gain at the end of it. So I was very, in a way, pleased when there was that change; that I felt very confident to come in to be a Deputy in the new districts that were developed. Of course, as a St. Johnny, it felt very strange to go from St. Johnny and also to start to get to know people in Trinity and St. Lawrence but I did full-heartedly. I knocked on lots of doors, I attended lots of events, I feel now part of the community of Trinity and St. Lawrence. I know many people who are also very much involved in the communities in those 3 Parishes. I really felt that also, not only that, there was competition when we did the elections. I feel that I went through the election and I am legitimately standing here today. We did 12 hustings so I nearly did the same as a Senator would have done, so I really feel ... in our district alone I think we did about 7, so I know that my constituents know who I am. I really spent a long time not only explaining my positions, my manifesto, where I want to see the Island and how I want to help the Island, I also felt that I knocked on a lot of doors and had those discussions. Yes, one of the issues was about bringing back Senators but I feel that that was because at that moment in time we had not got to this point. We were still in the moment of experiencing this new way, these new districts. I feel that now we have seen the results of that and many people have said that today; many colleagues have said that today. We feel that we are more diverse in this Assembly, we feel that there are more maybe different experiences of people’s past who can bring that into the Assembly. It feels then more collegiate and being able

to move forward and, as Deputy Ozouf has said, we have a lot of crises that are impacting Jersey, whether it is the war of the Ukraine, whether it is climate change, because we are experiencing that even as we speak. So we need to come together and sort out and support our Islanders and I think this is not then the moment to be again rearranging how we ourselves want to be positioned. People have said already in this debate that this is not the end of debate. P.P.C. still has a number of work to do to see how it is that we can then encourage more Islanders to vote because ultimately that is the most important. How can we help to increase our democracy by encouraging people to engage with us more and understand that; that is really important. So for me at this moment in time, and maybe I have talked myself into where I want to go with my voting, but I feel that though I understand those people that I spoke to on the door, I feel that that was a moment in time before they now can see what we are now. I would like to potentially go back to those people and to be able to ask them: "So you have seen now what those changes have done, are you still in favour of an Island-wide vote and why? Would that increase our legitimacy overall? Would that encourage more people to come out and vote?" On that evidence, I would then go back and say: "Yes, maybe then we need an Island-wide vote" but until I have that evidence base, until I have that where we have seen the analysis coming out from this current system, then I feel that I cannot vote for something that was about the past and not about now.

#### **2.1.16 Deputy L.V. Feltham:**

I was not going to speak but I have been moved to speak by Deputy Jeune because what she was saying resonated with me and the way that I was thinking as a member of P.P.C., as well about the role that P.P.C. has to play in managing change within the Assembly as an organisation. Those of you that have worked in business and management will be familiar with the change curve. Of course, the question in my mind is where those Members were on the change curve when they put a commitment to reinstating Senators in their manifestos and also where voters may have been on that change curve. Those of you that might be unfamiliar with what happened, you go through denial, anger, acceptance and then support. For me, that is why I was quite happy with the comments that we put together for P.P.C. because giving change the opportunity to work within any organisation is really important and also how we manage that change within an organisation is important. I think really the role now for P.P.C. as a committee in dealing with this change - I think Deputy Alves made some really good points about what P.P.C. was not able to do in the last term of office because of COVID - we now need to go out and explain and engage with voters, do the voter education. I cannot remember who it was that talked about - I think it may have been Deputy Tadier - more change now will add to further confusion when we get to the next election. So, that is where I am sitting, and that is my answer back to what Deputy Jeune was saying as well. Yesterday I switched on BBC Radio Jersey and I heard the former Deputy Russell Labey on the radio. When I first heard his voice I thought he was probably talking ahead of this debate, having been the former chair of P.P.C., and I see the Constable of Grouville nodding at me. He obviously heard it as well. Shock, horror, he was suggesting that the day of the Battle of Flowers should be changed. My first reaction to the idea and the notion that the Battle of Flowers should be on a late Friday afternoon rather than a Thursday afternoon, I was quite disappointed, because traditionally the Battle of Flowers always happens on the second Thursday of August and it never rains. So I had to go through the change curve myself, I have to say. But what I realised what the former Deputy Labey was doing in his new role as chair of the Battle of Flowers Association is trying to balance our local traditions with the changing times and the requirements of those changing times and our changing population. I was also surprised to hear that he was suggesting that groups of people could have floats and I did think at that point in time I could message my Reform Jersey colleagues and suggest we get our own float together. We will see about that. I will not promise that. But I think going back to that balance of tradition but also changing with the times and the requirements of the Island, I am reminded of some of the comments made by Deputy Bailhache around the introduction of Senators and he was talking about the introduction of Senators in 1947. Now, that may well have been correct in our Island-wide mandate

at that point in time for that population but the population of the Island was far less at that point in time than it is now. We now have a far bigger population and, as we have heard from many speakers today, that connection with a constituency I think a number of us are finding very, very useful. I think given the opportunity for these changes to bed in, for people to get used to this change and how to work with this change, will enable us to work with our constituents far more effectively. I wonder what going back to Senators would also mean. Would that mean that we would end up with fewer Deputies in each of those constituencies? Would people have fewer people to contact? We just do not know. So, I think there are far too many questions around this proposition to be able to support it. I think it is far too soon for us to be looking at the success or not of the most recent changes, although, as Deputy Stephenson has pointed out, we have already seen some marks of success, but we really do need to follow the change curve through and see this change bed in, so I urge people to support this proposition. I urge Members to reject the proposition. **[Laughter]**

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

Just checking that everyone was on the ball, were you, Deputy?

**Deputy K.F. Morel of St. John, St. Lawrence and Trinity:**

If I may, I would like to propose Standing Order 84, the proposition to end the debate which I can do without notice.

[11:45]

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

Yes, you may. If you just bear with me because my Standing Orders are in the desk in front. We have had 16 people having spoken, which is a sizeable amount of the Assembly, and by convention the Chair can determine whether or not the matter can go to a vote straight away if I think ... I am just trying to find in my book. Yes, if at least 10 Members have spoken, so you are well within that amount. In which case if you are working on Standing Order 84 which is that we have had an hour that has elapsed and you are making that proposal, so within 30 minutes' time that we would move to the vote. At the moment I have listed just to speak Deputy Alex Curtis and yourself, but that was to make this. It might be useful perhaps from the Chair to have an indication if there are any other Members who are wishing to speak who have yet to speak.

**Deputy M. Tadier:**

Can I just ask a point of order? For the Standing Order, to refresh our memories, is that in half an hour's time we will vote on whether to cease the debate or to continue, is that correct?

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

It goes straight to the vote, Deputy.

**Deputy M. Tadier:**

Straight to the vote whether to continue or not?

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

No, go straight to the vote itself.

**Deputy P.F.C. Ozouf:**

Sorry, correction, is it not that the proposer sums up and then there is a vote.

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

Yes.

**Deputy P.F.C. Ozouf:**

We vote whether to stop the debate and then ...

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

Absolutely.

**Deputy P.F.C. Ozouf:**

If that proposition is successful, then the proposer sums up straight away?

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

Yes, it is exactly that. So basically we allow the proposal, and then immediately put the proposal to the vote without debate on whether to close ... we have a vote on the closure and if that goes through we would move to the summing up of the debate.

**2.1.17 Deputy A. Curtis of St. Clement:**

I hope the Deputy was not doing that to target me to speak. I trust I can fit this within 60 seconds. There have been so many good points raised, whether by Deputy Renouf, Deputy Ozouf, Deputy Alves, but I think I am going to reflect on what I said during the election campaign. I can only think of one time I referenced a position I stood on this. It was within the hustings that are recorded and are on YouTube. I said I am quite happy for the States and for the Island to consider the return to Senators, or to consider an Island mandate, or consider a reform of the electoral system, but I did say that I was not happy to support any knee-jerk reaction by the Assembly to make that change. Now I am very glad that P.P.C. have provided a comments paper that affirms that the position I took prior to being elected is remarkably similar to theirs. I believe in data and evidence and I believe we have a lot to learn from the outcomes and the work of this Assembly to allow the Island to make that decision. There are decisions that do need to be made quickly; there are decisions that can take time. Sometimes we confuse which decisions fall into which camp, so I urge Members to think that a vote against Deputy Gorst's proposition here is not a vote against Senators, it is a vote against a very early decision without the proper data in front of us, and it would not be fair for me to represent my constituents by not making data-driven decisions. I urge Members to think which camp this decision lies: the former or the latter.

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

Does any other Member wish to speak? Very well, if no other Member wishes to speak, then I close the debate and I call upon Senator ... Deputy Gorst, sorry, to reply. **[Laughter]**

**2.1.18 Deputy I.J. Gorst of St. Mary, St. Ouen and St. Peter:**

Just as Deputy Mézec wishes to be buried on his gravestone with the term "The Last Senator", perhaps I will have "The Last referred to as Senator by the Chair in the Assembly." There have been some excellent speeches throughout the course of this debate and I am very grateful to all Members. Unfortunately, they have not always been on my side of the argument. These are issues which can touch on deeply-held views about democracy, about accountability, about the integrity of our democratic system but also about history, about connectivity with the public. Although perhaps we have spoken longer than we might have liked to have done and taken up more time than was necessary, we are a debating Chamber and it is right that we make our views known and provide our considered opinion. Ma'am, you have told us that now 17 people have spoken in this debate. It feels like more but that does not seem quite ... I do not think when I started this debate would I have thought that 25 seemed such a large number but that is the number that is required.

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

In fact, it is 26, Deputy. We, I think, miscounted from the Greffier's desk, so it is right that it was more speeches than you thought it was.

**Deputy I.J. Gorst:**

Well that indeed is then an interesting statistic that we have had more speakers than is required to vote one way to get this proposition over the line. Electoral reform is never easy nor straightforward and I think many have made that point in their speech. As I said in my opening speech, there are many things which the Government and this Assembly has rightly prioritised during the course of the first 6 or so months of our time in office, and that should not change. Islanders' priorities should be the priorities of Government and their Legislative Assembly and so, in some respects, voting to in principle say that a return to the Island-wide mandate, that is the easy bit. All of the questions that Members were asking about: "Well what does that mean going forward?" they rightly fall into the work that the chair of P.P.C. said that she and her committee was undertaking. In actual fact during the course of the chair of P.P.C.'s speech, she almost persuaded me to let her and her committee just take this work forward. But I do think that reading between some of the lines, and other Members said, that this vote was not necessary at this point, there would be other occasions on which we could vote to return or reinstate or restore even an Island-wide mandate and that there would be plenty of time. I do not accept that argument. I think experience shows to us that unless we make early and in-principle decisions around electoral change, it will not happen. I say experience tells us that because a number of Members referred in their speech to 2013 when a referendum was undertaken and option B was successful, and yet it took the best part of 10 years to introduce something that resembled option B into the electoral system, so it might be appealing for some Members to think they will have another vote in due course upon the reintroduction of the Island-wide mandate. I do not accept that and I think that what we will find if this is not carried today, all of those who do not want to see any change will be absolutely delighted because there will not be the change and there will not be the reintroduction of the Island-wide mandate. I also want to say, as I said in my opening comments, that there were improvements on the old system that this current system has introduced. I concur with the view that we have a more diverse Assembly, we have a strong Assembly, and the Island very clearly showed and was enabled to vote to deliver on its priorities.

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

I believe the Constable of St. Saviour will be adding to the Christmas Appeal in due course. Sorry, Deputy, please go on.

**Deputy I.J. Gorst:**

That is something that I think we should and it is appropriate to recognise. But as we deliver on all of the priorities, as Members have said, around housing, around health, around the cost of living, and we deliver relentless focus upon those issues, that does not mean we should also forget our other commitment to the electorate and the very strong sense - and I accept absolutely what Deputy Stephenson and the Chief Minister said - we are out west and we revel in our uniqueness. Of course, the electorate voted for 2 Members who very strongly said they wished to reintroduce the Island-wide mandate and 2 Members who equally as strongly made it clear that they supported the new system and that they would not be voting for a reintroduction of the Island-wide mandate. That is democracy in action. That is why I accept that for some the issue is not clear cut, despite what I think was an overwhelming voice on the doorstep about the reintroduction of the Island-wide mandate and, therefore, I do think it is legitimate - despite having spent longer than I would have wished - to raise this issue and to challenge ourselves around the commitments that we made to the electorate in the last election. We have had some colourful speeches as well; not just well-argued speeches. Perhaps one of the most colourful was the one that we have just had around the slimiest, longest, curliest snake, and I am pleased that the Deputy that used that picture swerved away from suggesting that

that was a description of the mover of this proposition, but it was rather relating to that old board game. We also of course had Deputy Tadier yesterday reminding us of his father and his growing of a beard. I would say to him that while that was an interesting indeed anecdote, if Members care to look across to my right they will see this morning - I will be careful how I phrase this - that Deputy Tadier is himself this morning coming and seeking to emulate his father which goes to show that a beard can be grown, can be shaved off and can be grown again. I would argue rather than the arguments that he made is that Islanders were disappointed that the beard of the Island-wide mandate was shaved off and would wish us - as you yourself would wish us - to grow that beard again. There is an old song which I will quote only the first line and those that know it will know why I am not quoting the second, which is: "You don't know what you've got until it's gone." That was the overwhelming sense that I got on the doorstep during the election, and the reason that I think it is right that we have this debate and this discussion today.

[12:00]

Statistics, as we heard from Deputy Mézec, can be used to prove any argument that the larger the constituency - I will use this phrase - the more watered-down the influence of the individual is. That the greater the number of Island-wide mandates that there are, the more Islander's influence is increased by that mandate. So it was the most democratic mandate of this Assembly. It was by referendum of option B revised that the previous Assembly took it away, and I assert by this proposition that Islanders wish to see it returned. I also assert that if we went to the community with a referendum question as we did with the office of Constable and said to Islanders: "Do you wish to see the reintroduction of an Island-wide mandate?" I believe that the answer to that - I could be indeed proven wrong - would be yes. I am grateful for the work that P.P.C. is undertaking and I stand ready to support them whichever way this vote goes today. I recognise the difficulty of the timing and, as I said in my opening comments, I am prepared and would expect Members to give latitude and be understanding in the work that they are undertaking. Taking care of our electoral system, ensuring that we as democratically elected politicians are connected with our community, and that our democracy has the support of Islanders right across the community is of fundamental importance, because without that we cannot act upon Islanders' priorities because we do not fully represent them. Therefore, for me it is quite clear; an Island-wide mandate is the most democratic of mandates and I ask Members to think very carefully before their cast vote against this proposal. I commend it to the Assembly and I call for the *appel*.

**The Bailiff:**

Thank you very much, Deputy. The *appel* is called for. I invite Members to return to their seats and I ask the Greffier to open the voting. If Members have had the opportunity of casting their vote then I ask the Greffier to close the voting. The proposition has been defeated.

<b>POUR: 23</b>		<b>CONTRE: 24</b>		<b>ABSTAIN: 0</b>
Connétable of St. Lawrence		Connétable of St. Helier		
Connétable of St. Brelade		Connétable of St. Peter		
Connétable of Trinity		Connétable of St. Martin		
Connétable of St. Clement		Connétable of St. John		
Connétable of Grouville		Deputy G..P. Southern		
Connétable of St. Ouen		Deputy M. Tadier		
Connétable of St. Mary		Deputy L.M.C. Doublet		
Connétable of St. Saviour		Deputy S.M. Ahier		
Deputy C.F. Labey		Deputy R.J. Ward		
Deputy S.G. Luce		Deputy C.S. Alves		
Deputy K.F. Morel		Deputy I. Gardiner		
Deputy M.R. Le Hagarat		Deputy K.L. Moore		

Deputy I.J. Gorst		Deputy S.Y. Mézec		
Deputy L.J Farnham		Deputy P.F.C. Ozouf		
Deputy H.M. Miles		Deputy P.M. Bailhache		
Deputy M.R. Scott		Deputy T.A. Coles		
Deputy R.E. Binet		Deputy D.J. Warr		
Deputy M.E. Millar		Deputy J. Renouf		
Deputy A. Howell		Deputy C.D. Curtis		
Deputy M.R. Ferey		Deputy L.V. Feltham		
Deputy B. Ward		Deputy H.L. Jeune		
Deputy K.M. Wilson		Deputy R.S. Kovacs		
Deputy M.B. Andrews		Deputy A.F. Curtis		
		Deputy L.K.F Stephenson		

### **3. Draft Marriage and Civil Partnership (Amendments) (Jersey) Law 202- (P.112/2022)**

#### **The Bailiff:**

The next item of Public Business is the Draft Marriage and Civil Partnership (Amendments) (Jersey) Law, P.113, lodged by the Minister for Home Affairs. The main respondent will be the chair of the Children, Education and Home Affairs Panel. I ask the Greffier to read the citation.

#### **The Greffier of the States:**

Draft Marriage and Civil Partnership (Amendments) (Jersey) Law 202-. A law to amend further the law relating to marriage and civil partnership. The States, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following Law.

#### **3.1 Deputy H. Miles of St. Brelade (The Minister for Home Affairs):**

The Draft Marriage and Civil Partnership (Amendments) (Jersey) Law will, if approved, make amendment to both the Marriage and Civil Status (Amendment No. 5) (Jersey) Law and the Civil Partnership (Amendment) (Jersey) Law. These 2 laws made amendments to the Marriage and Civil Status (Jersey) Law 2001 and the Civil Partnership (Jersey) Law 2012 respectively and were approved by the previous Assembly in March 2022. This draft law makes the corrections to provisions in those 2 amendment laws. The drafting corrections are fairly minor in nature but they are necessary to enable the 2 amendment laws to align with both Government policy and comply with E.C.H.R. (European Convention on Human Rights). It is necessary to make these amendments to allow the 2 amendment laws to proceed to Privy Council to enable the numerous amendments contained within those 2 amendment laws to take effect. Changes will include but are not limited to raising the minimum age of marriage and civil partnership to 18, introducing opposite sex civil partnerships, introducing the ability to have an alternative location for marriage or civil partnership where the primary location is open air, introduce provisions to govern the registration of names to prohibit confusing, embarrassing or offensive names, and to introduce additional safeguards to protect people from forced or sham civil partnerships. All of these when they take effect will provide a benefit to the public. It is important to note that the 2 amendment laws have been held back from enactment but no unintended consequences have occurred and the public have not been affected by any of the provisions that will be amended by this draft law. The necessary amendments centre on provisions that set out the prohibitions that apply to both marriage and civil partnerships. Article 1 amends schedule 1 to the Amendment No. 5 law to remove paragraph 3. Paragraph 3 consists of a table that was inadvertently included in the Amendment No. 5 law. The particular table sets out a series of relationships where 2 people are deemed to be within a prohibited degree of relationship for the purposes of marriage, i.e. they are prohibited from marrying one another. Unless the people mentioned in the right-hand column of the table are dead, 2 people cannot marry if one of those 2

people is a former civil partner of that person's child, a former spouse of that person's child, the parent of that person's former civil partner, or parent of that person's spouse. So to provide an example, which may or may not clarify what I have previously mentioned, if a person wanted to marry their daughter's ex-spouse they would need to wait until their ex-partner, i.e. the other partner of their daughter, was dead and also wait until their daughter was dead. Article 2 functions in the same way except that it removes the table that performs the same function for civil partnerships. If we fail to amend the 2001 law and the 2012 law in this manner it would place a prohibition on the marriage or civil partnership of a parent-in-law with his or her child-in-law unless their respective spouses or civil partners and their children or parents through whom the relationship is traced are dead. I just need to make it clear that those provisions were included in the law that was passed by the Assembly earlier in 2022. When the law was going through for assent to Privy Council it was found that this was incompatible with E.C.H.R. and the case of *B & L v United Kingdom* in which the European Court of Human Rights held that such a prohibition could not be maintained as logical or rational it is, therefore, necessary that we remove these tables before either the Marriage and Civil Status (Amendment No. 5) Law or the Civil Partnership (Amendment) Jersey Law can come into force. So going back to Article 1, this also removes certain repetitive definitions of child of the family that are defined elsewhere in the law, and it reinserts the absolute prohibitions on the marriage of a person with his or her former adoptive grandchild and adoptive grandchild. These prohibitions were inadvertently omitted from the provisions substituted into the new schedule 1 by the Marriage and Civil Partnership (Amendment No. 5) Law, and accord with Government's continued policy position in this area. In other words, it will be prohibited, an absolute prohibition, for the marriage of a person with his or her former adoptive grandchild or adoptive grandchild. If approved it is anticipated that this law and the 2 amendment laws which it makes amendment to will all be registered on the same date, and the effect is that the provisions being deleted will never take effect. With this I present the draft law to the Assembly.

**The Bailiff:**

You move the principles. Are the principles seconded? [**Seconded**]

**3.1.1 The Connétable of St. Brelade:**

This is really a request for the Minister to clarify the point that she mentioned about having, if my understanding is correct, a secondary option for a prescribed place of wedding. It is my understanding this applies to a beach wedding which may get rained off, but I cannot see in the outline of where that applies. The second point is really a general one in that I note that the notes that are included in the report have attached to them a sub-note, if you like, saying that these cannot be considered as legal advice. Surely we are making a law here and advice given by the department to States Members is legal advice, or is it not? Maybe this is something for the Solicitor General to comment on.

**The Bailiff:**

Does any other Member wish to speak on the principles? If no other Member wishes to speak on the principles then I close the debate and call upon the Minister to respond.

**3.1.2 Deputy H. Miles:**

In respect of the 2 questions raised by the Connétable of St. Brelade, in my preamble, when I was referring to the ability to have an alternative location for marriage I should point out that that has already been debated and already passed by the Assembly. The debate we are having today is about amendments referring to insertion about prohibition of marriage, so I am really not in a position to discuss that anymore. The second point that I would make around the legal advice is I think the legal advice here is referring to human rights notes rather than to the legal advice that was given around the preparation of the Articles.

**The Bailiff:**

Very well, and you maintain the proposition?

**Deputy H. Miles:**

Yes, with that I maintain the proposition and call for the *appel* please.

**The Bailiff:**

The *appel* is called for. I invite Members to return to their seats and ask the Greffier to open the voting. The vote is on the principles of the Draft Marriage and Civil Partnership (Amendments) (Jersey) Law. If Members have had the opportunity of casting their vote then I ask the Greffier to close the voting. The principles have been adopted: 45 votes pour, no votes contre.

<b>POUR: 45</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of St. Peter				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Clement				
Connétable of Grouville				
Connétable of St. Ouen				
Connétable of St. Mary				
Connétable of St. Saviour				
Deputy G..P. Southern				
Deputy C.F. Labey				
Deputy M. Tadier				
Deputy S.G. Luce				
Deputy L.M.C. Doublet				
Deputy K.F. Morel				
Deputy M.R. Le Hegarat				
Deputy S.M. Ahier				
Deputy R.J. Ward				
Deputy C.S. Alves				
Deputy I. Gardiner				
Deputy I.J. Gorst				
Deputy L.J Farnham				
Deputy K.L. Moore				
Deputy S.Y. Mézec				
Deputy P.F.C. Ozouf				
Deputy P.M. Bailhache				
Deputy T.A. Coles				
Deputy D.J. Warr				
Deputy H.M. Miles				
Deputy M.R. Scott				
Deputy J. Renouf				
Deputy C.D. Curtis				
Deputy L.V. Feltham				

Deputy R.E. Binet				
Deputy H.L. Jeune				
Deputy A. Howell				
Deputy M.R. Ferey				
Deputy R.S. Kovacs				
Deputy A.F. Curtis				
Deputy B. Ward				
Deputy K.M. Wilson				
Deputy L.K.F Stephenson				
Deputy M.B. Andrews				

Deputy Curtis, does your panel call the matter in? Very well, we move now to Second Reading. How do you wish to propose the Articles in Second Reading, Minister?

### 3.2 Deputy H. Miles:

I would like to take them *en bloc*.

[12:15]

#### The Bailiff:

I see no reason why not, yes. Are they seconded *en bloc*? **[Seconded]** Does any Member wish to speak on the Articles in Second Reading? Those in favour of adopting the Articles in Second Reading kindly show. Those against? The Articles are adopted in Second Reading. Do you propose the matter in Third Reading, Minister?

#### Deputy H. Miles:

Yes.

#### The Bailiff:

Is it seconded for Third Reading? **[Seconded]** Does any Member wish to speak in Third Reading? Those in favour of adopting the law in Third Reading kindly show. Those against? The law is adopted in Third Reading.

## 4. Proceeds of Crime (Consequential and Miscellaneous) (Jersey) Regulations 202-(P.113/2022)

#### The Bailiff:

We now move on to the Proceeds of Crime (Consequential and Miscellaneous) (Jersey) Regulations P.113, lodged by the Minister for External Relations and Financial Services. The main respondent will be the chair of the Economic and International Affairs Scrutiny Panel, and I ask the Greffier to read the citation.

#### The Greffier of the States:

Draft Proceeds of Crime (Consequential and Miscellaneous) (Jersey) Regulations 202-. The States make these Regulations under Article 44A of the Proceeds of Crime (Jersey) Law 1999.

### 4.1 Deputy P.F.C. Ozouf (The Minister for External Relations and Financial Services):

As Members will be aware, the Island's preparations for the upcoming MONEYVAL assessment continue apace. These preparations, among other issues, have regard to the previous MONEYVAL assessment which was carried out in 2015. That assessment flagged certain exemptions from what are Anti-Money Laundering - we call them A.M.L., I know Members like acronyms, I am going to use the acronym for A.M.L. and C.F.T. meaning Countering Financing of Terrorism - C.F.T.

obligations in Jersey. These all are matters which emanate from the global body of the Financial Action Task Force and they permit within which to adopt certain exemptions only on the basis of low risk or limited activity. As Members will be aware, these all form part of a wider piece of legislation which is called the Proceeds of Crime Law which introduced the overall A.M.L./C.F.T. obligations way back in 1999. Since then the financial services sector, the activities and Regulations have evolved in a number of different ways to align the regime that is advised on and then adjudged upon by the international standard setters. Then the MONEYVAL assessment which comes along and assesses how we are doing with the F.A.T.F. (Financial Action Task Force) implementation. Several existing exemptions from that law were directly linked to Jersey's Regulations regarding the conduct of our financial institutions and the requirements that A.M.L./C.F.T. put on them. These activities are expected and required obligations that the F.A.T.F. says in their recommendations, however, by virtue of legal arrangements and certain practices before, the regime has evolved and equally now means that certain activities, though expected to be the subject, certain activities that must have A.M.L. ... the companies and the directors, et cetera, must perform A.M.L. and C.F.T. obligations, and they are not specified in the current law. For example, the issues concerning virtual assets. I can advise the Assembly that since 2020 a working group led by the J.F.S.C. (Jersey Financial Services Commission) which includes a senior practitioner and experts from the industry, have considered the several exemptions in detail and financial impact should those exemptions no longer be available to organisations undertaking them. The J.F.S.C. have identified the most appropriate route forward would be to disconnect A.M.L. and C.F.T. obligations from conduct and financial obligations. This in fact means that where a business needs to be subject to these obligations they will be the case irrespective of that business's other obligations. This approach provides clarity and certainty to the finance sector regarding what activities are subject to those obligations and where there is no requirement to amend in the wider network of other statutes for financial services. This approach, as recommended in the draft law, allows the Island to demonstrate that any future exemptions from obligations are fully in line with these global standards issued by the F.A.T.F. which exempt certain operations. The J.F.S.C. and Government have consulted in 2021 on the proposed changes of the Proceeds of Crime Law and there were further engagements, and this fed back to the Proceeds of Crime Law amendment which Deputy Gorst brought to the last Assembly and was adopted I think virtually without much discussion because they knew the consultation. At that time that amendment 6 was said to be the first phase of the important project of aligning all of these obligations. While the draft Regulations in this proposition now represent the further conclusion of what this earlier part was, in fact this is the second phase of what Deputy Gorst did when he brought the amendments through. This second phase has required consultation and this was published in September 2022 by the J.F.S.C., in other words a second round of consultation. Feedback was got from the industry on the practical implementation of the removal of certain exemptions, and these are reflected in these Regulations. As part of this second round of consultation the J.F.S.C. and Government took these engagements with the finance industry and the magnitude of what was a removal of a whole series of exemptions - which could be regarded as quite unprecedented - in order to find an appropriate solution to a potential issue that we would find ourselves in when the MONEYVAL assessors came and they would find that there would be some areas of activities which were not subject to directors, for example, applying A.M.L. and C.F.T. obligations. Those exemptions left room for interpretation and would be a problem for guidance in terms of international people coming and looking and seeing what exactly was going on and which people had to undertake A.M.L. and C.F.T. obligations, and that would be not in line with best practice. The most significant point to highlight to the Assembly is that this will provide the industry with a certain and effective solution that removes certain exemptions from the orders and laws that I have referred to and provides certainty to the undertakings and the money-laundering requirements, and also relates to what is in the money laundering order. It sits under that statute. This will enable a relevant person to appoint a service provider to fulfil the obligations of A.M.L. and C.F.T. on their behalf. The overall draft Regulations make a number consequential changes to other laws which reflect the removal of what

are exemptions that we can no longer have. I should say that it is important that the J.F.S.C. themselves have also issued guidance and guidelines regarding how these changes should be implemented, subject to the Assembly passing this, and there has been feedback on all of these important issues with industry experts and practitioners. These guidelines form an important tool to provide clarity and certainty to our financial services industry regarding how these amendments are going to be practically put into place as soon as possible. I would like to also note that the Economic Affairs Scrutiny Panel has received a briefing on these issues which will be a greater way of explaining these issues than I am doing in this introductory set of remarks. I know that they have been briefed by officials and the chair may well wish to make some comments in this opening part of the proposal for these amendments. Naturally MONEYVAL will thoroughly examine whether the international standards and whether the changing standards are being adopted in Jersey and whether or not we have followed up on the previous recommendations that they have made. It is, therefore, crucial I would say respectfully to Members, that these draft Regulations are adopted because they resolve what was a fairly major finding in the 2015 MONEYVAL assessment, and this puts us in a much better position to secure a positive outcome in that upcoming assessment and that is why I am recommending with those hopefully ... it is a complicated issue but it has been well-researched, it has been well-looked into, and I recommend the adoption of the Regulations to the Assembly on an important issue.

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

Are the principles seconded? [Seconded]

**4.1.1 Deputy M.R. Scott:**

I can see the Minister looking at me so I felt obliged to speak as chairman of the Economic and International Panel and can confirm we have had the briefing from the Minister’s officers, which was very helpful, thank you, and we are supporting him in proceeding with this proposition.

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

Does any other Member wish to speak? Well if no other Member wishes to speak I close the debate and call on the Minister to reply.

**4.1.2 Deputy P.F.C. Ozouf:**

Thank you, I am grateful. Financial services matters often are complicated issues which this Assembly has to deal with. So it is really important, as we heard from the previous proposition, that there is proper scrutiny and proper explanation as part of the parliamentary process, so I am really grateful that the panel has looked at this, has had briefings and is supportive, and I move the principles. Can I call for the *appel*?

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

The *appel* has been called for. Members are invited to return to their seats. I ask the Greffier to open the voting. If all Members have had an opportunity to cast their votes I ask the Greffier to close the voting. I can announce that the principles have been adopted.

<b>POUR: 46</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of St. Peter				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Clement				

Connétable of Grouville				
Connétable of St. Ouen				
Connétable of St. Mary				
Connétable of St. Saviour				
Deputy G..P. Southern				
Deputy C.F. Labey				
Deputy M. Tadier				
Deputy S.G. Luce				
Deputy L.M.C. Doublet				
Deputy K.F. Morel				
Deputy M.R. Le Hegarat				
Deputy S.M. Ahier				
Deputy R.J. Ward				
Deputy C.S. Alves				
Deputy I. Gardiner				
Deputy I.J. Gorst				
Deputy L.J Farnham				
Deputy K.L. Moore				
Deputy S.Y. Mézec				
Deputy P.F.C. Ozouf				
Deputy P.M. Bailhache				
Deputy T.A. Coles				
Deputy D.J. Warr				
Deputy H.M. Miles				
Deputy M.R. Scott				
Deputy J. Renouf				
Deputy C.D. Curtis				
Deputy L.V. Feltham				
Deputy R.E. Binet				
Deputy H.L. Jeune				
Deputy M.E. Millar				
Deputy A. Howell				
Deputy M.R. Ferey				
Deputy R.S. Kovacs				
Deputy A.F. Curtis				
Deputy B. Ward				
Deputy K.M. Wilson				
Deputy L.K.F Stephenson				
Deputy M.B. Andrews				

We have heard from the Economic and International Affairs Scrutiny Panel, I take it, Chair, that you do not wish to call this matter in?

**Deputy M.R. Scott (Chair, Economic and International Affairs Scrutiny Panel):**

That is correct.

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

In which case, Minister, how do you wish to propose the Regulations?

**4.2 Deputy P.F.C. Ozouf:**

Members have been provided with a fulsome report on the explanation of the individual Regulations and so I do not propose to go through the Regulations in detail because Members have got a full report on that and how they interact, so I propose the Articles together if I may. But of course I am ready to answer any questions that Members may have on any of the individual Articles.

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

Very well. Are Regulations 1 to 10 seconded? **[Seconded]** Does any other Member wish to speak on the Regulations? If no Member wishes to speak do you wish to take an *appel* on this or a standing vote?

**Deputy P.F.C. Ozouf:**

Yes, it is appropriate for an *appel* because it is important legislation.

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

The *appel* has been called for. Members are invited to return to their seats. I ask the Greffier to open the voting. If Members have had an opportunity to cast their votes I ask the Greffier to close the voting and I can announce that the Regulations have been adopted.

<b>POUR: 46</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of St. Peter				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Clement				
Connétable of Grouville				
Connétable of St. Ouen				
Connétable of St. Mary				
Connétable of St. Saviour				
Deputy G..P. Southern				
Deputy C.F. Labey				
Deputy M. Tadier				
Deputy S.G. Luce				
Deputy L.M.C. Doublet				
Deputy K.F. Morel				
Deputy M.R. Le Hegarat				
Deputy S.M. Ahier				
Deputy R.J. Ward				
Deputy C.S. Alves				
Deputy I. Gardiner				
Deputy I.J. Gorst				
Deputy L.J. Farnham				
Deputy K.L. Moore				
Deputy S.Y. Mézec				

Deputy P.F.C. Ozouf				
Deputy P.M. Bailhache				
Deputy T.A. Coles				
Deputy D.J. Warr				
Deputy H.M. Miles				
Deputy M.R. Scott				
Deputy J. Renouf				
Deputy C.D. Curtis				
Deputy L.V. Feltham				
Deputy R.E. Binet				
Deputy H.L. Jeune				
Deputy M.E. Millar				
Deputy A. Howell				
Deputy M.R. Ferey				
Deputy R.S. Kovacs				
Deputy A.F. Curtis				
Deputy B. Ward				
Deputy K.M. Wilson				
Deputy L.K.F Stephenson				
Deputy M.B. Andrews				

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

**4.3 Deputy P.F.C. Ozouf:**

Yes, and in the speedy way in which the Assembly has approved that, I would just say that I am grateful to Members, grateful to the Scrutiny Panel, but also hugely grateful for the immense amount of work that goes into these matters generally, and the amount of work that industry and our regulator and our government officials and law officers do to bring clarity into legislation. I am very pleased that this important issue has been resolved and I thank Members for their support, and always ready to brief Members on any individual aspects concerning what are complicated issues but important legislative changes on a massively important issue for Jersey, which all Members will know is MONEYVAL commanding much attention. On those remarks I thank Members and call for the standing vote on the Third Reading.

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

Firstly is the matter seconded in Third Reading? **[Seconded]** Does any Member wish to speak in Third Reading? In which case those Members in favour of adopting the Regulations in Third Reading kindly show. Those against? The Regulations are adopted in Third Reading.

[12:30]

The next item is Assembly Approval for Supplementary Planning Guidance, P.114/2022 lodged by Deputy Scott of St. Brelade, and the main respondents are the Minister for the Environment and the Minister for Infrastructure. I ask the Greffier to read the proposition.

**Deputy M.R. Scott:**

May I move for an adjournment if I am allowed to?

**The Bailiff:**

You would like to move the adjournment?

**Deputy M.R. Scott:**

Yes, please.

**The Bailiff:**

Well you are called upon to open your proposition now but any Member can propose that the States adjourn until another time, and that will be taken, so it is a matter for you to move that proposition and for it to be seconded and the Assembly to determine whether we continue or whether we adjourn. You would say adjourn until when I think.

**Deputy M.R. Scott:**

I perhaps should defer to the ... is the chair for the Privileges and Procedures Committee going to move this herself?

**The Bailiff:**

This is not a matter for arrangement of future business, this has come on to your proposition and it is for you to move it if you wish to. You are entitled at this stage to defer your proposition. As a matter of absolute right you do not have to bring this before the Assembly, you can ask that it is taken on another occasion.

**Deputy M.R. Scott:**

I will proceed with my proposition. I was suggesting starting after lunch.

**Deputy M. Tadier:**

I think she is just moving the adjournment, Sir, and wants to start her proposition after lunch.

**The Bailiff:**

Very well. It was not entirely clear to me that that is what was happening, but I am grateful. So you would like to propose the Assembly adjourn and resume at 2.15 p.m.?

#### **LUNCHEON ADJOURNMENT PROPOSED**

**Deputy M.R. Scott:**

Yes, Sir.

**The Bailiff:**

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

**Deputy T.A. Coles:**

Would it be possible that I suggest that we reconvene at 2.00 p.m. rather than the usual 2.15 p.m. and just sort of have an early luncheon?

**The Bailiff:**

Someone else might stand up and say 2.45 p.m., we have got to take the first proposition first and so it must be that we would reconvene at 2.15 p.m.

**Deputy M. Tadier:**

I just think for the sake of 15 minutes we should give the courtesy to the Deputy who presumably wants to have a clear run. We have had a long morning debating a wide range of issues, heavy debate, and I think rather than debating another 5, 10 minutes here about whether we should have this let us show some courtesy to one of our Members.

**The Bailiff:**

Very well. Does anyone else wish to speak? I am not going to call upon the Deputy to respond. Those in favour of adjourning now until 2.15 p.m.? Those against? **[Laughter]** I think by the narrowest of margins we are adjourning until 2.15 p.m.

[12:32]

**LUNCHEON ADJOURNMENT**

[14:15]

**5. Assembly Approval for Supplementary Planning Guidance (P.114/2022)**

**The Bailiff:**

I am not sure we are quorate. The next item of Public Business is Assembly Approval for Supplementary Planning Guidance, P.114, lodged by Deputy Scott. The main respondent will be the Minister for Infrastructure and I ask the Greffier to read the proposition.

**The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion to agree that the prior approval of the States Assembly must be sought before the implementation of the following policies further to the bridging Island Plan - (a) interim policy H9A as set out in draft Supplementary Planning Guidance “Housing Outside the built-up area” dated October 2022 (introducing the proposed restriction of new residential development of homes outside the built-up area where they are in excess of 279 square metres or 3,000 square feet gross internal floor space’); and (b) interim policy H2A as set out in draft Supplementary Planning Guidance “Density” dated October 2022 (introducing the proposed encouragement of minimum residential density in various locations such as Les Quennevais and St. Brelade’s Bay).

**The Bailiff:**

I am grateful to Deputy Alex Curtis I think for a contribution to the fund. Was it your machine that went off there? Whose was it? Deputy Le Hegarat, thank you for owning up.

**Deputy M.R. Le Hegarat of St. Helier North:**

The second time in 2 days. I am going to be very poor.

**Deputy R. Ward:**

Is that double the fine? I am just asking for a friend.

**The Bailiff:**

No, we will just keep it the same fine but I believe the charitable funds will benefit greatly from it, thank you very much indeed.

**Deputy M.R. Scott:**

Sir, before I begin my speech I believe the main respondent is the Minister for the Environment rather than the Minister for Infrastructure, which I believe you said.

**The Bailiff:**

I said Minister for the Environment and the Minister for Infrastructure. They are both involved.

**5.1 Deputy M.R. Scott:**

Thank you very much. I only heard that, sorry, Sir. Last night when I was not thinking of Deputy Tadier’s father’s beard ...

**The Bailiff:**

I know. We were all in that position. [Laughter]

**Deputy M.R. Scott:**

... I was thinking of a song by the Canadian songwriter Joni Mitchell called “Big Yellow Taxi”. The lyrics say: “Don’t it always seem to go that you don’t know what you’ve got until it’s gone, they paved paradise and put up a parking lot.” During the COVID emergency when lockdowns and contact tracing dominated our lives and some basic civic freedoms were curtailed, democratic Government could not function optimally. Laws were amended on an emergency basis to allow Government to continue in that emergency. This was understandable. It was also understandable to environmentalists at least why the former Minister for the Environment wanted to fulfil his obligations under the Planning and Building Law and update the Island Plan, notwithstanding the urgency. Both he and they had identified a different kind of emergency, one that required new policies and proposals to be brought in a rather rushed manner into the Island Plan. Their key aim was to better protect from further insensitive development our Island’s beautiful environment and neighbourhoods with a special character, or at least to make a start. I notice Deputy Tadier is with us now and he has missed my joke about his father’s beard.

**The Bailiff:**

I am sure it will repeat itself through the whole life of this Assembly. [Laughter]

**Deputy M.R. Scott:**

So the COVID Island Plan Jersey Regulations 2021 were approved by the former States Assembly. The very name of the regulation shows its emergency origins and the very name of the Island Plan as a bridging Island Plan indicates its emergency nature. The former States Assembly accepted some changes to planning law and process to achieve this. That emergency is now over and the time for those changes is now gone. Supplementary planning guidance was intended to fill parts of the main document that were incomplete. This included revising housing policies once the population policy had been published and approved by the States Assembly. Other guidance needed to be developed to protect sensitive character areas from inappropriate housing density and unsympathetic housing design. These included landscaping and green infrastructure policies for non-coastal areas. Further work designating conservation areas such as Gorey Village, parts of St. Lawrence and St. Aubin, and work on developing building design guidance for heritage areas. How many times have States Members heard one of their constituents complain that they do not understand why a particular development has been allowed, notwithstanding that it might have been rejected by the Planning Committee. I cannot agree with the Minister that the draft supplementary planning guidance that is the subject of this proposition does not introduce policies. Do we understand the implications of approving these policies, which are indeed described as interim policies and numbered as such? I cannot say, despite 8 years of work immersing myself in planning policy and process that I do. By allowing the Minister to approve this supplementary planning guidance and the interim policies without being informed by our debate and consideration then we will allow a decision-making framework to prevail what already is flawed, muddled and because of that does not serve the interests of the people of Jersey as well as it might. If approved the proposed draft - and I am going to call the supplementary planning policy S.P.G. - H9A would introduce a new policy that was not debated by the States Assembly in March 2022. This is undemocratic and nonsensical. If approved the proposed draft S.P.G. H2A housing density would appear to introduce assessment measures that prevail over other important policy considerations, with far-reaching consequences for the whole of the plan. Numerous policy implications that need to be thought through and evaluated. For example, what about higher densities in a heritage setting, dominated by listed buildings? How do decision-makers balance emerging policy positions about conservation areas and housing density policies? To refer back to an unfortunate incident in our community, what about settlements on the edge of

reservoirs with lower water tables than others? Should they all have the same density policies or should they be looked at on a case-by-case basis? As is already allowed under the Island Plan with the concept of development briefs. I understand that the possibility of introducing density policy to inform decision-making has been debated in the U.K. for many years. It is considered to be a crude measure and not very effective on its own. Why then accept this S.P.G. as an assessment tool in Jersey without future debate. What about development on greenfield sites? Should these be the same as all built-up area sites? Where is the policy guidance about townscape and landscape impact in the built-up areas? These are just some of the important questions that arise from the Minister's proposal to approve the draft S.P.G.s on his own without prior States Assembly approval. Are we comfortable to continue to allow our hands to be tied, not just to be tied, but to be seen to sit on them while just one States Member approves important policy that has long-term implications for all of our communities while little pieces of paradise in our districts are designated for potential parking lots by the Minister on the advice of planning policy makers who do not represent the constituents in all our areas. The States Assembly should be prepared to amend, approve, or reject the final policy that the Minister seeks to approve. I have participated in the public consultations associated with the former Island Plan and the current bridging Island Plan. I am aware of their flaws and appreciate the extra protection that normally is given to local communities by the States Assembly having the ability to intervene in this high-level planning policy making if need be. Having the Minister approve interim planning policies under a process that was accepted during emergency COVID and as a part of its measures no longer is appropriate. Interim or not, poor policies result in poor planning, which our people will have to live with the results for a very long time to come and often they are not reversible. If we care about what our Island looks like, about the communities and neighbourhoods in the districts we represent, and delivering policies that enable decision-makers, even among our States Assembly, to make decisions that meet the purposes of the Planning and Building Law, then I do not see how we can allow these policies to be approved without our further debate. Contrary to what has been suggested by the Minister to the press, it is time to put away the emergency legislation and plan for our people in more ordinary times. Really, we should be amending the Planning Law so it is no longer framed on an emergency footing and so that the States Assembly can become democratically involved again and working with the Minister to modify and refine the emergency framework provided by the bridging Island Plan so that it is converted, through modifications, to a proper Island Plan within the timeframe originally contemplated by the former States Assembly. This would allow us to have a fully considered and debated Island Plan that provides a clear and democratically approved and accountable decision-making framework that delivers the quality of decision-making that our community deserves in a post-pandemic world going forward. Now that the COVID emergency is over and we need to rebuild as a post-pandemic emergency community, environmental groups, residents, those in building design and the construction industry, all need us to ensure a quality decision-making framework is produced now that meets the high standards of democratic accountability and principles. It is not appropriate for policies that have long-term and far-reaching consequences to be approved without debate by our Assembly. If we accept the Minister's position that these are supplementary policies without understanding and debating the implications then we are endorsing an emergency, truncated approach to policy formulation that has long-term implications for important changes to our Island. If we do not, as an Assembly, seek to provide a clear policy framework that adequately protects our communities against insensitive development then we are not serving our community well. So what we really should be doing now is considering legislation that is not providing emergency powers. We are thankfully beyond that. Revisiting the rules for land use decision-making to make sure they provide the decision-making framework that is now beyond interim and bridging, it is time for the Minister to focus on delivering an Island Plan that enables our decision-makers to make decisions within a robust and accountable policy framework. So that we as an Assembly can account for our decisions and explain how we are helping our decision-makers meet the purposes of the Planning and Building (Jersey) Law, which includes protecting the environment, heritage areas, and many other things for our communities for

the longer term. Decisions that are made affecting land use have implications for decades to come. By approving this proposition, the States Assembly can start this process. It is not the time to turn away from being part of the future of our constituents, but to embrace the future with them. Thank you.

[14:30]

**The Bailiff:**

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

**5.1.1 Deputy T.A. Coles:**

I thought I would have a couple people speaking before me on this, but I will go first. When this proposition first came across in Teams as we all receive them, I looked at it and read it and my first thoughts were this is a Ministerial kind of decision, it is written in planning guidelines, so that the Minister will bring differences and edits as it goes along. As I started looking and started reading a little bit further, I noticed some other bits and the policies that are trying to be made changed here are quite significant, and if a fellow Member of this Assembly feels that a plan or a change in policy is significant that may supersede what is given out as a Ministerial responsibility or power that they have every right to recall that document before us and we should be allowed to debate it. So that is one of the first reasons why I was not sure whether I was going to support Deputy Scott in this proposition. But after a good read realised that, do you know what, that is a good reason to support this. It is not directly about the policy itself, whether we agree whether that policy is right or whether that policy is wrong. It is about having the right that this Assembly should look at a large policy change that someone feels is significant enough that it should be brought before us so that we can then debate as and when, if we agree with those policy changes. Then I look at the 2 policy ... sorry, and for an example on why I think there are certain scales of different inputs that the Minister could have had over policy, it referred to policy H9 in the bridging Island Plan. As a member of the Planning Committee I have read that document far too many times. The fact that it is saved as one of my favourite P.D.F. (Portable Document Format) documents in my Teams speaks for itself. Under policy H9, and we have this issue with the Water's Edge Hotel, that the policy H9 asks for something, and it is quite vague in asking for a significant reduction in visual mass. Significant to who varies, it is subjective. The Minister could have brought plans forward to say that: "I want to introduce a number, I want to take 25 per cent is what I consider significant." Therefore adjust the Island Plan to say 25 per cent reduction is the minimum reduction required to move along with this policy. If that was brought here today under this I would not be supporting Deputy Scott because I believe that is a small alteration. But then this is when we start looking at what the policies are asking for itself and when we are talking about minimum densities it is changing how we are fundamentally going to start building on our Island and what kind of developments we are going to bring forward, or we expect the developers to bring forward, to planning to get approval. I feel that this particular policy is going to have quite a large visual impact on our Island's character in varying parts of the Island. We should all have an input and a debate over whether we agree that this 150 or 350 dwellings per hectare is appropriate for the built-up area and whether we feel that the other ratios for the other areas and towns are acceptable or whether they are being allowed to gentrify the countryside so that the poor people stay in town and the rich people get to live in their bigger houses. I then looked at policy H2 as well and I find the number, and this one is quite concerning for me and another reason why it needs to be brought before the Assembly, that if we put a halt on building properties over a certain size, Members of this Assembly with properties over that size could see their properties raised by a significant value. Now that potentially, whether meant for by the Minister bringing these amendments or not, is a potential consequence of that fact. So should we be being allowed to let one person make that decision or should we all have an account as the Assembly and say: "Do you know what, some of us do not." Sorry, I am losing my train of thought. I said I was trying to plan whether or not Members of this Assembly should be allowed to benefit from a policy that is just passed

through under Ministerial Direction, which could see them make significant capital gains on their property should they wish to sell. It is an option but it is my, and no risk of saying that this is why the Minister did it, it is literally just a consequence of if this goes through quite easily and us having absolutely no say over it. So those are sort of my 2 main reasons and, just for the record, I do not disagree with the policy H9A; I think it is something we are going to have to consider as the Minister made in his comments paper that we do have to consider these things. There was a consultation that went out that all Members were allowed to take part with, as well as the general public. But this is also another reason why I would like that particular policy brought back to the Assembly because this minimum density dwelling policy would mean we get developers trying to squeeze in the minimum density into the space that they can, which means that the size of the living rooms on these properties will not expand unless that is added to this supplementary planning guidance. We have heard from the Chief Minister and the Minister for Infrastructure and the Minister for Housing and Communities when they stopped the Kensington Place development that they do not want these kind of developments to still go on. But introducing this minimum density dwelling without that other change, which if it comes before the Assembly and the Minister has not added it, I would be bringing it as an amendment myself to increase that liveable space. I have discussed this with the Minister and he does know my position on this. But I could not see that in what was presented under policy H9A. So I would want that included if I was to agree to that to go forward. So those are my 2 main reasons for why I will be supporting Deputy Scott's proposition.

**Deputy J. Renouf:**

Can I make a point of order?

**The Bailiff:**

A point of order, yes.

**Deputy J. Renouf:**

Could I ask you to rule on the question of conflicts of interest and declaring interests? Would it be appropriate in your view for Members to declare should they have an interest in or ownership of a property over 3,000 square feet when they speak or indeed if they have spoken?

**The Bailiff:**

That is a matter for Members. But the point is that this decision made on this proposition will not have any bearing on that, it seems to me. It is a matter of whether the States is going to call this in or is not going to call it in. No one has a direct financial interest potentially in this. But, even were it so, I suspect it is something that Members would share in common with a large number of other people within the Island and therefore would not fall normally to be disclosed to the point of disqualifying them from participating in the debate. The answer to that is that it does not appear to me that a declaration is necessary at this stage for this part of the decision-making process. Thank you.

**Deputy M.R. Scott:**

I am not sure if the Minister ...

**The Bailiff:**

What are you doing now? Is this a ...

**Deputy M.R. Scott:**

On the point of order.

**The Bailiff:**

Right.

**Deputy M.R. Scott:**

I think I will shut up.

**The Bailiff:**

I am reinforcing that view after the conversation I have had with the Deputy Greffier. The decision of the Assembly would not be determining the policy itself and it is the policy itself that might cause people to feel the need to make a declaration. Very well, thank you very much. Yes, does any other Member wish to speak on the proposition?

**5.1.2 Deputy S.G. Luce:**

Every Member in this Assembly has been through an election process last summer, at the beginning of last summer, they have come into this Assembly and on the second sitting they have elected a Minister for the Environment. With that job comes a certain amount of responsibility, a lot of responsibility, and a certain amount of decision-making. One of those decisions you have to make is you have the responsibility to develop supplementary planning guidance. The most obvious and easiest example to give would be a housing site debated through the Island Plan and agreed and the particular field in question is then subject usually to supplementary planning guidance, which the Minister will bring forward, which guides. It does what it says on the tin. It is guidance as to how that field may or may not be developed, the type of density, the type of housing that might be allowed on it, and how we move forward. Initially, as has already been said by Deputy Coles, one read this proposition and thought it is not right that the States get into the micromanagement of planning, otherwise we will spend our entire 3 weeks, every 3 weeks, trying to reach decisions. If you look on supplementary planning guidance you will notice that there is masterplan frameworks developed by the Minister and there are 2 sites here, Gas Place and South Hill, there is some supplementary planning advice on things like the disposal of our sewerage, repairing walls, and T.V. (television) and radio masts, and there are supplementary planning notes on parking and rooftops. In many cases, while the guidance is there and written down, it may well be that an application is approved that may be slightly contrary to guidance because in all planning decisions it is always a balance of policies and it may be a policy over here is significantly weightier and carries more gravity than one over here and guidance is exactly what it is. It is there to guide but it is not to be the definitive answer. But Members, getting back to this proposition, will have to decide whether they feel that the development of new homes, new residential property over 279 square metres is a matter for guidance or whether it is a policy matter. They will also have to look at the issue of density and whether that is something that Ministers should be guiding on or whether that should be part of an Island Plan. An Island Plan policy which would need to come back to this Assembly and be debated if I am correct in my understanding. So the Environment Scrutiny Panel have looked at this. We do not have a particular view one way or the other, but what we think is it is up to States Members to decide whether they think these 2 particular issues are important enough to be debated on the floor of this Assembly. The danger is of course that we then get an increasing number of things brought to this Assembly for a decision, a decision which quite normally would be taken as part of the responsibility of being elected as the Minister for the Environment.

**5.1.3 Deputy A. Howell:**

I very much am following in Deputy Luce, the comments he has made, but I would just like to say that supplementary is something that is added or serving as a supplement or additional. So while I really appreciate all that the previous Minister for the Environment has done, and I have great faith in the new Minister for the Environment, I am questioning whether these are supplementary or whether these are truly policy changes. I would say that probably with the size of homes that is a real policy change and also in the density that is a policy change, rather than just supplementary guidance. I know that the Minister has to make decisions, but equally I think these are more than just supplementary guidance and perhaps these should be coming back for debate. I realise we cannot

debate everything but there are certain things and we are going to have to, as a Planning Committee, decide on the dead minimum density and, as Deputy Coles has mentioned, we have to make sure that people have decent homes to live in with decent space around. It is a major, I think it is a policy change, and that is what I would like to say. Whereas I really appreciate all work the Minister for the Environment does but equally I think we should sometimes be able to discuss these matters and come up with what the Assembly says.

#### **5.1.4 Deputy M. Tadier:**

Generally I am of the same opinion that whatever appropriate powers this Assembly can have as a check and balance, which I think over the years of the introduction of Ministerial Government have been eroded and taken away, sometimes legitimately for effective efficiency, but as a general rule we are seeing more and more power given away from the Assembly to Ministers. But sometimes not even Ministers, to officers in departments. That could be argued to be the same in planning. Now I am in quite an interesting position, whereas sometimes politically we may have disagreements in St. Brelade as representatives, our politics might be either completely different or slightly different on occasions, I know that when it comes to planning issues I think we are generally fairly well-aligned, and certainly I know that before Deputy Scott was elected we had similar concerns about the built-up areas and also protecting sensitive areas in St. Brelade like St. Brelade's Bay.

[14:45]

I speak to those both as a representative of the area and because it is a large focus of this proposition. Similarly, I know that the current Minister, as a St. Brelade representative, also has the same concerns. I noticed in his manifesto, for example, that he focused on the fact that he had fought against planning applications that over-intensified development in the Parish and he gave examples of Petit Port and along Route Orange. Similarly, I have done the same and I know Deputy Scott has done the same as well. The reason I raise this is because I think it is relevant, is that the Minister has inherited, like the new Assembly has, a bridging Island Plan which it did not vote for and it did not implement. It is a previous Minister. I suspect, I am pretty sure, because I heard him say sentiments to this effect during the election process, that he was very concerned about that there is a presumption of overdevelopment in St. Brelade, which I sought to remove from the previous bridging Island Plan. I have spoken to Deputy Scott about that. So he has inherited a plan where he may be being asked to bring forward guidance, which is not in keeping with what he believes and what his manifesto says, and perhaps what the new representatives of the area also believe. I also think it is a question of magnitude. So while the bridging Island Plan may talk about a presumption of density intensification, and we might see, for example, developments coming forward where they would have been turned down in the past where now there is a presumption towards development, garden grabs for example, putting an extra floor on buildings where they were not there before, I think it is still a question of judgment and of what kind of guidance we put around that. It would seem to me that it would be wise to have that come back to the Assembly so we can look at the nuances and the fine detail in that. What it does not mean is that every application is going to come back to the Assembly for a decision. It is not going to turn into a 49-person P.A.P. (Planning Applications Panel), it simply means that we will have a chance, along with the Minister, to see what he is bring forward, to see if it could be improved, to see if it has the general support of the Assembly. We have talked about how important representation in all of its forms is in this Assembly. It would be surely worthwhile hearing from community and constituency representatives about what they think about that fine detail before it is put into effect. So I am quite relaxed that this is very much not just something we can vote for easily but it is the right thing to vote for because it gives us those safeguards in place.

#### **5.1.5 Deputy H. Jeune:**

I will be brief but it is important for Members to really see what this proposition puts forward because it is saying basically, as maybe Deputy Tadier was alluding to, to really rethink some of the elements

of the bridging Island Plan, which we need to caution because there was, as we heard in the summing-up of last year, at the end of last year, that it was the longest debate that happened last year or longer in time. I would be worried that that is opening up to many things because for us to go into the bridging Island Plan and start really questioning the principles and the elements that were already agreed. For example, there was already an agreement in the bridging Island Plan to limit the spread of development on greenfield sites and to make best use of already-developed land. This supplementary planning guide would help develop what that looks like and it would be worrying to see that we would, if we went into the supplementary planning guides and that was brought back to the States, that we then potentially could open up that principle and then therefore open up the bridging Island Plan again.

#### **5.1.6 Deputy J. Renouf:**

I must admit I have struggled slightly in knowing how to respond to this debate. There are broadly 2 approaches I think. I can go on the arguments of technicalities and explain why I think almost every assertion that Deputy Scott has made is wrong; but of course the argument is mostly being conducted on emotive terms and I feel therefore that maybe I should respond in those terms. I am perhaps less good at that so I am probably going to stick at plan A. But when we hear words like: “Little pieces of paradise that will be turned into parking lots by the Minister acting on his own”, that is so far removed from what we are talking about here that it is off the scale. We are not talking about that. We are not talking about me deciding anything. We are certainly not talking about me taking bits of paradise and turning them into parking lots on my own. So I think the emotive argument that Deputy Scott is advancing here is that in lots of ways the bridging Island Plan is so flawed that essentially we should stop work on anything that was mandated in the bridging Island Plan, not do any of the pieces of supplementary planning guidance that were mandated in that plan, and instead accept that it was a flawed piece of work, no longer relevant because it was conducted and put together under Regulations that are no longer applicable and therefore we should move on. That is nonsense. The Deputy’s statement implies that the bridging Island Plan was prepared on the basis of an inadequate evidence base or that it was somehow rushed through. The basis for the preparation of the bridging Island Plan was very clearly set and justified and the assumptions, which underpin it, were very clearly articulated at the time. It was certainly acknowledged that it was prepared in a period of uncertainty and change. But it was prepared at a time when there was clear and unequivocal need for more homes, for the creation of better neighbourhoods and better environmental protection. A very large evidence base was prepared and published in support of the development of the bridging Island Plan. This was available to inform the approval of the plan and was the subject of independent review. In their summary of conclusions, the independent planning inspectors appointed to review the draft bridging Island Plan stated: “The evidence base for the plan is comprehensive and generally provides convincing support for the policies and proposals. This is a good Island Plan.” Those are my opening remarks, but I think it is quite interesting. I have 2 things on the agenda today; I doubt any Ministers enjoy a more varied portfolio than I do. We are developing supplementary planning guidance relating to housing density and so on, but later we will be debating changes as to our policy on replacement vessels, which is also under my remit. While these are 2 very different subjects there are some significant links. Both depend on careful consideration of the law, both concern the limits to Ministerial discretion and both have implications for the effective conduct of Government. These are all issues that I take exceptionally seriously. In the case of Deputy Scott’s proposition, her suggestion is that I have gone too far in exercising the powers granted to me under law. I want to explain why I disagree and why in fact the supplementary planning guidance that I am developing is entirely normal, entirely within the framework established by the Assembly and entirely proportionate to the aims of the bridging Island Plan. It might be helpful to start perhaps with some of the facts around this rather than the emotive arguments and consider what is supplementary planning guidance under the law. S.P.G. is effectively defined by the 2002 Planning and Building law under Article 6 which says: “The Minister may publish guidelines and policies in respect of (a)

development generally, (b) any class of development, (c) the development of any area of land or (d) the development of a specified site.” It is pretty clear that the S.P.G. under consideration in this proposition falls within these categories. It is also worth saying, by the way, that S.P.G. is not a sudden thing that has only been brought in to cope with the supposed problems of the bridging Island Plan. That is the 2002 law. There are also stipulations in the law about the need to consult, which I have done. Indeed, many of you, including Deputy Scott, interrupted your Christmas shopping to attend 2 online meetings to discuss the draft guidance at the end of last year. There was also consultation with the public and, by invitation, with the development industry. Furthermore, although I have yet to finalise the guidance, before I do so I will have regard to all of the consultation feedback and will consider amending the draft guidance in light of the feedback before adoption. I am also committed to publishing the consultation feedback and my analysis and response to it. There is no question that I am within my rights to develop this S.P.G. and I have gone about it in the right way. I note within her report that Deputy Scott appears to concede these points. There is, however, a second important aspect to this. It is quite clear under the law that I can only bring forward S.P.G. that is consistent with the Island Plan. That is both implicit in that the Planning and Building Law stipulates that only an Island Plan can set new planning policies, but beyond that this point has also been the subject of explicit law officer advice. No Minister for the Environment can bring forward S.P.G. that either sets a new policy direction or contradicts policy that is within the Island Plan. The supplementary planning guidance that I am preparing does not contradict existing policy, nor does it set a new policy direction. It is my contention that the substance of the proposed guidance entirely supports and is consistent with the policy direction of the bridging Island Plan, which has been approved by the States Assembly. It is entirely supplementary to it. This I fear is where I must disagree with Deputy Scott. She refers at the end of her report to these substantive new policies and argues that because they are new policies they should be debated by the States Assembly. As already noted, I am not legally able to bring new policies to contradict the Island Plan in the form of S.P.G. and I do not believe I am doing so. Deputy Scott is correct in saying that these are new policies but they are policies that are supplemental to the Island Plan, critically they do not introduce a new policy direction or contradict the policy framework established by the Island Plan. It is worth recalling at this point where S.P.G. fits into the decision-making framework in planning policy because there does seem to be some confusion about this.

**Deputy K.F. Morel:**

I wonder if the Minister would give way for a point of clarification?

**The Bailiff:**

Do you give way for a point of clarification?

**Deputy J. Renouf:**

I would rather not if that is okay, sorry. I think it is worth recalling at this point where S.P.G. fits into the decision-making framework and planning policy because there seems to be some confusion around this and people have been saying things like: “Once this supplementary planning policy is in place it will no longer be possible to build houses over 3,000 square feet” and so on. Members will be aware that the Island Plan is the primary consideration in Jersey’s plan-led planning system. It is because of this and the significant weight attached to Island Plan policy and decision-making about planning applications that the Island Plan requires the approval of the States Assembly. Supplementary planning guidance, whether it is in the form of interim policies or advice, does not carry the same weight as Island Plan policy; it is but one material consideration. Supplementary planning guidance is designed to operate under the Island Plan and is subordinate to it. S.P.G. is an extra piece of consideration, another material misconsideration. Other material misconsiderations can take many forms, including representations from people or groups objecting to or supporting planning applications, they all must be taken into account in decision-making. They do not carry the

same weight as Island Plan policies. That is why the law empowers the Minister to adopt S.P.G. and does not require its endorsement by the States Assembly. That is the critical point about this. It fits into a framework of extra items for consideration. It does not mandate anything and it does not contradict the Island Plan.

[15:00]

Proposals in the bridging Island Plan confer a responsibility upon the Minister for the Environment mandated by this Assembly to develop at least 15 specific pieces of supplementary planning guidance over the plan period. I really do not believe that it is appropriate, warranted or an efficient use of parliamentary time for S.P.G. to be debated by the States Assembly. I want to set out now the key issue, which is whether or not the S.P.G. could in any way be interpreted as setting a new policy direction or contradicting policy that is in the bridging Island Plan. There are 2 sections to this guidance. The first relates to minimum density standards. Proposal 21 of the bridging Island Plan states that the Minister for the Environment will develop supplementary planning guidance to establish minimum densities for the Island's built-up areas. It was mandated, I have not made this up. The guidance also proposes the introduction of a maximum density standard to protect against over development or super-cramming. The content of this guidance note is thus simply responding to that which the States Assembly has requested be undertaken in support of and supplementary to the Island Plan that it has approved. It also responds to the overriding policy objectives which has been built into successive Island Plans, which is to concentrate development in the existing built-up areas. We need to make the most efficient use of that built-up land and that is what this part of the supplementary planning guidance addresses. It does not, as the Deputy says, get set above other policies. It does not trump anything else. It is another factor to be considered along with other supplementary planning guidance, along with other factors such as objections, such as letters or representations of support and so on. Density policy has been mandated by this Assembly. In content terms, I know that some Members have worries that this guidance will be too prescriptive and will force overly-dense development in inappropriate areas. I would make 2 points in response. First, the guidance, if you read it, very explicitly creates categories that relate to particular areas. So the guidance is different depending on where it is being applied. It is different for town, on the one hand, compared to, say, local centres on the other and Quennevais on another. Each one has specific elements of density guidelines and those density guidelines also reference examples elsewhere in the Island of comparable developments, which are familiar to people in those contexts. Second, the draft S.P.G. contains explicit reference to some important qualifications to the density guidelines. It says, and I quote - I think this is worth listening to given some of the comments that have been made so far: "Density in itself is a crude tool. It is a measure of a proposed residential development but should not be a determinant of it. To be successful the provision of more dense forms of development throughout the Island's built-up areas must have regard to the quality of design relative to its context, the quality, type and mix of homes being created and place making." That is all in the draft supplementary planning guidance. This is not an instruction to insist that all developments in a particular area hit a particular target. It is a piece of supplementary guidance to suggest where thresholds might lie but making sure that lots of other factors are taken into account and explicitly indicating that. In her letter to States Members the Deputy raises, with respect, some particularly large and colourful red herrings. For example, she says that there are areas of St. Brelade that remain vulnerable to insensitive development under the bridging Island Plan including, for example, Route Orange. I have to say that I am not sure developers would agree. Since the new Island Plan was passed 6 applications in St. Brelade have been refused by the Planning Committee, including 3 on Route Orange. But, in any case, this is irrelevant. The proposition is about supplementary planning guidance not the bridging Island Plan. Let me move on to look at the guidance around housing in the countryside. This is made up of 2 parts. First of all a clarification around Policy H9. Again, as requested explicitly in the bridging Island Plan, it provides more detail around the interpretation of various parts of this policy and does nothing more. But it is, I think, the second part of this guidance

which is called in the guidance “Interim Policy H9A” that is causing the most angst. This is the policy concerning large homes outside the built-up area and says that new homes outside the built-up area would not normally be supported if they are over 279 square metres or 3,000 square feet. It is argued this is a new policy direction not supported by the bridging Island Plan. This I refute and I want to take Members through the argument because it is important. The bridging Island Plan provides for the development of new homes and, in particular, the development of more affordable homes to help meet existing housing demand and address the increasing cost of housing. Policy SP3.6 says that new housing will be supported if, and I quote: “Residential development provides housing types and tenures that reflect local housing need and market demand.” Reflect local housing need and market demand. What is our housing need? Whatever S.P.G. I produce has to surely support that. There is, I am afraid, no evidence that supports the need to provide more very large homes in Jersey. Quite the opposite. Most of the Island’s current need is for smaller homes, not tiny homes, by the way, but certainly not mega homes. Jersey’s Future Housing Needs 2019-21 report identified a potential shortfall of 2,750 one, 2 and 3-bed dwellings, both flats and houses, together with a surplus - a surplus - of 4-plus bed homes over the report period. What is more, evidence from the census suggests that over 40 per cent of owner-occupied homes in the Island were underoccupied where households had 2 or more bedrooms above the standard required relative to the number of people living in the house. This suggests that a significant proportion of existing large homes in the Island are not being put to best use. A dwelling of 279 square metres or 3,000 square feet is big. Over double the floor area of a standard 4-bed dwelling. These are luxury homes with a significant market value that is well beyond the reach of most Islanders. For the purchase of a medium priced 4-bedroom house at £1.2 million in the fourth quarter of 2021 by a household with mean net income, the total deposit required was £752,000. A 3,000 square foot home would be bigger and cost substantially more than this type of house. So remember Policy SP3 says that new housing must reflect local housing need and market demand. The above analysis demonstrates quite clearly that the demand for new housing is not for very large houses but for smaller affordable housing. Therefore developing S.P.G. that provides more detail on how this is achieved is entirely consistent with the bridging Island Plan and does not in any way constitute a new policy direction. In addition, Policy H9 already says that new residential developments in the countryside would only be permitted where the replacement dwelling is not larger than that being replaced in terms of gross floor space, building footprint and visual impact. There is already a clear desire to shrink buildings in that category in the countryside in the policy. But there are still more ways in which Policy H9A helps deliver the objectives of the bridging Island Plan. The 3,000 square feet guidance will only apply where a house larger than 3,000 square feet is being replaced. But there is an important qualification in the draft guidance; it is qualified. New buildings should be less than 279 square metres or 3,000 square feet gross floor space except where the existing building is considerably larger. In other words, it is not the intention to try and shrink exceptionally large existing buildings down to 3,000 square feet. The question of what constitutes “considerably larger” will remain at the discretion of the decision-maker, the planning officer, the Planning Committee or, if it goes to an appeal or a public inquiry, with the Minister. There is still room for discretion and, as with the density guidelines, I reinforce the point. These are one factor to be considered, these guidelines. They are not an instruction. They do not mandate. The introduction of a size threshold for the development of new homes will help ensure that the homes that are provided during the bridging Island Plan period better match the needs of Islanders in terms of their size, use and affordability. Of course, as I have said, we already have a lot of very large houses so there is no shortage of mansions for the very wealthy in this Island. This is about making sure we better address housing need and adjust housing need, where appropriate, in the future to our demand. A final way, if you have got lost in all of the technicalities, to judge whether this S.P.G. is in accordance with the bridging Island Plan is to ask a rather simple question. What if I wrote the complete opposite to this S.P.G.? What if the S.P.G. said all buildings over 3,000 square feet must get bigger? That would clearly be in opposition to the bridging Island Plan. That would not be allowed. The supplementary planning guidance I have

developed does not say that, it says the opposite of that. It is entirely in keeping with the direction of travel in the Island Plan and, in particular, bearing in mind that it is a supplementary piece of guidance to be read in conjunction with all other items to be considered and subservient to the Island Plan. A couple of other things I just wanted to tackle that were raised by Deputy Scott. It does seem to me that there are a number a diversionary points that have little to do with the amendment that seem to be left over arguments from the bridging Island Plan. Deputy Scott says that owing to Ministerial priority the introduction of this S.P.G. leapfrogs other planning policy proposals. It is not true. There is no leapfrogging, the supplementary planning guidance will be developed over time. As I say, this does not subsume anything that is in the Island in any case. In her letters to Members she wrote that there was an implication that parts of the Island will remain at risk from insensitive development before S.P.G. is developed. I think that is flawed because the bridging Island Plan actually provides a revised and strengthened planning policy framework to deal with planning applications throughout the Island where the impact of development on the character and sensitive place of an area is now a key policy consideration where it was not before. In other words, there are no risks to the countryside because of the order in which I am bringing forward this S.P.G. I note also from the letter sent around that somehow Portelet Bay Apartments have been dragged into the argument. Wildly irrelevant. Those apartments were approved under the 2002 Island Plan and the policy framework has completely changed since then. To give just one example, we now have a skyline vista's policy which we did not have at that time. Much is being made about this distinction between new policies and policies. This is a question of formatting as much as anything else. There is no established convention as to how S.P.G. should appear or look. In other words, how I should present it. We framed this, I and officers, in this consultation as interim policies. That is the phrase we have chosen to use. It is not mandated. We have given the policy number that relate to their parent policies in the bridging Island Plan, simply for ease of reference in decision making. They are not suddenly part of the Island Plan. They remain supplementary to the Island Plan.

[15:15]

The fact that they have a numbering system that relates to something in the Island Plan does not give them the same legal status as the Island Plan. They remain supplementary. I might even consider changing that designation to remove any confusion. An alternative might be to set the provisions of the S.P.G. in various paragraphs and tables throughout the guidance which might then be cited by reference to paragraph, page and table numbers. There are other ways of doing that. At the moment I think it is just easier to do it this way, but remember through all this, this S.P.G. is supplementary, it does not become part of the Island Plan and it is just one of the factors the decision-makers will need to take into account. Notwithstanding any of these arguments, it is of course within the prerogative of this Assembly, our sovereign law-making body, to consider any matter it wishes. If it is the Assembly's wish to debate the S.P.G. once it is finalised then, of course, I will happily go through these points all over again. But it is worth remembering that the sovereign law-making body of this Island is the body that both passed the bridging Island Plan and has given me delegated powers to bring forward an S.P.G. I would respectfully suggest that we move forward on that basis. It is my strongly held view that if this S.P.G. effectively gets called in, it would achieve little while causing delay to other important pieces of policy development. Remember the bridging Island Plan remains the prime basis for decision-making. That is why it is the Island Plan and gets a 9-day debate in this Assembly whereas S.P.G. is delegated to the Minister. This S.P.G. is but one factor to help out decision-makers and all those attempting to navigate the planning system, and it is consistent with the direction of the bridging Island Plan. I urge Members to reject the proposition. Thank you.

**Deputy R.J. Ward:**

I wonder if I may ask a question ... it may be a ruling from you but it may be a question to the A.G. (Attorney General)?

**The Bailiff:**

Until I hear it I will not be able to tell.

**Deputy R.J. Ward:**

I thought that might be the case. It is just the wording of the proposition itself. It is around the words “implementation of the following policies” because we have had a lot of talk about redrafting the policy but what is the legal implication of the word “implementation”. Are we just bringing back the decision that is made, and talking about that, does that mean legally, or are we going to bring the entire policy because I am reading it as not bringing back the entire policy, just bringing back the decision that is made using that policy? A lot of the debate so far seems to me to be around something that I do not think is in this proposition. That is the best way I can put that question across.

**The Bailiff:**

So the question that you are asking is ... is the question for the Assembly as to whether it is bringing back for consideration the entire policy in each case or any decision made under the policy, is that correct? Because that would be individual planning decisions, would it not?

**Deputy R.J. Ward:**

Yes, it would indeed. I think that is what we need to understand, as to whether it is simply bringing back the implementation, as that word to me means, of a policy rather than the policy itself which has been agreed by this Assembly already. I think that is a very important point and there is a legal point there because I know that the bridging Island Plan has to be debated under a particular part of the law, I believe. It may not even be possible.

**The Bailiff:**

If there is a legal question that is a matter for the Solicitor General to advise on, if it is a matter of construction of the meaning of the proposition, that is a matter for the Chair to determine. Let us see what the legal answer is and then I will decide whether or not I need to say anything.

**Deputy R.J. Ward:**

I did say I was not sure which one it was, Sir, at the beginning.

**The Bailiff:**

Did you have a point of clarification from the Minister? Shall we hear the point of clarification first and then the Minister will have stopped speaking and then the Solicitor General can give us the benefit of his advice.

**Deputy K.F. Morel:**

The Solicitor General may appreciate that time.

**The Bailiff:**

That, of course, still requires the Minister to give way if he chooses to do so.

**Deputy K.F. Morel:**

Thank you. I was just wondering if the Minister could clarify in drawing up the supplementary planning guidance and ultimately publishing it, does he go through a process of consultation with industry, with the affected sectors before it is published?

**Deputy J. Renouf:**

Yes, the supplementary planning guidance is consulted on quite widely. I should have brought with me the statistics of the number of people who responded and so on. It will be published so the Members will be able to see the extent of the consultation. The consultation was initially for 6 weeks.

We were asked whether that could be extended. We offered to extend it to anybody who contacted us to 8 weeks so there was time for people to respond. I know there was engagement explicitly with representatives of the development industry, if we can call it that, construction sector and so on. Obviously States Members were invited and indeed joined in large numbers meetings with me and the other relevant officers. I think the requirement for consultation was very fully met.

**The Bailiff:**

Mr. Solicitor, are you able to assist on the legal point raised by Deputy Rob Ward?

**Mr. M. Jowitt., H.M. Solicitor General:**

I will try to, I hope I do not confuse things further. I wonder whether there is a risk that we are using language perhaps more loosely than is necessarily helpful. The question I think is probably this: is this supplementary planning guidance properly so called or does it contain something which is not merely supplemental to but is different from and marks a departure from the Island Plan? Ordinarily one would expect an issue of that sort to be determined by a court on an application for judicial review. Certainly it happens in the English jurisdiction from time to time. I hope Members will forgive me if, with that in mind, I do make some points that I would be making on my feet in court if I were resisting such an application. Perhaps I could take Policy H9 in the supplementary planning guidance to start with. It is at page 24, if Members have it. Policy H9 was adopted by this Assembly, or rather the last Assembly, in the bridging Island Plan. This is a policy that has been adopted by this Assembly and has, as a consequence, a legal force behind it. The policy is this: "Proposals for new residential development outside the built-up area will not be supported." That is the policy. There should be no residential development at all outside the built-up area. Then there are caveats to the policy that are set out from points 1 through to 6, including at 3, the exception that development would represent optimal viable use of a traditional farm building where no alternative deployment use is appropriate. In other words it is conserving buildings by allowing them to be redeveloped. At point 5, in the case of redevelopment of existing dwellings involving demolition and replacement of dwelling that is not larger than that being replaced in terms of greater floor space and gives rise to demonstrable environmental gains. Then last in 6, the case of redevelopment of existing buildings in employment use involving demolition and replacement. It goes on to talk about there should not be any greater size and there should be environmental gains. The blanket policy, as expressed in the Island Plan, carries with it certain exceptions. We then look at what is perhaps loosely termed Interim Policy H9A. Is it properly so-called a new policy or is it - as the author of the document suggests and as the Minister has suggested - in fact in the nature of supplemental planning guidance? Interim Policy H9A talks about large homes outside the built-up area and it talks about there will be no residential development exceeding a certain floor space or square meterage except in, again, limited exceptions, 1 and 2. It seems to me a perfectly respectable argument to say that that in fact amounts to nothing more than a further explanation of the general prohibition on building residences outside the built-up area because it provides a further supplemental explanation concerning floor space and then it goes on to make caveats to that, exceptions to that, 1 and 2, which closely mirror ... if Members have it open in front of them, caveat 1 and 2 closely mirror in fact caveats 3 and 6 of the general policy. So those are the sorts of arguments you might be thinking of making to resist a judicial review on the basis of Deputy Scott's argument. It seems to me that Policy H2 - Housing Density, the arguments are even clearer in favour of this being supplemental guidance, because H2 expressly and explicitly talks about development density in the built-up area. If those 2 documents stand the test of being supplemental guidance - and that is not a matter for me, it is obviously a matter for Members to consider in this debate - but if that is what they are, then it seems to me there is a fundamental problem as a matter of law with the proposition as drafted, for this reason. If I set the scene, under the Planning and Building (Jersey) Law, Article 6 gives to the Minister and to the Minister alone an independent discretion as to whether he does or does not publish guidelines of this nature, provided that if he is going to issue them and before doing so he consults any Minister or statutory authority

with an interest in the topic. The law gives to this Assembly no power whatsoever to direct the Minister in the exercise of that executive power to adhere to directions given to the Minister by this Assembly. The Assembly in fact has no power as a matter of law to order the Minister to bring proposed planning guidance, supplementary guidance, before this Assembly in order to receive this Assembly's approval to publish it. So if the Assembly sought to act in that way, it would be, in my view, acting *ultra vires* and that I take to be the fundamental problem, but as I say, it turns upon this question of whether this is properly supplementary planning guidance or whether it is in fact a radical departure from the bridging Island Plan. I hope that is helpful.

**The Bailiff:**

I am not sure - with the greatest thanks to the learned Solicitor General - where that leaves the question that you were asking, Deputy Ward.

**Deputy R.J. Ward:**

If I am completely honest, neither am I. [Laughter] I think some of it does, but thank you, Sir, and thank you, Solicitor General, for that.

**The Bailiff:**

I mean, Mr. Solicitor, is it your advice that it is for the Assembly to determine whether this is supplemental guidance or not? Because supplemental guidance surely is a matter for statutory definition and it is a matter of legal interpretation as to whether the particular document falls within the parameters of the statute.

**The Solicitor General:**

I am happy to be more robust than ...

**The Bailiff:**

It is entirely a matter for you. I cannot tell you how to advise the Assembly, but ...

**The Solicitor General:**

I know. Well, given that supplementary planning guidance is susceptible to challenge by way of judicial review on the basis of the usual test of irrationality, unlawfulness and procedural irregularity, if I were advising a client or the Minister in these circumstances, I would be advising him that I think a court would conclude that this was supplementary planning guidance and that it was not a new policy.

**Deputy M. Tadier:**

What if the Solicitor General was not advising the Minister but advising Deputy Scott as a Back-Bencher?

**The Bailiff:**

I think the answer to that will be the advice is the advice. I think it was a form of words. Yes, Deputy Scott.

**Deputy M.R. Scott:**

May I just make the point that if this were an application for judicial review that 2 sides of the case would be heard? I just want to point out that there is a simple question in terms of a policy. Could you do something before that you could not afterwards as a result of the introduction of it? I do believe in this particular case, could I build a house that was more than 3,000 feet or not as a result of this particular supplementary planning guidance, which has been described as an interim policy? While I very much respect the fact that the Solicitor General has very much considered this matter

on their feet, I would respect you to bear this in mind so that the States Assembly can continue to debate this matter.

**The Bailiff:**

Do you have a further question for the Solicitor General? Because the matter of ... the way this Assembly functions is that we do not, we cannot, resolve legal issues here. The Assembly ...

**Deputy M.R. Scott:**

Then I will ask ...

**The Bailiff:**

If you would please let me finish and sit down for the moment, Deputy. The matter is that the only individual who provides legal advice to the Assembly - and it is a matter for the Assembly whether it accepts it or rejects it - but there is no other voice to provide legal advice. That will be one of the law officers; in this case, the Solicitor General. What he says about the legal position is the definitive advice given to the Assembly. Whether Members regard it or disregard it, it is open to any client to accept or disregard legal advice that is given at their own peril.

[15:30]

But there is no other legal argument to be heard and there is no way of determining any other legal argument. Now, is there something that you wish to add in terms of carrying this forward?

**Deputy M.R. Scott:**

May I ask an additional question of the Solicitor General?

**The Bailiff:**

Please do, yes.

**Deputy M.R. Scott:**

The additional question I would like to ask is whether he would agree that there will be a difference in the ability of somebody who wanted to build a building of more than 3,000 feet as a result of the introduction of this supplementary planning guidance that supports the possible interpretation that it therefore should be regarded - or could be regarded - as a change in the content of the Island Plan of sufficient significance to say it could be regarded as a change of policy.

**The Bailiff:**

Is the question that the documentation before us, this particular policy - supplemental guidance, whatever you wish to call it at this point - restricts the ability of an individual to develop and it provides ... sorry, that is the point, does it ...

**Deputy M.R. Scott:**

Yes, that was not there before.

**The Bailiff:**

That was not there before. Would that make it other than supplementary guidance?

**The Solicitor General:**

My advice does not change as to what I think the nature of these documents are, but supplementary planning guidance will usually be a relevant consideration for the decision-maker as to whether or not to grant planning permission. Now, inevitably if there is an express guidance to the effect that properties above a certain size should not be built, that will be a relevant consideration for the decision-maker to have regard to and it is likely, in practice, to make decision-making in respect of

those larger buildings perhaps easier for the decision-maker. It does not follow necessarily that without this supplemental guidance the decision-maker's decision would have been different because each planning matter falls to be considered on its own merits. It is not a black and white exercise. A planning officer has, in the exercise of his discretion, to come to the best decision he can in light of all the circumstances of the particular case, including whatever supplementary planning guidance is in existence.

**Deputy M.R. Scott:**

A supplementary question, Sir.

**The Bailiff:**

Yes.

**Deputy M.R. Scott:**

Does the Solicitor General ... could he please advise the Assembly, in characterising supplementary planning guidance and indeed when one looks at the content of the documents and describes the different forms in which it could take, that it could include policy?

**The Solicitor General:**

That is a hypothetical question. I can only repeat the advice I have given, which is that in my view, the better view is that these documents constitute supplemental planning guidance. I am not sure I can add to what I have advised.

**The Bailiff:**

The consequences, Mr. Solicitor, of it constituting supplemental planning guidance for the purposes of this debate?

**The Solicitor General:**

The consequences of it being supplemental planning guidance in terms of this proposition, it is the one I have said, which is that the proposition, couched as it is, it is saying that the States Assembly ... the prior approval of the States Assembly must be sought before the implementation of what is supplementary planning guidance. It does not accord with the law. Article 6 of the Planning and Building (Jersey) Law gives to the Minister, not to this Assembly, an absolute discretion as to whether or not he will issue supplementary planning guidance. It does not give this Assembly any power to dictate to the Minister that he will or will not do so.

**The Bailiff:**

I am sorry, if Members will forgive me for having an exchange with the learned Solicitor at this point, but I think this may help. It is the case therefore that your advice would be that if it is supplemental planning guidance, and you have advised that in your opinion it is, if the Assembly purported to approve the proposition, it would be approving a proposition that is directly at odds with the statutory provisions under which the supplemental planning guidance was made. Do I characterise your advice correctly?

**The Solicitor General:**

You do indeed. If it simply invited the Minister ...

**The Bailiff:**

Yes, right.

**The Solicitor General:**

... then that would not be objectionable.

**The Bailiff:**

The distinction the learned Solicitor has made - and Members were speaking - the distinction the learned Solicitor has made is that many such propositions, as Members will recall, and certainly those in previous Assemblies, will seek to “invite” or “ask” the Minister to do a particular thing, but do not purport to direct him, but this is mandatory in its form, and mandatory in its form means that he has no discretion about it and it will be directing him to act other than in accordance with the law, is what I understand the learned Solicitor’s advice to be. I hope that clarifies it for Members, but I am only seeking to interpret what I believe I have been told rather than to give original advice. Lots of lights on.

**Deputy S.G. Luce:**

It is a point of order. Given what the Solicitor General has just told us, that we could be acting *ultra vires*, I have been trying to scan Standing Orders, unsuccessfully. But is there a Standing Order that says we cannot pass something, vote on something that is *ultra vires*?

**The Bailiff:**

I think the position is that the Assembly can pass whatever proposition is put before it. The effect of that proposition of course is a different thing. The Assembly is competent to pass any lawful proposition, and by lawful I simply mean that do not go against the Standing Orders and the States of Jersey Law. The consequences, however, may be that they are simply asking the Minister to do something he simply cannot or will not be able to do. That is a possible consequence, but that is outside, I think, the limit of the advice, certainly the limit of what I am able to say as presiding officer.

**Deputy M.R. Scott:**

On the basis of the advice of the Solicitor General, and I apologise to States Members for this, I feel that I need to withdraw the proposition because I cannot ask the Minister to act against the law. That is not reasonable. I accept that perhaps I will need to make another proposition to ask for the law to be changed.

**The Bailiff:**

Deputy, you are entitled to ask the Assembly. As the debate is open, it can only be withdrawn with the agreement of the Assembly, but of course you are entitled entirely to ask it, so I can do this informally, if we do not need to do it formally. Do Members agree that the proposition may be withdrawn? Yes, very well. That seems to *nem con*, Deputy Scott, and accordingly that proposition is withdrawn. The last item of Public Business is the ...

**Deputy P.F.C. Ozouf:**

May I raise a point of order in relation to order?

**The Bailiff:**

Certainly.

**Deputy P.F.C. Ozouf:**

I think this is a genuine point of order. Members of the public and Members will be finding it difficult to work out how we have arrived at a 2-hour discussion on something which was *ultra vires*. I just would ask you to make not a ruling now, but whether or not we can avoid that in future.

**The Bailiff:**

Clearly that must be the case sometimes although, as you will know, Deputy, from your long experience in the Chamber, from time to time points of law come up which makes it clear that there is a difficulty that had not been anticipated by everyone. One assumes that the Minister had taken advice; one assumes that the Deputy had taken advice. Sometimes, however, the right questions are

not always before the Assembly at the right time and this is one such occasion in which clearly a result has come about as a result of a recent understanding of the legal position. Other than ensuring that advice is taken at an earlier stage and that any concern is placed before the law officers so that the Assembly will know in advance what the position of the law officers may be, then I am not sure there is anything that I can reasonably say to encourage a different outcome, but if you think that there may be ... I do not think, in other words, there is a ruling to be made about this. I think it is a matter of process. Certainly in my experience in years gone by, when matters were of some complexity, the law officers were asked to and did file a written opinion before the Assembly so the Assembly had the legal position before it. That may be appropriate in certain circumstances but obviously not for every single proposition. That will be, I think, unreasonable. I am not sure I can assist further, however.

**Deputy P.F.C. Ozouf:**

Obviously I do not want to take up the Assembly's time again, but clearly there is an improvement in processes ...

**The Bailiff:**

Indeed.

**Deputy P.F.C. Ozouf:**

... because it would seem to me to be an open and shut case that this was not lawful.

**The Bailiff:**

Deputy Farnham, did you have a point of order or ...

**Deputy L.J. Farnham:**

It was only to say previously it has not been unusual for Ministers to be requested or the States Assembly to request a Minister to do something that is entirely up to the Minister to do. When that happens, it is normally the Minister takes away a strong steer from the Assembly and acts accordingly. It would have been, in my opinion, for what it is worth, we could have continued with the debate and, whatever the result was, the Minister was still able to carry on his own judgment.

**The Bailiff:**

The matter has been withdrawn and I think it was withdrawn on the basis that the actual terms of the proposition were not to request, but were mandatory "may not do so without" and I think the mandatory nature of that would have taken it outside the example you have brought to the attention of the Assembly.

**6. Draft Sea Fisheries (T.C.A. - Licensing of Fishing Boats) (Amendment of Law and Regulations) (No. 2) (Jersey) Regulations 202- (P.115/2022)**

**The Bailiff:**

The next and final item is the Draft Sea Fisheries (T.C.A. - Licensing of Fishing Boats) (Amendment of Law and Regulations) (No. 2) (Jersey) Regulations, P.115/2022, lodged by the Minister for the Environment. The main respondent is the chair of the Environment, Housing and Infrastructure Scrutiny Panel. I ask the Greffier to read the citation.

**The Greffier of the States:**

Draft Sea Fisheries (T.C.A. - Licensing of Fishing Boats) (Amendment of Law and Regulations) (No. 2) (Jersey) Regulations 202-. The States make these Regulations under Article 2 and 5A of the European Union Legislation (Implementation) (Jersey) Law 2014 and under Article 25 and 26 of the Sea Fisheries (Jersey) Law 1994.

## **6.1 Deputy J. Renouf (The Minister for the Environment):**

Sorry, things have moved a little faster than I expected and I have been searching back through my notes to find the relevant speech, and indeed the right version of the speech, because there are sensitive issues involved in this matter, so I hope I do not cause a major diplomatic incident by blurting out something that I should not. First, I would like to thank the Assembly for shortening the lodging period and allowing this proposition to be debated today. It is greatly appreciated, particularly as this relates to time-sensitive discussions with the E.U. (European Union) and through them with our French friends. I would also like to thank the Environment, Housing and Infrastructure Scrutiny Panel for engaging with the detailed content of this amendment to Regulations and, in particular, for agreeing to meet at short notice on Monday to give me and officers a chance to deal with some of the issues in more detail. Members will see that I circulated a policy document to accompany the proposition. I apologise for the very late nature of that. It followed those discussions with Scrutiny on Monday and it was felt by Scrutiny and by me that it would be helpful in the light of those discussions for that document to be scrutinised. I will refer to it later when I talk about this matter. The reason why all these documents are late is because we are engaged in a careful choreography here. Discussions are still ongoing with the E.U. about various matters to do with fishing and the exact policies have not yet been agreed. In circulating the policy document that I have, I am circulating policy that is not finalised, but we have considered this matter and decided that it is sufficiently well-advanced and has not changed much in the last week or 2 and therefore is probably a good basis on which Members can judge the kind of policy framework I would be using in deciding replacement vessels. Let me, if I may, talk in a little more length about what it is I am asking from the Assembly. Although short in length, the amendment is an important - indeed, critical - part of the overall implementation of the Trade and Co-operation Agreement. I am sure Members of the Assembly will be aware that since the decision of the States to adopt P.170/2020 in relation to the U.K.-E.U. T.C.A. (Trade and Co-operation Agreement) there have been lengthy, complicated and sometimes difficult discussions around implementing that agreement with respect to fishing opportunities. This is what is known as the extent and nature part of the fishing negotiations. I am pleased to say that those discussions are drawing to a conclusion and we can look forward to managing the stocks in our waters in a more systematic and thorough way than has been possible in the past, but also so as to provide some certainty and clarity to the fishing industry. The amendment to Regulations before the Assembly today is a necessary step towards achieving this, but first let me step back and set the context.

[15:45]

The T.C.A states: "Each party shall grant vessels of the other party access to fish in its water, reflecting the actual extent and nature of fishing activity that it can be demonstrated was carrying out during the period beginning on 1st February 2017 and ending on 31st January 2020 by qualifying vessels of the other party in the waters and under any treaty arrangements that existed on 31st January 2020." So there is a reference period and we have to allow access to our waters to match the fishing efforts that were undertaken during that reference period. In order to do this, amendment to the Sea Fisheries (Jersey) Law 1994 and Sea Fisheries (Licensing of Fishing Boats) (Jersey) Regulations 2003 were brought forward by the previous Minister for the Environment and passed by the Assembly on 23rd April 2021. As a result of that, the number of qualifying vessels, both those French vessels that demonstrated they could fish in Jersey waters and Jersey vessels that demonstrated fishing in French waters, has been determined and there are 136 French vessels with full licences to fish in our waters. You have got some more details on that in the document that I submitted or sent around earlier. So we have done licensing. Now we are in the second phase of discussions, with discussions related to the extent and nature part of the T.C.A. As I say, these are now in their very final stages. This too has been a complicated process with discussions, both administrative and political, occurring locally, regionally and with representatives from the U.K., France and the European Commission. I would like to acknowledge with gratitude the work undertaken by Marine

Resources officers, supported by colleagues in External Relations and the Law Officers' Department in completing this task. The proposed amendment deals with one facet of the extent and nature process, that of replacement vessels. I am going to use R.V.s (replacement vessels), if people do not mind, just to avoid repeating the same phrase over again. Jersey's current R.V. process, as set out in the 1994 law, allows the Minister to licence a R.V., which in that law is known as a substitute vessel, only where certain conditions are met relating to fishing type and characteristics of the vessel. The vessel must employ the same fishing method, known as *métier*, and be no greater in length, breadth, tonnage and power than the vessel it is replacing. That is the current situation and it is this that I am seeking to amend. The reason for that is this causes a problem. The T.C.A requires Jersey to maintain access to its waters by French vessels at a level fixed against that historical track record period that I mentioned earlier. To achieve this will require some flexibility to be considered as part of any R.V. scheme. This is down to practical realities. Consider this example: if you require a R.V. to be no greater in 4 different characteristics, length, breadth, tonnage and power, the practical reality is that it is impossible to buy a new boat that hits all 4 characteristics exactly. You are just not going to find one off the peg that fits those 4 things exactly. Since no characteristic can exceed that of the old vessel, the reality is that some of those characteristics of the new R.V. will be lower. That means that cumulatively over time the size and power of the French fleet would reduce. That risks breaching the terms of the T.C.A., where we have to allow the French to maintain access with the same characteristics as they had during the reference period. The amendments which would be made by the draft Regulations in this proposition would give the Minister a degree of discretion in determining the issuing of a licence for a R.V., but the discretion must be based on the policy determined by the Minister to give clarity to industry, to our foreign friends and to administrators. The issue here is discretion. Members may rightly ask: "What is the policy on which this discretion based? Are we not just giving the Minister a blank cheque?" That is why I circulated the draft policy, which I will explain in a bit more detail in a moment. As I said earlier, there is still a small chance that it will change, but the details seem to be pretty settled now. I think it is very important, first of all, to highlight what this proposition does not do. It does not allow for a vessel to increase what, when and how it can fish in our waters. I know this issue has been raised by members of the industry and I can assure the Assembly that I have considered this matter at length. Regardless of size, the fishing effort expended by a vessel, as well as the gear, the *métier* it may use and the species it may target is set out in the extent and nature aspect of the T.C.A. The issue of R.V.s that is under consideration here deals with just this and not with other issues. It is important that I am clear and transparent in what I might mean by a degree of discretion when determining a licence for a R.V. As noted, I only have discretion within the guidelines of the policy and a critical aspect of the policy is that it establishes a global ceiling for tonnage and energy power. The maximum capacity of the French fleet when you add up all the boats may not exceed this ceiling. This means that an increase in capacity by one vessel can only be accommodated if there is a similar reduction made to other vessels, but that is not all. Even within the global limit, the upper ceiling, if you like, there is a further restriction. The policy limits any increase in engine power and tonnage for vessels over 12 metres in length to a maximum of 10 and 20 per cent respectively. The rules are slightly different for vessels under 12 metres, which must have a replacement that stays shorter than 12 metres and an engine power that is below 221 kilowatts. These restrict the degree to which any one R.V. may increase over its predecessor. I have agreed to consider as exceptional cases those vessels demonstrably replaced or commissioned, if properly evidenced, between February 2000 and December 2020. This is to accommodate R.V. decisions that were made before the T.C.A came into effect on 1st January 2021. These vessels, which are very few in number - we think literally 2 or 3 at the moment - may benefit from increases in engine power and tonnage of up to 40 per cent and 70 per cent. However, a crucial factor is that when this R.V. itself comes up for renewal at some point in the future, it will be judged against the donor vessel, the original vessel, not the larger vessel. How does this all come together? Could it lead to an increase in the capacity of the French fleet, perhaps to the disadvantage of our own fishing fleet? Let us look at an example. The owner of a boat of 13 metres, a French trawlerman,

let us say, wishes to replace his or her boat with one that is larger. Because it is over 12 metres in length, it will be bound by the part of the policy that says a new vessel will not be able to increase its engine power by more than 10 per cent or its gross tonnage by more than 20 per cent but, in addition to that, we have to consider the global limits, the total ceiling on tonnage and power. So the French fleets will have to find room within their global tonnage and horsepower limits to make way for the new replacement. They could do this by handing back the licence of a different boat or there might be headroom if a different owner has applied in the past for a replacement vessel that is smaller than the donor boat. Either way, the total tonnage and power of the French fleet cannot increase. I want to make one other thing clear. The proposition allows me by Ministerial Decision to vary the policy should it become necessary. That may make it sound as if I could turnaround and abandon all these safeguards. Not so. First, this R.V. policy is part of an ecosystem of similar R.V. policies agreed by Guernsey, the U.K. and also with the E.U. It is in fact going to be, in large measure, reciprocal so it will apply to our boats fishing in French waters as well. It is not realistically possible for a Minister to go rogue on this. Secondly, I am very happy to give a commitment here that I would not make any changes to the replacement vessel policy without first taking them to Scrutiny and consulting over them. There might be those who would fear that these changes to the R.V. policy would still lead to an increase in fishing effort. After all, fewer bigger boats are more efficient. They could catch more fish. That is where we have to bring back into the picture the extent and nature of discussions that I mentioned right at the beginning. If you recall, the extent and nature of discussions placed limits on what the French fleet can catch. Again, the key is the reference period from 2017 to 2020. These limits are controlled by permits which we issue. They are complicated, they are different for different boats for different types of fishing for different sized boats and for the area in which the boats are fishing. The overall headline is that those permits fix the total effort. This is the critical point. The combined effect of the R.V. policy and extent and nature is to break the link between the size and power of a vessel on the one hand and fishing effort on the other. In colloquial terms, it does not matter anymore how big a replacement vessel is. It still will not be able to catch more fish. Now perhaps Members can see the importance of timing and why this is coming to the Assembly now. The E.U. side has wanted us to change the R.V. policy for some time. They have around half a dozen fishers I believe already who, for entirely legitimate reasons, wish to replace old boats and, again, for very legitimate reasons, they would like them either to have a bit more power or be a bit bigger. We have not wanted to change our R.V. policy until we had extent and nature agreed. That way, we knew that slightly larger boats would not be a problem because we had control of our stocks through extent and nature but not unreasonably, the French are now saying: "We are pretty well done with extent and nature. Now where is the replacement vessel policy?" They have been waiting for this change for some time. In fact, before Christmas, I turned down an application for a replacement vessel that would have fitted into this policy because we had not yet agreed and got to the position where I felt comfortable that we could do that. I think that it would be a good message to send to our French partners that we are serious about meeting our side of the bargain. This is why it is all coming together at the last minute. The choreography is important. So, in summary, the Minister's discretion is clearly set out in the policy enabling industry and administrations to understand and accommodate the flexibility offered in respect of replacement vessels. I have spent rather a long time going through the details and you have listened to me rather a lot today. I hope I have managed to set Members' minds at rest without sending them to sleep and I would urge Members, please, to support this proposition to amend the Regulations.

#### **The Bailiff:**

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

#### **6.1.1 Deputy S.G. Luce:**

I would like to start right at the outset thanking the Minister for his speech in the opening of this debate. I was not quite sure, like he said at the beginning, how much he was going to be able to tell

the Assembly but, for my mind and I am sure my panel's mind, he has certainly been very comprehensive in what he has told the Assembly today. I hope Members have been able to follow him and understand that because fishing is the most complicated subject I have ever come across. Historically, when I was involved with it, I found it took a huge amount of time and effort to understand the negotiations between not just the French but the Norman and Breton fishermen, negotiations with Guernsey, with the U.K., with the European Union and then negotiations inside the Island with inshore and offshore fishermen and fishermen that fished for different species and with different methods. Then came Brexit and then we all knew the decision that was taken and the negotiations that went about to come up with the T.C.A. which really went on to the 59th second of the 23rd hour and it was only at the very last minute that we knew what was happening on the paperwork. It has been a bit like this with this policy. As Members will know, the Minister lodged the proposition in front of us today on 15th December. That is not very many days ago and within a week, my Environment Scrutiny Panel were meeting with the officers and the Minister to discuss that.

[16:00]

I am going to shorten my speech considerably because he has said a lot of the things I wanted to. If Members have read the over 2,500 pages of the T.C.A., they will know on page 623, Article 502, it states exactly what the Minister said, which was that we must allow the same amount of access for others to fish in our waters reflecting the nature and extent of those boats and the effort they did within that reference period that the Minister spoke about. So, as I said, the panel met first with the Minister on 21st December and we were told, among other things, about the replacement vessel policy, the one that exists at the moment, and as the Minister outlined, why it has been deemed to be too restrictive and needs to be changed. We spoke about the new policy, which I am glad Members have now had a chance to see because the Minister circulated it and we spoke about the fact that replacement vessel policy, as the Minister has said, is going to be very similar in France, the E.U., U.K. and Guernsey. That is important because many of these boats do not fish exclusively in our waters but travel further afield. We spoke about licences and permits and the importance, again as the Minister said, of these permits which will limit the amount of tonnage of a particular species any boat can catch regardless of its size. We were told that what constitutes a day at sea was still to be defined and we were told about satellite tracking of vessels and that every boat over 12 metres had to have a system fitted to it by 1st July last year in order that the Marine Resources Department can track where it was. There was a lot more as well. We know that licences have been issued and need to be reissued and we know, as the Minister said, that permits certainly need to be issued and many people are waiting for that to happen. We know that a small number, admittedly, of French replacement vessels are seeking an approval in order that they can come into the French fleet and there is a lot of pressure on all sides to move forward here. My panel realises the importance of this relatively small piece of legislation and we realise how vital it is to keep moving forward with this and that it would be undesirable in the extreme for this Assembly to vote against it at this stage. However, we do feel that more information needs to be put into the public domain. I am grateful for everything the Minister has told us today but there are still a few small questions that we, as a panel, would like to ask. The balance of what I am saying here, I think, is that after we have approved the principles which I very, very much hope we are going to do, my panel will call this in if only to the next sitting because we promised to move this forward just as quickly as we can. That will only add a single week to the desired date of 1st February but, hopefully, in calling it in, we can have a very short time to deliver the additional information that we feel States Members and the public should have and at that time at the next sitting, we can move forward. So I will leave it there and allow others to speak on the principles. Thank you.

### **6.1.2 Deputy M.R. Scott:**

I would very much like to thank the Minister for the Environment for the work he has done so far on the Regulations and the policy that supports it and indeed thank the Minister for External Relations and Financial Services for calling me at ... well, perhaps I do not quite thank him, as much as I can, for calling me at 8.30 quite late the other night just to try and allay some of my concerns about it. I also want to thank the Environment, Housing and Infrastructure Scrutiny Panel for looking at this issue in such depth in a very tight timeframe. I respect the decision they are taking because I certainly have not quite got my head around it. We have been talking about following the letter of the law and I have been hearing about the letter of the law when it comes to the T.C.A. Regulations about replacement vessels but I am also hearing about a policy that allows larger vessels to some extent within a certain percentage to replace some of these boats in the fishing fleet and with some sort of reference to technology bearing in mind that, generally, as we progress towards the future, we tend to find that technology helps smaller vessels become more and more powerful and efficient, these sort of smaller things, and being very mindful of the way in which catch is perhaps monitored. So I thank my members on the Environment, Housing and Infrastructure Scrutiny Panel for endeavouring to get to the bottom of this.

### **6.1.3 Deputy P.F.C. Ozouf:**

First of all, I would like to also add to the Minister for the Environment's thanks to the Assembly for its permission for what is a shortened lodging period in debating this matter today. The Minister has explained in a way that I certainly could not the complexity of the licence arrangement and fishing, and Deputy Luce will remember when I discharged Environmental and Public Services I found it pretty difficult to understand fishing matters. As Minister for External Relations and Financial Services, I have been working for Jersey for the Minister for the Environment in the negotiations in relation to the issuing of the licences and permits that the Minister did not - I do not think but he may in his concluding remarks - explain clearly expire on 31st January. In other words, in a couple of weeks' time. So access for Jersey fishermen in our waters with licences and permits expires unless the Minister does something to extend those licences. There has been a huge amount of debate which has had to be choreographed and brilliantly choreographed by the Minister's Sea Department assisted by External Relations with D.E.F.R.A. (Department for Environment, Food and Rural Affairs) and with Brussels. Members will know that I met personally and have had 2 online calls and letter exchanges just yesterday with Commissioner Sinkevičius in Brussels and I also met the French Secretary of State for the Sea in Paris just before Christmas. There has been a lot of to and fro on whether or not boats qualify within the period that the T.C.A. agrees. In other words, can they prove to have fished in waters and therefore it gives them the right to have a licence? Without going into an awful lot of detail, there has been a lot of discussion with these parties where, obviously, the French fishers want to have as much ability to fish in our valuable waters as possible. By right, as the Minister and Deputy Luce have said, they have to prove that effort by virtue of being able to prove either by satellite ... there is something called Ping which I tried to get my head around in terms of 2 reference points whether or not they have fished in Jersey waters in the relevant period in order to get a licence. Those discussions and negotiations have been very difficult in which French fishers are applying to the Minister in Jersey for a right to fish in our waters. I can say to Members that we are now hopefully and finally at a conclusion for the issuing of those licences and permits. Those licences and permits, as the Minister has explained and Deputy Luce has also confirmed, are the effect of effectuating the policy that was set out in the T.C.A. and what we are talking about here is the legal ability for the Minister to allow replacement vessels. The previous debate was talking about a legal ability for planning matters and then a policy. The policy is a matter for the Minister and I do not want to play any political overstatements but it is, from an External Relations point of view, absolutely vital that the Minister for the Environment can issue licences and permits by 31st January and that French fishers have the confidence that those licences are going to be able to be continued to access Jersey waters. That does mean that some of those licences are going to apply for

replacement vessels, et cetera. I know that there has been some lobbying of Members by fishers in Jersey and others that are suggesting that this means effectively an open door. The Minister has explained it quite clearly and the Minister has been absolutely clear, and he is a Minister in touch with his brief, and I have been trying to explain the high-level issues and make sure that the effect to the parties ... and I do not want to go into the detail which the Minister has. I would say to the Assembly that there was a very, very serious reason why the Minister and the Council of Ministers wanted this legislation passed by the Assembly today. It is the legal ability to grant a replacement vessel. We are only dealing with the principles but if we went on to the Articles, we would then go on to examine what effectively is a replication of T.C.A. and there are all sorts of legal provisions in there which replicate what is in the T.C.A., et cetera. It is quite restricted and it is discretionary under the policy which the Minister has also circulated to States Members. I would be concerned as this Assembly's Minister for External Relations and Financial Services if we did not complete the legislative process for granting the Minister the licensing ability before the end of January. I understand why a number of Members are concerned about whether or not they should be scrutinising the Regulations and I would ask the Minister in his summing-up ... because this debate is going to be halted and we are not going to get to the Regulations because Scrutiny have said they are going to call it in, which is their right and I completely respect the democratic right of the Scrutiny Panel to do so. As Minister for External Relations and Financial Services, I would have to say that I do not quite understand whether or not it is the policy which is the discretionary part ... and Members have learnt a lot about policy this afternoon because of the debate we have had previously about policy versus law in the Island Plan debate. The Scrutiny Panel, it seems to me - and I say this incredibly respectfully - want, quite rightly, to understand the way that the law which could be passed today and the Regulations are then going to be put into policy effect by the Minister. There has only been the Minister and the chairman of the Scrutiny Panel speaking and I would just invite the Minister and any other members of the panel to consider very carefully whether they are wanting to scrutinise the policy which is the addendum which has been provided by the Minister, which can only take effect when the legal provisions are there, or whether or not it is the Regulations themselves which are effectively mandatory because they are lifted from the T.C.A. I am trying to explain something very complicated in most simplistic language because there is a 3-stage process. There are the principles of a law, then there are the Regulations which set out some more detail and then there is how you implement it, which is the policy. The policy is the Ministerial Decision that the Minister will make under Ministerial powers, and he has accepted that he is prepared to not only publish the plan and use that plan but then bring that matter to Scrutiny if he wants to change it. I completely have confidence in the Sea Fisheries Department and the External Relations team and the incredibly difficult negotiations that have been underway.

[16:15]

I recall to Members the last time we were unable to sort out fishing licences. Members will recall what happened and I am not suggesting at all that this will happen again, but I want this Assembly or I invite this Assembly to give certainty and confidence about the Jersey position and this Assembly's position about implementing the T.C.A. and the consequences of issuing French fishers in Jersey waters. At the same time, it should be said that we should also think about local fishers, and I was very pleased that the Minister for Economic Development, Tourism, Sport and Culture indicated the importance of local fishers because this law is mainly going to be used and we are talking about recording the issuing of licences of French vessels in our waters. So I am sorry to take the Assembly's time but I do wish to raise very, very seriously and respectfully the issue of a legislative arrangement and a law that allows the Minister to do something, how he wishes to implement it and invite the Scrutiny Panel to consider whether they wish to take the undertaking of the Minister about the policy, which is the addendum to the report, or whether or not it is the Regulations themselves. I think the Regulations, as far as I have understood them, are basically what they are; they are mandatory and it is not really subject to furthermore discussion and could not be

changed. It is a policy which is under debate which some people have been concerned about. I have a 10-minute limit, is it not, for speeches?

**The Bailiff:**

Fifteen.

**Deputy P.F.C. Ozouf:**

Fifteen. I have tried to speak for just 10 minutes and I am taking the time of the Assembly because the Minister for the Environment and I work together on what is an incredibly difficult area and which is a very complex area and getting it wrong has big implications for reputation. I can say to the Assembly the reputation of Jersey, the standing of Jersey as being a trusted, proper jurisdiction that respects its obligations under the law is good because of the interactions we have had at national level. I do not think any Members of this Assembly have met before a Minister of State in France in their office. I met 2 just before Christmas. The Secretary of State for Europe and the new Minister for the Sea and I am expressing to them that we will do the right thing and we are a responsible jurisdiction that will abide by the T.C.A. provisions. Moreover, I am also not afraid to tell them what I expect them to do in return, and that is why I have been absolutely clear that, as far as our local fishermen are concerned, I am not happy and this Island is not happy about the port closing times that we have experienced which prevented our Jersey fishermen - which is not the subject of this debate but is tangential in the general negotiations of diplomacy - being able to land their catch in Normandy and Granville. There are other issues of administrative arrangements that I will not talk about because it is not this subject but it is tangential. I am engaged carefully with the Minister and the Minister for Economic Development, Tourism, Sport and Culture and other Ministers as well in careful negotiations in diplomacy in getting what we want from our French counterparts for our Island community. I encourage this Assembly, subject to democratic processes and all the rest of it, to ensure that I can go out from this Assembly with the support and endorsement of the Assembly to continue to ensure that we get from our French neighbours what we need, and that does mean making decisions properly within law and within timeframes. Members know that negotiations about things to do with Europe go to the wire and it is true that the discussions which underline the Minister's requirement to have this replacement vessel vote is going up to the wire. I had an email only yesterday from Brussels about some of the detailed and complex natures of the proofing of the fishing at sea and I cannot say certainly but I can say that Jersey is well-advanced of being able to solve it once and for all. That means that the Minister has done the right thing to protect access for French fishermen in Jersey waters. That means giving them what they can prove has been done before and that they can continue on, which is the legal obligation of the T.C.A. So the Minister for External Relations and Financial Services says to the Assembly very politely: "Please can we continue with the legislation which gives the Minister the right for replacement vessels so he can issue those licences by 31st January with the ability to get replacement vessels for those licences?" If we do not do that, I think there is a risk, unless we have to go back and explain why we have not done the legal rights to have replacement vessels which was in the T.C.A. I am not going to criticise the last Government. I am not going to criticise anybody at all but we are where we are. We did not have it, we should have had it, we need it and I need the Minister, for my own negotiations with France, to be able to issue licences and get this over and done with so we can get on and then say: "Look, we have done that. Now we want this." There are things wrong from France and I want a better deal for our fishermen in Granville, in St. Malo and in lots of other areas. I am not going to speak anymore because time is running out. I do not really want to spend a long time on speeches but I really urge the Assembly to consider the difference between scrutiny of legislation and policy.

**The Bailiff:**

I am afraid your time is up. Thank you very much.

#### **6.1.4 Deputy P.M. Bailhache:**

One of the few advantages to my mind of acceding to the Trade and Co-operation Agreement was the change that it brought about by allowing Jersey or the Minister for the Environment specifically to regulate fishing in our own territorial sea. That was a significant and major change and it seems to me that it ought to be reflected in the legislation and I was puzzled to look at the amendment to Article 7(2)(j) in this law which states that: "Regulations may provide that a person or authority who may grant a licence under this law must do so only ..." and then it sets out the provisions. My question for the Minister is why does this not say "The Minister"? Is there anybody else who can issue a licence under this law and, if so, who is it? If the Minister's answer to that question is in the negative, there is nobody else and it is the Minister, I hope that, particularly if it is going to be called in by Scrutiny, there might be time to give some consideration as to whether this minor change might be made to the drafting to make it clear on the face of the law that Jersey regulates its own territorial sea and the Minister has this responsibility.

#### **6.1.5 Deputy C.D. Curtis of St. Helier Central:**

During the election period I met with the chair of the Jersey Fishermen's Association because I believe in our traditional industries and we have since consulted with them on this matter. They do not agree to these Regulations as they are currently worded. They are the experts on fishing. It is vital for our fishing industry and for our food security, and for environmental sustainability that the replacement vessel scheme does not allow for larger replacement vessels. High impact, powerful foreign vessels licensed by Jersey force our small scale boats out of traditional areas to compete with much bigger foreign vessels. I urge Members to properly consider our own Jersey fishermen and to remember that we are their representatives in Government. I am pleased to hear this is being called in by Scrutiny for further consideration.

#### **6.1.6 Deputy C.F. Labey of Grouville and St. Martin:**

I realise that it has required huge amounts of diplomacy to get to this stage and it is still a very delicate situation, and there are still some issues to resolve, not least for our own fishermen. I would just like to make the point - and as Scrutiny has called it in it seems like an opportune time to raise this issue - and that is about the scope, what scope we have to restrict the size of vessels in our waters. Now, the Minister sent around a very helpful note to say there were 29 vessels over 12 metres, French vessels that have been licensed. So there are 29 French vessels in our waters. I believe, very sadly, that there is now only one Jersey vessel whose size is over 12 metres in our waters. I happen to know that fisherman and I know that he would consider being brought out if it came to that. I would like Scrutiny and the Minister to have a look at this issue. If we restricted our own fleet to 12 metres and under, if we could then say that our fishing ground is for vessels under 12 metres and that would restrict the 29 French vessels over 12 metres because it does concern me if they are doing environmental damage. It does concern me that there are issues with our own fishermen and I would like some assurance that our waters are being protected to the full extent for our own fishermen and environmental grounds. So I welcome the Minister's comments on this but I would really like Scrutiny to have a look at this particular issue.

#### **6.1.7 Deputy M. Tadier:**

It is a shame that Deputy Ozouf had to finish at 15 minutes and 5 seconds, and I have also said that the time limit is undemocratic because I am sure he had much more to say that was more interesting. In fact he might have started to say something which I think would have informed me about why we might want to vote for this today or to object to the pulling in of Scrutiny. What I heard though is what I think was a lot of talk about the general post-Brexit negotiations, our general relations with Europe and a lot of the Secretaries of State that the Minister has met. It is in stark contrast to the meeting we had with the head of the Jersey Fishermen's Association, I think it is called, or the Jersey Fishers' Association, which I thank Deputy Curtis for arranging for us. As she said, she has been in

long correspondence with them from the election up until now to listen to what they have to say, to understand it. I think as Deputy Luce quite rightly said, none of us necessarily professed to be experts in this area so it is important to listen to those who have experience, not at the coalface but at the seafront in that respect. The first thing is I think we need a reality check. We hear expressions saying that we have now more control of our own waters and that this law is giving the Minister more power to basically control and regulate fishing in our waters. More control than what? Because, as we know, we had a very good agreement called the Bay of Granville Agreement, which was negotiated directly effectively between Jersey, with co-ordination from Guernsey, and our French counterparts. That was seen as working very well. We know that has changed. It has to be said that ironically post-Brexit ... Brexit was supposed to be about taking back control, we did not have a say in it of course, we are innocent bystanders, if we can call it that, and also I think it was sold to the fishermen and fishers about taking control of the water. We find ourselves in the opposite position where actually we do not have control of our waters anymore because the theory is, I would say, potentially very different from the reality. There are those in some quarters who believe that actually Ministers locally will simply acquiesce to whatever they are asked for.

[16:30]

Whether it is by ... in some cases, in different areas by the British Government or by the French in this case. I think there are serious questions that need to be asked. I was alarmed by a couple of things. First of all, we do have a parliamentary process that should be respected and it is there for good reason. The first thing is that this lodging time has already been reduced so that we can debate this today. If the Minister for External Relations and Financial Services is concerned about sending the wrong message out to the French, for example, he does not need to, he and his Government have already done something which is cutting corners on the parliamentary process to make sure that this can be debated earlier than it should have been. Secondly, is that Ministers should presume that all legislation that they bring to the Assembly will be called in. We have first, second and third readings for a reason and it is far too often that those happen all at the same sitting within a space of an hour - sometimes within the space of minutes - without necessarily a recorded vote, let alone a debate. Some of these are done on a standing vote. So when a Scrutiny Panel - and I think they have been very diplomatic and measured so far in what they have said - say we would like to bring this in for some scrutiny so that we know more about the policy that is behind it, so that we can perhaps measure and test what we have been told by Ministers against the policy line by line, and also what we have been told by local fishers who are at that seafront dealing with this. That they can come back in short order and I think that has to be respected. I would simply say to the Minister, I think he has done what he is required to be doing. I was also slightly alarmed by the word - did anyone else pick up on it - "choreography" from the Minister for the Environment. He said that the choreography here is very important. I am not quite sure what that means. Are we here to pass robust and well thought-out legislation or are we here to perform a piece of theatre, presumably for the benefit of the French authorities who might be listening to what we are doing. This is not a pantomime, if we are going to talk about choreography, this is about real politics and what we are passing, making sure it is fit for purpose. Speaking personally here, we know that we have to always balance 2 things; I think, fundamentally it is fish stocks. That is what this all boils down to. Now, many scientists believe that if we carry on globally as we are, in 25 years there may not be any meaningful amounts of fish in the sea. Both in terms of ecology but also in terms of economy. That is a very serious position to be in. Why is it then we have a piece of legislation here which allows the largest vessels to increase by 10 per cent? There is a presumption that ... who has the largest vessels that fish in our waters. Is it the Jersey Fishers? Is it the Jersey vessels or is it the non-Jersey vessels? Apart from one exception, which we have been told about ... I think personally we need to be moving away from large vessels, we need to be moving away from trawlers, we need to be moving away from any kind of vessel which can put perhaps miles and miles of nets out and leave them there for days on end, which I have been told could even take a week to get them all back in, whether they are catching spider crab or whatever.

This is not a sustainable *métier* that we should be promoting. *Métier* is a good French word I think in this case. If we carry on like this it is not good for the planet, it is not good for the oceans. Secondly, we then need to balance that against who gets the benefit, *cui bono*. Who gets the best side of this deal? It is not the Jersey fishing fleet, it is potentially the French fishing fleet. Let us look at it. A large trawler which maybe operates in the North Sea might be capped at 2,000 horsepower. Some of the vessels we get in our waters from the French side, and possibly one of the Jersey ones, might be in the region of 1,000, 1,500 horse power, which is big. Now, if you increase a vessel which is 12 metres more in terms of its horsepower by 10 per cent, say if it is 1,500 horsepower, you are putting an extra 150 horsepower on top of that. Well that increase is perhaps bigger than one boat that goes out and does more sustainable fishing in local waters already. Who is going to win? This idea that having bigger boats does not automatically mean that more fish will be caught, I think is not credible. The whole point of having a bigger vessel and applying to upgrade your vessel is because you can catch more fish. There is a paradox that the bigger the vessel you have, the higher your running costs so it becomes cyclical. You have to spend more time at sea, you have to employ more staff and you have to ultimately catch more fish, which other fishers are not going to be catching themselves. It leads, ironically, to a surplus in stock, which then drives down fish prices and it does not help anyone in the long term, and it certainly depletes fish stocks. That in itself I think is a good reason that these things can be looked at in the round and why I welcome the Scrutiny Panel calling this in. Personally I do not know if one session is enough for the adequate scrutiny that needs to be done into these issues being brought forward but they have told us that there is sufficient time and so I do not need to make the case for that, because they are allowed to do that. We certainly should not be morally judging them or putting pressure on the Scrutiny Panel to do the work that they should be doing. They would be remiss if they were not doing that work. As it stands, I do remain openminded, I do appreciate this is a nuanced negotiation, I do accept that at the same time we have always had to respect the historical rights of French fishers who have operated in our Island. I also accept that a lot of the licences that are currently being issued may not be being used and they may never be used, it is simply something for potential vessels. But I do think there are lots of gnarly issues, if you like, that need to be resolved and looked at by the Scrutiny Panel. I think what the fishers have been telling us themselves, I do not think we should be dismissing so quickly in this.

#### **6.1.8 The Connétable of St. Brelade:**

I would first of all say that our duty as scrutineers is to our own Jersey fishing fleet and that has to be our primary concern and that is the reason why we are considering taking the proposition in. I would also say that one of the reasons I think we have to ... and I am very grateful for the Minister and his team for the comprehensive presentation to us but we have not taken the Jersey fishing fleet with us. We have not taken fishermen, fisherwomen with us at all. This is the problem, as I see it, which needs to be resolved. We have to look after our fleet and do what we can to help them. It has been decimated since Brexit and we have to reverse that direction of travel. I am fully versed with the needs and requirements for replacement vessels. I have been in the marine industry all my life and there will be variations needed. There will be increased sizes due to availability of boats, of moulds and so on and so forth, engines, and there has to be a bit of accommodation for that. The framework put forward is probably where that will have to go. That said, there has been no mention in the debate, and I do not think the Minister alluded to it at this point, the fact that it is the permits that will regulate the amount of fish caught, and that is an extremely important point. It may be down to the mechanisms of how this is being dealt with. What one is feeling is that there is a question mark over the adherence of French fishermen to the proposed permits which are not in place yet. Now, we understand there will be significant technology available to our team at Marine Resources to be able to monitor this. We are not really confident that the French will adhere and I think we need to have some words of confidence. I look to the Minister for External Relations and Financial Services to pick up that point. We need confidence that those permits will be adhered to because

without them our fleet is dead, quite frankly. The figure of 1.3 tonnes of scallops a day is really quite pertinent. At the moment that is not really being measured anywhere. We are certainly not measuring it here and we do not really want to lose track. So it is an exchange. The agreement for the replacement vessel policy has to be exchanged fairly with this permit allocation, and I think that is probably where we need to go. But as scrutineers we will be looking to try and take the fishing industry with us as best we can.

#### **6.1.9 Deputy K.F. Morel:**

Deputy Tadier in his speech said that the Minister, Government, others, people except him, needed a reality check. I put it to the Assembly that the only person here who needs a reality check is Deputy Tadier, because this is not a matter of choice. The Assembly does not have a lot of power in this area and Deputy Tadier knows that. This is entirely a result of the U.K.'s folly with Brexit, the poorly negotiated by the U.K. Trade and Co-operation Agreement with the E.U., which we were then - as many Members who were here in the last Assembly will remember - I was trying to scrutinise on Boxing Day because we got it on Boxing Day, so I started my scrutiny immediately at home without any resources because that is all there was, going through everything that I could as quickly as possible as chair of the Economic and International Affairs Scrutiny Panel. That agreement - incredibly poorly negotiated by the U.K. - which is causing problems in Northern Ireland, it is causing problems in Jersey, it is causing problems everywhere; it is that agreement which is tying the hands of the Minister for the Environment and the Minister for External Relations and Financial Services and ultimately this Assembly. The chair of the Jersey Fishermen's Association can want all he wants. I do still remember him saying that he supported Brexit. Well, unfortunately this is the result of Brexit. The Trade and Co-operation Agreement with the E.U. basically states that we have to maintain the same levels of fishing by the French in our waters as happened before the U.K. left the E.U. That means we have to let them into our waters. There is no question; we cannot as an Assembly change that. We can rail against it, we can listen to the chair of the Fishermen's Association telling us how much he does not like it. Well that is the Brexit that he supported. That is the Brexit that he wanted. It took control away from us in so many ways. We had the Bay of Granville Agreement which, if I am correct, Deputy Tadier, did not involve Guernsey, it was just Jersey as a tripartite agreement between Jersey, the U.K. and France, not Guernsey. That was imperfect, and I know Deputy Bailhache is very aware of its imperfections, but it was something to work with. It was difficult at the time to work with and that is where the frustration came from the fishing fleet at the time. There were absolutely, as I understand it, speaking to people over the last few years, there was an intransigence on the part of Normandy and Brittany fisheries to adapt to some of the things that Jersey would have liked, and that made it very difficult. But where we have landed, while giving us a semblance of control, has also taken away control from us fully. I entirely respect the right of the chair of the Environment Panel to call in this item. He has been incredibly good in saying that the panel will work on it as quickly as possible and I have no doubt that he understands, having spoken to him many times about the implications of Brexit on fishing and others, he will understand that we are limited in what we can do. So Deputy Catherine Curtis can talk as much as she likes about the things that we should be doing for fishing, but our hands are tied by a poorly negotiated agreement, by a poor decision by the U.K. that is affecting us daily. It affects our fishermen daily, it affects us daily, and there is not a lot we can do about it. I speak passionately because Brexit almost always triggers me and that is just the way I am, I am still not over it, but also because for me the right way for us to deal with this piece of legislation is exactly as Deputy Luce is doing. He has been briefed by the Minister, he and his panel believe they need to do a bit more work on it. They will do their work and they will work with the Minister to ensure that they are happy with where we end up. But as an Assembly we are not able to change this. We could pass a proposition saying Jersey's waters are for Jersey only, we could pass that proposition today; it would mean nothing. It would do nothing because our hands are tied by international law because of that poorly negotiated agreement by the U.K.

[16:45]

So please, as an Assembly, understand this: we do not have a choice in this matter in the way that we would like to think we do. We cannot give the Jersey fishermen everything that they would like because of Brexit, because of the Trade and Co-operation Agreement. Now, we could have decided on those days around Christmas in 2020 not to sign up to the Trade and Co-operation Agreement. That was the only option. We had a choice; we sign this agreement, we do not sign this agreement. We could have chosen not to sign that agreement in which case we would absolutely be able to say Jersey waters are for Jersey boats only, everyone else can go away, no one is allowed in our waters. That would have given us that ability. We did not do that because it would not just have allowed us to restrict Jersey's waters to Jersey fishing, it would also have meant that we would have had customs barriers between us and the U.K. It would have also meant that basically every item coming to Jersey where 98 per cent of our goods come from would have had to be checked and stopped and everything going the opposite direction would have been exactly the same thing. So Jersey's supply lines, which people talk about at the moment a great deal with concern, had we decided not to go down the road of the Trade and Co-operation Agreement Jersey's supply lines would have been ruptured immediately. So when people talk about resilience, that was something the Assembly did in order to ensure the resilience of the Island's basic supplies. One of the costs - there were many costs - was that our hands with regard to fishing were tied. Now, that cannot be changed. We all talked to the chair of the Jersey Fishermen's Association, we all know his views on this matter, but his views are not compatible with the poorly negotiated agreement which we effectively had to sign up to. That is unfortunately the truth. So, yes, please, as an Assembly we must support this proposal because to do otherwise would end up with us being in breach of international law, it would then bring the U.K. looking around wondering what we are doing, that would threaten our autonomy, that would be a serious matter, a much more serious matter than the fishing matter that is before us. Let Scrutiny do its work properly and I have no doubt, because Deputy Luce is aware of these implications, that he and the panel will do it properly. But let us stop pretending that there is another reality in which Jersey can control its waters completely. That reality does not exist. It will only exist if we withdraw from the Trade and Co-operation Agreement with the U.K. That might be something that we would want to do but that would be a very interesting debate that would be, I expect, called in by almost every Scrutiny Panel because we would need to look at that very closely. But that is the only world in which we get full freedom over our seas, and I just hope the Assembly begins to understand that. Thank you.

#### **6.1.10 Deputy R.J. Ward:**

It is good to follow Deputy Morel and his Brexit passions, if I can put it that way, because I agree with him on so many points and the implications of Brexit I think are only just being seen, the reality. Let us talk about reality. I have got to say a few things about what was just said though and, I mean, I am not going to criticise someone being passionate in their views but I do not think the Jersey Fishermen's Association's position is to say Jersey fishermen only in Jersey waters. I do not think they have ever said that. I think their concerns really ... and this is what we are talking about, we are talking about this amendment which is the replacement vessel scheme, and there have been some genuine concerns there. I just go back to what we talked about earlier today and one of the reasons that a proposition was brought to this Assembly was that people believe that on the doorstep they spoke to people who had a concern. Now, we cannot do that in one part of our day and then dismiss the concerns on the later part of our day of the Jersey Fishermen's Association and Jersey fishers on our Island. But we debated it and we listened to it and we went through it and it was very important to do that. To some extent you are right, there is not a lot we can do, we have to give access to our fishing waters to the French fishing fleet. We get that. But the concerns are the process of replacement vessels and I have got to say it has not helped when the Minister for External Relations and Financial Services puts all of this together in one bucket, one net one might say, and says that if we do not do this we will not have any licences and everything will fall in, and we get into this

catastrophe politics again. What it takes is a bit of a calmer head than that. It takes a calmer approach which is what we need, to say that we understand the issues that are being faced but we need to take on board the concerns of the fishing industry if we are going to get them onside because the Jersey fishing industry has seen a decline in those boats that are out fishing. That is the reality, and it has happened since Brexit. The concerns are these, and this is the detail ... and I have got to go back to something that the Minister said - I am trying to be polite but this is a proper debate to some extent, I think - the words were: "Probably a good policy to judge the kind of basis" and those words lack a definite that people are looking for in the fishing industry. The words "probably" and "the kind of basis" and these "seem to be settled", it is that uncertainty that is causing the problem for those who go out and fish every day. For example, with a larger boat, even a slightly larger boat - and I have had an exponential learning curve when it comes to fishing - it does change the time when you can go and fish in rougher waters, so they may be able to access fishing grounds when they could not before. That gradual change over time is the concern that is being expressed to us. It is not about what happens next year even, or the year after when those few boats that are going to have replacement vessels now, it is the implication in 5 years, 10 years, 15 years, will there be a fishing industry still or will we look back on this amendment and say: "Actually we can pinpoint where we allowed this change and then we can pinpoint and track through where we are today, which is effectively not to really have a fishing industry on this Island." That is a genuine question; that is a genuine concern. Do I know the answer to that? Of course I do not know the answer to that, I do not think we do, but that is what needs to be discussed. I think that is why in Scrutiny we want to look again and give that a little more time. The lodging period was reduced, it was lodged for next time so we are not going to be any later than when we started, but we will undertake some looking at this in short order and put the time into that. I have got to say as well there are some other issues that have arisen. I will choose my words carefully in terms of there was an announcement of £300,000 yesterday - just yesterday - for the fishing industry, which is a real coincidence that we are discussing this and this change now. But that comes with a lot of strings attached. Even at that point, speaking to the Jersey fishing industry as we did, there was concern that money is linked to us and sustainability in fishing less and, if you like, having more control over the Jersey fishing fleet. But that is not being seen in the French fishing fleet at the same time where they will keep the same tonnage or that combination of factors, that overall fishing capacity. I think that is the wrong word but I think the Minister knows what I mean. We have spoken about it quite a lot. But at times it will change the nature of that. By changing the nature of that, it could change the nature of that fishing and it could put the Jersey fleet at a huge disadvantage, and that is the question that is causing the concern. If you are certain that that is not going to happen then fine. But if you are not, you need to be very wary of what we are voting on today. Particularly when we are ... if you like, our arm is twisted a little as we go through this debate and of course that is the nature of the debate, you try to convince people. But there are ways to do that, and that is the concerns that come from the debates for me today as well as the Scrutiny Panel, and we have listened to quite a lot about fishing in the last few days. It is quite interesting actually. There was another point as well in terms of the nature of the crewing of the French ships. They have revolving crews which means those vessels are out fishing constantly. Some of that time will not be in our waters, it might be in other waters but they are still equipped to fish at any time in those waters. That is the subtle changes in the nature of the fishing that is undertaken that we need to be wary of. It is that uncertainty that worries me before we ... and the word is not "condemn". That is the wrong word. Before we allow perhaps influence in an industry that has been so paramount to Jersey's identity for so long. They are just words of warning that are in my mind and I think this is the place to have those in this debate. I leave you with that.

**Deputy C.D. Curtis:**

Sir, could I ask a question of the Solicitor General?

**The Bailiff:**

You can, of course. What question do you have?

**Deputy C.D. Curtis:**

I understand of course that Jersey is bound by agreements already made and, just to help the Assembly, I wanted to ask: is it possible for Jersey to have its jurisdiction over particular issues in the Regulations like whether to allow for larger replacement vessels because this is the issue that was brought up by the Jersey Fishermen's Association in this case? Nothing to do with anything else.

**The Solicitor General:**

Forgive me, is the question: can this Assembly legislate to give the Minister power to licence larger vessels than it can at present? Yes, this Assembly is sovereign and can legislate in whatever way it chooses.

**Deputy I.J. Gorst:**

I hesitate to rise on this subject. Perhaps I just caveat the Solicitor General's advice. I am sure as advised to the States he would say providing it was not in breach of our international obligations that we have to balance those 2 things.

**The Solicitor General:**

No, my answer is the same. This Assembly can legislate in the way proposed. If it chooses however to conduct itself in a way that places it arguably in breach of the Trade and Co-operation Agreement then the agreement itself provides a mechanism by which that can be addressed by other parties to the agreement. So in this instance it would be the French. There are a number of steps the French might consider taking if they consider we were in breach. They are in Article 506 of the T.C.A. They include suspending in whole or in part access to its waters by our ships and preferential tariff treatment granted to fishery products under Article 21, so it would involve, given the option at least, of starting a tariff war. There are other sanctions that a party to the agreement could seek to pursue. It is a lengthy process. It is designed, above all, to culminate in a civilised settlement through mediation. But those risks are there if the Assembly legislates in a way that arguably would put us in breach of the agreement. In terms of dealing with such breaches, I understand we would be represented for such purposes by the U.K. pursuant to an agreement and a memorandum of understanding, which I have not seen, but which deals with how that would work in practice.

**6.1.11 Deputy I.J. Gorst:**

We earlier today had some arguments about restorationism and at least one speaker this afternoon has also made an argument about restorationism. I just wanted to provide some background context, as it were, because the Minister for Economic Development, Tourism, Sport and Culture gave a speech with which some of us are familiar on his views about Brexit and the implications of Brexit to the United Kingdom and, by extension, to ourselves. Things have also been suggested about the work of the Minister for the Environment and the Minister for External Relations and Financial Services, and I wish to distance myself from those. I think they are doing an excellent job in unravelling some of the unfinished implication difficulties of implementing the T.C.A. in Jersey.

[17:00]

Deputy Bailhache was right, although others have doubted it. One of the main benefits of the T.C.A. to Jersey was the repatriation of the rights of Jersey to manage its own waters. That may not be accepted by some in our community but it is there in black and white. This Assembly and the Minister is now the licensing authority for Jersey waters. It was never going to be possible, of course, for any Jersey Minister to do anything other than reach agreement around licensing French vessels. It was suggested to me at the time of Brexit that why on earth would we ever want to. French vessels

and Jersey vessels have been fishing in the Bay of Grainville for hundreds and hundreds of years. Those fishers see them as their waters undivided almost. It is a political construct, and it is a construct of sovereignty that says there is this dividing line, these are Jersey waters, these are French waters, these are Guernsey waters, these are U.K. waters. Therefore it was always going to be necessary for Jersey to issue licences to those vessels who could, in this instance, show a historic track record in our waters. Now they have provided evidence to show that historic track record and all of that data the Minister for the Environment now uses to issue licences, but also importantly uses to, as he described, deal with what is technically known as extent and nature but to you and I and the layman could be the overall amount of fish that can be caught in our waters. This idea, the Minister for the Environment used the word “cap”. That is a good way of thinking about it. In some respects, you can have 20 boats that can fish the same cap of fish. Of course it does not work quite like that because each boat has its own extent and nature. Or you could have 150 boats with the same cap. You have the same amount of fish coming out of the water but how they do it is determined by that historic data. The context of Brexit is ... we remind ourselves before Brexit, the Jersey Fishing Association were determined to rip up the Bay of Grainville. The number of previous Ministers for the Environment to whom they had said they wanted to stop the Bay of Grainville Agreement because it was not working in Jersey’s interest goes back beyond this Minister for the Environment and probably the last 2, if not 3 or 4 before that. They had themselves withdrawn from the bodies which the Bay of Grainville Agreement set up to support joint management of waters, and they made the very strongest of representations to say that that agreement was no longer, in their view, working in Jersey’s interest and that it should be ripped up and that French boats ... there should be a new relationship between Jersey and French boats. Brexit in regard to fishing was all about the 2 competing aims. One was the control of water and the other was access to markets. The Jersey fishing fleet started of course to suffer during COVID and then COVID aligned with Brexit meant that they ran into difficulties. But those difficulties are not delivered by the number of licensed vessels if they can show that historic work. They are delivered by the friction on the ports in Normandy and in Brittany. It is that work that the Minister for External Relations and Financial Services is trying ever so carefully and ever so diplomatically to say: “Okay, we or the Minister for the Environment is going to sort out the replacement vessels”, which has been an issue from day one. When I was Minister and there was a former Minister for the Environment we said: “No, no, we are not going to sort that out until we have gone through this process and sorted these other issues out.” There was a day when ...

**The Bailiff:**

Did you wish to make an intervention of some sort?

**Deputy M.R. Scott:**

Please, just a point of clarification because ...

**The Bailiff:**

Do you give way for a point of clarification?

**Deputy M.R. Scott:**

It is exactly what we are debating because the Environment Scrutiny Panel has called these Regulations in, are we debating whether they have the right to do that or are we still debating ...

**The Bailiff:**

It is not a point of clarification from the speaker. I think if anything that is a point of order ...

**Deputy M.R. Scott:**

Sorry, then it is a question of order.

**The Bailiff:**

The position is we are debating the principles.

**Deputy M.R. Scott:**

Still.

**The Bailiff:**

The Scrutiny Panel is absolutely entitled to call the matter in but only once the Assembly has approved the principles. If the Assembly does not approve the principles the entire matter falls away. If the Assembly does approve the principles then the Scrutiny Panel is entitled to call it in. That is the sequence at the moment.

**Deputy M.R. Scott:**

Thank you, Sir. I am sorry to interrupt.

**Deputy I.J. Gorst:**

I had not seen the Deputy wishing to intervene so I apologise to her as well. So the problems arose because even though the T.C.A. gave access to markets or tariff free access to markets there was a need for new facilities at various ports. Those facilities got bogged down in red tape, be that in Normandy or Paris or Brussels throughout the system, we could say. What the incoming Ministers have sought to do is to unravel and cut through some of that red tape, start to build positive relationships and work together with their counterparts in Normandy and Brittany and in Paris and in Brussels so that that friction at the border is eliminated to the largest extent possible, port opening times are extended and we hope that ultimately we will have this new facility at Grainville as well, which will allow a reversion of market access that was prior to Brexit where catches can be appropriately checked and administered. It is building that goodwill, that work of diplomacy, that I think they are doing an excellent job on, that is very much connected with the commitment of dealing with replacement vessels, and that is what the Minister is doing. That is why he has taken longer than he would have liked to bring this before the Assembly. It is extremely important that this Assembly shows that it can be a trusted partner with its international colleagues. I do not think that this is a pantomime, as others have suggested. I actually think the Ministers are doing a very good job under the most trying of circumstances because the Christmas and New Year that Deputy Morel refers to, this Assembly could have made the decisions not to be party to the T.C.A. despite Guernsey and the Isle of Man being party to it. That would have left us with a Bay of Grainville Agreement with a member state. We remind ourselves of what would have been. We would have been outside of the T.C.A. We would have had no tariff free access to market, we would have had all of the same sanitary issues of landing fish into the European market, and we would have been completely on the back foot for negotiating another agreement that was bespoke. The reason I say that is, all these years down the line, Gibraltar were not allowed in the T.C.A. because of the position taken by European Union member states and, as we stand here today, they still have no agreement with the European Union. That would not have served the interest of Jersey, its supply line, or the work that the Economic Development Ministry is seeking to do in extending supply lines to the south, and it certainly would not have been in the best interests of Jersey fishers. It really would have been the end of them. So there will be this continuing light at the end of the tunnel. My colleague Ministers, I have every confidence in them. They are making progress. If I understand rightly, the chair of the Scrutiny Panel, they are really, as much as anything, rather than seeking to scrutinise the legislation, which I understand they are supporting in First Reading, they want to scrutinise the underlying policy. I think that is quite important and it is an important message that my colleague Ministers will be able to relay to their European and their French counterparts. I am not sure, as I stand here, how the Minister for the Environment is going to deal with that interregnum of a week around issuing licences when one bit of legislation stops and they will not have any certainty until this Assembly, if it does,

passes the Regulations a week later. That will be for him and the Minister for External Relations and Financial Services to deal with. I am grateful for that confirmation. I think that is the correct understanding of it, but it does still leave Ministers with managing that relationship through that week's difficulty. I imagine they will find a way round that. I am going to sit down and be quiet now.

**The Bailiff:**

Does any other Member wish to speak on the principles? If no other Member wishes to speak on the principles I close the debate and call upon the Minister to respond.

**6.1.12 Deputy J. Renouf:**

That was very useful in some respects. In one particular important respect, which was that it was perhaps remiss of me not to speak more in my opening speech about the Jersey fishing fleet because that is an issue that is always on my mind. I have had several long discussions with the chair of the J.F.A. (Jersey Fishermen's Association). I regret that I have not been able to persuade him to withdraw his opposition to this. I will deal with a couple of his points in a moment. But I do want to say that I am absolutely committed to the Jersey fishing fleet to ensuring that we have a sustainable fishery and a fishery that works for both fleets. I will deal with a few more points of detail in a moment. The first thing to say is I think this question about what happens at the end of this month. What happens on 31st January and then on 1st February. The 2 things that we are talking about here are separate. The replacement vessel policy is something that we would like to pass in order to fulfil, if you like, our side of the bargain in terms of extent and nature. What will actually happen on 1st February is that Jersey, at this point, becomes ... Jersey is the licensing authority for all French vessels in our waters. We extended the licences until 31st January to coincide with the deadline for the end of the extent and nature discussions. We will issue new licences on 1st February for all the qualifying French vessels with permits, and this will be the first time that they will have permits. Those permits will be the permits that have been agreed as a result of the extent and nature discussions. That is the point at which the French say through the E.U. quite legitimately: "Okay, you now have your limits. You know what these permits are covering so why can we not have a replacement vessel policy that is a little more flexible?" That is the situation in terms of what happens then. So there were a few points that are worth picking up in terms of the Reform Deputies' points they have been making. It is true the J.F.A. do not agree that we should modify the replacement vessel policy. I think that does illustrate one of the problems I have here because there is a simple fact here that people are finding very, very difficult to accept, even when I say it over and over again, even when officers say it over and over again. That is that there are caps here. There is a cap on the total size of the French fleet. And there is a cap through the extent and nature and through the permits that result from the extent and nature discussions there is a cap on the total catch. Both of those are fixed on the previous reference period. They are caps. You can have a bigger boat. You can have a more powerful boat if these Regulations are amended. Only slightly, remember: 10 per cent more power.

[17:15]

It does not matter that you can fish in rougher waters. It does not matter that you can get to your fishing place quicker. You can still only catch the same amount of fish. I have made this point over and over again, so have officers. I think the problem is that, for reasons I do not quite understand, it is not fully accepted. It is the case. Questions are raised around compliance as the kind of final issue that people raised questions about this. Well, yes, there is a cap but the French will not follow it. I have to say that we have now an experience of a year of the licence situation. French vessels have been licensed for a year and the condition of the licence is they have to have satellite tracking equipment on them. One of the many conditions actually. We have therefore been able to monitor the position and movements of the French fleet throughout the last year. That is a vital part of the compliance process. It means we can see what the fleet is up to. It means we can form intelligence-

led investigations of particular boats. It means getting into some of the technicalities but if you are doing a scallop fishing run you are travelling at a certain speed in the same direction for a certain amount of time before the bags fill up. That is all pretty well-known. That does not change. So sitting in offices at Howard Davis Farm, our officers can see which boats are scallop dredging at any one time. They know the bag limits. They know it is 1.3 tonnes a day. They can measure the amount of fishing effort and if it looks like a boat is going over it they can immediately go out. So our investigations, which in the past were on the basis, because we were not tracking the fleet, we will just go and take a look today and see what is happening out there. Today our system is much more effective. We can say: "That looks a bit dodgy. What is going on there?" And the boat can go out immediately. I have to say, speaking to officers, that there is very little evidence that the French fleet is cheating the system. I can only report what I am told. So I do want to really get people to focus on these realities. It is very easy to throw sand in people's eyes and say: "Well, yes, but faster boats, surely that is more effective, more efficient" and so on. It will be more efficient but the reason ... you might think: "Well why do the French want all of these bigger boats?" They are not just fishing in our waters. They fish in English waters, in other French waters. So for them it makes sense to have a boat that is a bit bigger to fish in our waters, which they can also use to fish more effectively in other areas where they are allowed to fish. It is not some nefarious plot to get past the slightly dim Jersey folk who will not realise what they are up to. I think again I want really to focus on the realities of this situation rather than the fears. But I do understand that there have been fears. We will hopefully, with this extra time that we will have, have a chance to allay those fears. I am just looking through my notes to make sure I address the points. Deputy Bailhache raised the point about the wording of the agreement. It is a valid point and we should look at that. The reason why it was written like that was it was also implied that officers might make decisions. So it did not only relate to the Minister because the subclauses relate to several different matters, some of which it is envisaged might be designed by officers, but I think we could look at that to be more specific. There were also questions about what exactly it is, where exactly the discretion exists. It is worth just highlighting the very key part of the amended Regulations that creates the power for discretion. The amended Regulations keep with all the existing ways in which I could authorise a replacement Fresh vessel. But it creates one extra category, category (B) which allows the Minister: "Where the Minister decides to accept as a substitute vessel having regard to the policy published by the Minister from time to time." That is the discretion: "... having regard to the policy published by the Minister from time to time." That is why I published the policy. It was not some pantomime to produce it at this point. The use of the word "choreography", I think the entire Assembly, with the exception of perhaps one Member, understood that I was trying to find phrases that captured the diplomatic subtleties of what is going on. I published that policy in the hope that people would gain some comfort that that very vague and general clause (B): "... having regard to the policy published by the Minister from time to time" was not just me sitting in the office one day saying: "This week we will do this." It is a thought-through policy. It creates different categories. It is very clear what it is trying to do. Deputy Ward calls it a suspicious coincidence that the support package for Jersey fishermen was announced on Monday. It is actually part of the marine economy framework - I think I may have said that correctly - that the Minister for Economic Development, Tourism, Sport and Culture has been working on for many, many months and has been the result of considerable discussion. I think you could look at it a different way and say our Jersey fishing fleet has the advantage of 3 different Ministers who work exceptionally hard - I would say the whole Council of Ministers - but 3 Ministers who have in their specific remits the brief to examine and to consider issues that relate to our fleet. We have the Minister for Economic Development, Tourism, Sport and Culture who, as you can see, has done a major piece of work and that has borne fruit. The Minister for External Relations and Financial Services who has been working tirelessly, not just on this but on things like the access to port, the closure of the French ports, the restrictions on opening times and achieved a very good result for our fishing fleet. And my officers working to try and sort out extent and nature in line with the T.C.A. What I would urge is, we are in this position where Scrutiny have

said they will call it in. I cannot pretend that I would have preferred it not to, it is not ideal, but we are a democracy. It is entirely the right of Scrutiny to call it in. I am going to look on the bright side. I hope we can achieve an even greater level of agreement and consensus around this as a result of that extra time. I hope that we can allay whatever remaining fears there may be, any reservations that may exist and clarify any points that Members may still have doubts over. I know it will make things harder for the Minister for External Relations and Financial Services and his team. We are going to have to hope that our negotiating counterparts understand the situation in which we find ourselves in. But I would urge - urge - every Member please to vote for this proposition at the principle stage. It is a really important message to send to our negotiating partners that we understand the significance of what we are doing. The safeguard you have in place is that Scrutiny is going to call it in and examine the details but I urge all Members, please, to vote to support this proposition. I call for the appel.

**Deputy P.F.C. Ozouf:**

Can I ask for the Minister to make a clarification?

**The Bailiff:**

You can ask for a point of clarification.

**Deputy P.F.C. Ozouf:**

I am grateful to the Minister for his observations. Can I just ask him to send out, to be clear, about the extent to which the possibility of changing the Regulations which we would not be dealing with versus the policy? Could he just please give clarification about the ability to change the Regulations, which we cannot discuss because we have to pass the principles first, as the policy.

**Deputy M. Tadier:**

Point of order, there seems to be a fine line between asking for a point of clarification and making a suggestion about how one might extend one's speech to incorporate something that Deputy Ozouf did not say in his speech as Minister.

**The Bailiff:**

I am not sure it is a point of clarification, as I was hearing you say it, Deputy Ozouf. It seems to me that you are not asking the Minister to clarify. You are asking him to provide further information. If you wish to express it as would he please clarify a particular position then you are able to do that.

**Deputy P.F.C. Ozouf:**

Can he clarify what the Regulations are versus the policy?

**Deputy J. Renouf:**

Yes, I can. The Regulations are the sections written down in the Order Paper. The key one I have identified is section (B), I think that is the one that probably is the one that has caused all the issues. The policy is the document I sent around separately, which indicates the policy framework in which I would exercise the discretion given to me by the changing Regulations.

**The Bailiff:**

The appel is called for. I invite Members to return to their seats. The vote is on the principles. I ask the Greffier to open the voting and Members to cast their votes in the normal way. If Members have had the opportunity of casting their votes then I ask the Greffier to close the voting. The principles have been adopted.

<b>POUR: 37</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 8</b>
Connétable of St. Helier				Deputy G.P.Southern
Connétable of St. Lawrence				Deputy M. Tadier
Connétable of St. Brelade				Deputy R.J. Ward
Connétable of Trinity				Deputy C.S. Ward
Connétable of St. Peter				Deputy S.Y. Mézec
Connétable of St. Martin				Deputy C.D. Curtis
Connétable of St. John				Deputy L.V. Feltham
Connétable of St. Clement				Deputy R.S. Kovacs
Connétable of Grouville				
Connétable of St. Ouen				
Connétable of St. Mary				
Connétable of St. Saviour				
Deputy C.F. Labey				
Deputy S.G. Luce				
Deputy L.M.C. Doublet				
Deputy K.F. Morel				
Deputy M.R. Le Hegarat				
Deputy S.M. Ahier				
Deputy I. Gardiner				
Deputy I.J. Gorst				
Deputy L.J Farnham				
Deputy K.L. Moore				
Deputy P.F.C. Ozouf				
Deputy P.M. Bailhache				
Deputy D.J. Warr				
Deputy H.M. Miles				
Deputy M.R. Scott				
Deputy J. Renouf				
Deputy R.E. Binet				
Deputy H.L. Jeune				
Deputy M.E. Millar				
Deputy A. Howell				
Deputy M.R. Ferey				
Deputy A.F. Curtis				
Deputy B. Ward				
Deputy L.K.F Stephenson				
Deputy M.B. Andrews				

**The Bailiff:**

Do you wish to call this matter in, as you have indicated?

**Deputy S.G. Luce:**

I do, Sir, thank you.

**The Bailiff:**

When will you propose to have it relisted for discussion in the Assembly?

**Deputy S.G. Luce:**

My panel realises the importance of this. We are already committed to come back to the next Assembly, which I believe is 7th February; one week after the 1st February.

**The Bailiff:**

The draft Regulations are called into Scrutiny to be relisted for 7th February, which is the earliest opportunity in which they can be relisted for further debate. That concludes Public Business and I call upon the chair of P.P.C. to propose the arrangement for future business.

**ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS**

**7. Connétable K. Shenton-Stone of St. Martin (Chair, Privileges and Procedures Committee):**

One additional proposition has been lodged since the publication of the Consolidated Order Paper. The Draft Banking Business (Amendment No. 7 - Commencement) Act has been listed for 28th February 2023. There are only a few propositions listed for next time and, has just been stated, the Draft Fishing Regulations which was due to be debated this afternoon has been called in by Scrutiny and the date for the resumption debate will be on 7th February. As there are so few propositions listed for next time, I believe that we may be able to finish business within 2 days at the next sitting. But Members should always bear in mind the continuation days that have been set aside just in case we do not finish within 2 days.

**The Bailiff:**

Do Members agree the arrangement of business proposed by the chair of P.P.C.? Very well, that concludes the business of the Assembly and we stand adjourned until 7th February.

**ADJOURNMENT**

[17:28]