

STATES OF JERSEY

OFFICIAL REPORT

WEDNESDAY, 29th APRIL 2009

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

PUBLIC BUSINESS - resumption

1. Police Complaints and Discipline: extension to Honorary Officers conducting Parish Hall Inquiries (P.30/2009) (continued)

The Deputy Bailiff:

So we return to the debate on Projet 30, Police Complaints and Discipline: extension to Honorary Officers conducting Parish Hall Inquiries. The matter is now open for debate.

1.1 Connétable K.P. Vibert of St. Ouen:

I firstly wish to challenge the Deputy of St. Martin's criticism of the Connétables for the lateness of submission of comments regarding this proposition. Yes, they were late but the Deputy himself must accept some, if not most, of the blame for this. The proposition was lodged on 5th March and came as a total surprise to the Island Centeniers. They approached me and on 24th March I sought confirmation from the Deputy that he had consulted with the Comité des Chefs. For those unaware of this group, they are the body constituted by Act of this House to represent the Island Centeniers. The Deputy's response was that he had been in correspondence with the Attorney General for some time and as the Attorney General was the titular head of the Honorary Police he saw no reason to consult with anyone else. The Deputy of St. Martin would be the first, I contend, to criticise should any other Member bring a proposition where those most affected by any changes proposed [**Approbation**] had not been consulted. Yet he appeared not to want to consult with the Centeniers. On 2nd April when the Deputy accepted a delay of this proposition until this sitting, I challenged him on the floor of this to use the delay as an opportunity to meet with the Centeniers. I have to say that when I spoke to the Deputy after the sitting he did not appear too pleased at my actions because they had placed him in what he believed was a difficult position. The meeting with the Deputy and the Centeniers finally happened on Friday of last week when the Deputy informed them that he was proceeding with his proposition, regardless of any concerns which they wished to raise. On Monday the Comité des Connétables met with the Centeniers to agree the comments as submitted. These comments attempted to address the concerns of the Centeniers. I submit to Members that the lack of action on the part of the Deputy in consulting with the Centeniers earlier must carry most of the blame for the late arrival of our comments. I do not intend to comment on the facts of the case used by the Deputy to justify his bringing of the proposition, other than to say that the actions of the police officers were, at the very worst, a slight error of judgment. They certainly were not actions which merit a change in this law. As far as charging of persons at Parish Hall Inquiries or elsewhere, at the moment there is no ambiguity in the law. All the actions of all honorary officers of the Island, up to and including Parish Hall Inquiries, are subject to the Police Complaints and Discipline (Jersey) Law 1999 and to the Police Complaints and Discipline Procedures (Jersey) Regulations 2000. This proposition therefore must be aimed at the actions of Centeniers in respect of their role in decisions to prosecute or otherwise. If this is so then this proposition must be rejected because it is deficient in the respect that Centeniers undertake the role of adjudication of facts and possible charging of people at places other than Parish Hall Inquiries. Persons are charged at the airport, the harbour and police headquarters. To restrict the proposition merely to actions at Parish Hall Inquiries is not the right way forward. The Deputy yesterday gave the impression that Centeniers can both investigate a case and then hear the same case at a Parish Hall Inquiry. This is definitely not correct. The Centenier holding the inquiry at the Parish Hall must be independent of the officers who have done the investigation. As far as the charging of persons at Parish Hall Inquiries or elsewhere is concerned, I believe that the present system has served the Island very well and continues to do so. The Centeniers of the Island give an incredibly

good and accurate service and this proposition should not be considered until there has been proper consultation with all those involved in the delivery of this service. The dangers associated with the acceptance of this proposition could, in effect, I believe, be throwing out the baby with the bath water. I implore Members to reject it.

1.2 Senator S.C. Ferguson:

The Deputy quoted at length from the *Helen Miles Report* on the Parish Hall Inquiry. If any Members would like an electronic copy of this, it is 199 pages; I would be delighted to let them have one. To my knowledge there are only 3 Members of this House now who have been Centeniers. I cannot speak for the Connétables but certainly among the hoi poloi [Laughter]. Sadly this means that there are only 3 of us, apart from the Connétables, who really understand the implications of this proposition. The proposition is based on one event and is only viewed from the perspective of the accused. It seems to me that it is unwise to read too much into any one event. A need for change, as envisaged, can only be determined by analysis of a series of events. You know, one swallow does not a summer make. As a corollary there are very, very few - if any - complaints about decisions at Parish Halls. The Deputy is trying to make a case based on a single isolated incident. There is confusion in the proposition, there is the conduct of the Parish Hall Inquiry which could well be the subject of a complaints and disciplinary proceedings but in this case the complaint appears to be against decision. The proper place for a complaint against this is not through the complaints and disciplinary laws and regulations but with the Attorney General. Added to which the Deputy has confused the word “conduct” with decision in his speech last night. The Deputy has reported the facts as stated by the individual in the case. The Centenier will have made his decision based on the prosecution bundle supplied by the police. I do not know whether the Deputy has seen the prosecution bundle. Certainly Members of this House have not, and without these it is impossible to comment on the quality of the decision. In normal proceedings the Centenier will have been the only person at the inquiry to have seen the bundle at that stage. Plus if the accused does not agree with decision, which is based on the police evidence, then they are always advised that they can have the case heard in the Magistrate’s Court. The Deputy also maintains that the Centenier’s role in a Parish Hall Inquiry is an investigatory role. This is not the case. The investigatory work is performed by the States Police who prepare a prosecution bundle which is then discussed at the Parish Hall Inquiry. The Centenier makes a decision based on the facts. As the Deputy states, the Centenier, who shall have read the report of the incident before the inquiry starts, shall consider such other material as he or she thinks fit, including hearing from the attendee. Well, of course, the Centenier hears from the attendee. What sort of justice is it if the attendee is not allowed to say anything? A Parish Hall Inquiry is held to discuss the facts in the case with those involved. It is a review of the evidence with those involved. There are very clear rules, and I speak from experience here, no Centenier ever prosecutes in cases where he has been the investigator. I do not know whether Members have read the Attorney General’s comments but as he states in paragraph 12 of his comments: “A Centenier’s decision is always subject to change by the Attorney General upon him receiving a representation.” The Attorney General also emphasises that the Centenier’s conduct is subject to complaints and discipline, but as I have said, the Centenier’s decision is subject to the Attorney General’s override. As I have said already the Deputy refers to conduct where he should have referred to decision in his speech. This particular proposal does raise some interesting issues. If the Centenier’s decision, as opposed to his conduct, is subject to the complaints and disciplines procedure, will the Attorney General’s decision to prosecute be subject to the same complaints and discipline procedure. Who might review a complaints and discipline process for correctness? That would be a police matter, a police process after all. Just consider the implications. Sadly, the Deputy of St. Martin has allowed his enthusiasm to override his normal measured approach. This proposition is based on a single case and extrapolates that case to the whole Parish Hall Inquiry system. I ask Members to reject this proposition.

1.3 Senator F.E.Cohen:

This proposition seeks to interfere with a well established principle that is at the core of our unique and cherished honorary service system. The principle is that decisions in relation to prosecutions should ultimately rest with the Attorney General. Matters of conduct are entirely separate from matters relating to prosecution decision and the proposition effectively conflates the issues of conduct and prosecution decisions. The effect of the proposition would be to move the authority in relation to prosecution decision from the Attorney General to the police or the Police Complaints Authority. It is essential to appreciate that a Parish Hall Inquiry is a prosecution process and therefore the decisions of the Centenier are presently subject to the ultimate authority of the Attorney General. This mechanism already provides the appropriate and necessary controls to ensure consistency, fairness and justice. Matters relating to the conduct of Centeniers are already subject to the 1999 Discipline Law. This extends not just to Parish Hall Inquiries but to the general conduct of Centeniers. In my view we have a system that works well with the appropriate separation and control of both prosecution and conduct issues. As a former Centenier, and therefore clearly a member of Senator Ferguson's hoi poloi, I will be voting against this proposition and I urge other Members to do the same.

1.4 Connétable S.A. Yates of St. Martin:

I can add a little bit more to the previous speakers, and as a previous Centenier myself, I would like to urge Members to somewhat disregard the very lengthy example that our esteemed Deputy of St. Martin gave us yesterday as an illustration of this particular proposition. Without a doubt what the Centenier does in his office at the Parish Hall is in fact part of the prosecution process and, as such, it would be outside the police complaints. The complaints against a Centenier's conduct would be through the other article, which I think is 99. But what the Centenier does in dealing a report is that first of all his job is the determination of jurisdiction, and by that - for the benefit of Members - will explain that the magistrate's powers of punishment and respect of an individual offence are limited to a £5,000 fine and a sentence of custody to 12 months. It is a prosecution's duty to assist the magistrate in determining the seriousness of an offence and whether the case can be dealt with and sentenced properly in the Magistrate's Court or whether the matter should be committed to the Royal Court where there are greater powers of punishment. In effect, what the Centenier is doing at the very, very early stages is determining what scale the case merits. Is it a case where the Centenier can deal with it himself, in the Parish Hall, by way of a fine - in my day I think was up to the level of £50 - or whether it can be dealt with by way of a written caution or words of advice, or whether the case merits a charge and prosecution in the Magistrate's Court. But the Centenier must determine the scale and the jurisdiction of the case. At that stage he must decide his recommendations that he might have to put to the Magistrate. Whether the Magistrate can deal with it, depending upon the scale of the offence or whether it might ultimately have to be referred to the Royal Court. This is, in fact, the very early stages of the prosecution and as such it should fall outside the scope of the Police Complaints and Discipline (Jersey) Law 1999. In fact, I am concerned that should this proposition be passed by the Chamber today that it would in fact be a situation where a frivolous complaint against the Centenier during his process of prosecution could delay a case for many months, and I suggest that a contentious series of parking offences could be delayed almost indefinitely by a frivolous complaint. I would absolutely and positively urge the Members of the House to consider this very careful and we do not want to have situation where frivolous complaints could be made during the first stage of the prosecution.

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

Much of what I wanted to say has already been said by other Members and I will resist the urge to repeat it all. But I would like to just bullet point a few things. Having looked at the paperwork

provided, we heard one side of the story, and it came to me that we are not a Court of Appeal. If we were we would want to hear both sides of the story and we would want to examine all the facts. But we are not, so it is one-sided version. Prosecutions, or the decision to prosecute, must be free of all political interference. It is fundamental to our system. If we allow this to go through in its current format, as Senator Ferguson said, next we will be examining whether the Attorney General should have made the decision or otherwise to prosecute, and next we will be trying to interfere in the proceedings in the Royal Court. We interfere with this ancient system at our peril. You might have gathered I will not be supporting the proposition. But while on my feet what I would like to do ... and I am not one of the Senator's hoi poloi, I have never been a Centenier, but I have seen the very good work that Centenier's do. While on my feet I would like to acknowledge the many hours of very good work put in by the Honorary Police. **[Approbation]**

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

Firstly, can I declare an interest having been a Centenier in St. Helier from 1970 to 1980 and in St. John from 1983 to 1986, and one of the hoi poloi of Senator Ferguson. If I could correct her, there is 5 hoi poloi in the Chamber **[Laughter]** If I could just give a little bit of background of back prior to 1976, which may be of help to Members, that is when the first Honorary Police Bill came into being. I can recall dealing, at that time, prior to that law coming into place, with Parish Hall Inquiries and one of the cases I dealt with was a report from the Harbourmaster who, in fact, has the same authority as a Centenier. But he sent the report to the Town Hall and I had the job of adjudicating. The 2 accused were the Solicitor General and a Jurat of the day. After explaining the procedure to the 2 accused of the misdemeanour they had been involved with, of failing to register their vessel, I explained to them that they had the opportunity of either being dealt with at the Parish Hall or they could take it to the Magistrate's Court, and that they did not in fact have to attend any Parish Hall Inquiry under law. That was the procedure then and in fact the Solicitor General of the day and the Jurat of the day elected to go to court. Proceedings were as follows: I took them to the Magistrate's Court and they were both duly fined for the misdemeanour. That shows, even as far back as nearly 40 years ago, that there was a procedure in place that helped the public. They did not have to attend the Parish Hall Inquiry then, the 2 accused on that particular case decided they would come along and see how the procedure worked and it worked well and they went to court and they paid up their £10, I think, fine or whatever it was at the time for their misdemeanour. But the procedure has been updated in 1976 and became more transparent, as the Deputy of St. Martin would like everything to be so transparent, and then it has been updated on several other occasions since I have been in this Chamber. It is a shame that over many years now, since ... and I know the Deputy of St. Martin very well and as an ex professional policeman from the United Kingdom he looks at things slightly differently to what the honorary system works and he has, over many occasions in this Chamber, brought amendments - or tried to bring amendments - to the floor of the House to improve the transparency of the system we have, which is good because if we do not keep on looking at ourselves then obviously we stagnate. But that said, I do not think he does the system any justice in some of the things he says. In fact, I have a letter here from our Parish Chef de Police at the moment. If I may be permitted to read what he says: "I am writing to you to voice my concerns over the Deputy of St. Martin's proposed amendment to the Honorary Police Complaints and Disciplinary Procedure (Jersey) Regulation 2000 to include complaints against honorary officers conducting Parish Hall Inquiries. Firstly, may I refer to the report on the incident in November 2007. I am led to believe that the Deputy's version of events is only from the motorist and is not aware of all the facts and no attempt has been made to ask the Centenier, the Chef de Police or the Parish Hall, not that they would be able to comment as the Attorney General would do this. My point being how fortunate we are that Centeniers make sure they are in possession of all the facts before making a decision. Secondly, to imply that Centeniers conducting Parish Hall Inquiries are not accountable is very misleading and technically untrue. At every point during the inquiry the person is told they do not have to accept the Centenier's decision and if they

wish they can go before the Magistrate. Over the past 5 years at the end of every Parish Hall Inquiry that I have carried out, I have given the person the choice that if they are not happy with my decision they can go to the Magistrate's Court. Not one person has taken up that opportunity. If a person thinks that the Centenier has made a bad decision, they can write to the Attorney General to review the case. The Attorney General has the power to overturn the Centenier's decision and reprimand the Centenier if he feels an error has occurred. All complaints against honorary officers are made in the first instance to the Connétable who then passes this on to the Attorney General to be dealt with. I therefore think we are very accountable. To have Parish Hall Inquiry decisions investigated by Complaints and Discipline would, in my opinion, be very dangerous. It would be the equivalent of Metropolitan Police investigating the Crown Prosecution Service. It would also mean that decisions to charge would also be investigated by Complaints and Discipline. This is equally concerning. Not that I am afraid of being investigated. I believe that in St. John we are very fair, impartial, polite, honest and tolerant. I am extremely proud of all my officers and the way in which we conduct ourselves. Now, Centeniers make sure that cases meet the evidence test and are in the public interest before charging. Having Centeniers do this is vital because they are independent of the States of Jersey Police. They make sure cases are evidentially correct and sound before taking them to court to be dealt with. It keeps the States of Jersey Police officers aware of the fact that all cases need to be sound before they charge a person. If Centeniers were not there, cases charged by another system would get to court and then drop due to lack of evidence. The cost to the taxpayer would probably run into hundreds of thousands of pounds. In the recent *Howard Report for Penal Reform*, the Parish Hall system received a glowing report and was the envy of many jurisdictions around the world in the way it dealt with the teenagers and their first dealings with the legal system. The way it helps to reduce the list of minor offences and therefore does not clog up the Magistrate's Court received acclaim. On behalf of all the Honorary Police, I would ask the Members not to support this proposition." This is signed by David Curtis, the Chef de Police of St. John, who is in fact sitting the gallery this morning. The last paragraph about *Howard League on Penal Reforms*, in fact it was in 1973 that the late John Morris and myself started the procedure at Parish Hall Inquiries of putting young offenders on voluntary probation for up to 6 months and with the Probation Service this was taken on board and, in fact, this is still used today. It is a superb system and I was so gratified when in fact I read that in the *Howard League Report* knowing full well that the Honorary Police, after all those years - that was put in place 35 years ago - has gone from strength to strength in the way it deals with children, youngsters and the public in general. Therefore I ask the Members here today to reject this proposition.

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

I am not going to repeat all that has been said already but I think there is just one or 2 points, bearing in mind that I have been retired as a 27 and a half year police officer 11 years ago, 10 years ago, and therefore am probably not up to date. I am quite pleased that this proposition has been brought forward because what it does is it clarifies points that I suspect that many members of the public did not realise in that there is a separation of responsibilities and duties of honorary police officers. In fact their role is quite unique and distinct. Indeed, many years ago the United Kingdom adopted in very simple principles of the simple role of the honorary system in their parish wardens that they set up, for small communities especially, and they recognised the value of it. But I think the main distinction here is that over years it has evolved but a Centenier being a police officer ... and as a young police officer I remember being thrown out of the Parish of Grouville because I had no right of being there without their permission as a States police officer. So we have advanced some way since then [**Laughter**] and there is many a tale that could be told, which will not be today. But the one thing that I think that the public might not be fully aware of is this dual role of being a police officer, an honorary police officer and being in a Parish Hall as the prosecutor and that there are 2 routes should a complaint be made against an officer or whatever. From my experience, yes, in the past there was the odd occasion when it was suggested that putting your

hands up at the Parish Hall and getting a verbal caution was a lot more preferential than going to court, if for nothing else for your time, et cetera. I think those days are probably, in the main, gone. The one thing that I think we must bear in mind is that in all the years when I was a police officer when anybody wished to make a complaint, whether it was about a States or an Honorary Police officer, the public did have the choice. As has been rightly said, there was procedure where they could go to the Connétable, if it involves Honorary Police officers, or indeed to the duty inspector or the duty officer as I understand they are called now at police headquarters. Of course, there is also the role of the titular head of Attorney General. I am afraid I cannot support this particular proposition as I, too, are concerned that there was too much emphasis on one case which can be dealt with in the appropriate way, whatever that is. Also the fact that the proposition is incorrect, because it only refers to the Parish Hall instead of the other places where the evidence in the prosecution might occur. I think that is all I need to say on this point.

1.8 Deputy S. Power of St. Brelade:

The first thing I would like to say is that I, again, am one of these Members that have never had experience of being in the Honorary Police but I have had experience of being at the receiving end of 3 Parish Hall Inquiries. **[Laughter]** Never in St. Brelade. On the 3 occasions one was for speeding, one was turning right into a street when there was no right turn, and the third one was forgetting to put safety belt on. In all 3 cases I was treated - this is before I was a States Member - with respect and indeed fairness. So my first reading of this proposition was that this is a report or proposition, in my view subjective, by one individual who is a Deputy about one other individual and his son, which was one isolated incident in one parish and in my view, at this stage, it does not prove that we need this amendment or that the request in the proposition can be upheld. There were 2 strong personalities involved in this: one is the individual who was driving and the other one is the St. Clement Honorary Police officer, and there may or may not have been error of judgment. It is not for me to judge on that because, again, as Members have said, we are being asked to comment on something and we have not seen the case report. I am going to make 2 short comments. The first thing I would like Members to do is reread the comments of the Comité des Connétable on page 2, which is the second paragraph, and that is: "The Honorary Police are subject to the Police Complaints and Discipline (Jersey) Law 1999 and to the Police Honorary Complaints and Discipline Procedures 2000. These regulations set out the code of conduct for members and the correct procedure to follow when a complaint is received." I would then ask Members to reread paragraph 15 of the Attorney General's comments where he says: "The 1999 law provides a framework for dealing with complaints about the conduct of members of the Honorary Police." If one looks at the Honorary Police Complaints and Discipline Procedure, it is clear that if a member of the Honorary Police commits an offence or the discipline of member's conduct does not meet the standard there is a procedure to deal with that and those procedures deal with requirements for honesty, integrity, fairness, impartiality, politeness and intolerance. I do not believe, and I do not accept, that this one incident that the Deputy of St. Martin is talking about, and the resultant actions that took place against the individual, justify this proposition and I shall be opposing it.

1.9 Deputy M. Tadier of St. Brelade:

I will try and keep it brief. It sounds like a lot of Members are standing up and saying that they cannot make a decision just based on one example, so perhaps it would be very useful if, in summing up, the Deputy gave us several other examples. I am sure he has them in his armoury. I am sure we could all give certain examples. I think it is important, though, to bring the debate back to what it is really about. We are not here to debate individual cases about where Parish Hall Inquiries may go wrong. I am sure that can happen in any system, States Police included. But rather what we are talking about is how the complaints are dealt with thereafter. But I do feel that I am compelled to pick up on one of the comments by the Deputy of St. John. He gave an example

saying that when he first got his spurs, so to speak, in the Honorary Police in St. John, I presume ... St. Helier was it? Thanks for the correction. He said that most people are given the option to go to Magistrate's Court but they do not take it up and that is supposed to be some kind of hard and categorical evidence that people prefer the Parish Hall system. Now, seeing as my fellow Deputy from St. Brelade has also chose to do some of his dirty washing in public, I am quite happy to give a candid example of a time that I had to face the Parish Hall in St. Helier. I do want to point out that this is just one example but it is really to illustrate that the Deputy of St. John's story does not tell the whole of the story, I believe. I used to run a furniture business with my brother in a former life. I gave it up because it was too much hard work **[Laughter]** and here I am in the States doing a different type of even harder work, I would suggest. But it is not so hard on the back thankfully. Now, we were pulled over for having a defective vehicle. We had a white van and it was ... I will not comment on whether it was or it was not, but the process that we were subject to within the Parish Hall seemed to me to be fairly arbitrary in the sense that we were given random fines, it seemed for each individual defect. Incidentally it was my brother who was driving my van at the time so we were both called in. He was given one round of fines for being the driver; I was given a separate round of fines for being the owner. They were all slightly different and fanciful. Now, I and my brother disagreed with this. I am quite confident that if it had gone to Magistrate's Court we would have probably got a much lower fine and I could have certainly argued, because there was a case, because 2 weeks before the van had been vandalised, we had taken it to the police station, the police had inspected the van and they said that there was no problem there. Certainly we would have been pulled up by the States Police, you would have expected. There was no other damage; there was no deterioration in the vehicle within those 2 weeks so I think that was one of the arguments I could have certainly put forward from myself. I believe that if it had gone to a Magistrate's Court with a good lawyer, we would have probably been cleared of it. The point is most people do not want to go through the humiliation of having to go to the Magistrate's Court to have their name put in the paper. They are more likely to just pay a fine. I think the example that the Deputy gave is a very salient one because at the end of the day we were only talking about a £20 maximum fine for this individual and he was encouraged to plead guilty even though he firmly believed that he was not guilty. It is quite arguable that many people in that position who did not have the fortitude of character, so to speak, would have just coughed up the fine or perhaps taken a caution rather than go to court and have to go through the whole rigmarole. So although it is a slightly tangential point, if I can call it that, I think it does address the Deputy of St. John's slightly false claim. But I would bring it back and say that ...

The Deputy of St. John:

If I may interject. At no time did I put in - as it was put - any slightly false claim. I was stating actual fact and if the Deputy himself got himself into a bother I am sure he was given the option of going to court. No more, no less. If he chose to accept a fine, he obviously pleaded guilty to the offence.

Deputy M. Tadier:

I am not sure what the Deputy of St. John is objecting to. I am not saying that the information that he gave was false, I am saying that inference that he was drawing from that claim, that people are quite happy ... if people do not accept the chance to go to Magistrate's Court it is because they are happy that they have had justice at the Parish Hall Inquiry, I am saying the inference that you are drawing from that is not a valid one. If you are happy with that we can proceed, but I am by no means imputing the Deputy's motives. So, just to conclude, I think it is important that we say here that we are not here to judge the case. This case is a spent one, it is just one example that has been given. It sounds like Members would like to hear other examples of how the system has broken down and how the complaints procedure is not working, so I would invite the Deputy in his, what I

am sure will be a brief summing up to maybe give us more examples so that we do not just have to rely on this one isolated case.

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

Although he has left us, I was intrigued by Deputy Power trying to turn right, which I think he has **[Laughter]** made considerable efforts ... as I am sure he would not mind me saying. I was going to build on one of the many excellent Deputy of St. Brelade, Deputy Tadier's, speech, should we base a case on one example. I think, yes, we should if the Deputy of St. Martin feels there has been an injustice done he is fully entitled, with his usual terrier like abilities, to pursue it with tenacity and to draw out the general issues that there might be. What I am worried about, and it has been brought up by other speakers, is this conflation, this confusion of issues. I think he is trying to put ... under the Police Discipline Complaints Procedure he is trying to put implied criticism of the absence of checks and balances and of proper redress in the prosecution procedure. Had he framed this proposition in terms of concerns, in his view, about that procedure and reforms that he wished to see introduced to deal with that, I think it would have been a much, much better approach. One Member has suggested to me, would a look at the Police Complaints Discipline Procedure be a good subject for Scrutiny. Well, it might well be a good subject for Scrutiny but I do not think this is the issue we are looking at. The issue we are looking at are the concerns, and indeed the concerns that the Deputy and his troop of scrutineers looked at a year or so ago, of the whole issue of the Centenier's role in the prosecution process. That was very thoroughly scrutinised as I recall, with great feeling and detail, and I am wondering whether we are indirectly revisiting that. I would beseech the Deputy to re-examine his stance on this issue and to reconsider whether he should, if he feels as he does deeply about this on behalf of his constituents, have targeted it on the prosecution system rather than on the need to bring Centeniers in these roles within the Complaints and Discipline Procedure which I think is the inappropriate procedure to deal with it.

1.11 Senator B.I. Le Marquand:

I am very pleased this morning to have an opportunity to pay tribute to the excellent work done by the Honorary Police officers, particularly by the Centeniers, which I was able to see and experience - as indeed was my former colleague in the Youth Court, Deputy Green - over quite a number of years. I often said to new Centeniers as they came to the court for the first time, having been sworn in, wishing them well and so on, that some of the decisions that they would have to make were every bit as difficult as the decisions that I had to make. Particularly in the areas of discretion in relation to deciding what was in the public interest and when matters could be dealt with at a Parish Hall and so on. Having said all those things, I have to say that I find the proposition of the Deputy of St. Martin a rather confusing, if not confused, proposition. Because he started off by saying he believes the existing law is satisfactory. He then goes on to invite me to seek to amend that law. Now, of course, we all know that the real issue is he disagrees with the interpretation of the law based on it by the Attorney General in relation to what is meant by the word "conduct". The word "conduct" is included in the existing law and the view of the Attorney General is that the decision made by a Centenier and matters relating to that decision are not part of conduct, they are part of something else. That is a view which I also wish to support. But really the basis of the proposition is that we should now amend the law to make it clear that the decision is part of a disciplinary matter. Now, there was no dispute, I believe, between the Deputy of St. Martin and the Attorney General over the matter that if a Centenier, during the course of a Parish Hall Inquiry, were to swear at a person or otherwise were to misbehave in such a manner, that would be conduct. There is no dispute on that and there is amendment required in relation to that. The issue is whether, as I said before, the decision made, a decision to prosecute or not to prosecute, in particular, should be subject to a disciplinary matter. But that decision is very often discretionary and it is, as I have often said to new Centeniers, a very difficult decision. It cannot be right that a person can be

subject to disciplinary proceedings in relation to what is essentially a discretionary matter. Even if that were so, it would not provide a remedy to the person in a case in which a Centenier might inadvertently make a bad decision. There is in existence perfectly good remedies. If a complainant believes that a case should be taken to a court and the Centenier has decided not to, then the matter can be referred on to the Attorney General and the Attorney General can direct that a prosecution take place. In the other direction, if a person believes that should not have been prosecuted - and clearly that was the case of the gentleman in this particular case - what happens then is he is presented before the court, he pleads not guilty and the matter is now automatically passed on to a paid prosecutor, a legal adviser, to deal the matter. If the Centenier is wrong, his decision is reviewed. That is the correct way of doing it. Now, the example taken by the Deputy of St. Martin is not quite as good an example as he may think because, in fact, in this particular case having ended up at the Magistrate's Court the matter was referred to a professional prosecutor and the professional prosecutor decided that there was a strong enough case to take to trial and the matter went to a full trial which was presided over by myself and I acquitted. But you cannot blame a Centenier for having made a decision if that decision was subsequently affirmed by a professional prosecutor. Are we then to discipline the professional prosecutor also for having made a mistake? The situation becomes utterly ludicrous. He was a very young and inexperienced professional prosecutor but no doubt seeking to do what he thought right. So I have dealt in general with the big issues. There is another remedy available and that is the correct remedy. But I wanted, in closing, to deal with some technical matters and that is the wording of the proposition because the wording of the proposition basically asks the definition of complaints is widened to include complaints against Honorary Police officers conducting Parish Hall Inquiries. Unfortunately that does not achieve anything at all because it does not deal with the underlying meaning of the word "conduct". So if we add in words saying "including what happens at a Parish Hall Inquiry" but do not amend "conduct" we get nowhere. Because it does not do that I would be left in a very confused situation. I have no doubt that the House is going to overwhelmingly vote against this proposition, but if it did hypothetically vote in favour, I, on the wording of this, would not know what I was supposed to do. So I am going to oppose this for a whole number of reasons but mainly because I think it is utterly wrong that a decision to prosecute be subject to disciplinary action.

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

Before I begin I would just like to pick up on the point the Minister just made about he would be surprised if this proposition was not rejected overwhelmingly. I find that quite a surprising assertion in view of the question I am going to ask later on in my speech. But I would just ask ... I do not know whether it is a ruling or whether it is just a general point about the fact that many Members directly are members of the Honorary Police in their capacity as Constables, I just do not see where that fits with conflicts of interest and so. So I just leave that on the floor. I do not know whether that can be the subject of a ruling or whether that is something we just plough on regardless.

The Deputy Bailiff:

Sorry, Deputy, are you asking me?

The Deputy of St. Mary:

I am asking you whether there is a question there that needs a ruling.

The Deputy Bailiff:

In relation to?

The Deputy of St. Mary:

A conflict of interest, because as I understand it Constables are members of the Honorary Police.

The Deputy Bailiff:

I am quite satisfied there is no interest which requires them to withdraw. There is no reason why they should not contribute or speak on this matter. They are there simply as officials. This is a question as to whether there should or not be a disciplinary process against Centeniers in relation to their charging decisions. I see no conflict of interest in relation to Constables on that.

The Deputy of St. Mary:

Thank you, Sir, for that ruling. I also tend to take a fairly wide view of conflicts of interest. I think it is brought up too often and people say: "Oh well, I have got this or that little conflict and therefore I must leave the Chamber" and I find that slightly odd. But there is still a question there and I am glad some Constables have intervened in this debate and maybe a few more will give us the benefit of their views. I wanted to start by upping the score. I have had several encounters with what now seem to be called the hoi poloi, 6 or 7 I counted them up a couple of days ago, so I am top of the stakes, partly because I think in my former life driving around delivering bicycles I did a lot of driving so I came into contact with the Honorary Police many times. My score is 6 to one of good encounters, and one questionable one. One that I think was not correctly handled. So that is a good score. But we are not talking about the general run of how the Honorary Police functions and I echo the sentiments of Deputy Green and the Minister in praising the principles and the general functions of the general operations of the Honorary Police and, in particular, the spirit of public service which underlies that whole operation. It does deserve to be underlined, it is a remarkable system. But we are not talking about how it runs in general, we are talking about what happens when it is broke. What happens when something goes wrong. So I just want to make a few points and I hope they will be clear because this is a proposition which is in danger of getting muddy. The first point is about prosecution decisions. We have heard from, I forget who - one of the Constables, the Constable of St. Martin - who said that this whole ... the Parish Hall Inquiry is a prosecution process and it is also in the A.G.'s (Attorney General) comments. If I can refer Members to his paragraph 25 in the A.G.'s comments: "I reached the view some years ago that the 1999 law simply is not consistent with treating complaints about a prosecution decision, as a complaint for the purposes of that law." Now, I do not have any argument with the notion that it should not be allowable to complain in the ordinary course of events about a prosecution decision. Prosecution decisions in general should not be complainable, they are determined in the courts. It is crazy, as the Minister pointed out, that they should be second-guessed by the complaints procedure. So let us put that to one side. We are not talking about questioning prosecution decisions. There is a higher issue which Deputy Le Hérissier raised about the matter of questioning major prosecution decisions and how that process itself is scrutinised. But that is not the issue we are talking about today. We are talking about complaints about the conduct of the Honorary Police where it falls short and, by implication, the States Police. So that is the first point. We are not, in my view, talking about questioning prosecution decisions. I can see some nods and people getting cross about that, let us hope they contribute later, but it is quite clear from the Deputy of St. Martin's proposition that - and no doubt he will come back to it in his summing up - distinguishing between the aspects of a Parish Hall Inquiry which are prosecutory and the aspects which are not prosecutory but which are investigatory and judicial. So that is the first point. The second point is that the account that the Deputy of St. Martin gave us was not about the ... I will just read out his paragraph 4: "The investigation of the complaints against the police constable were conducted but the A.G. refused to accept the complaint against the Centenier who carried out the Parish Hall Inquiry. He rejected the complaint on the grounds that the Police Complaints and Discipline

(Jersey) 1999 is concerned with disciplinary offences committed by Honorary Police officers and is not concerned with the prosecution service.” But, as I understand it, the complaints were not about the prosecution as a prosecution, they were about the conduct of the Honorary Police in arriving at that whole scenario and it was spelt out in detail by the Deputy. Clearly there was something wonky with it and the person felt that they had to complain about it. So I do distinguish between prosecution and pre-prosecution or ancillary to prosecution and conduct in general. The third point is where does this leave a member of the public who wishes to make a complaint not about the decision itself but about the conduct? My question to the Assembly is does the Assembly recognise that this right of complaint is necessary? Does it recognise that this right of complaint is important or are the actions of the Honorary Police, and by implication the States Police, above complaint? Now, we know from what has been happening with the G20 demonstrations ... and I do not wish to compare Jersey to what goes on in London when all the leaders of the world turn up. But the fact is that we know from that, that policemen make mistakes. In fact sometimes they go way beyond what they are supposed to be doing. Quite rightly, the I.P.C.C. (Independent Police Complaints Commission) now is looking at 100 clearly documented cases of abuse of police powers. So by analogy where does that power lie? Are we saying as an Assembly that the public should not have the right of redress when they feel that the process, the conduct, was not up to what it should be or was in fact damaging to the reputation of the service? I go to the proposition at page 6 where I note that the disciplinary code says: “Whether on or off duty officers should not behave in a way which is likely to bring discredit upon the Honorary Police.” Further, at (b): “This code sets out the principles which guide officers’ conduct, it does not seek to restrict their discretion; (c) The code applies to the conduct of all officers while on duty or while off duty if the conduct is serious enough to indicate that the officer is not fit to be such.” So clearly it does limit it to important issues but that is what complaints would be about, or they would be dismissed at some stage. So I fear that underlying the resistance to this proposition is the belief that a police officer can do no wrong. That is the reaction ... I immediately get a reaction when I say that and there is a problem here because ...

Connétable J. Gallichan of St. Mary:

Will the Deputy give way? I just wonder could the Deputy clarify whether he is stating that he does not believe there is a mechanism at the present time for a complaint to be heard.

The Deputy of St. Mary:

The proposition is about the apparent sidelining of some complaints, that there are cases - well, he has adduced one case, maybe there are others - where a complaint is made and then it is not heard because the Parish Hall Inquiry, as I understand it - but we will hear no doubt in the summing up - is deemed by the A.G. to be a prosecution event. That is what happened in this case. The person was not complaining, as I understand it from this document, about the decision. He was complaining about the conduct over many months of certain officers. So that is how I read it. Maybe the Constable might like to comment more fully later. The way out of this confusion, I would suggest, is to add complaints about the Parish Hall Inquiry to the complaints law as the proposition suggests but to specifically exclude the decision to prosecute. Now, I guess that some will say that you cannot simply do this but I would beg to differ, I think you can and in fact the whole system of the States Police creating a bundle of evidence and then the Centenier deciding to prosecute shows that you can split the 2. I cannot see how the A.G. or indeed anyone else would object to this. So to recap, the question facing this Assembly is do we recognise that the right of complaint about the conduct of the Honorary or, indeed, the States Police is important and necessary?

1.13 Connétable L. Norman of St. Clement:

If one thing was clear from the Deputy of St. Martin's speech yesterday, it was that when he prepared and lodged his proposition he did not appear to understand that the Honorary Police are indeed subject to a strict disciplinary code under the Police Complaints and Discipline Law. A problem he clearly shares with the Deputy of St. Mary following that speech. As the Deputy of St. Martin's speech went on yesterday it became obvious, to me anyway, that the penny was finally dropping. Unfortunately that does not apply to the Deputy of St. Mary. As I said, the Honorary Police are subject to the Complaints and Discipline Law, they will be called to account if they are rude or abusive at the Parish Hall, at the Parish Hall Inquiry or elsewhere. They will be called to account if they are drunk or drink while on duty at the Parish Hall, at the Parish Hall Inquiry or elsewhere. They will be called to account if they are less than impartial at the Parish Hall, at the Parish Hall Inquiry or elsewhere. They will be called to account if they publish unsubstantiated accusations on their personal blogs. If they swear at the Parish Hall, at the Parish Hall Inquiry or elsewhere in the hearing of an interested party they will be called to account. Anything you can think of that could constitute inappropriate behaviour, the Honorary Police will be called to account. But what the proposition seeks to do is to extend the disciplinary code to Parish Hall inquiries and charging procedures at the Parish Hall. Now, that has got to be wrong. Not only because charges can happen at other places, as has been explained previously, at police headquarters, at the harbour or at the airport, for example, but it is wrong because a decision to charge - and it is merely a decision - is a matter of judgment or, as the Minister for Home Affairs said a few moments ago, a matter of discretion based on evidence provided and the public interest test. It would be intolerable if making a judgment could be the subject of disciplinary action. It is the Attorney General or the court, at whatever level, who will decide whether the charge made the Centenier was appropriate, not a disciplinary panel. When you think about it, we make judgments every time we have a debate in this place. I will make a judgment in a few moments to vote against this proposition. The Deputy of St. Mary and the Deputy of St. Martin will probably make a judgment to support it. Does that mean that one of us could be the subject of a disciplinary inquiry because we have made a judgment? Absolute nonsense. Now, if I swear or I am rude, yes, that is fine, but making the judgment itself cannot be subject to a disciplinary inquiry. The proposition is quite simply wrong and should be rejected.

1.14 Senator S. Syvret:

This is an extremely interesting and important subject and one I think that the Assembly is going to be addressing again and again and again in the coming months. It is plain to many people for many different reasons that frankly there are a number of significant problems with what might generally be termed the administration of justice in the Island, the prosecution function among it. It is one of those situations whereby ultimately this Assembly will decide that it has to modernise and evolve the Island's systems in order to keep them human rights compliant, to have them subject to effective checks and balances and, indeed, to make it appear as though our system is not too archaic. If we do not do that then ultimately we run the risk of interferences that might want to do it for us. So I do think that some of the hostility exhibited towards this proposition of the Deputy of St. Martin is quite misplaced because the subject is an important one. The Attorney General tries to make some distinction, or does make a distinction, between the Police Complaints and Disciplinary Law ... says that it deals only with disciplinary offences committed by Honorary Officers and is not concerned with the prosecution service. Well, that may or may not be the case but the question that we have to ask is should it, in fact, be involved? Is there not an underlying assumption here on the part of the Connétables and the Attorney General that a Centenier cannot, or an Honorary Police officer may not and could not act improperly in making a prosecution decision, either out of vindictiveness against a particular individual or the other way exhibiting favouritism to a particular individual. So it is quite easy to see, hypothetically that the decision to prosecute effectively, the prosecutory function could, in fact, be abused. I think the difference we have to address here is the difference between misfeasance and malfeasance. My understanding is that misfeasance essentially

means errors, professional areas of conduct; whereas malfeasance is somewhat stronger, it means kind of deliberate and wilful, professional negligences or abuses. I think we do have to recognise that sometimes sadly, human nature being what it is, on rare occasions people in positions of authority people can engage in malfeasances. I am a great support of the Honorary Police but we have to recognise that if the Honorary Police and the honorary system is to survive it has to evolve. It has to move with the times. It is not, frankly, credible in my view to retain one particular dimension of the aspects of the Honorary Police Force's role that remains effectively outside of any effective and ready, easily accessible check and balance other than the single power vested in the one man, the Attorney General, or ultimately the court. Because we all know in an environment that has no paid legal aid system and lawyers are massively expensive, the prospect for any ordinary person wishing to take the matter to court, to challenge these decisions, to seek judicial reviews, whatever it maybe, the prospect is wholly unrealistic. I am sorry, it will not just wash to say that these matters, if people have such a grievance, can be challenged in court. It just is not a practical or realistic prospect. In his comments the Attorney General says this in the summary, and I will quote the sentence: "The 1999 law is structured as to give relevant authority to the Attorney General as titular head of the Honorary Police and I suggest that the Attorney General should be left to decide on a case-by-case basis which are matters of competence and which are matters of conduct. If that is the conclusion then no amendment of the 1999 law is necessary." But the great difficulty with that statement is that, again, it leaves the power to make that decision, as to what is question of competence and what is a matter of conduct, in the hands of the Attorney General. A power which is, to all practical intents and purposes, not realistically challengeable. We have to ask ourselves in this day and age is such a concentration of power in the hands of one individual, without some alternative reviewing mechanism, really satisfactory in the 21st century. There has been a great deal of discussion about the importance and the sanctity of the neutrality of the system of the prosecution service in the Island and how it has to be and must be absolutely free from political kind of pressures. Of course that is structurally an impossible thing to achieve under our present arrangements. We have 12 people here, the Parish Connétables, who are police, who have responsibility for their parish police forces, will be responsible for officers who are making decisions whether or not to prosecute. These are politicians, these are politicised police forces. So the very notion that somehow the prosecution system can be utterly divorced and regarded as utterly independent from political considerations simply is not realistic. We have the 12 heads of the Parishes' Honorary Police Forces sat in this Chamber as politicians. I am afraid assertions to the effect that the prosecution service does not have a degree of political contamination already are simply literally incredible. Nor is the Attorney General himself neutral and non political. He is a de facto and unelected politician. That is frequently the role he plays in this Assembly. If Members wish I could probably spend some time going through the archives of my collection of political speeches made by the Attorney General in this Chamber. So the notion again that this prosecution service with the Attorney General as the ultimate arbiter over all of it is free from any kind of political contamination, simply just does not stack up. It is not remotely credible. To consider that point further, let us recollect the controversy that arose when 2 Members of this Assembly, I will not bother mentioning their names but they know who they are, had a private meeting with the Attorney General and convinced him to pause and to halt the prosecution of a person known to them, a member of the public. Now, what on earth is going on there? What did the Attorney General imagine he was doing even contemplating entertaining such an approach? But he did. It is a matter of public fact, and indeed ultimately the individual in question, notwithstanding the fact that he had, in fact, admitted the offences in question under oath in another context in court, was ultimately let off and awarded full costs. I am sorry but that is political interference with the prosecution system. Then there was another infamous example of 2 people accused of child abuse. Where it was absolutely clear, it was even accepted by the Honorary Police officer in question that the evidence to charge was present and, again, the Attorney General decided that he did not want them to be prosecuted, notwithstanding the evidence, and so they were not. They were released without charge. These are the kind of conflicts of interest, the contaminations,

that afflict the whole prosecution system in Jersey. Now, I have not doubt that the Deputy of St. Martin's proposition will be defeated today but other similar propositions are going to be brought forward, and I am glad about that and frankly I think all Members of this Assembly should be glad about it too because there are significant issues here. If we are a competent and responsible Assembly we will, of our own volition, face up to those issues and address them.

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

As usual I will be brief and to the point. The Honorary Police are subject to the Police Complaints and Discipline (Jersey) Law 1999 and to the Honorary Police Complaints and Disciplinary Procedure (Jersey) Regulation 2000. If a Centenier is rude to a member of the public the code of conduct for politeness and tolerance would apply or if he or she showed favouritism to an attendee over others this will fall under the code of fairness and impartiality. This relates to complaints against the Honorary Police officers conducting Parish Hall Inquiries but Centeniers also reach decisions on whether or not to prosecute at police headquarters and also at the harbours and airports customs and immigration. The same code on prosecution applies to these decisions but the provision only refers to Parish Hall Inquiries being brought within the scope of the law. People have recourse also to the Chef de Police, the Constable and the Attorney General. I will not be supporting this, I will be voting against it. I would also like to add I have never been a Centenier but in the 1970s I was a C.O. (Constable's Officer), probably booking Ford Cortinas and such like.

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

I listened with great interest to Senator Syvret's contribution. He describes himself as a great supporter of the Honorary Police and I welcome that because I think as has been shown in this debate there is a great deal of value given to the Island by this body. Clearly, though, many of his remarks were more about his concerns about the prosecution service itself and the politicisation of the judiciary that he believes takes place rather than about the projet that is before us today. It may well be that because Clothier One has not been implemented there is a perception that the Connétables are, in his words, contaminating the prosecution service. Certainly from my own standpoint I do not see there is any evidence that that has happened but there may be a perception out there that it can happen. Perceptions are important and clearly it has been mentioned by many Members in a number of forums recently, we do need to look again at Clothier One and think very hard about the fact that there is still no police authority and I believe we need to reopen that discussion. Several of the Senator's comments, and this, I think, is simply to some other Members who have spoken, are based on examples of how the public have been treated which regrettably are one-sided. It is very easy to argue that laws must be changed on the basis of examples that have been brought to one by members of the public. There are, of course, examples of poor policing that happened from time to time, both from the honorary side and the States side. Thankfully, though, there are far more examples of good effective policing that go on every day 24/7. I think that there is a lack of balance in some Members who have spoken. They have been affected by particular examples where they feel the system has gone wrong and it has led them to see the whole system as being in some way fatally flawed. The Deputy of St. Martin, I think, was unwise in basing most of his speech yesterday on the detailed account of this particular offence, which if that was all there was, I would agree with him, that was a dreadful thing to have happened. Indeed I have heard, in my capacity as father of the parish ... complaints have been brought to me by members of the parish and at first sight these sound terrible. But when one goes and asks the other people concerned, the person about which the complaint has been made, what really happened, you very often get a completely different story. So I think there is a lack of balance here and other Members have spoken about the fact that the projet does not achieve what the Deputy, or indeed what Senator Syvret, would like to see in the way we deal with prosecutions. I must say that there has been a recent example I am aware of where a particular decision made by a Centenier has been the subject

of a complaint and the Attorney General very quickly has decided to review it. So it seems to me the Senator is arguing that is not enough and we should not be giving this right of reviewing decisions into that one pair of hands of the Attorney General but, again, that is a much bigger question. It is not being addressed by this proposition whether there should be a way of reviewing the decisions of Parish Hall Inquiries that goes beyond the Attorney General. Perhaps it should go beyond the Attorney General and maybe that is a discussion we should be having. I do not think it is true to say ... I think the word used by the Senator was hostility. Members are opposing this proposition, in some cases because it is confusing, it lacks logic; in other cases because it appears to be based on a particular example or a number of examples where a person feels they have been dealt with wrongly by the honorary system. That is not hostility, that is the States simply not wishing to approve a proposition which simply does not do the work of convincing us that we should support it. I welcome the Deputy of St. Martin's interest in policing. I think it is important, and he has a history of bringing matters to the attention of the Assembly which I think are important, and in many cases he has made a real difference to the way we run this aspect of our government. But I think on this particular occasion I will not be able to support it.

The Deputy Bailiff:

I call on the Deputy of St. Martin to reply.

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

Can I thank all Members that have spoken. I think it is very important to speak. Without a doubt I think this is a very important proposition and I am disappointed that some people think it is seen to be another attack on the Honorary Police. It is not. What I am trying to do, and I am grateful to the Constable of St. Helier for saying that I had brought a number of issues before the House because I do always seek to see ... I suppose I aspire to excellence and I would like to see that carried out throughout both sides of police, both States Police and Honorary Police, and I think it would be fair to say that I have been fairly even-handed with my actions on both because the police are very, very important to us, they played a very important part in my life. I have had a tremendous number of good experiences but unfortunately some are bad. What we ought to be doing is looking where the balance arises. What I am purely asking for here today is clarification of the law. I am absolutely amazed, I really am, that the Attorney General has taken the trouble to put the comments ... no doubt he has assisted the Comité des Connétables to draft their comments, and we have not heard ... no, that is fine, good, I have said I am not bothered about that, but what I am concerned about, I would have expected the Attorney General to have at least stood up and clarified the law, if only in the fact he is here to assist us as an adviser. I did write to you, Sir, to ask whether in fact there was a conflict, and I agree with you I do not think there is in the present set up. There is not a conflict. But I would have expected the Attorney General ... particularly in my last paragraph of my speech last night I said the easiest thing was because of the uncertainty maybe was to bring a proposition to the States to the exclude that part which is unclear. Bring that part to the States for us to debate whether in actual fact the conduct of an officer, a Centenier, on his approach to a decision and thereafter is part of the Police Complaints Law because what I did was I brought that case as an illustration of the difficulty one has if, indeed, someone does act ... their conduct is one of incompetence and they cannot be within the constraints of the Police Complaints Law. I believe it does. That is the dilemma I have. I believe that when we passed this law in 1999 ... in fact it is difficult because what we have got now is a different Attorney General, as indeed the trouble is with law, as lawyers will know, you can both have a different opinion and it depends who is in the seat as whose opinion is right. So quite clearly I would assume that when the Deputy Bailiff was Attorney General he did not see this as a problem. I am assuming he thought the Parish Hall Inquiries was part of the Police Complaints Law. However we have a different Attorney General now who is having a different interpretation, and who knows, the next one that comes along - I

must not be presumptuous, Sir, I do not know if you are moving up, I would hope so - may have another interpretation. What I am asking for really is if there is this lack of clarity in the law, let us get it changed. I was challenging the Attorney General last night to bring forward an amendment to in fact clarify the law. What I have got to do is ask Members to agree this morning whether in actual fact they think that the conduct of a Centenier up to the point of decision and then after the decision is part of the Police Complaints Law. Because there is no way - no way - am I saying that the actual decision to charge can be complained of because at the end of the day it is for the court, and people have misunderstood that. It is not the decision to charge, it is the actions prior to and after and I made that clear in my speech. I wrote it down and it is there for everyone to hear. Obviously some chose not to hear. He is not here now but Deputy Tadier said do not spend too long on my summing up. I do not think there is a need to because quite clearly I am not going to succeed with what I propose to do. But at the same time what I hope I have done is raised people awareness to a problem; that is lack of clarity in the law. Because I will say now that if one looks at the particular law, there is no definition about what a complaint is. There is no definition of what conduct is. As I say, we ought to be seeking clarification. If one looks at paragraph 3 of the Attorney General's comment - and I would hope everyone has taken as much trouble as I have to read his comments and indeed the one of the Comité des Connétables - it says: "If Members' view is that it is appropriate to introduce specific provisions in a 1999 law, it would be essential that it be made clear that the law was not intended to cover prosecutions." That is what I am asking for. The Attorney General has got it here and, as I say, I am disappointed he has not stood up to say so. The one person I would very much like to compliment this morning, and that is the Deputy of St. Mary. I am sad to say he is the only one that has been spot on. He has read this, he has understood it **[Approbation]** and I must say I am a bit disappointed in my friend Deputy Le Hérissier **[Laughter]**. Could I just clarify the situation with the Connétable of St. Ouen because he and I sat down when I lodged this and I really am disappointed he should think to place all the blame on me for not telling his Centeniers. I am great believer in people knowing what they are and the line of delegation but when this proposition was lodged I had a meeting with the Attorney General and I said I have lodged this this morning, so the titular head of the police knew about it. I would assume that you have this rank structure, that this titular police officer would make sure his Centeniers and his Constables knew but did not need to because they, as police officers of their parish would have got it and, of course, the whole purpose of us having a 14 day delay before lodging and discussing it is to allow the Connétables to bring this forward to the parishioners. We know that does not happen, I can understand that. But I would have expected them at least to talk down to their Centeniers to ensure that they were aware of this. In fact, it did not happen and, in fact, I did take the trouble of writing and emailing my proposition to my Parish Centenier and I would have hoped the Connétable, likewise, would make sure that his Centenier had it because I sent the proposition to the head of St. Martin. I never got a reply but it did not matter, I know they have got it. I did hear what the Connétable had to say on 2nd April and probably I ought to - and I did think about it - copy him in and I thought: "No, I will not because he will probably assume I have not done it." But I probably ought to have now. Because on 2nd April, that very day, that very afternoon, I left the Chamber, I did email the Chef of the new ... I did not realise there was a change and I am delighted for the Honorary Police that Centenier Scaife is now the head. I think he is a tremendous guy and I have every support for him, and I know how competent he is. But it is quite interesting because I did ask if I could meet him. What was interesting was he told me he had not got a copy of P.30. So you can understand how confused I am. I just wonder why the Connétable of St. Helier had not passed it on to his Chef, why the Connétable of St. Ouen had not passed it on to his Chef, because it appears that they did not know. I did ask if I could meet prior to me going away - I went away for Easter - and it was not possible but the earliest that they could meet me was just the week prior to it, and I did also offer to meet the Comité des Connétables when I spoke to the Constable of St. Ouen way back in early March. So I think the criticism of me is really a little bit disingenuous. I am not going to go through everything else, what I have always sort is clarification of the law. I personally do not believe the law needs to be changed, that is my dilemma. It does

not need to change to show that the Parish Hall Inquiry is part of the Police Complaints Law. I believe it is. So really what I am asking people is to say that it should be part of the law that is there already and if, indeed, it is intended to be taken out, I think the etiquette would be that the Attorney General would request the Minister for Home Affairs to bring forward an amendment to clarify the law. That is what I ask Members to do. I have got to put it to the vote because I think it is the only way to end this debate. But what I would ask Members to do is to support what I am doing and possibly then ask that the Attorney General has taken heed of what I have asked today that he will bring forward ... discuss the matter with the Minister for Home Affairs with a view to seeking clarification of the law. I make the proposition and ask people to support me. I will have the appel, please.

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

I wonder if the Deputy would accept one mild clarification of the matter in relation to his summing up speech, when he said there was no definition of complaint in the 1999 discipline law. That is not correct, the provision is set out in full in paragraph 4 of my comments.

The Deputy of St. Martin:

I was talking about in the law, not the Attorney General’s interpretation. That is the problem, we have one person making an interpretation of a law which has been passed by the States, however a different Attorney General has chosen to have his own interpretation.

The Deputy Bailiff:

Very well, the matter then before the Assembly is for or against the proposition of the Deputy of St. Martin. I invite Members to return to their seats and the Greffier will open the voting.

| POUR: 10 | | CONTRE: 39 | | ABSTAIN: 0 |
|--------------------------|--|--------------------------|--|-------------------|
| Senator S. Syvret | | Senator T.A. Le Sueur | | |
| Deputy R.C. Duhamel (S) | | Senator P.F. Routier | | |
| Deputy of St. Martin | | Senator P.F.C. Ozouf | | |
| Deputy J.A. Martin (H) | | Senator B.E. Shenton | | |
| Deputy G.P. Southern (H) | | Senator J.L. Perchard | | |
| Deputy S. Pitman (H) | | Senator A. Breckon | | |
| Deputy M. Tadier (B) | | Senator S.C. Ferguson | | |
| Deputy of St. Mary | | Senator A.J.D. Maclean | | |
| Deputy T.M. Pitman (H) | | Senator B.I. Le Marquand | | |
| Deputy D. De Sousa (H) | | Connétable of St. Ouen | | |
| | | Connétable of St. Helier | | |
| | | Connétable of Trinity | | |

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| | | Connétable of Grouville | | |
| | | Connétable of St. Brelade | | |
| | | Connétable of St. Martin | | |
| | | Connétable of St. John | | |
| | | Connétable of St. Saviour | | |
| | | Connétable of St. Clement | | |
| | | Connétable of St. Peter | | |
| | | Connétable of St. Lawrence | | |
| | | Connétable of St. Mary | | |
| | | Deputy R.G. Le Hérisier (S) | | |
| | | Deputy J.B. Fox (H) | | |
| | | Deputy of St. Ouen | | |
| | | Deputy of St. Peter | | |
| | | Deputy J.A. Hilton (H) | | |
| | | Deputy P.V.F. Le Claire (H) | | |
| | | Deputy of Trinity | | |
| | | Deputy S.S.P.A. Power (B) | | |
| | | Deputy K.C. Lewis (S) | | |
| | | Deputy I.J. Gorst (C) | | |
| | | Deputy of St. John | | |
| | | Deputy A.E. Jeune (B) | | |
| | | Deputy A.T. Dupré (C) | | |
| | | Deputy E.J. Noel (L) | | |
| | | Deputy T.A. Vallois (S) | | |
| | | Deputy M.R. Higgins (H) | | |

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| | | Deputy A.K.F. Green (H) | | |
| | | Deputy J.M. Maçon (S) | | |

2. Code of Practice for Scrutiny Panels and the Public Accounts Committee: amendment (P.31/2009)

The Deputy Bailiff:

Very well, we move on to the next matter on the Order Paper which is projet 31, Code of Practice for Scrutiny Panels and the Public Accounts Committee: amendment lodged by the Chairmen’s Committee. I will ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion to refer to their Act dated 12th March 2008 in which they approved the Code of Practice for Scrutiny Panels and the Public Accounts Committee and to their Act of 21st October 2008, in which they approved amendments to the Standing Orders of the States of Jersey and to approve the following amendments to the code of conduct to bring it in line with the revised Standing Orders: (a) in paragraph 2.1 delete the words: “Two additional members are appointed by the States on the nomination of the President of the Chairmen’s Committee (Note: alternative nominations may also be considered by the States)”; (b) after paragraph 4.15 insert a new section entitled “Co-option” to read: “4.16 Panels may co-opt an additional non-executive Member on to a panel for the purposes of assisting with a specific review; 4.17 A member can only be co-opted on to a panel if he or she is not already a member of 2 Scrutiny Panels; 4.18 The co-opted Member must only take part in discussions on the specific review for which he or she has been co-opted and not in any other panel business” and renumber the code as necessary; (c) in Appendix 4, delete 4(1), substitute 4(4) with revised Standing Order 121 as approved by the States on 21st October 2008, and renumber the appendix accordingly.

2.1 Senator B.E. Shenton (Chairman of the Chairmen’s Committee):

This will be an unusual proposition in as much as my speech will probably be shorter than the time it took to read the proposition out. It is very much a housekeeping exercise. Our Standing Orders have already been changed and this is purely to update the codes of practice for Scrutiny Panels and the Public Accounts Committee. Standing Order 142 has been amended to remove the 2 independent members from the Chairmen’s Committee. I was never quite sure why we had the 2 independent members on the Chairmen’s Committee. It would be a bit like the Council of Ministers inviting an extra Constable along to their meetings. Standing Order 138 was inserted by recent amendment to permit the possibility of co-opting another member on to a Scrutiny Panel for a specific review. As I say, this is all just housekeeping, we have already had the debate when we changed Standing Orders. We have got a lot of business to get on with and I put forward the proposition.

The Deputy Bailiff:

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

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

While I have no objection to most of this particular proposition and it is, as the Chairman has said, just mere housekeeping, what I am concerned about is any limitation on the amount of work that any member of Scrutiny might be tempted to do. So 4.17 strikes me as rather unusual: "A member can only be co-opted on to a panel if he or she is not already a member of 2 Scrutiny Panels." While I would not recommend being a member of more than 2 Scrutiny Panels as good for your health, we already have a number of members who are not involved in Scrutiny work and perhaps should be. We are already running Scrutiny Panels which only have 4 members and, in one case, 3 members, which is a very difficult task indeed. Here we are saying that members of Scrutiny cannot volunteer to take on an extra load. While I do not recommend that they take on 5 Scrutiny Panels or 5 co-options, because they would soon end up in the knackers ... broken down by work if not by anything else, I do not think we should be restricting and saying people cannot appear on more than a certain number. What is the reasoning? I want to hear from the Chairman, what is the reasoning behind that limitation? Is it just for the health of members of Scrutiny?

2.1.2 The Connétable of St. Mary:

I rise just really to address, if I may, the question posed by the previous speaker. This is not a new imposition of a limit. Standing Orders already say that Members may not be a member of more than 2 Scrutiny Panels. Members can be on sub-panels of Scrutiny Panels as well but when the corresponding change was put through by the last Assembly, I did myself rise then to point out that was it being dealt with here is not a sub-panel, it is an existing full panel with a co-opted member on to it. So Standing Orders, in fact, are not being changed to reflect the work load of Members. Members can only be on 2 full panels at the moment.

Deputy G.P. Southern:

I would still ask for justification for limiting the amount of work the Scrutiny member can do in this way from the Chair.

2.1.3 Senator A. Breckon:

Could I just say it was the Health, Housing and Social Security Panel that had some difficulty in the previous life, as it were, and what we found we had to do, in order to make something work, instead of having a full panel review complimented by another member somebody had to drop out in order that we could bring in somebody else. We had 2 areas, one was a Housing Panel Review we wanted to do with another member and we could not do that, and the other one was in Elderly Care. The other thing I am sure Members are aware of, and something that Deputy Southern has touched on, is when the panels were reconstituted when the new House was convened there was some difficulty in that some Members, through the Greffe, had submitted areas of interest and as chairman of a panel was I given a list of Members and in effect it was about useless because the people who had expressed an interest were already doing something else. So although they might have had an interest in that area, when it came to saying: "Are you interested in being on the panel?" they were not. There is some work burdens, as I would call them, on Scrutiny Panels and if we could spread this out with sub-panel membership or co-opting people and spreading the work around then that is so. But sometimes, and I know where Deputy Southern is coming from here, you could have one panel that are in the process of writing a report, so at a different stage to hearings and gathering evidence and background reading, therefore it is perhaps not quite as intense although one or 2 members may be working with the officer to conclude the report, but you run something alongside that. If people are willing and able to do that I do not think we should restrict them because one of the benefits of it is not just the report themselves, it is working with other people in different areas and sometimes you find things out not just about the subject but about the people that you are working with and people who are working in the system. Wherever we can, if

people can handle the workload ... there was some discussion at some stage about whether Assistant Ministers may be involved in some area of Scrutiny and I do not think we really bottomed that out either because they are involved in planning issues on sub-panels and the like. I think this is a move forward but I think it is something that we may have to look at again because the restriction is 2 panels and membership - especially the Environment Panel at 3 - is tight with other commitments and with some big areas to look at. So I hope Members will accept this today but I think at some time through P.P.C. (Privileges and Procedures Committee) it will come back because it is something we do certainly, I believe, need to look at again.

The Deputy Bailiff:

I call upon the Chairman to reply.

2.1.4 Senator B.E. Shenton:

I think probably an experience I had clarifies it. I managed to fall out with the former Deputy of St. Clement, Deputy Baudains, over an issue and Deputy Baudains decided to write to the *Evening Post* and criticise me for not being on the Executive at the time and not being a member of Scrutiny. Technically he was right because I was not sitting on any full Scrutiny Panel at that time. The fact that I sat with him on a telecoms sub-panel and also sat on 3 other sub-panels doing quite a lot of scrutiny work did not bear any fruit with the Deputy. Technically he was right, I was not on Scrutiny, albeit I was on 4 Scrutiny sub-panels. The amendment to the 4.17 refers to the full panels only. Basically it says you cannot be co-opted to a third full panel if you are already a member of 2 other full panels. Now, if this is something that Scrutiny members wish to have a look at, it is not something I am aware has caused any problems because you can be on, I believe, an unlimited amount of sub-panels, it is certainly something we can look at. But from today's point of view this is merely putting into place the codes of practice to line up with Standing Orders, but I take on board the comments of my fellow Scrutiny members and certainly it is something we can have a look at in the future. I would like to put forward the proposition and call for the appel.

The Deputy Bailiff:

The appel is called for then in relation to projet 31, Code of Practice Scrutiny Panels and the Public Accounts Committee: amendment. I invite Members to return to their seats and the Greffier will open the voting.

| POUR: 41 | CONTRE: 0 | ABSTAIN: 0 |
|---------------------------|------------------|-------------------|
| Senator S. Syvret | | |
| Senator T.A. Le Sueur | | |
| Senator P.F. Routier | | |
| Senator P.F.C. Ozouf | | |
| Senator B.E. Shenton | | |
| Senator J.L. Perchard | | |
| Senator A. Breckon | | |
| Senator S.C. Ferguson | | |
| Senator A.J.D. Maclean | | |
| Senator B.I. Le Marquand | | |
| Connétable of St. Ouen | | |
| Connétable of Trinity | | |
| Connétable of St. Brelade | | |
| Connétable of St. Saviour | | |
| Connétable of St. Clement | | |

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

3. Draft Sea Fisheries (Licensing of Fishing Boats) (Amendment No. 4) (Jersey) Regulations 200- (P.35/2009)

The Deputy Bailiff:

We come next to the Draft Sea Fisheries (Licensing of Fishing Boats) (Amendment No. 4) (Jersey) Regulations, projet 35, lodged by the Minister for Economic Development. I will ask the Greffier to read the citation.

The Greffier of the States:

The States, in pursuance of Articles 12, 13, 26 and 29 of the Sea Fisheries (Jersey) Law 1994, have made the following regulations.

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

Could I ask my Assistant Minister, the Constable of St. Clement, to be rapporteur for this.

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

This is a small but nevertheless important piece of legislation. It is important not just because of its effect and impact but because it does illustrate the excellent working relationship which now exists between the French and Jersey fishermen. Pelagic fishing is permitted in the whole area to the east and southeast of Jersey and in the main a gentleman's agreement between the local potters and the French trawlers has worked well, with each knowing when the other would be working in a particular area and thereby mutually avoiding each other. However, the area to the southeast to Le Hocq, which is situated in God's own parish has been **[Laughter]** more difficult to manage because of the intensity of fishing there. Quite significant damage has been caused to the gear of local potters because of rogue trawlers coming into the area at times not agreed and, of course, nothing could be done about it. The French fishermen themselves and the French authorities recognise that this was an unacceptable situation and they do commend the licensing regime I am proposing today. In simple terms, what it means is that any trawling activity in the area designated in the proposition will require a permit and the permit will have conditions attached and those conditions will be agreed in advance by the joint management committee of the Bay of Granville in April of each year. They have already met this April in anticipation of this legislation coming into place and they have agreed that for this year that the permits will only be issued to those fishermen/trawlermen who attended that meeting, I think it was on 17th April and that trawling activity would be restricted to the 6 weeks between 15th May and 30th June, and that is when the potters will obviously remove their gear while that trawling is going on. I propose the principles.

The Deputy Bailiff:

Are the principles seconded? **[Seconded]**

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

I would like to reach the chandelier and give it a little push. In a former life I was appointed to HMS Jersey for my first deployment in the Marines, it was a fishery protection vessel, I thought it was great because I was finally see the world and we came to Guernsey and the next stop was Jersey. On my time on HMS Jersey we were involved in inspections of fishing vessels and I grew to understand the importance of the interaction of the Royal Navy and Inspectorate and also the investigations of who was conducting activities and which ships were in the region. Laws and regulations and permits are wonderful mechanisms to set aside and protect the environment and the resource but without adequate policing and adequate inspection, they mean very little. I wonder if, in responding to the issue in principle, the Constable of St. Clement would be able to give us some indication as to the levels of inspection that will be occurring to ensure that these times and these permits are being used in the right way at the right time by the right people. Also that activity outside of these times is also policed as there is some concern that the inspection side of sea fisheries in Jersey perhaps needs to be understood better and perhaps - although I am not saying it does - needs to be done more often.

3.1.2 Deputy G.P. Southern:

Could the Assistant Minister kindly inform Members whether this period of 15th May until end of June is significant in terms of preserving stocks either of that which is potted or that which is trawled?

3.1.3 Connétable D.W. Mezbourian of St. Lawrence:

Following on from Deputy Southern, the Assistant Minister mentioned restriction from 15th May to 30th June. What restrictions will be imposed in the licence approvals of future time constraints for fishing? I understood from what he said that this restriction is for this year. Is it ongoing?

3.1.4 The Deputy of St. John:

I refer to page 4 where it says there are no financial or manpower implications for the States arising from these draft regulations. Given that I presume we will have additional policing by the Norman Le Brocq over this period of time, also that if permits are to be issued, there must be some financial implications. Could the Connétable, in his response, explain how come there are no financial implications if we are going to be issue permits? There must be an implication there somewhere and therefore it needs an explanation.

3.1.5 Deputy S. Power:

I wonder if the Assistant Minister in his summing up could clarify why they are using the phrase “pelagic” when talking about pair trawling because, in my view, there are 2 types of fish, pelagic and hemocele. What this amendment describes is as form of dredge trawling because the area of the bay that the Assistant Minister has referred to is a very shallow bay and by permitting the use of dredge trawling, where the net is along the bottom, that is why we are having the problems we have. So I think the title and the use of the phrase “pelagic” is wrong. I also want to know - and I agree with the Deputy of St. John, there may be financial or manpower implications of this because there may need to be an increase in patrols. So I would like the Assistant Minister to clarify that. But I would like him to specifically comment on dredge trawling.

3.1.6 Deputy A.K.F. Green:

Following on from Deputy Power, as a scuba diver I have seen the effects of dredge trawling and I would describe it as akin to a farmer ploughing the field with his cattle still in it. The damage it does is absolutely appalling and I would urge the Assistant Minister to restrict trawling as much as possible, particularly in some parts of our coastal waters to preserve our stocks and allow sustainable fishing.

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

If I may speak with my hat as a member of the Fisheries and Marine Resources panel on this matter. It was passed as being indicated in the report by the panel in November 2008. If I may comment that in terms of policing the team who operate the Norman Le Brocq are very effective in that on the 27th there was a case in court whereby the owner of a French vessel was fined £300 in the Magistrate’s Court and only a month ago 2 French low water fishermen were given a strong written warning at St. Helier Parish Hall with regard to low water fishing at the Minquiers. I would also like to point out that the relationship between the Jersey fishermen and those in Granville is extremely good. It is a question of balance. There is a complex chart arrangement whereby there are agreements in certain boxes and the Frouquier Aubert box, which is under discussion at the moment, is one of those. It is a sensitive area with regard to spawning and we are keen to preserve that and also to preserve the interest of our local shellfish potters. It is not an area for dredging, as has been indicated. Pelagic trawling is done by 2 boats drawing a net off the bottom and this in turn of course catches the gear attached to the pots which our people use and consequently that is where the damage gets caused. So, I would urge, from the point of view of the Fisheries and Marine Resource panel, for Members to support the proposition.

The Deputy of St. Mary:

On a point of clarification, I just misheard something. I could not hear. Was the trawling off the bottom, or on the bottom?

The Connétable of St. Brelade:

No, the trawling is off the bottom.

The Deputy Bailiff:

I call upon the Assistant Minister to reply.

3.1.8 The Connétable of St. Clement:

I thank the Constable of St. Brelade who has answered many of the questions that were asked, but I can say to Deputy Le Claire and the Deputy of St. John, yes, of course this will be policed; there is no point in having a regulation if they are not policed and as the Constable mentioned the policing is successful and he mentioned a court case which was publicised only a few weeks ago. There will be no additional costs of the policing because it will be part of the usual routine policing activities that will be factored into that and there will be no costs for issuing the permits because as the vessels which do the trawling are French, the permits will be issued by the French authorities so there will be no cost to the Jersey authorities. Deputy Southern, I do have to say this is not a conservation measure. In fact, in some ways almost exactly the opposite, because the French trawlers will want to come into do this pelagic fishing when the bream are plentiful and that is the period that they are expected to be there, but of course it will conserve the Jersey potters' equipment because, as I say, they will not be in during that particular period. To the Constable of St. Lawrence also, I did try to say in my opening comments that the Management Committee will meet each April to decide on the conditions and the dates for the forthcoming year. So, while it is 15th May to 30th June for this year, next year there could be different days depending on the agreements reached by the Management Committee. Deputy Power, I do understand the difference between pelagic and dredge trawling and what these regulations cover is any trawling which requires gear to be dragged across the bottom and therefore damage the pots which these regulations are trying to prevent. Of course it is the responsibility of all jurisdictions with the responsibility for fishing legislations to abide by international conventions and understandings for conservation measures and that will continue to be done as far as Jersey is concerned. I maintain the principle.

The Deputy Bailiff:

The appel is called for in relation to the principles of Projet 35, the Draft Sea Fisheries Licensing of Fishing Boats Amendment No. 4 Regulations. I invite Members to return to their seats and the Greffier will open the voting.

| POUR: 41 | | CONTRE: 1 | | ABSTAIN: 0 |
|---------------------------|--|---------------------------|--|-------------------|
| Senator T.A. Le Sueur | | Deputy S.S.P.A. Power (B) | | |
| Senator P.F. Routier | | | | |
| Senator P.F.C. Ozouf | | | | |
| Senator B.E. Shenton | | | | |
| Senator J.L. Perchard | | | | |
| Senator S.C. Ferguson | | | | |
| Senator A.J.D. Maclean | | | | |
| Senator B.I. Le Marquand | | | | |
| Connétable of St. Ouen | | | | |
| Connétable of Trinity | | | | |
| Connétable of Grouville | | | | |
| Connétable of St. Brelade | | | | |

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

The Deputy Bailiff:

This is a matter which falls within the Economic Affairs Scrutiny Panel’s area of responsibility. Deputy Higgins, do you wish this matter referred to your panel?

Deputy M.R. Higgins of St. Helier:

No, Sir.

The Deputy Bailiff:

Constable, do you wish to propose both Regulations at the same time?

The Connétable of St. Clement:

Yes, I propose the regulations.

The Deputy Bailiff:

Are they seconded? **[Seconded]** Does any Member wish to speak on either of the regulations? All those in favour of adopting Regulations 1 and 2 kindly show. Those against? The Regulations are adopted. Do you propose in the third reading? Does any Member wish to speak in third reading? All those in favour of adopting the Regulations in the third reading kindly show. Those against? The Regulations are adopted in the third reading.

4. Draft Public Elections (Amendment No. 3) (Jersey) Regulations 200- (P.36/2009)

The Deputy Bailiff:

Next we come to the Draft Public Elections (Amendment No. 3) (Jersey) Regulations 200- Projet 36 lodged by the Comité des Connétables. I will ask the Greffier to read the citation.

The Greffier of the States:

Draft Public Elections Amendment No. 3 (Jersey) Regulations 200-. The States, in pursuance of Articles 7 and 72 of the Public Elections (Jersey) Law 2002, have made the following Regulations.

4.1 The Connétable of St. Ouen (Chairman of Comité des Connétables):

The Comité are required to bring this amendment to the House for consideration because the form, which is attached to the report on page 6, is a statutory requirement of the law. The amendments proposed here are merely a small housekeeping measure which the Law Draftsmen have highlighted as needed. They merely adjust the layout of the form to make it consistent with the States decision to bring into force a 3-year rolling register. The old form was in fact a registration form; this new one will now be a registration statement. The new form will now be sent to households completed with all the names which appear on the rolling register. The only action needed by the householder will be to verify the information contained on it, or alternatively to add or take away any names as necessary. The opportunity has also been taken to adjust the dates on the form, bringing the dates back one month; this to assist Parish Hall staff. There are no financial or manpower implications with this proposition and do make it.

The Deputy Bailiff:

Are the principles seconded? **[Seconded]**

4.1.1. Deputy M. Tadier:

It will not be long; it is just to say that as a campaigner for more electoral participation in Jersey I think this can only be seen as a good step and I do welcome the amendment as brought by the Connétable.

4.1.2 Deputy G.P. Southern:

First of all, the Constable talked about a 3-year rolling register. I presume then that means that as has been the practice in the past, it is a practice of removing names from the register if they have not been registered in the past previous 2 years will still continue and I wish to know if that is the case, if that is what he means by a 3-year rolling register. I am also worried by a statement that it brings back the date by a month for the convenience of administration by parish officials. Does that mean that the date by which members of the public have to register in order to be on the register to vote has been brought back by a month? Because that would be a retrograde step if that were the case. Finally, I would like to take the opportunity, since we are looking at the registration

process, whether he, and his committee, have had time to consider and to debate or discuss with P.P.C. or others whether the time has come to assist members of the public to vote by post along the lines already engaged in in the U.K. (United Kingdom) whereby, for example, those who require a postal vote because of disability, either blindness or mobility problems, once they have applied for a postal vote that request stays for each subsequent election *ad infinitum*, so they do not have to register every time to get a postal vote, and that further those people wishing to vote by post no longer have to give a reason to vote by post, they can just simply say: "I prefer to vote by post. Please arrange for me to have a postal vote." It seems to me that we have 2 registers at the moment; we have the voting register and the postal voting register and 2 separate processes apply. It seems to me that it would be a useful process to bring the 2 together in that a postal register and the electoral register should be part of the same process and people would be enabled to register for a postal vote at their address, known by the Constable and the parish authorities, as they register on the electoral register itself, and I wonder if the Chairman can address those issues and suggest a way forward.

The Deputy Bailiff:

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

4.1.3 The Connétable of St. Ouen:

I thank Deputy Tadier for his thanks and Deputy Southern mentioned removal of names. We will continue to do that, but this new form will also assist in that the householder will have the opportunity to identify any names which should be removed when the form comes in for return to the Parish Hall. The form which we are going to use is similar to the one which we are now using with the rates where all the information which the householder has supplied in the past is on the form and the task of the householder is merely to identify any changes. I do apologise to the House. I should have said that the date has moved forward one month and not back. We were originally June. We are now 1st July. In fact, that would also assist with youngsters who are at university because by then they will probably be back in the Island and so we will have an opportunity to ensure that their names are on the form. As far as the other issue which the Deputy raised, it is obviously not part of this particular proposition, but I am prepared to address it. The Connétables are considering implementation of a new computer system Island-wide and I am sure that all the points which the Deputy has raised will be addressed when that system becomes operational. I maintain the proposition.

Deputy G.P. Southern:

Could I just seek a point of clarification? When the Chairman said that we will remove names from the register, was he specifically referring to the practice in the past of removing anyone not registered in the past 2 years? Because that is a substantial removal in St. Helier No. 2, for example, it removed 2,500 names which then had to be built up again through a new registration campaign. Is that practice continuing?

The Connétable of St. Ouen:

The only names which will be removed are those of people who are obviously deceased and also persons who have failed to return the statement for a 3-year period.

The Deputy Bailiff:

All those in favour of adopting the principles to the regulations kindly show. Those against? The principles are adopted. Senator Ferguson, do you wish this matter referred to your scrutiny panel?

Senator S.C. Ferguson:

No, thank you.

The Deputy Bailiff:

Very well. Do you propose the regulations *en bloc*, Chairman?

The Connétable of St. Ouen:

I do, Sir.

The Deputy Bailiff:

Are they seconded? **[Seconded]** Does any Member wish to speak on any of Regulations 1 to 3 in the schedule? The appel is called for. In relation to that I invite Members to return to their seats. The vote is on Regulations 1 to 3 in the schedule. The Greffier will open the voting.

| POUR: 42 | CONTRE: 2 | ABSTAIN: 0 |
|------------------------------|------------------------|-------------------|
| Senator P.F. Routier | Senator A. Breckon | |
| Senator P.F.C. Ozouf | Deputy J.A. Martin (H) | |
| Senator B.E. Shenton | | |
| Senator J.L. Perchard | | |
| Senator S.C. Ferguson | | |
| Senator A.J.D. Maclean | | |
| Senator B.I. Le Marquand | | |
| Connétable of St. Ouen | | |
| Connétable of Trinity | | |
| Connétable of Grouville | | |
| Connétable of St. Brelade | | |
| Connétable of St. Martin | | |
| Connétable of St. John | | |
| Connétable of St. Saviour | | |
| Connétable of St. Lawrence | | |
| Connétable of St. Mary | | |
| Deputy R.C. Duhamel (S) | | |
| Deputy of St. Martin | | |
| Deputy R.G. Le Hérissier (S) | | |
| Deputy J.B. Fox (H) | | |
| Deputy G.P. Southern (H) | | |
| Deputy of St. Ouen | | |
| Deputy of St. Peter | | |
| Deputy J.A. Hilton (H) | | |
| Deputy P.V.F. Le Claire (H) | | |
| Deputy of Trinity | | |
| Deputy S.S.P.A. Power (B) | | |
| Deputy S. Pitman (H) | | |
| Deputy K.C. Lewis (S) | | |

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

The Deputy Bailiff:

Chairman, do you propose the regulations in third reading?

The Connétable of St. Ouen:

I do. I am sorry, my ears have suddenly blocked. I cannot hear anything. Probably my lucky day.

The Deputy Bailiff:

Let us hope you do not have to reply to much debate on this one then. **[Laughter]** Is it seconded in third reading? **[Seconded]** Does any Member wish to speak in third reading?

Deputy G.P. Southern:

Just since it was part of the debate, may I express my disappointment that once again we are going to be removing a large number of names every 3 years from the register and then attempting to build them up so we have a decent register. This is not truly a rolling register.

The Deputy Bailiff:

Does any Member wish to speak? Do you wish to reply to that? All those in favour of adopting the regulations in third reading kindly show. Those against? The Regulations are adopted in third reading.

5. Jersey Community Relations Trust: Appointment of Trustee (P.38/2009)

The Deputy Bailiff:

We come next to Jersey Community Relations Trust: Appointment of Trustee, Projet 38, lodged by the Minister for Home Affairs. I will ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion; to agree to appoint by secret ballot one of the following members to be a trustee of the Jersey Community Relations Trust for a period of 3 years: Senator S.C. Ferguson, Deputy S.S.P.A. Power of St. Brelade, the Deputy of St. Mary, and

to agree that the procedure for the ballot should mirror that used for the appointment of Ministers, namely that successive ballots should be held if necessary until one nominee obtains more than half of the votes cast.

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

I am going to ask my excellent and hardworking Assistant Minister, Deputy Hilton, to act as Rapporteur.

The Deputy Bailiff:

Very well. Rapporteur, Deputy Hilton.

5.1 Deputy J.A. Hilton of St. Helier (Assistant Minister for Home Affairs - Rapporteur):

Based on an amendment brought to the Jersey Community Relations Trust in 2003 by the Connétable of St. Helier the Constitution now requires that the States shall appoint one trustee, being a Member of the States of Jersey, who is committed to the objectives of the Jersey Community Relations Trust as set out in paragraph 3 of the Constitution. The Minister for Home Affairs has invited all Members of the States to consider, with due regard to the commitment required to the objectives of the Trust, if they would wish to be appointed by the States as a trustee and 3 nominations have been received; Senator Ferguson, Deputy Power, and the Deputy of St. Mary. Each nominee has submitted a written statement of no more than 500 words to support their application in which they set out their reasons for wishing to be appointed and why they support the aims of the Trust. These statements have been circulated. I propose that Members be requested to appoint a Trustee by ballot.

The Deputy Bailiff:

Is the proposition seconded? **[Seconded]** Does any Member wish to speak on the proposition? All those in favour of adopting the proposition kindly show. Those against? The proposition is adopted. So, that means that the Assembly will move to the ballot, so I would ask the ballot papers be distributed please by the usher and the Deputy Greffier and Members should therefore put down one name.

Deputy M. Tadier:

Could I just raise a point of order. It seems to me that when we have an appel you make a call for people in the precinct to return to the Chamber, is that also the case for this kind of ballot?

The Deputy Bailiff:

Not usually. If Members are not here so be it. Very well, thank you. Now the ballot papers will be collected. I was going to ask the Attorney General and the Deputy Greffier to act as scrutineers. I understand he is here. Very well. They will act as scrutineers. **[Ballot held]**

The Deputy Bailiff:

I can inform Members of the result of the ballot. The votes cast were as follows: Senator Ferguson, 13 votes; Deputy Power, 18 votes; and the Deputy of St. Mary, 13 votes. That means that there is no overall majority but it also means that we will have to have a runoff ballot between the Deputy of St. Mary and Senator Ferguson in order to decide who drops out and who goes forward to a final

round against Deputy Power. If Members agree I would have thought the correct course now is to ask for ballot papers to be redistributed. I remind Members that this is between Senator Ferguson and the Deputy of St. Mary only. Whoever gets the higher number of votes will go through then enter a ballot with Deputy Power. So you may only vote for Senator Ferguson or the Deputy of St. Mary.

Deputy P.V.F. Le Claire:

Could I make an observation, Sir, that recently it was pointed out to me that the changes in respect to the Jurats' elections have been made to avoid the possibility that where there is no clear leader the options have more rigorous forecasting. I wonder if perhaps I could request the Chairman of the Privileges and Procedures Committee to consider this in regards to the fact that we are now voting for 2 Members when there is no clear overall majority winner at this time.

The Deputy Bailiff:

I am sorry, Deputy, I am not sure I quite follow that. My recollection is that the jurats have been brought into follow the very procedure which the States are now following. In other words, where you have a tie for second place then there is a vote between those 2 to see who drops out and then there will be a ballot between the winner and Deputy Power and the eventual winner will have an absolute majority therefore. Have all Members got ballot papers? Very well, I request then that the ballot papers be collected. Have all ballot papers been collected? Very well, then I will ask the Deputy Greffier and the Attorney General to act as scrutineers. **[Second ballot held]**

The Deputy Bailiff:

I can give Members the result of the ballot for the runoff. Senator Ferguson received 27 votes and the Deputy of St. Mary, 20 votes. I, therefore, declare that Senator Ferguson goes through. So there will be one more ballot which will be necessary between Deputy Power and Senator Ferguson. I will ask that ballot papers be distributed. May I remind Members that it is between Deputy Power and Senator Ferguson? Very well, I ask the papers to be collected. Very well, in the absence of the Attorney General or the Viscount I will ask the Assistant Greffier to manage this task on her own then. **[Third ballot held]**

The Deputy Bailiff:

Very well I can announce the result of the election. Senator Ferguson received 11 votes and Deputy Power received 22 votes. There were spoiled papers, 4, which were votes cast for the Deputy of St. Mary who is no longer in the contest **[Laughter]**. I, therefore, declare that Deputy Power is elected **[Approbation]**. Sorry, Deputy, you wanted to say something.

Deputy S. Power:

Yes, Sir, just to thank everyone for their support in my appointment as a trustee of the Jersey Community Relations Trust. I will take the responsibility seriously. I feel slightly guilty though we had to go to 3 ballots.

6. Suspension of States Employees and States of Jersey Police Officers: Revised Procedures (P.46/2009)

The Deputy Bailiff:

We then come to Projet 46, Suspension of States Employees and States of Jersey Police Officers: Revised Procedures, lodged by the Deputy of St. Martin and I will ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion; (a) to request the States Employment Board and Minister for Home Affairs to amend policies, procedures and, if necessary, relevant legislation in relation to discipline for States employees and officers of the States of Jersey Police to ensure that; (i) when any States employee or officer of the States of Jersey Police is suspended they shall, within 3 working days of the suspension, receive in writing the reason or reasons for the suspension; (ii) at the time the person concerned is formally notified of the suspension they may be accompanied by a union representative, workplace colleague or friend; (iii) 28 days after suspension, and every 28 days thereafter, the continuing need for the suspension will be reviewed by a panel drawn from within the public service which shall be independent of the department where the suspended person is employed and which will report its findings to the States Employment Board; (iv) the suspended person should be able to be accompanied at each such 28 day review by a union representative, workplace colleague or friend and with the Chief Officer of the department concerned or his nominee also to be required to attend the review; and (b) to agree that the above revised procedures will apply to every States employee and officer of the States of Jersey Police and become operative within 42 days of the approval of this proposition.

6.1 The Deputy of St. Martin:

It did not seem that long ago I was talking. I would hope that Members will have had on their desk the letters that were circulated by the Greffier, and I express my thanks to everybody for that. Members who will have read my report will have noted that paying States employees to be off work while suspended is not very productive. In the past 12 months it has cost the States in the region of £1 million to pay for overtime and cover for suspended employees. However, it is the human cost that really concerns me and following answers given to the Connétable Deidre Mezbourian of St. Lawrence in early February I decided to look at the issue of State suspensions. I have met and spoken to a raft of people including representatives of the Civil Service Association, the Civil Service united union, the Manual Workers union, the police, the prison, the nursing representatives, the employee relations section, the head of Human Resources and employees who are still suspended. Shall we say the experience has been revealing and helpful. From my meetings and research it is apparent that very little is understood of the impact the suspensions have on the employer, the employee and the taxpayer. This lack of understanding is clearly evident in the report accompanying the Chief Minister's amendments, therefore it is very important that this issue is addressed without further delay. Members will have read the Chief Minister's report and his justification for rejecting my proposal. The main difference between his report and mine is that the Chief Minister's report is how he believes and wishes the situation to be. However, my report is based on how the situation really is. I will provide evidence the Chief Minister seeks to substantiate my claims. Members will hear that my proposals urgently need approval to ease the suffering caused to so many States employees who have been badly let down by the Chief Minister and fellow members of the States Employment Board. I submit the real intention of the Chief Minister's report is to maintain the employer's charter to retain complete control of suspensions with a little consideration be given to the employee and the taxpayer. Any tears shed by the Chief Minister are merely crocodile tears. For some time questions have been asked in respect of suspensions. As a result of the concerns expressed, in the spring of 2006 a review was undertaken by the States of Jersey disciplinary procedure and in particular the area of suspension. The terms of reference were to undertake a review of the current procedure and make recommendations for improvement. The Chief Executive was asked to carry out an urgent review. The review found

that all disciplinary procedures in use within the States were fully compliant with best practices as set out by A.C.A.S. (Advisory, Conciliation and Arbitration Service), however while the overall procedures were fine, it was their application where improvements could be made and a number of recommendations were made. Members will have read the findings and recommendations in my report so I will only refer to the key recommendations which are as follows. While it was accepted that there may be a need for specific aspects in disciplinary procedures for particular pay groups, work should be undertaken to deliver a clearer generic disciplinary procedure with a consistent core applicable across all pay groups. This is a key recommendation which I have incorporated in my proposition. What I am proposing will have a consistent core and be applicable to every employee, irrespective of their rank, who are in receipt of a salary from the public purse. However, it is apparent that Home Affairs is happy to continue in its time warp and exclude police officers from the proposed procedure. The second one was that the authority to suspend employees be restricted to the Chief Officer of the department or his nominee. A requirement would be introduced that all suspensions must be notified to the Employee Relations section at the point of suspension to enable the level and duration to be monitored, with the employee relations section to produce a monthly monitoring report to the Director of Human Resources. The Chief Officer to ensure that all suspensions are formally reviewed one month from suspension date and no less frequently than one month afterwards. A requirement that a maximum of time between the suspension date and a disciplinary hearing be 8 weeks, with the expectation that it would be done before that time, if possible. This is another recommendation which is central to my proposition. I am pleased to report that the above recommendations have been implemented, however, it is evident that inconsistencies remain, despite the Chief Minister's claim to the contrary. It could be said that the outcome of the review was an improvement but in my opinion further improvement is necessary. This opinion is shared by a number of people that I have met to discuss the suspension issue, including Ms. Karen Huchet and Mr. John Moulin, 2 highly respected Island residents whose letters of support are on Members' desks. It is apparent that some employees are still being suspended without receiving anything in writing. It is also apparent that a cooling off period would be advantageous to both the employer and the employee. There is no provision for suspended employees being accompanied by a friend when being suspended or for any redress when a period of suspension is longer than the 8 weeks. It is also apparent there has been little adherence to employees' human rights. Members will have noted that my proposition contains a number of ways to improve the current system which will not only formalise the suspension process, but should lead to less employees being suspended and, if they are, their period of suspension could be short. It is therefore disappointing that some of my proposals are not being supported by the Chief Minister. It is imperative that suspensions are not seen to be the first option. Also, it is imperative that when an employee is suspended the suspension process is put into a more formal and transparent manner. It is not uncommon for employees to be called before an employer and informed that they have been suspended and they will receive something in the post. There are occasions when an employee has been instantly suspended, possibly because there has been some physical altercation, or the employee has been accused of some other questionable conduct. This action has caused difficulties because one side of the argument may only have been heard, or the matter has been mismanaged. I believe a better way of dealing with a matter would be for the Chief Officer to send an employee home to allow a cooling off period. The employee would be told to report back to work within 3 working days. The cooling off period would allow for both parties to contemplate their best course of action. Very importantly, if the employer believes that the employee's actions may be best dealt with by imparting suitable words of advice or warning this could be carried out when the employee returns at the appointed time. If the incident is one which is deemed to be worthy of suspension the employee would be warned to attend within 3 days to be formally suspended and given written reasons for suspension. As one can imagine, being suspended can be a traumatic and humiliating experience. Receiving such news, particularly if not backed up at the time of the suspension with written reasons, can lead to confusion and the employee not fully comprehending what is going on. Therefore, it is in everyone's interests that at

the time the employees are being suspended they are able to be accompanied. At present employees are entitled to be accompanied by a union representative or workplace colleague when attending disciplinary hearings. Following discussions I believe the employee should also have the right to be accompanied by a friend at the formal suspension stage. The friend could be anyone. What is wrong with this? I do not understand the Chief Minister's concern that the friend might have a legal background. It could be that the union representative or the workplace colleague may have a legal background, so why the objection? The purpose of being accompanied is for that person to comfort and support the employee and ensure that the suspension process is conducted in an efficient and orderly manner. It could be said that there is some merit in having someone at the outset with the skill to see any weaknesses in either the employer or the employee's case, whereby a suspension could be short-lived. This would save a lot of unnecessary hardship at the public expense. If the word "friend" is deleted from my proposition it will deny the suspension employee the right to be accompanied by one's husband, wife, parent, partner, or any close friend or confidante. Why is the Chief Minister concerned? Is he worried about openness and justice? It should be noted that if one is arrested under the Police and Criminal Evidence law, which is human right compliant, the prisoner is entitled to contact a friend, relative, or any other person. It appears that a potential criminal has more rights than a States employee. Therefore, I believe that Members should support part (a)(i) and (ii) of my proposition, which allows for the employee to be accompanied by a union representative, work colleague, or friend. It is illogical for police officers to be excluded, particularly if the only reason for exclusion is because of a perceived problem drafting an amendment within 6 weeks. I will elaborate on that when we debate the Home Affairs amendment. Some suspensions are deemed to be neutral acts, which seems to be an anomaly. There certainly does not appear to be a neutral act for the employee. While a person may well be suspended to enable an investigation to be carried out there is a perception that the employee is guilty until the Chief Officer has produced evidence to confirm the employee's guilt or innocence. It is often the case that employees are suspended following accusations. That fact is acknowledged in the written answer given to the Connétable of St. Lawrence's questions. Often an employee is suspended while an accusation is being investigated, even though there is no judgment at the time of suspension. Investigations can take months, even years, and it is totally unfair and wrong for employees to be left in limbo while investigations are being carried out. It is also unfair to the taxpayer who has to foot the bill. While provision is now in place for the Chief Officer to review employee suspensions on a monthly basis it is often seen as a rubberstamping exercise. The review is not always appropriate as it could be that the suspension arose because of a problem between the Chief Officer and the suspended person. Also, the process is totally unfair for the employee who has no say in the matter. Even what the Chief Minister is proposing is flawed as it still denies the suspended person the right of a hearing to contest the continued suspension. It is simply not good enough or acceptable for the Chief Minister to say that the suspended person is still being paid. I ask: what sort of employers are we? In an effort to get a definition of a neutral act and whether there was any system in place for an independent review to enable a suspended person to appeal against the continuation of a suspension, at the States sitting on Tuesday, 10th March, during oral question time I asked the Chief Minister to define a neutral act and were there any guidelines on the conduct of the reviews held after 8 weeks of suspension, particularly to ensure that such reviews are independent and allow for the employee to be accompanied by a representative and if no such provisions exist, was he minded to remedy the matter. Unfortunately - probably topical for today - as oral question time overran its allotted time the Chief Minister forwarded me the answer which he would have given, had time not run out. The full answer is in my report but in summary, suspensions are usually put in place to ensure that investigations into allegations can be made in an unfettered manner. The act is considered neutral as no judgment is made at the point of suspension as to whether the allegations are true or not. There is no, I repeat, there is no specific review after 8 weeks. Eight weeks has been set as a target by the States Employment Board for the desired maximum time between suspension and the holding of a discipline hearing and this target is normally achieved. All suspensions must be actively reviewed on a monthly basis. The purpose of

the review is to establish whether any material change has occurred between a suspension date and the date of review. There is no face-to-face meeting with the Chief Officer. Should the suspended person believe there has been a material change in circumstances since suspension then they are fully at liberty at any time to write to the Chief Officer. It should be noted the Chief Minister said that there was no specific review after 8 weeks and he failed to state what steps are in hand to remedy the matter. This is a matter I believe which must be addressed and my proposition seeks to do so. As one can see the neutral act is an open-ended act which does little to safeguard the employees' interests. It is a known fact that investigations do take months and even years, leaving the employees with a view that even if the allegations are unfounded their prospects of returning or resuming their employment in any meaningful way are very slim. Often suspended persons are told that they may not enter their place of work or have contact with work colleagues or the media. This is an unnecessary interference on the employee who could be the innocent victim of an unfounded accusation. It is evidence that once an employee is suspended very little welfare support is given. Employees' lives are left in limbo, not knowing whether target dates have been set for the completion of the inquiries, or when they are likely to hear if any charges have been brought against them. This can be most demoralising because often one's work and social life are entwined. This is even harder to endure within a small community. There is also evidence that suspensions can lead to short and long-term family tensions, particularly in families with children. This isolation can also pose difficulties for suspended persons in obtaining any evidence to show that there has been a material change in the circumstances since the last review. The monthly review itself is flawed as it is a one-sided matter, as evidenced in the Chief Minister's answer when he says: "It is not expected that reviews will be face-to-face and if there has been any material change to the circumstances since the original suspension then they (that is the suspended person) are fully at liberty to write." I find such anti-personal action to be an affront to the employee who could be the innocent victim of a malicious allegation. As said, a person under investigation of an illegal act would have greater rights. It should be noted the current policy provides for no specific review after 8 weeks. Such a policy gives the impression that if an investigation is not completed within 8 weeks the suspended person is presumed guilty, therefore there is no need to rush things. Even if there is only a perception it is unacceptable to the employee and the taxpayer. It could also be seen as a form of dismissal by stealth because the suspended person's job may have been occupied by some other person. This could create difficulties, particularly if the reason for suspension was as a result of an unfounded allegation being made by a workplace colleague. When I began my speech I said that suspensions are costing the taxpayer in the region of £1 million a year. It should be noted in a question from the Connétable of St. Lawrence in March of 2007 regarding the number of employees suspended in 2006, she was informed that 15 employees were suspended with 5 carried over from the previous year. The Connétable asked the question again in 2007 and the Connétable was informed that there were 17 employees suspended with 4 carried over. In February this year the Connétable asked a similar question and asked for the 2008 number and was told that 29 employees were suspended with 7 carried over from 2007. It is a fact that the number of employees suspended in 2008 is almost 3 times as many as in 2002. At bullet point 3 on page 4 of the Chief Minister's report he accuses me of making a sweeping statement when I claimed that much more must be done to ensure the suspensions are not seen to be the first option rather than the last. It is apparent that he is not aware of the number of suspensions being imposed. It should be noted that the purpose of the 2006 review was to reduce suspensions, so my claim that the present system is not working is substantiated. I can assure the Chief Minister that the figures I am quoting have come from his own department. From my research, despite the Chief Minister's claims, it is apparent that suspensions are too readily given with little concern being given to the hardship inflicted on the employee. There appears to be an absence of any joined up approach or urgency when investigating suspensions. Investigations are often left in the hands of investigating officers who can only devote what spare time they have from their fulltime job or employment to investigating. I am told that files are left lying in either the police or the Law Officers' trays for months. We as States Members must do much more for our employees. It is just not good enough

for the Chief Officer to review suspensions; they should be actively inquiring into the reasons why an investigation is taking so long. Ministers should also take a much more active role in respect of suspensions. It is not disputed that investigations do take months. Currently there are employees who have been suspended for 2 and a half years. Such practice is totally unacceptable and must be remedied. There must be more urgency and accountability from Chief Officers to substantiate whatever allegations have been made. It is imperative that after a reasonable time the interests of the suspended person becomes of paramount importance. As such it should be for the Chief Officer to justify why a suspension can be extended. There may well be justifiable reasons for delay, however, there is no procedure for any suspended employee to contest the continuation of the suspension, or for the Chief Officer to justify the continuation of a suspension. This is even more relevant when a suspension is a neutral act. I believe that after one month if the employee is still suspended and has not been given a date for discipline hearing or court appearance, the onus should be placed on the Chief Officer to justify the extension of the suspension. I therefore propose that an independent review panel be established to allow employees to question the continuation of the suspension. The review panel should comprise of employees from within the States service. When adjudicating reviews the panel need not comprise of more than 3 persons, however, to ensure there is sufficient people it would be desirable for the panel to consist of a pool of probably no less than 9 persons who would be appointed by the States Employment Board. During my meetings, which included the Chief Minister, it was not considered to be too difficult to recruit a pool of 9 employees within this States section within a 6-week period. I accept that no specific terms of reference are proposed, but my report outlines what the panel's role would be. The purpose of the review would be to permit suspended persons to question the continuation of suspension and for the Chief Officer to justify that continuation. It would not, and I repeat, it would not be to investigate or try disciplinary cases involved. The terms of reference would be similar to many other tribunals therefore drafting terms of reference would not be difficult or time consuming, particularly if there was a will to do so. When I was discussing my proposal with the Chief Minister there was concern as to who would be responsible for carrying out the panel's recommendation. It was considered unethical for members of the tribunal, who may be of junior rank, to instruct or request Chief Officers to carry out recommendations. It was the Chief Minister's suggestion that the panel should forward its recommendation to the States Employment Board because it would have the authority to request fellow Ministers or Chief Officers to carry out whatever the board had in mind. The reviews would be administered by the Employee Relations section. At present there is a requirement that all suspensions must be notified to this section at the point of suspension to enable the level and duration to be monitored. The section then produces a monthly monitoring report to the Director of Human Resources. The Chief Officer will still need to continue reviewing suspensions within departments, however, instead of submitting the monitoring report to the Director of Human Resources it would be the responsibility of the employment relations section to organise the suspension review. When the suspension has been in place for a month, and is to be continued, a suspended employee would be able to ask why the investigation has not been completed and it would be for the Chief Officer to justify the extension of the suspension before an independent panel. It may be that the panel is satisfied with the Chief Officer's explanation and because the investigation is complicated more time is given. However, it could recommend that the States Employment Board request the Chief Officer to ensure that the investigation is completed within a specified time. At least this would ensure the investigation is completed, or a date is set for a disciplinary hearing. As mentioned previously it appears that much of the present delays can be found at the door of the police or the Law Officers' Department. It was felt necessary to request an explanation for the delay from those departments it would have been more prudent for that request to be made by the Chief Minister. If it was to recommend that the employer be permitted to return to work it would be for the States Employment Board to take whatever action is deemed appropriate. The sanction of an appearance before a review board to justify the continuation of suspension should certainly concentrate the Chief Officer's mind and instil some urgency into the investigation. As mentioned above there may be good reasons why an investigation has not been

completed and no doubt can be defended, however, there should be a right for employees to appeal to an independent body and be accompanied at those hearings. The establishment of a panel will certainly speed up suspension process and save the taxpayer considerable money. I accept that there will be a cost but if one considers the human cost and the cost of keeping employees suspended my proposal will save hundreds, if not thousands of pounds. I believe it is important for me to address the Chief Minister's comments and explain why I believe he is ill-informed and that my proposals are a solution, not a ...

The Deputy Bailiff:

Deputy, would it not be appropriate to do that in the debate on the amendment?

The Deputy of St. Martin:

No, Sir, because I think it follows through that this is not part of the amendment. This is part of the process. I would like to carry on.

The Deputy Bailiff:

One moment, Deputy, if you are now going to deal with the points raised by the Chief Minister in his amendment that ought to be on the amendment debate. We do not want to have a debate now about those amendments.

The Deputy of St. Martin:

Well, the point is, Sir ...

The Deputy Bailiff:

You are proposing it in your unamended form.

The Deputy of St. Martin:

Yes, Sir, and we have not had the amendment yet, so I am proposing it in my unamended form.

The Deputy Bailiff:

Therefore, I do not think you need at this stage to go into detail about why you disagree with the Chief Minister's amendments. You will of course have the opportunity of doing that in the debate on this amendment.

The Deputy of St. Martin:

Sir, I have prepared my speech so I can illustrate the difference between what I am proposing and what the Chief Minister is proposing.

The Deputy Bailiff:

I am sorry, but I think you should do that in the debate on his amendment.

The Deputy of St. Martin:

Well, if you will give me a second or 2, Sir, because I will have to rearrange what I have to say. I will take away the 7 bullet points and I will include those. I would like to say that I stated earlier that much of the delays can be found at the door of the police and the Law Officers' Department. This claim is also supported by the Chief Minister. I do have considerable investigative experience and I have also experienced frustration at having to wait for legal advice to consider recommendations and I know how easy it is to find excuses to delay an investigation by claiming that witnesses are on holiday, or something more pressing has turned up. I also know that if an investigation is properly supervised and scrutinised an investigation can be efficiently undertaken and completed within a reasonable and acceptable time scale. I have looked into the number of suspensions and spoken to suspended employees and staff representatives. I know it must be embarrassing for the Chief Minister and Chief Officers for someone like me to question their efficiency, but I do so in the knowledge that I have done my homework and I am sorry that I believe that the wool is being pulled over the Chief Minister's eyes for him to accept that so much time is needed to complete investigations. There is an absence of joined up approach. How can so much time be taken to complete one investigation? How can Chief Officers and Ministers allow for their employees to suffer hardship, all because files are lying in officers' in-trays? Where is the accountability? Who is seeking justification for those delays? The States Police and the Law Officers' Departments come under States umbrella and they both have a duty of care when undertaking their duties and I find it difficult to accept that the police require months to conduct investigations or law officers need months to consider recommendations. In paragraph 4 of the report the Chief Minister says: "It is a fact that a vast majority of suspensions which exceed 28 days do so because of complicated internal investigations, police inquiries and legal proceedings involved." The procedures I am proposing in my proposal would have minimal effect. I ask how delays can be justified and who is accountable for them? Can the Chief Minister tell me why it has taken over 8 months for the police to investigate a complaint regarding 2 police officers reported in last Friday's *J.E.P.* (*Jersey Evening Post*) when it appears there was only one other person involved? **[Approbation]** How long did it take to investigate the allegation? How long was the police file and its recommendation with the law officers? Who was supervising the investigation? Why did the Acting Chief Officer allow for such delay? What duty of care did he take, or give, to the suspended officers? It appears that the matter is now to be dealt with by an internal discipline hearing. Therefore, there will be no criminal charges and no adverse publicity by court appearances. However, I do question why the officers had to endure 8 months suspension and who was responsible for the delay. If there was truly an accountable joined up approach the length of the officers' suspension would have been drastically reduced. In paragraph 7 of the Chief Minister's report the Chief Minister claims that my proposed panel would create a danger of the panel effectively investigating or trying disciplinary cases involved. When I discussed my proposal with the Chief Minister I fully explained the purpose of review which I previously mentioned and I totally agree that my proposal would usurp the totally flawed, outdated and inhuman procedures that currently are in place. That is what my proposals are intended to do. The Chief Minister claims that the review panel would be resource hungry but I have no idea how he has worked that out; that some 7 working days per month could be incurred by each panel member involved and the process would involve the dedication of half a post of support administration. It would not be for me to be prescriptive, but I would not have thought that any hearing would need to run more than 3 hours at the very longest. Members will have noted I have circulated an updated list of suspensions that were supplied last February at the onset of the Connétable of St. Lawrence's questions. Members will see on the 20th of this month there were 7 long-term suspended States employees, each of whom would be entitled to have had their suspension reviewed. However, I am reliably informed that disciplinary hearings have now been arranged for the 2 Health Department employees and, as just mentioned, the *J.E.P.* has reported that 2 of the 3 police officers are to attend an internal hearing. So, if my proposals are adopted it would mean that there would be only 3 cases left to review. Therefore, it would hardly take the panel 7 working days a month to review just 3 cases. If my proposals are adopted the number of people suspended would be reduced. If the onus

is placed on employers to justify the continuation of suspensions investigations could be conducted with more urgency and transparency. This in turn could lead to less employees being suspended and also for shorter periods. This should also reduce the number of reviews required, therefore very few reviews would be necessary. The Chief Minister is claiming that my proposals would require an additional half post. As always, it seems that as soon as additional work for a civil servant is mentioned, irrespective of how little is required, there is a call for additional manpower. I accept that there might be a requirement for additional work, but nowhere to the extent that it would require an additional half post. The Employee Relations section currently monitors all suspensions. If a hearing is required all that is required of the Employee Relations section is to arrange for 3 members of the pool to be warned and forward a copy of the suspended employee's file, which under the present system has to be reviewed anyway. However, if the number of suspensions are reduced and the suspensions are more efficiently processed there will be less work for the employee relations section staff. As one can see, the Chief Minister is opposing paragraph (a)(iii) and does not support my proposal for a review panel because it creates difficulties. I am sure it does for Chief Officers and their Ministers because what I am proposing will make Chief Officers more accountable for suspensions that they have implemented. By proposing my proposal and replacing it with the Chief Minister's amendment will continue to deny the right of an employee to a fair hearing in accordance with Article 6 of the Jersey Human Rights Law. It will not improve the current unsatisfactory unaccountable procedure, and my proposal had received overwhelming support from staff representatives I have met and it would be an affront, I believe, to States employees if my proposals are rejected. The Chief Minister is claiming that because there are some 20 pay groups that would need to amend their procedures it would take 12, not the 6 weeks I am proposing. The Chief Minister is way out with his claim as evidenced in Mr. Moulin's letter. It might be of interest to know that before I lodged my proposition I did attempt to discuss my proposals with the States Employment Board, but it was impossible to arrange a date on which we could all attend, therefore I only had a meeting with the Chief Minister who appeared to be enthusiastic towards my proposals. We were concerned as to whom the review panel could report to and it was the Chief Minister who suggested that it should report to the States Employment Board, for the reasons mentioned earlier. I was quite impressed with the Chief Minister's vision and I quietly thought to myself he was not quite such a bad chap after all. However, it was apparent that whatever commonsense and vision was present left or disappeared when I left the room **[Laughter]**. This is because the Chief Minister no longer supports his original inspirational suggestion. Surely what I am proposing is open, transparent and fairer than either the present arrangement or what the Chief Minister is proposing. However, it will be for Members to decide if they want that practice to continue. I note that in paragraph 10 of page 6, the Chief Minister is concerned that matters affecting contractual terms and conditions of States employees and police officers are being brought to the States Assembly for debate and determination. I make no apologies. It is quite apparent that the States Employment Board has failed to look after the interests of States employees including police officers. I know that I have the support of a great many of its union representatives. I would draw Members attention to the 2 letters from Mr. John Moulin and Ms. Karen Huchet. They are very respected people who have a clear appreciation of the hardship and unfairness that there currently exists within our workplace. With regard to amending police regulations, if they could not be amended within 6 weeks there is nothing to stop Home Affairs entering into the spirit of good practice and allow for their officers to be part of the suspension review. As far as manpower and financial implications, quite clearly there are very few. In actual fact there will be a huge saving on the budget; less for the taxpayer and certainly much better for the States employee. I make the proposition.

The Deputy Bailiff:

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

7. Suspension of States employees and States of Jersey Police Officers: revised procedures (P.46/2009) – second amendment.

The Deputy Bailiff:

Now we have 2 amendments to the proposition of the Deputy of St. Martin. The first one which calls for debate is that lodged by the Chief Minister. I will, therefore, ask the Greffier to read the amendment.

The Greffier of the States:

(1) In paragraph (a)(ii) after the word “representative” insert the word “or” and delete the words “or friend”; (2) In paragraph (a)(iii) for the words “a panel drawn from within the public service which will be independent of the department where the suspended person is employed and which will report its findings to the States Employment Board” substitute the words “the States Employment Board or in the case of police officers an appropriate senior officer in conjunction with the appropriate chief officer”; (3) Delete paragraph (a)(iv) and; (4) in paragraph (b) for the words “42 days” substitute the words “3 months”.

Senator B.I. Le Marquand:

Sir, I am sorry to interrupt but on the Order Paper it is my amendment which goes first.

The Deputy Bailiff:

Yes, but yours in text comes after the Chief Minister’s and, therefore, under Standing Orders yours must be taken afterwards.

Senator B.I. Le Marquand:

I see. Thank you for putting me right on that, Sir.

The Deputy of St. Mary:

Can I make a point of order? Can we take these one at a time because it is going to make the debate a lot easier?

The Deputy Bailiff:

That is a matter for the Chief Minister. How do you wish to take them, Chief Minister? The normal course would be to take them all at once although possibly voted on separately if the Chief Minister agrees.

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

Certainly, Sir, I was proposing to speak to all my amendments in one go and then I think maybe they fall into 3 parts because amendment 3 is really conditional on amendment 2 but I will take separate votes on items 1, 2, 3 and 4 but speak, as I say, in respect of all of them. I shall do so once I get my papers in order but, unfortunately, like the Minister for Home Affairs I was taken slightly off balance. But the first amendment is to delete the word “friend”. At first glance that looks a very odd amendment. Surely at a time of suspension the very person that one needs to accompany one is a friend. Certainly there is no intention on my part to isolate the person being suspended or

to deny that person adequate support. But that support can be given, as the proposition says, by a union representative or workplace colleague, either or both of which I would have thought would come under the terminology of "friend". But my problem comes with the looseness of the term "friend". Members may recall that some years ago I was involved in the instigation of reforms to local employment laws. Indeed it was my committee that brought forward the original Fair Play in the Workplace discussion some considerable time ago now. But in the case of disciplinary proceedings it has been made clear both by the States Employment Board and more importantly by the trade union officials themselves that the one thing they want to avoid is the involvement of lawyers because once you start getting lawyers involved in disciplinary proceedings you inevitably end up with a confrontational approach. That was felt not just by us but by the employee representatives themselves to be a detrimental situation. That view may have changed but that was certainly the view expressed at the time and reflected in the outcome of the employment legislation. My amendment to delete the word "friend", therefore, brings our procedures into line with the Jersey Employment Law which we passed a little while ago. Furthermore, the Jersey Advisory and Conciliation Service (J.A.C.S.) have confirmed that they do not support the use of lawyers in disciplinary proceedings and modern employment practice does not support that. Therefore, I believe that, however odd this amendment may appear on first sight, it does have merit. My next 2 amendments delete the words "a panel drawn from within the public service" and just substitute the words "the States Employment Board". It is important I think to understand exactly what the review process that the Deputy of St. Martin and I are both talking about, what that is trying to achieve and, more importantly, what it is not trying to achieve. Because the purpose of any review is to ascertain whether anything has changed, whether there have been any new developments which may have cause to change the current suspension arrangements. It is quite reasonable that such review should take place and an interval of 28 days is a reasonable interval. What is unreasonable and, in my view, unrealistic is that such a review should be carried out by a panel of representatives from within the public service. The reason I say that is because there is a clear danger of that body trying to second guess or adjudicate on the suspension and the reasons themselves. I am sure the Deputy of St. Martin would say that that was not his intention and I would believe him. But I have no doubt that the process in time would inevitably tend to look at second guessing the outcome of the suspension. I say that because it is clear from the Deputy's comments that he expects the panel to hear from the suspended individuals, the union representatives and the Chief Officer of the department. It strikes me that if you are going to hear different arguments put forward by all those sides, the panel is in danger of themselves making the decision. Therefore, the review is not going to just assess the validity of the suspension. It is trying to access the outcome of the suspension itself. I point out that in the Deputy's own report he uses the word "contest" within the review not just to review it. But I think the word "contest" highlights the fact that that is really what the panel would end up doing. He talks about the resources and being resource intensive, but I do not want to make too much heavy weather of that one. He suggests that there were only 7 cases so if they took half a day each that would not be so serious. I point out that the wording of his proposition is such a process should take place every 28 days. If he refers to the table addressed to his own notes this morning, there were 7 suspensions ongoing after 8 weeks but there were rather more than that after 28 days. Many of them were settled within the 28 days and the 8 week period. So that is the reason why I say that I do not want to make heavy weather about the resource matter. It is really the fact that setting up that sort of panel is inevitably going to second guess the outcome of the disciplinary hearing. The fourth amendment was a relatively simple one; just to replace the words "42 days" with "3 months". Certainly like the Deputy of St. Martin I do not want to delay this unduly. But I do point out it is a matter of practicalities, while we can change policy guidelines quite quickly it is my practice to consult and listen to the views of the employee groups and representatives before changing those guidelines. I think in fairness to them they have got to have time to think and respond. I do reiterate that there are something like 20 different pay groups to negotiate with. All at the moment may be having different points of view. If I am going to be fair to each of those groups I have got to listen to each

of those groups and listen to what they have to say. I do not think it is unreasonable to suggest that the very laudable objectives of the Deputy of St. Martin should necessarily be stymied because it would take 3 months to put them into effect. I think that sort of timescale is more than reasonable. But having moved these amendments I would like to spend just a few minutes trying to correct some possible misapprehensions about the Deputy's proposition. At the risk of doing just what you told off the Deputy of St. Martin for trying to do, I shall try to relate them to the amendments that I have within my proposals here this morning.

The Deputy Bailiff:

Indeed, Chief Minister, because we cannot have a debate on the main proposition; on the amendment.

Senator T.A. Le Sueur:

No, Sir, but I do think that it is important to understand the background to this and some of the comments that the Deputy has made which may lead to some misunderstanding in people's minds because I think it is important for Members to realise that, as the Deputy said, we had various meetings and I think we shared a common objective of how we should try to improve on the improvements that had already been made. It is only in trying to put those into practice that he and I differ in certain respects. I say in certain respects because there are other parts of his proposition which I thoroughly endorse and which I think are an improvement on where we are. But I think the amendments which I am proposing here simply go on to reflect what I believe could make the objectives of the Deputy of St. Martin delivered more effectively. So I believe that is a good reason why we should support these amendments. I think the Deputy in his opening remarks suggested that the second paragraph of his requirement would lead to a cooling off period. Again I am happy that should take place. That there could be malicious allegations, I am happy that we try to remedy that. But when he talks about this leading to dismissal by stealth I have to remind him that we do have legislation in respect of unfair dismissal. As I say I think I will retain the majority of my comments for the main proposition but there is a danger I think in doing so, that if these amendments are rejected then effectively it is the main proposition or nothing at all. That would be to some extent a retrograde step. I do not want to oppose many of the good ideas of the Deputy of St. Martin. I want to make them better. So I do believe that I have to try to make my case on that one a bit more at this stage to impress upon Members the reasons why these amendments are not, as might appear at first sight, simply being petty and lacking in substance. I think perhaps at this stage it would be a convenient place for me to break off and suggest I remind Members of those problems after lunch. So may I at this stage propose the adjournment?

Senator S. Syvret:

Sir, before the Senator does that may I just ask for a point of clarification on something he said in his speech? I would like to know why if the objective of the first amendment is to prevent lawyers from being involved that that is not the word used. Why is it the catch all phrase "friend"? Could he confirm also that the term "friend" does not cover States Members, because if it did it would effectively be an assault on the rights of individuals; their common law right to be represented by their elected representatives?

Senator T.A. le Sueur:

I think while that might have been an alternative suggestion, we are debating what is in front of us today and that is where we are. But I would just point out the reason I used the wording I did was again tied up with the current wording in the Employment Law. I want it to be consistent.

LUNCHEON ADJOURNMENT PROPOSED

Senator T.A. le Sueur:

I again move the adjournment.

LUNCHEON ADJOURNMENT

The Deputy Bailiff:

So then we return to the amendment lodged by the Chief Minister who was in the midst of putting it.

PUBLIC BUSINESS - resumed

7. Suspension of States employees and States of Jersey Police Officers: revised procedures (P.46/2009) – second amendment (continued)

Senator T.A. le Sueur:

Yes, in fact rather than in the midst of it, I decided that I can probably cut short most of what else I need to say. But I do think I need to address the issue of why we need these amendments at all and, indeed, why we need the proposition at all. Because there seems to be a view held by some that suspensions are currently being carried out without any written notification of the reason why. If that were the case then I could understand the concerns may be justified. The fact is that as far as States employees are concerned, existing practice already requires that the reasons for suspension are given either at the time of suspension or within 3 days at most. I point out to the Deputy that those policies were agreed after a discussion with a Civil Service Joint Side of whom Mr. Moulin was a member and took part. I am not going to comment on the other letter he attaches from the former Head of Family Nursing and Home Care because she was not a States employee. I point out in general terms, suspension contrary to what the Deputy says is not an action taken lightly. Officers are well aware of the extra burden, both financially and operationally, that any suspension would involve and the strains it puts not just on the organisation but particularly on the person suspended. That is why as well as in the interests of justice and timeliness, officers themselves are anxious to resolve suspensions as quickly as possible; just as I am, and just as the States Employment Board wish to be notified of any reasons why a suspension should be prolonged and in particular the reasons for that delay. But as the Deputy points out, in virtually every case of prolonged suspension the reasons are either prolonged ongoing police inquiries or ongoing legal investigations. The difficulty is that the proposition before us today will have no affect whatsoever on speeding up that process. Indeed it has every likelihood, by calling for detailed monthly reviews, of delaying it still further. The Deputy seems to think that we have a widespread problem here. But he has pointed out and circulated a list which shows that only 7 staff out of a current workforce of nearly 7,000 have been suspended for more than 8 weeks.

The Deputy of St. Mary:

Sir, can I make a point of order? Are we discussing the amendments?

The Deputy Bailiff:

We are discussing the amendments, yes.

The Deputy of St. Mary:

The speech seems to be about the proposition, Sir.

Senator T.A. le Sueur:

I appreciate that. That is why I am keeping my remarks to the very minimum just to set my amendments into context because I think what we have here is a situation where virtually any concerns which the Deputy's proposition raises and my amendment seeks to improve upon is in matters which are the subject of ongoing police and legal investigations.

The Deputy of St. John:

On a point of clarification, Sir.

The Deputy Bailiff:

It is a point of clarification only if the Chief Minister gives way.

Senator T.A. le Sueur:

Yes, Sir.

The Deputy of St. John:

Yes, Sir, this morning I heard you instruct the proposer of the main proposition to leave out the area to do with the amendment and, yet, you are allowing the Minister to tread over the border into the main amendment. Can we have a ruling from the Chair, please?

The Deputy Bailiff:

Yes, the position is clear. The remarks may only be relevant to the matter which is being discussed. This morning I indicated to the Deputy of St. Martin that he must not deal with matters which were only going to deal with the amendments. I have raised the same point with the Chief Minister but he has said that he needs to touch upon the main proposition in order to explain the reason for his amendments. That seems to me not unreasonable provided that he keeps those within proper bounds. At the moment I do not consider he has exceeded those proper bounds.

Senator T.A. le Sueur:

I have one more minute to test your patience. **[Laughter]** I know that the Deputy's proposals were brought with the best of intentions. Indeed we did try to find a way of resolving it jointly between us. I am only sorry that we have still got what I regard as a flawed proposition which required me to bring these, what I would regard, very minor amendments to improve what is a good thrust of his proposition. But I do believe that they are important ones. The amendments seek to improve that situation and I do commend them.

The Deputy Bailiff:

Chief Minister, just before you sit down you did not speak at any stage to amendment 3 and in the earlier remarks about how the vote might be taken you said that you thought your amendment 3 was consequential upon amendment 2. On looking at it I cannot see that that is necessarily so.

Senator T.A. le Sueur:

I thought I had, Sir, but I was relatively brief because I thought it was a fairly straightforward matter that with 20 different pay groups to discuss and negotiate with and in view of my desire to have a dialogue with each of those groups I felt that a 3 month time period was unrealistic.

The Deputy Bailiff:

No, amendment 3 relates to the right at the review hearing of the person to attend with a representative.

Senator T.A. le Sueur:

My apologies because that that was covered by a very similar amendment. It was consequential. I mentioned the use of the word “friend” in the first amendment. I think if I am correct ...

The Deputy Bailiff:

You are trying to delete that altogether. In other words, you are suggesting that there should be no right to be accompanied at the review by anybody?

Senator T.A. le Sueur:

I hope not.

The Deputy Bailiff:

You are deleting 4 altogether?

Senator T.A. le Sueur:

Sorry, yes, that is the case, Sir. Have I missed a page?

The Deputy of St. John:

Can I suggest the Minister withdraws it and we continue with the main proposition?

Senator T.A. le Sueur:

No, indeed, Sir, I think I had already given the thrust of my reason for doing this was that the involvement of ... let me go back to my notes. I just did not number the pages.

The Deputy Bailiff:

What you have put forward, Chief Minister, is that the review should be before not the independent panel but that there should be a 28 day review.

Senator T.A. le Sueur:

Yes.

The Deputy Bailiff:

Number 4 then says in effect that at that review the person should be accompanied and you have suggested in your amendment that that paragraph is deleted altogether which presumably must mean, therefore, that at a review of the suspension the person may not be accompanied at all by anybody.

Senator T.A. le Sueur:

That is correct; at all by anybody. I am not saying that the existing procedures are effective procedures; they simply should be maintained.

The Deputy Bailiff:

Right, but it is not consequential on the other it seems to me.

Senator T.A. le Sueur:

No, not really.

The Deputy Bailiff:

Is the amendment of the Chief Minister seconded? **[Seconded]**

7.1.1 Deputy R.G. Le Hérissier:

In looking at the Chief Minister's comments I have to say sadly I find it all very churlish and unnecessary **[Approbation]**. Again we have got this game that we must not trespass into the main proposition which I will comment on. I see no problem with a friend but not having any **[Laughter]** I would not be suffering, and even trying to phone a friend does not get a result either. But perhaps the Attorney General could give us the legal definition of a friend when I finish my remarks because it is quite unusual. I mean people obviously may have friends who are lawyers but I do not think a friend is synonymous with being a lawyer. In fact it is almost an oxymoron **[Laughter]**. So the Attorney General will no doubt draw our attention to what is a friend when you step across the rubicon of a lawyer's office. I think it is very churlish. I also think the Deputy was very wise - although I do not like the 28 days - to look at an independent panel. There will be the issue that the States Employment Board, although it is composed of gallant and fine people of integrity, it is not independent of the system and the whole idea is to have people who are independent of the system. So I cannot take the second amendment either. By definition, because of the illogicality you have drawn attention to, (a)(iv) has to stand because otherwise a person goes, so to speak, naked into the conference chamber which is ridiculous and it totally undermines everything - even if some of us may think it is too far - that the Deputy of St. Martin is trying to achieve. I am very saddened by the Chief Minister's comments. I do not think he has got the import. The issue is not that people are being suspended every day and so forth and so on. The issue is it has cost the system, where it has occurred, a lot of money. There are clearly problems as he rightly says when these issues involve the judicial and the police sides of our administration. There is enormous distress being caused all the way round and somehow we have to keep the pressure on to find ways of dealing with that. In regard to amendment 4 I will support the Chief Minister because I do not think it is material whether we bring it in in 28 days or 3 months. I hope we will have to bring it in and that we will not reject the essence of Deputy Hill's proposition.

7.1.2 Deputy M. Tadier:

I do not have a great deal to add to what Deputy Le Hérissier has just said. I would largely like to concentrate my comments though on the first amendment which are to do with a friend. Would it be appropriate, Sir, to ask for the definition now and then can I reserve my right to carry on once the definition ...

The Deputy Bailiff:

Is it really necessary to ask the Attorney General to define a friend?

The Attorney General:

The request came from Deputy Le Hérissier and if it is true that the Deputy has no friends as he says then it is clearly because he does not spend enough time with lawyers [**Laughter**] which may indeed be the reason for some his contributions in this Assembly [**Approbation**]. A friend in my view is any person who is selected by the person who is entitled by those rules to take a friend along to give him or her support at the hearing in question.

Deputy M. Tadier:

I think that was of some help. I was pleased earlier to hear Senator Syvret's comments about the lawyer. There is a saying that small minds never differ. He beat me to the mark with that one. The obvious question is if the thrust of the Chief Minister's argument is that a lawyer should not be present then an amendment to that effect would have seemed more logical than suggesting that in a minority of cases someone's friend might happen to be a lawyer. I take particular issue with this amendment because I think it is an attack on workers' rights. We have to remember that someone who has been suspended there has to always be a presumption of innocence until proven guilty. If we are going to restrict the representation to either a union official or a fellow colleague, first of all that person may not be in a union for whatever reason. I would suggest that people do join unions. I think that is certainly good for them to do so. But if they do not then they may have difficulty in securing union representation. There may be other reasons that they do not require or do not wish a union rep to be present as well. Secondly, it can only be satisfactory in certain circumstances. Again they may not wish a fellow colleague to be present and there is no guarantee that a colleague might be impartial either. I think it is absolutely imperative that the person defending themselves be allowed to bring whoever they want to; friend or even possibly someone they do not get on with. But I think the issue of friend is misleading here. It should be someone who they wish to bring along with them. Usually it may just be someone who does not speak who is there to accompany them for moral support because we know that these kinds of tribunals or hearings can be quite intimidating for some people. I think that is what I want to limit my comments to. I will certainly be rejecting the first amendment.

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

I might just add that I think the reason Deputy Le Hérissier has not got many friends is it is quite hard to balance them all on the fence [**Laughter**]. But on a serious note. I represented colleagues for more than 10 years and I do not think the Chief Minister really appreciates the importance of this, whatever we want to call these people. Indeed the Chief Minister described the proposition as flawed. I am sorry and I do not mean to be disrespectful, but listening to him I do not think he understands what he is putting forward himself. I will be rejecting this out of hand, I am sorry.

7.1.4 Deputy A.K.F. Green:

I seem to be in the minority on this one because I will be supporting amendment 1. I will contain my comments only on the amendments at the moment and I will talk later about the experience I have had in holding hearings and travelling right through the U.K. as an independent member of review boards for a number of different charities. Bear in mind that what we are talking about here are rules and procedures for the public sector. We have a wide pool of people that could be regarded as a colleague, as well as having your union representative. I accept that they are not always people that wish to be members of a union for a number of reasons and, therefore, may not wish to be represented by a union representative. But we have a large number of employees within the public sector that could act as support. I have seen cases where friends from outside the organisation have come in and taken over the whole procedure. In fact I have seen regulations in other organisations where it does say friend but it says friend acting in a non legal capacity which might cover the point that Senator Syvret was making. I think it is appropriate to remove the word “friend” in this case. I am not sure that I can entirely support amendment 2. I understand where we are coming from but I think some independence in the review is essential. I also have a question as to why the Chief Officer would be in attendance at any reviews on suspensions, as the Chief Officer may very easily or may well be the person that will be holding the hearing. I cannot see that they should be involved in reviewing the process and then being the judge and jury as well. I am not happy with deleting paragraph (iii) because anybody undergoing any form of disciplinary action, neutral or otherwise, should have the right to be supported by a friend or union representative. I have got no problems with amendment 4. So a mixed bag there but I do not have a problem with deleting the word “friend”.

7.1.5 Deputy G.P. Southern:

I am becoming increasingly bemused by the arguments put forward often by the Chief Minister. I am reminded sometimes of Alice in Wonderland and the phrase “curiouser and curiouser”. This is certainly one today which could be paraphrased as crazier and crazier. It seemed to me that Senator Syvret’s argument that the elimination of friend is designed to take out the possibility of representation by a States Member. I, on certainly 2 occasions, have represented employees in a situation of disciplinary procedures, not in suspension procedures, and I believe it is the right of any of my constituents or any constituent to ask for that, should it occur. The point being that in the Attorney General’s definition of a friend, it was a person of the employee’s choice. The restriction of choice in that case is I believe unwarranted and unjustifiable in any case. Then it goes on to say the people who should be doing a review and making sure that things are hunky dory are the States of Jersey Employment Board. It beggars belief. The States of Jersey Employment Board are, by law, the employer of every single States worker and they should be deciding whether something is being done properly or not because they have what measure of independence in any way, shape or form? It just does not make sense. Then to go on ... it just gets curiouser and curiouser. By the way, we will just take out paragraph (iii) so you get no representation in certain circumstances. I mean it just ... if my jaw could drop, effectively it would do. No. I believe the confusion of thinking was revealed in the hesitation and the confusion in the presentation by the Chief Minister. I cannot believe that a man of his calibre cannot realise that as he was saying it, what he was saying made no sense whatsoever and he was embarrassing. I urge the Chief Minister to withdraw these 3 amendments straightaway. Perhaps the fourth one still has some validity but otherwise this is absolute tosh.

7.1.6 The Deputy of St. Martin:

Sir, I would like to speak later but I think it might have been helpful because you stopped me when I wanted to speak but I was going to explain who the States Employment Board is. If Members do not know maybe I could ask the Chief Minister to tell us who the States Employment Board is or who it is comprised of.

Senator T.A. le Sueur:

The States Employment Board comprises of Ministers or Assistant Ministers appointed by the Council of Ministers and currently consists of myself, the Minister for Treasury and Resources and the Minister for Transport and Technical Services. It also used to contain the Minister for Health and Social Services but as he is no longer a member of the Council, we have not replaced him as such yet on that board.

Deputy G.P. Southern:

Sir, may I ask a further point of clarification with the Chief Minister? That body is legally the employer of every single public sector employee, is that not the case?

Senator T.A. le Sueur:

Yes.

7.1.7 The Deputy of St. John:

That clarification says it all. It says it all, that clarification. I have to take issue with something the Minister said early on in his speech after lunch. He mentioned that only 7 persons have been suspended for in excess of 8 weeks - I think that is correct, Minister - out of some 7,000 plus workforce. In fact 7 people suspended for 8 weeks, 8 weeks is a long time as a minimum but in excess of that, just think of the pressure that that person and his family or her family are under during that period of time because they are not permitted to make known the reasons of their suspension. They have no one to confide in, other than their friend or their partner. I think it is wrong that he can lightly say we have got 7 people suspended longer than 8 weeks. One person, to me, suspended for longer ... and in fact I am thinking of one for nearly 3 years, of which it took over 2 years for a board of inquiry - I think the word is, I am not sure of the exact word but for the inquiry to start. This poor family have had this over their head for years. I think it cannot be acceptable. For the Minister to say we have only got 7 people suspended for this long, I think is appalling - totally appalling - because I know if it had been a member of my family I would be climbing the trees because you cannot treat people like this. This is 2009. I really expect the Chief Minister to have sympathy for all of these families because at the end of the day apart from having to replace that person within the workplace at great cost ... and I am thinking of shall we say the medical person who was suspended or is suspended. He was replaced by another medical person at great cost, who I am given to understand became ill. So we have got 3 people ... he has been replaced again by somebody else as a temporary person so there are 3 people at great cost to the Island and we still have not got any results and that is 2 and a half to 3 years down the road. I think it is appalling that the Minister can stand up and be quite happy that there are only 7 persons suspended for longer than 8 weeks. To me, I hope when he sums up he will withdraw those remarks and apologise because I think those families who are suffering under the suspensions and all that goes with it ... all the grey areas that go with somebody who is suspended, has that person done wrong or have they not? It goes on for months and months and months, and in cases years, all the tittle-tattle that goes on. It is totally unfair. I expect a lot more from my Chief Minister than to make a comment of that nature. I sincerely hope he will withdraw it when he sums up.

7.1.8 The Deputy of St. Mary:

I shall not be funny, I am afraid, or indeed outrageous; just critical and analytic. It does seem very bizarre what we are being given in these amendments. I shall just take them one by one. I offer no comment on amendment 4. Amendment 1 is about the friend. Somebody has already said quite

rightly that it should have been phrased “or friend acting in a legal capacity”. As it is not phrased like that then it is really very difficult to see how anyone can have excluded the right to have anyone that they choose with them. So that is amendment 1. Amendment 2 is very strange. The comments of the Chief Minister say at paragraph 7 on page 5: “Firstly, it would create the danger of the panel ...” This is about having a panel at all: “It would create the danger of the panel effectively investigating or trying the disciplinary case involved.” Now, that is explicitly excluded by the proposition. It does not mention investigation. It mentions only reviewing the process and reviewing whether the person should carry on being suspended. The other point was the proposer that he spoke with the Chief Minister and made it clear to him that he specifically excludes that the panel would go and investigate the matter of the suspension itself. Notwithstanding that, the Chief Minister still puts in his comments the comment that the process might go down this road and there is a clear danger that the panel would start to adjudicate on the matter. Is there no chairman of this panel? Is there no officer to point out: “We are going into where we should not go and we are only looking at the matter of the timing and whether things are progressing satisfactorily.” So that is the main argument of the Chief Minister about whether there should be a panel. His main argument is that it might go down the road of looking at the matter - the substantive issue - and that matter has been excluded by the proposition. If that is the main argument then the argument falls. The second argument is this curious one about resources. Again I would quote from the Chief Minister’s comments: “It is estimated that given the proposal that the panel meets with suspended individuals, their representatives and chief officers, some 7 working days per month would be incurred for each panel member involved.” I have got a note in my margin, show how this figure is arrived at. The Chief Minister has already just gone back from that. He has resiled from that. He says it is not a very strong argument so we will not use it at all. We will not rely on it. So the 2 arguments that the Chief Minister uses to not have a panel are both not valid. I cannot see how amendment 2 can be carried by this House. Amendment 3, he was clearly in some state of misunderstanding. There is serious doubt as to whether what the Chief Minister meant was to remove the words “or friend” from that second range of hearings. He has now stuck to his guns and he says he does want to delete the entire paragraph. Others have commented of course that that is completely out of order and not right. I would just conclude by saying it would be very, very strange if the Assembly votes for those 3 amendments.

7.1.9 Senator B.I. Le Marquand:

I have particular difficulties in relation to the situation set out in the proposition because I have received very strong representations, some of which I will read out shortly, Sir, with your permission, both from the acting leadership of the States of Jersey Police and also from the States of Jersey Police Association. If the Deputy of St. Martin thinks he has consulted with the States of Jersey Police Association, I must assure him that they are not in the least in favour of his proposition for reasons which I will read out shortly.

The Deputy Bailiff:

This is a debate on the amendment, Senator.

Senator B.I. Le Marquand:

Yes, it is. Yes, it is. Yes, it is indeed. The reason why I am supporting the amendments is linked in with what I have already said about the situation with the police. You must understand that where there is a suspension involving a States police officer that there may be particular sensitivities which arise. If I can give you a hypothetical case of a police officer who is facing suspension because he is suspected of corruption in connection with the drugs trade or something of that nature. Then not only are potential serious criminal charges involved, or could be involved

against the person, but also there are particular sensitivities in terms of information about the underlying complaint coming out in public in any way whatsoever. It is for that reason that the police object to the inclusion of the word "friend" because that would potentially involve any other person who the suspended officer might wish to be there, who might then have access to highly sensitive information. That view is supported by a section which I will now read from the letter of the President of the States of Jersey Police Association in which he says: "Depending on the nature of the allegation, an officer is also entitled to support from a legal representative" police have no problem with a legal representative, by the way "but from a legal representative, as well as a member of the Police Association and/or welfare officer." So the police do not have the same problem in terms of legal representatives but they do have the problem in terms of the friend being a person who is going to obtain highly confidential information which they should not have access to. That is why I supported the amendment because the police are lumped in together with the civil servants in relation to the first part of the amendment. Now, in relation to the second part of the amendment, I have a very big difficulty if it does not go through and that is because, tactically, in consultation with the Chief Minister, I decided that the right way to approach this was to support his amendments but not to seek to delete the police from section (a) but only to seek to delete them from section (b) for reasons which I will come to on my amendment. The problem that I have and the fundamental problem which the police have - and I am going to read out longer sections of this - are twofold. Firstly, because the police have been lumped in with civil servants, it has been completely overlooked that they have a special status. They are not civil servants. They are particular public officers and the concept of an independent review body composed of civil servants being convened in order to deal with a suspension of a police officer is abhorrent to the police at all levels because it undermines their peculiar status. I am going to read now, if I may, a section from the letter of the President of the States of Jersey Police Association. He says: "I am writing in connection with the above proposition as President of the States of Jersey Police Association who, as I am sure you are fully aware, represents the members of the States of Jersey Police up to and including the rank of Superintendent and formally place on record our opposition to this proposal. The accompanying report to the proposal places much emphasis on States employees and there is little mention of police officers which would tend to indicate that the inclusion of police is an afterthought. Police officers, represented by the Police Association, are not employees as defined in the Employment (Jersey) Law 2003 but are defined as officers of the Crown (I am actually not sure he is right about that but nevertheless have a special status) in that we hold the office of constable." So he wishes to uphold, and the senior management believe it is imperative that we uphold, the special status. We cannot have a situation in which the status of police officers is being undercut, which it is, accidentally, by this proposition. So I have a fundamental difficulty in the methodology of the review. I have no objection to a review taking place that needs to take place in the correct and the appropriate way. Now, the amendment 2 is drawn up partly in order to deal with that so that it is clear that suspension reviews are dealt with by an appropriate senior officer. This, in practice, if I can explain to the Members, will normally be the Deputy Chief Officer because the police are very careful to distinguish between the role of the person who deals with suspensions - a point, I think, made by Deputy Green - and the role of the person who will deal with the ultimate hearing. It is a very important principle that they are kept separately and that is how they do it. Nevertheless, it must be by a senior police officer because otherwise we have the same problem again as we had with the friend; namely, that the members of the panel would then have access potentially to highly confidential matters which could pertain to criminal investigations of a serious nature when they should not. These are matters which should be retained within the police force as part of their structure and discipline. There is a further issue which flows from this which is this. The States of Jersey Police Force is a disciplined force. It is a disciplined force in the same way as the Army is a disciplined force except in a different way. It has a clear management structure and leadership structure. If the decisions of senior officers are to be overturned by people outside the force, that overturns the whole concept of a disciplined and structured force. There is a further point which I need to make in relation to part 2(iii) in support of

the proposition but which I think the Chief Minister may have overlooked, hence his difficulty in relation to part 3, that is, if you look carefully at the wording of (iii) of the proposition and then look at the amendment, you will see that it presupposes that there will always be a hearing at a review. Now, the principle of a 28-day or one-month review of matters is fine but when you have a situation, as you can regrettably have when criminal investigations are continuing and there is a lengthy delay in those, the fact is you can have long periods of time in which there is no change. Nothing has happened, the matter is still subject to investigation and I quote, as an example of that, a case which I believe caused much annoyance to Senator Syvret when he was the Minister for Health and Social Services, a matter which went on, if my memory serves me correctly, for more than 3 years in which one of the employees of Health and Social Services remained suspended because the criminal procedures against him were stuck at a particular stage. So that would have meant that every month a panel would have been convened, which would have to have met under this proposal, to say: "Well, nothing has changed since last month so we make the same decision." That is part of what we attempted to achieve in amendment 2 to avoid the requirement for a sitting which is totally unnecessary every 28 days over a long period of time. Now, if there has been some relevant change or if there are new matters to be put, then of course there should be a further meeting, as it were, but if nothing has changed, what is the point of the costs and the expense of convening that in that way? I move on ...

The Deputy of St. Mary:

Once again, I was going to ask whether this was on the amendment or on the main proposition. It sounded like it was on the main proposition.

Senator B.I. Le Marquand:

It is on the amendment.

The Deputy Bailiff:

It was clearly on the amendment.

Senator B.I. Le Marquand:

It was on the amendment, yes, but clearly, my opinion also.

The Deputy of St. Mary:

The amendment only substitutes one body for another.

Senator B.I. Le Marquand:

I thought it was apparent to Members I was giving the reason why this particular set of wording has been selected because it takes out the requirement. If I then move on to part 3 of the amendment, which is (a)(iv) of the original proposition - I think this is the point which the Chief Minister overlooked - the reason why that has been taken out entirely is because that also presupposes that there will always be a hearing and if the principle of there always being a hearing is a wrong principle, then that should be deleted and that is the thinking behind that.

7.1.10 The Connétable of St. Helier:

I think quite a lot of the previous speaker's comments would have been better made under the amendment to exempt States of Jersey Police Officers from the provisions of the Deputy's proposals, perhaps except for the last. Clearly, the Minister has been in a difficult position because he thought his amendment was going to go first and perhaps if the police had been taken out of the frame, it would have been easier in some ways to have the debate. I do not think that some of the concerns raised by the Minister for Home Affairs apply. I am going to work backwards through the amendments just to bring some variety into the debate. It does seem to me that the last amendment, which most Members are very comfortable with accepting, which is that the timeframe of these proposals should be extended to 3 months. Clearly, it would seem to me sensible for the Deputy of St. Martin to accept this amendment because if he does not it is going to make the amendment of the Minister for Home Affairs much stronger because what that amendment is suggesting is that we need more time to implement the proposals the Deputy of St. Martin is bringing forward. So I have no problem in accepting the last of the amendments. It seems that 3-month period, at the very least, will be required. The third amendment, to delete the whole paragraph relating to the review hearings, notwithstanding the previous comments, seems to me to be a bit of a Freudian slip because if one has a panel every month they appear to deny the suspended person the opportunity of having any assistance whatsoever. I am certainly aware of one recent example where a suspended officer was denied any representation whatsoever, having been suspended. It is clearly wrong. If we are going to have some kind of monthly review, then it absolutely follows that the suspended officer must be allowed to be accompanied. Whether this should be by the very people who have suspended this person or an independent panel, I leave for Members but it does seem to me that there is a very clear risk. Again, I can think of a particular example where the very States Members that have been mentioned today were complicit in the suspension of the person and it really does not offer them any relief or comfort whatsoever that their situation is going to be reviewed by the very States Members who were involved in the suspension. **[Approbation]** Then turning to the first amendment, which is this tricky one about the meaning of the word "friend". We possibly are making rather a lot of heavy weather about this because I suppose it does depend what you mean by "workplace colleague". Having said that, Deputy Green said he supported this amendment because I think he said that in most situations there are plenty of colleagues to choose from. I think it does depend on what one means by "workplace colleagues". Do we mean current workplace colleagues or people who have previously been in that particular job? What happens to a person who works in a very small department of only a couple of colleagues, colleagues who may well be involved in passing the information to the senior staff that suspended them? You cannot restrict somebody to only being accompanied by somebody in whom they have no trust, somebody who may have led to their dismissal or their suspension. It seems to me there is an element here ... Deputy Southern talked about it being curious. I call these amendments defensive and paranoid and it does seem to me that we absolutely must allow anybody who was undergone the rigors and the distress of a suspension on a small Island with a very tightly focused media that we have in Jersey ... to deny them the ability to choose the person who represents them at these meetings because they might be a lawyer, because they might be a States Member, because they might be a journalist, because a they might be a priest, I do not think we have any right to interfere. I think we should allow a suspended member of States of Jersey employment to choose the person they feel most comfortable with in this distressing situation. I would urge Members to reject the amendment.

7.1.11 Senator S. Syvret:

I was interested to hear the speech by Deputy Green when he says he was thinking of supporting the first amendment and like the previous speaker, I would urge him to reconsider his position on that and, hopefully, I will explain why. I have to return to the point I raised just as a question before lunchtime about just what is meant by the word "friend" and whether, in fact, the excising of the word "friend" would have the effect of preventing a person from being accompanied and supported by one of their elected representatives. Now, we just do not know what the answer to

that is at the moment. The Chief Minister, the Attorney General, has been silent on that point. That is really quite a serious matter because if the effect of the amendment to remove the word “friend” does, in fact, also have the effect of removing the right of a person to be accompanied by their elected representative, then that is a very serious constitutional issue. People have a common law right to be supported by their politicians, to seek their assistance and support, and if the effect of the amendment that is being put forward prevents politicians from being able to do that at the request of the individuals concerned, then it is an extremely dangerous path to go down. I fear, for reasons I will explain later, that, frankly, that is part of the unspoken objective of this proposition of this amendment, to prevent States Members from becoming involved in these matters. It is said by the support of the amendment that it would be okay if the word “friend” was deleted as that would still leave in place “accompanied by a union representative or workplace colleague”. Now, this was the point that I think Deputy Green seemed to think was okay. Well, I would ask him to think again about that point. Firstly, the Deputy was used to working in an extremely large department, the largest employer in the Channel Islands, and there would be no shortage of choice of workplace colleagues he might wish to accompany him. The same, however, does not apply, cannot necessarily be said of every other States department which may be a lot smaller. For all kinds of reasons, some of which I will come back to later, it simply will not be appropriate for a workplace colleague to be the person attending with the suspended person. Indeed, I have to say the same is true sometimes occasionally of union representatives. Setting aside the fact that not everyone who is suspended will have a union or professional body to call upon, I have known cases where the mood of the workforce, which then tended to be reflected in the views of the leadership of the relevant union, was inimically hostile to the suspended person. The union was on the side of the majority of close workplace colleagues and basically was quite happy that the person suspended was so suspended. Now, if the union has that kind of conflict of interests because the suspended person has allegedly been bullying staff, but in reality they might consider that they were just requiring proper accountability and efficiency from their staff, then you can see how that places the union in a position of a tremendous conflict of interest. So there will be many occasions when a union representative will not be appropriate. I was interested to read some of the remarks and the assertions in the Chief Minister’s report in which under paragraph 2 and subsequent bullet points of the report, it is attempted to take issue with the Deputy of St. Martin’s substantive proposition. For example, the Chief Minister’s report says, and I quote: “The report says that it is alleged that some employees are still being suspended without receiving anything in writing. This is highly unlikely and where is the evidence for this allegation?” Well, I seem to recollect an extremely high profile police officer who was suspended without receiving not only any prior notice in writing, without any notice at all, so there is an evidenced example. The Chief Minister’s report goes on. It says that: “It is also apparent that there has been little adherence to employees’ human rights. Again, where is the evidence for this assertion?” Well, again, in the case of the Chief Officer of the States of Jersey Police Force ...

The Deputy Bailiff:

Senator Syvret, be careful here, because any debate about that must be in camera.

Senator S. Syvret:

Very well, I do not wish us to go into camera. I will constrain my remarks on that particular point just to say that it is highly debatable, shall we say, that due process and human rights were met. The Chief Minister’s comments also go on to attack the Deputy of St. Martin for saying it is not uncommon for employees to be called before an employer and informed that he/she is being suspended and they would receive “something in writing in due course”. Well, again, in the case I have already referred to, and there are some others, that did not, in fact, happen, so the assertions made in the report of the Chief Minister are highly contentious and highly debatable. It is also the

case that there remains suspended, as was referred to by another speaker, a senior hospital consultant again whose case, whose circumstances, I happen to be very familiar with and there is simply no way that the procedures that have been used against him throughout the length of the entire episode even get on the radar screen of complying with due process, not even faintly. So we can be certain that employees do need some improved protections. I would like to explain why it is necessary to have the ability to keep the management, as it were, on their toes in the way that is proposed by the Deputy of St. Martin and in ways which the Chief Minister is opposing. It is necessary because it is argued on the basis that the system we have now works “as it says on the tin”, if I might use that expression and, of course, it does not. I know from personal experiences that the internal politics, for example, if I might describe it as that, of Health and Social Services was frequently utterly toxic and Deputy Green, a former employee of the department, nods his head in agreement. The factions, the personality clashes, the arguments over turf, resources, priorities; frankly, you would have to experience it to fully appreciate it. While not a suspension, I have to explain to Members that around the very end of 2007 I was asked by a senior consultant to represent him for a disciplinary board who were basically going to sack him. That was the objective of the exercise. This was the view of Health and Social Services management and several of his clinical colleagues. Now, when I read the files and the paperwork on this case and agreed to represent the man concerned, I was rendered speechless. It was literally unbelievable some of the assertions that had been made and the positions that had been adopted under supposed policies that had been used. This is very, very important because it is an issue of profound significance for the public good and public safety. The supposed offences committed by this consultant were that he was allegedly bullying a colleague because he had referred this colleague’s practice to the G.M.C. (General Medical Council), because he considered it, in his professional judgment, to be dangerous, to be unsafe to the patients of the person he was referring. This was accepted as bullying by Health and Social Services management and as the situation escalated, the management even attempted to put in place a policy which said that consultants, other clinicians, could not refer professional concerns to the G.M.C. unless they got the permission of the management first. This was literally breathtaking, it was, frankly, an *ultra vires* policy. As anyone remotely familiar with the Health environment will confirm, frankly, pre-Shipman, but most certainly post-Shipman, clinicians not only can refer dangerous practices and their concerns about them to the G.M.C., they are legally obliged to. They carry a liability if they do not make such referrals. Here we had a management structure united with certain clinicians who were determined to crush this individual at the end of his career simply because he had carried out his professional legal duty and referred what he considered to be dangerous practice to the G.M.C. The hearing itself we won, fortunately, because at the very outset when it became our turn to represent and make our case, I simply asked the question: “Could the management or the management’s representatives show me where in any States of Jersey employment contract or regulations or, indeed, in any of the regulations and rules of the G.M.C. it says that clinicians cannot report dangerous practices to the G.M.C. without management permission?” Their case collapsed into dust at that point. Nevertheless, for the remaining 4 or 5 hours we had to go through the charade of the full hearing which, interestingly, was recorded quite openly. All parties agreed to it being recorded. After this hearing had taken place, some weeks later, I discovered that following that hearing, the States Employment Board - or even if it reached that far, I am not sure - but certainly States H.R. (Human Relations) Department decided that from henceforth they did not want politicians representing people at those kinds of hearings and that henceforth no recordings would be permitted of the proceedings. Now, this is extremely dangerous and counter to the public good and I am afraid that most of the amendments that the Chief Minister has been advised to bring forward by, no doubt, senior H.R. managers and others, to me smack of exactly the same culture. For inasmuch as it is important that we do apply proper standards in disciplinary requirements, proper professional performance requirements to individual members of staff, we must apply the same standards and the same degree of scrutiny to those who are implementing these policies, those who are managing, those who are doing things such as suspending and so on. At the moment, even the system we have today is too weak and

ineffectual to do that properly, to properly protect the public good. It is a job well done that the Deputy of St. Martin has brought this forward but I am afraid most of the amendments tabled by the Chief Minister basically have the effect of wrecking what it is the Deputy of St. Martin is attempting to do. If employees are suspended, subjected to investigations and disciplinary processes, we need to know and we need to require upon our senior management that they are at all times properly adhering to due process. The proposition of the Deputy of St. Martin takes us a great step towards that objective which is why I believe most of the amendments which are being proposed must be rejected.

7.1.12 The Deputy of St. Martin:

I was holding on until everyone else had an opportunity of speaking. I cannot help having a little wry smile that I was told again whenever a back-bencher brings something to the States, the proposition is flawed. Well, it is great today to find out that even the Chief Minister can bring amendments to the States which are flawed and they are admitted which is even greater. Because to look at amendment 3, that really is a flawed one. Can I just say that if one looks at paragraph 10 of the Chief Minister's amendments, you will see the Chief Minister and the States Employment Board are very concerned about matters affecting contractual terms. I gather that the Chief Ministers and the S.E.B. (States Employment Board) have not met. I took the trouble to find out, to see whether it was on the minutes but I gather it was and, of course, I stand to be corrected if the Chief Minister would like to say that I have made a mistake but again if I have made a mistake, it is only because the information I have been given is wrong but I would really think that the information I have been given is correct.

Deputy R.G. Le Hérissier:

Could I have a point of clarification from the Chief Minister. Did the States Employment Board meet to discuss Deputy Hill's proposition?

The Deputy Bailiff:

It is a matter for the Chief Minister. The Deputy of St. Martin is speaking at the moment.

The Deputy of St. Martin:

I am quite happy to allow the question.

The Deputy Bailiff:

It is not normal to ask all sorts of different Members questions.

Senator T.A. Le Sueur:

I am happy to answer. Because all the members of the Employment Board were also members of the Council of Ministers, it was discussed at last week's Council of Minister's meeting at which all members of the S.E.B. were present. **[Laughter]**

The Deputy of St. Martin:

I think you will find that the Chief Minister's amendment was noted but it is neither here nor there. It is just a little point I would like to pick up because it is easy to criticise Back-Benchers. Maybe I could do like the Constable of St. Helier and look at the days between 26 and 42, the difference in

days, the 28 days or the 42 days, or whether we want to have it just another month. The reason I did it was quite simply because if one looks, and I am very grateful to Mr. Moulin, but if one looks at his letter he makes it absolutely clear that it can be done almost at a will. One of the reasons we had the objection from the Home Affairs not to be included - but again, if one looks at the Home Affairs amendment, which we will have to come to but I think it is important - the reason they do not want to be part of it is because they do not feel they can get their regulations done within the given time. It is nothing to do with anything else and, again, I stand corrected, but I can only go by the evidence before me. But, again, it is neither here nor there. I think I would rather it was done within the 42 days because I think it is important and if Members choose to go for the amendment, well, so be it. But really I would ask Members to stick with what I am proposing because what I am proposing has been justified from people like Mr. Moulin and the other people I have spoken to. I can assure you other associations I have spoken to, with the exception of the police - the police do not want to be part of it and I can understand their reason for it. I am bitterly disappointed because I thought the police in Jersey was all about openness and that is what disappoints me, but we will debate that when we come to the amendment. Again, I would like to stick with the 42 days. It will be for Members to discuss it. Now, the objection to the panel. Can I make it quite clear that the purpose of the review panel is to review the reasons for the continuation of the suspension. In actual fact, early on in January, the Minister for Education, Sport and Culture will remember that we asked about the suspensions going on in schools and I asked whether it was human right compliant. The Minister said: "Yes, it is, because we allow a hearing for the continuation of suspensions. We allow the principal to do it." So if, indeed, it was human right compliant for Education, it is quite clear that the situation we are going to agree to, if we do agree to the Chief Minister's proposals, is not human rights compliant. So you cannot have it human right compliant for Education and then not for the States employees. So, again, I just think it is a point that is well worth making. Again, we have also heard that the present situation is not face-to-face so if we do not approve what I am proposing, we will still have this non face-to-face. There will be still no right for any person to go along and request a justification from the Chief Officer before an independent panel because if we do not approve what I am asking for, what we will do, we are going to change one flawed system, no face-to-face with another no face-to-face and who is going to consider the suspension? The Chief Officer and Senator Ozouf, Senator Le Sueur, Constable Jackson and one other very, very busy Minister. All I am asking for is that the panel do that job and if any recommendations are made, the only job the S.E.B. will have to do is to consider the recommendation. Again, just to allay the Minister for Home Affairs' concerns, it may well be that there is every justification for the suspension to continue. I understand, I think we all do. There may well be a very complex, complicated inquiry; it may well take extra months but it may also be that it is not and what I want to make sure is if it is not, that those people are being dealt with in a speedy fashion. So I would rather we be positive about this, not looking at ways for doing nothing. Again, it was suggested by the Chief Minister that the panel could be second-guessing. Well, what is the difference between that panel allegedly second-guessing than the S.E.B. second-guessing? Again, what we need to do is to look for the justification for the continuation of the suspension, something which would be human right compliant under Education but, of course, it would not be human right compliant if it was down to the S.E.B. I believe the employee has the right to question the continuation of the suspension and for the Chief Officer to justify it. If we go along with the amendments, that will not happen and, again, we have heard that it was an error on the part of the Chief Minister asking that part (a) or 3, whatever it is, to be deleted. Again, it does not make sense to do that one. Can I just ask Members to see the support again that we have got for the panel. Again, I think it is important that we get people like Ms. Huchet to come along and put it in writing why they feel an impartial panel is important, why we get some that are so well respected as John Moulin to come along and say why and maybe if Members have not had a chance of reading what they have to say, it is the last paragraph but one from John Moulin: "While we consider the current civil service policy to be sufficient and well-tested, we do have concerns about the lack of a proper review period carried out in an impartial way. We would like to see a system of timely reviews

undertaken by a panel of independent people drawn from the public sector, one from the staff side and the other from a union not associated with the suspension.” That is coming from someone who has tremendous amount of experience in that field and that recommendation was overturned by the Council of Ministers. Again, we look at what Ms. Huchet has to say. She says: “It is essential that within the current climate and to gain the faith of the electorate that an independent panel is established. It should instil no fear in any organisation if best practice has been followed and a duty of care to the employee has to take precedence.” So, 2 respected people and, again, if they are to be ignored, well, so be it. It is a shame. But I would ask Members to reject all the amendments because I think they are without any justification at all and, no doubt, we will hear from the Minister when he sums up.

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

I will be very brief. Looking at the proposition itself, it is headed “Suspension - revised procedure” but it appears to me that it is relevant to all disciplinary matters and, without question, a member of staff should always be entitled to be accompanied by whosoever they choose. To keep it to a representative concerns me very much as it sounds almost like saying “closed shop” and that is something that I could never accept. Procedural matters should be good management and can be implemented quite rapidly and so they should be, and I see no reason for delaying either.

7.1.14 Deputy K.C. Lewis:

I just have one brief query. In (a), (a)(i) and (b) it alludes to the States of Jersey Police. As the Minister for Home Affairs has alluded to, and it is his amendment, are the States of Jersey Police employees or are they Crown appointees? I am just curious as to whether everything here would be procedurally correct.

7.1.15 Deputy M.R. Higgins:

I was employed in the publicly owned sector for 30 years and during that period of time, I witnessed some appalling cases of mismanagement and management where Chief Officers or Senior Managers have not only not followed the correct procedures but have also abused their positions and piled undue stress on people who have faced disciplinary charges, encouraging them either to resign on health grounds or otherwise leave the Public Service. Many of the hearings or procedures have not only been in breach of the principles of natural justice, but also in breach of the European Convention on Human Rights. The Deputy of St. Martin’s proposal, to my mind, is long overdue and States employees deserve to have proper procedures in place and know that the States are concerned that they are treated properly and fairly. I believe that it is scandalous how we have treated many fine public employees and the time it takes to bring their matters to a conclusion and the associated waste of public money. I also believe that we should reject the Chief Minister’s amendments and I look forward to the rest of the debate.

7.1.16 The Connétable of St. Mary:

I hope this is going to make sense. I am finding myself slowly cooking. I think most other Members are at the moment so I think we have a problem with our heating. As this debate has progressed, I am afraid that rather than becoming more enlightened, I have become rather more confused. I have to say that I do have an awful lot of sympathy and support for the Deputy of St. Martin’s proposition in general. However, one thing particularly that strikes me was the inclusion of the word “friend” in his paragraph (a)(ii). I have had the experience of trying to represent someone not in the public sector, I admit, but a very similar contract and not being able to do so because they were only limited to a workplace colleague. They were in a situation where

practically every other person in the small workplace was involved in the issue they were trying to fight and it was totally unacceptable. I was very strongly going to support the Deputy of St. Martin until, that is, I heard from the Minister for Home Affairs because I had realised that there might in some cases be a situation where perhaps a confidential aspect was to be discussed as part of a review of a matter or a proceeding, but I do not see in most circumstances why a simple declaration of confidentiality to be signed at the outset of a meeting between the parties could not overcome that. From the operational reasons that the Minister for Home Affairs raised concerning the Police Force though, that gave me cause to think again and my question is - and I do not know whether perhaps you might be able to help me with this from the Chair, Sir - in the next amendment from the Minister himself, we will be discussing the application or not to the States of Jersey Police but only as regards part (b). How will we stand if the amendments to part (a) are rejected and part (a) stands as it is and then the amendment to part (b) is carried with police officers being represented in part (a) but not in part (b). I wonder if some clarification could be given to that.

The Deputy Bailiff:

Well, it is a little unclear but the Minister for Home Affairs' proposition clearly only refers to paragraph (b) and paragraph (b) is solely concerned with timing so the position is that the main body of the proposition under paragraph (a), the States would have agreed that it should apply to States Police but it will not have given any instruction to the Minister as to how soon this should take place. That would be the outcome if the Minister's amendment were adopted but paragraph (a) was passed in accordance with the Deputy of St. Martin. Now, Senator Perchard.

7.2 Senator J.L. Perchard:

Briefly, I have just asked the Chairman of the Corporate Services Scrutiny Panel her opinion on this. I feel we are on the verge of agreeing some policies and procedures that will rightly formalise the rights of a States employee without getting all our ducks in a row. For example, a Member spoke earlier of a health professional clinician who has been suspended for over 2 years. Well, that is incorrect. He has been excluded, not suspended. There is a difference, and any rules around suspension that we agree today will not affect the rights of that individual. I think this needs to be looked at a little more carefully and I would suggest to the House that we ask Scrutiny to pick this up and have a look at this and bring it back properly as quickly and as swiftly as possible because it is clear that there is some support for some of the States Employment Board's amendments, and there is certainly a lot of sympathy with Deputy Hill's substantive proposition. But it does not protect the rights of an excluded health professional and I ask, as is my right under Standing Order 79, whether this should be referred to Scrutiny and I would like to put that to the House.

The Deputy Bailiff:

So you are formally proposing, Senator Perchard, under Standing Order 79(1) that the matter be referred to the relevant Scrutiny Panel which is Corporate Affairs?

Senator J.L. Perchard:

Yes, Sir.

The Deputy Bailiff:

Is that proposition seconded? **[Seconded]** Very well, well, then, that is an absolute right of any Member to do that provided it is seconded so the proposition now before the Assembly is as to whether debate on this current matter would have to stop.

Senator J.L. Perchard:

Yes, and if it would help Members when making their decision if the Attorney General could confirm that there is a difference between “excluded” and “suspended”.

The Deputy Bailiff:

Let us just first of all concentrate on the proposition which is therefore ...

7.2.1 The Deputy of St. Martin:

Can I just ask a question of Senator Perchard and I would ask him to look at one of the 3 pages that should be on his desk which talks about employee suspensions and having just been ... was the Minister for Health and Social Services, this is a States document produced which was also produced in request of the Connétable of St. Lawrence in February. It was published when he was the Minister for Health and Social Services and he did not point out to the rest of the States Members that this person he is talking about happens to be on the list as still suspended. Now, is it because of an oversight by Senator Perchard that we are going to have this nonsense of asking for a Scrutiny? Can Senator Perchard confirm if this was a mistake while he was the Minister, or was it a mistake since he has ceased being a Minister?

Senator S.C. Ferguson:

Can I just make a comment?

The Deputy Bailiff:

One moment. We have to decide whether we have a proposition. Now, Senator Perchard has proposed, is that right, Senator, you are maintaining your proposal?

Senator J.L. Perchard:

Yes, I am, and I think it would be helpful to Members if the Attorney General could confirm my statement that there is a difference between suspension and exclusion and that it is a concern that some of our States employees are excluded.

The Deputy Bailiff:

Well, Senator Perchard has proposed it. It has been seconded so that is the matter now before the Assembly so we are now debating whether this matter should be referred to Scrutiny. Senator Ferguson wishes to speak on this.

7.2.2 Senator S.C. Ferguson:

In actual fact, I have been a little concerned about the operation of H.R. policies at lower levels in the States and, in due course, after we have got through our workload at the moment, I will be recommending to my panel that we look at States policies in the area of complaints, whistle blowing and to which we would add suspensions and, quite possibly, dismissals. I was going to speak after Senator Perchard at some stage. It would have been my intention to bring such a report to the States later this year but probably not within the 3 months that the Chief Minister was recommending being attached to the proposition of the Deputy of St. Martin. If the Deputy of St.

Martin considered withdrawing his proposal until our Scrutiny report was out - I merely inquire; I am quite entitled to, I think - it would certainly make it easier for our workload.

7.2.3 Deputy G.P. Southern:

This is clearly what used to be called a wrecking amendment and I believe it is clear that it infringes the rights of back-benchers. It should be thrown out. What is more, it is clear from what the Chairman of the appropriate Scrutiny Panel has just said that she cannot deal with it in the near future anyway. So this is clearly a mechanism to delay, and if necessary, to wreck a back-bencher amendment. I urge the House to reject this proposition.

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

Can I just ask on a point of clarification on the Minister for Home Affairs. When he spoke, he spoke about accepting the Chief Minister's amendment because he had not dealt with his amendment. Would he still feel the same way if his amendment was accepted?

The Deputy Bailiff:

Deputy, I think we have got to confine ourselves at the moment to whether to refer to this to Scrutiny. You can come back and raise that in the main debate. Deputy Higgins?

7.2.5 Deputy M.R. Higgins:

Much of what I was going to say has been said by Deputy Southern. I do believe this is an abuse. I think it is a delaying tactic, a wrecking tactic, and there are States employees who deserve better from this House. **[Approbation]** I really do believe that the idea of putting it to Corporate Services Scrutiny, who have got a heavy workload, is going to delay it unduly and I think the House should reject this proposal.

7.2.6 Senator P.F.C. Ozouf:

I am a new member of S.E.B. I am learning about employment policies. Here, it seems to me that we are attempting as a committee of 53 to determine H.R. policy for the States of Jersey. I am uncomfortable. I would just point out to Members, Members are remonstrating and suggesting that this is a wrecking amendment. It is not a wrecking amendment. I am uncomfortable with some of the things I have heard and I am on the S.E.B. I realise that there is going to have to be a coming together in the middle of certain issues. Certainly, we have the important issues which have been drawn to our attention by the Minister for Home Affairs. I would just point out to Members, respectfully, that this matter was lodged by the Deputy of St. Martin - he is absolutely entitled to do so - on 31st March. There has been Easter in between. We are dealing with Council of Ministers' amendments that need to labour for 6 weeks. The worst kind of decisions are rushed decisions, rushed just because we want to try and make a speedy conclusion. I am going to vote in favour of the suggestion of Senator Perchard that we move this to Scrutiny. It may be that Scrutiny and the S.E.B. can give the matter consideration, that we can deal and find a halfway house in some of the messages that we are clearly getting from Members like the Deputy of St. John, that they want revised procedures in place. But to rush a conclusion, to force something through with the feeling of disquiet, it is the wrong decision. I would urge Members to vote in favour of referring it to Scrutiny and maybe between Scrutiny and the S.E.B., we can find an acceptable way forward rather than rushing into something which is clearly going to be incomplete. I would just point out to Members that there are issues that this Assembly has already considered. The employment law maintains a position that for workplace grievance procedures, for example, there should not be

lawyers. This proposition by the Deputy of St. Martin, if approved, goes completely against that. This needs more consideration. This needs proper debate, not rushed incomplete debate. I say let us go for Scrutiny review and let the S.E.B. work with Scrutiny to find a solution quickly.

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

I would like to just point out on the Standing Order 79, to me, this would seem that, okay, it may not be wrecking, it may just be trying to delay but it is not going to be any help if under this Standing Order - if people will wait for a moment. If this proposal is accepted by the States, the States says, 79(3): "If the States agree to the proposal, the debate shall be suspended until the next meeting." We have already had confirmation from the Chair of the relevant Scrutiny Panel that she cannot deal with this in the near future but it also goes on to say: "At the next meeting, the Presiding Officer shall ask the Chairman of the relevant Scrutiny Panel whether he or she wishes to have the proposition referred to the Panel and if the Chairman confirms, having considered the matter, he or she does not wish to have their proposition, the debate will resume but if the Chairman confirms that the Panel having considered the matter he or she wishes to have the proposition referred to the Panel, the States must decide at which meeting the debate shall be listed to resume". The important Standing Order 79(5) says: "The debate must be listed to resume at a meeting which is not later than the fourth meeting disregarding any ...". Now, the Chairman has said this cannot be done, so I suggest that Standing Order 79 is not relevant. It cannot be done under this Order. We may all vote on it but all we will be doing is putting it off to the next States sitting because the Chair cannot - the relevant Chair has nodded at me - cannot scrutinise this in the set time under 79(5). So I am very sorry but it does seem to me that we have got to a point where a Back-Bencher might be successful. We are now discussing excluding or suspension when if a Minister or anybody else had a problem with the word "suspension", they could have amended it to include "exclusion" as well. As I say, we are now in a procedure debate which cannot, under the procedures of Standing Order, even be proceeded with in the amount of time set down for it. So I urge people to just throw this proposition back to where it came from and let us get on with the main debate. **[Approbation]**

7.2.8 Deputy T.M. Pitman:

Very short and sweet in contrast to the Minister for Treasury and Resources' comments and following on from what Deputy Martin has very adroitly said, I would just remind people that justice delayed is justice denied and let us get on with it. Let us get on with it and have the vote.

7.2.9 The Connétable of St. Helier:

The Minister for Treasury and Resources, in supporting this proposition, said that we were in danger as a House of setting H.R. policy. Oh, dear, how dreadful. **[Laughter]** It does seem to me that that is our job, to make sure that we have structures in place that protect our employees and that hold Chief Officers to account and that is what the Deputy of St. Martin is attempting to do. Clearly, it would be nice for the Council of Ministers if the new way of referring things back is to send them off to Scrutiny. That is not what Scrutiny is for. It is not a device, it is not a rabbit to pull out of a hat in a difficult debate when the Council of Ministers feels it is on the ropes. **[Approbation]** We cannot put this in the in tray of a busy Scrutiny Panel. We need to have the debate today and it is clear that had we dealt with the Minister for Home Affairs' amendment first, we would have had a much better debate. **[Approbation]** I regret that is not the case but I still believe it is possible for us to go on and approve hopefully to get rid of these defensive and paranoid amendments by the Council of Ministers and to approve the Deputy of St. Martin's proposition probably with the amendment of the Minister for Home Affairs accepted because there is clearly more work to be done on that aspect of it. But I do not believe that placing this in

Scrutiny's in tray is the right answer. We have heard today already that there are over £1 million of taxpayers' money being spent on suspended officers. We have heard that more people have been suspended than in previous years. What message do we send out to the taxpayer? What message do we send out to the suspended members of staff and their families if we simply decide to put this back into the in tray? **[Approbation]**

7.2.10 Senator S. Syvret:

We have to look at the substantive proposition and ask ourselves why it should be necessary to refer this to Scrutiny at this stage because the proposition does say to request the States Employment Board and Minister for Home Affairs to amend policies and procedures and, if necessary, relevant legislation, et cetera. So we are asking the relevant bodies to go away and formulate the revised policy documents and procedures and that will involve, presumably, some degree of critical thought from them, some degree of self-scrutiny, as it were, as they devise the policies and surely it is up to us to invoke Scrutiny of those completed policies once they have worked on them according to the instruction that the House is hopefully going to issue for them today. Senator Ozouf cited employment law and he said that it specifically excluded lawyers. That may well be correct but what we are being asked to do here is to exclude using the phrase "friend". If the proposition is defective and it required something in it that said lawyers would be excluded, then the burden of responsibility for that was on the Chief Minister to get these amendments right and bring them forward appropriately. **[Approbation]** Instead he has brought forward a catchall, wholly inappropriate draconian amendment and now we see the spectacle of the blame for this issue trying to be directed against the substantive proposition of the back-bencher who has brought this when, in fact, this is a fault, a flaw, raised by the Chief Minister's amendment. Really, I think we should get on and support the proposition. We should debate it today, we should decide it today. It is, frankly ridiculous to put it off at this stage. Public concern about the whole issue of States suspensions is very great and we have got to be seen to be taking some action as opposed to merely another X months of prevarication **[Approbation]**.

7.2.11 Deputy J.B. Fox:

I am very concerned about this amendment and the propositions and everything at the moment because, clearly, we have a difference between that which involves the States of Jersey Police and that which involves the general civil service. Quite clearly, this amendment that is brought before us at this moment in time cannot be dealt with by the Scrutiny Panel concerned within the timeframe that is there. I do not think that we can accept this amendment because of that one reason. But my main concern is how I can agree to the rest when there clearly are significant differences within part (a) especially and, certainly, until I have heard from the amendments of the Home Affairs ...

The Greffier of the States (in the Chair):

Deputy, sorry to interrupt you but we are, at this stage, only debating the possible reference to Scrutiny ...

Deputy J.B. Fox:

No, no, I appreciate that, but this is where my problem lies because, at the moment, until we hear the second part, it is very difficult to make a decision on this particular one. The only reason I would vote against it at this moment in time is because the Scrutiny Panel cannot look at it to be able to put all these parts together. Thank you.

7.2.12 Deputy A.E. Jeune:

Just briefly. If the proposition of Senator Perchard to pass the matter to Scrutiny is lost, would the Scrutiny Panel Chairman reassure the House that her Scrutiny Panel will address H.R. (Human Resources) issues as soon as possible within her agenda?

The Greffier of the States (in the Chair):

Can you clarify that briefly, Senator?

Senator S.C. Ferguson:

With pleasure. I have already said that we are going to look at H.R. matters and we shall be doing.

7.2.13 Senator B.E. Shenton:

I am standing in my capacity as President of the Chairmen's Committee. We do simply not have the resources to do a full and proper review of this matter in the time frame allowed under Standing Orders. There will be a full Scrutiny review of these issues in due course and the review will take place and then we will review whatever we put in place after today. Members can therefore rest assured that if they do have concerns that whatever the law should be after today will be fully reviewed by Scrutiny. As Scrutiny only undertakes full and comprehensive reviews, it does not do quick reviews, which are not of a high quality, as Senator Perchard well knows.

7.2.14 Deputy M. Tadier:

This motion was called a wrecking motion. I think that is slightly unfair. It is clearly a face-saving motion. The only question is which of the 2 faces of the Council of Ministers is it trying to save because there is clearly some hypocrisy going on there. If back-benchers tried this motion, it would be clearly kicked out, even if it was a genuine referral to Scrutiny, which this is clearly not. So I would suggest that ...

The Greffier of the States (in the Chair):

Just to remind you, Deputy, it is being brought by a back-bencher.

Deputy M. Tadier:

Okay, good, but perhaps not a spiritual back-bencher. **[Laughter]** But, all right, I will leave that for Members to decide. Thanks for the correction. Having cut my flow, I would leave it at that. I would say if there is no one else who wants to speak, let us get on with this; we have dilly dallied enough. The amendments should have been withdrawn, in my opinion, and let us simply get on with this and have a vote.

7.2.15 Senator T.A. Le Sueur:

Members will be reassured to know that I do not support the proposal before us at the moment to refer it to Scrutiny although I do believe the intentions behind it are very good because, over the course of the afternoon, I have come to the conclusion that however well-intended my amendments may have been, with the exception of the fourth one which is probably not too controversial, the remainder were not well expressed. I think in fairness to the Members, as the day goes on, what I would propose to do would be to withdraw my first 3 amendments. **[Approbation]** I know we are

not talking about them at this stage, on the basis that the proposition asks me to request the board to amend our policy, procedures and necessary legislation. I believe that the spirit of that, and the spirit from what I have heard today, is that in amending our policies, procedures and regulations, I would seek to clarify the word “friend” to exclude people like legal representatives, discuss that with Scrutiny and then we can have an informed proper decision on a well-worded set of procedures. I do believe that there are flaws with the argument of the Deputy of St. Martin. I do accept that there are flaws in my amendments. I do not believe that returning to Scrutiny at this stage is the right approach but I do believe that an approach to Scrutiny in the development of those policies would be a useful exercise and could, as we often say, add value. On that basis, much as I accept that the proposal from Senator Perchard was well-meaning, I am afraid I would prefer to get on with it; accept that my amendments fall. We will then debate and either agree or reject the proposals of the Deputy St. Martin and that it is in the implementation of the policies, procedures and legislation that the detailed scrutiny could and should, in my view, take place. **[Approbation]**

7.2.16 Senator J.L. Perchard:

In that case, with permission from whoever seconded my proposition to refer to Scrutiny, I would withdraw it and advise Deputy Higgins and others it really was not an intentional wrecking motion; it was simply that the States was stuck and the Chief Minister has just provided the tow rope that we needed to get out of the hole, and I hope you will accept that my intentions were genuine.

The Greffier of the States (in the Chair):

Are Members willing to grant leave to Senator Perchard to withdraw the proposition? Very well. Once a matter is before the Assembly, it does require the leave of the whole Assembly to withdraw it so it is open to Members to vote on that. The proposition before Members, is the proposition of Senator Perchard that he be granted leave to withdraw his proposition. If Members are in their seats, Greffier will open the voting. I ask the Greffier to close the voting. The proposition is adopted: 50 votes in favour, no votes against and the proposition is, accordingly, withdrawn.

| POUR: 50 | CONTRE: 0 | ABSTAIN: 0 |
|----------------------------|------------------|-------------------|
| Senator S. Syvret | | |
| Senator T.A. Le Sueur | | |
| Senator P.F. Routier | | |
| Senator P.F.C. Ozouf | | |
| Senator B.E. Shenton | | |
| Senator J.L. Perchard | | |
| Senator A. Breckon | | |
| Senator S.C. Ferguson | | |
| Senator A.J.D. Maclean | | |
| Senator B.I. Le Marquand | | |
| Connétable of St. Ouen | | |
| Connétable of St. Helier | | |
| Connétable of Trinity | | |
| Connétable of Grouville | | |
| Connétable of St. Brelade | | |
| Connétable of St. Martin | | |
| Connétable of St. John | | |
| Connétable of St. Saviour | | |
| Connétable of St. Clement | | |
| Connétable of St. Peter | | |
| Connétable of St. Lawrence | | |

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

The Greffier of the States (in the Chair):

Very well. The debate, therefore, theoretically now resumes on the amendments of the Chief Minister. But Chief Minister, do you wish also, yourself, to seek leave to withdraw 3 amendments?

7.3 Senator T.A. Le Sueur:

While we are in the mood for withdrawals can I propose that the Assembly grants me leave to withdraw amendments 1, 2 and 3. I think if they are going to work with Scrutiny to get good results on the policies and procedures, I would keep amendment 4 in place but 1, 2 and 3, I would seek the leave of the House to withdraw.

The Greffier of the States (in the Chair):

Are Members content to grant leave to the Chief Minister to withdraw those 3 amendments? Very well, they are withdrawn. Does any other Member wish to speak on the remaining amendment, who has not spoken yet, on amendment 4?

7.3.1 The Connétable of St. Brelade:

I feel it appropriate for me to speak as a member of the States Employment Board and I endorse the Chief Minister's withdrawal of the first 3 items on the basis that I think the whole thing needs to be kept simple and we run the risk of over-complicating the issue which is something certainly I think, generally, States Members are keen not to do. With regard to the last amendment I think, in terms of practicality, the H.R. section of the Chief Minister's Department will need 3 months to get this set up and it would be impossible for them to do that in less than that. So I would urge Members to support amendment 4 for practical reasons.

The Greffier of the States (in the Chair):

Does any other Member wish to speak?

7.3.2 The Deputy of St. Martin:

If it would help, I would be quite happy that if we are again wasting time, I am quite happy to accept the 3 months in the spirit that if it can be done earlier. **[Approbation]**

The Greffier of the States (in the Chair):

Very well. I call the Chief Minister to reply.

7.3.4 Senator T.A. Le Sueur:

I think no further reply is necessary. I am grateful to the Deputy of St. Martin for agreeing to accept this amendment and I now formally put it to the Members on a standing vote.

The Greffier of the States (in the Chair):

I put the amendment. Those Members in favour of adopting it, kindly show? The amendment is adopted. **[Laughter]**

8. Suspension of States employees and States of Jersey Police Officers: revised procedures (P.46/2009) – amendment.

The Greffier of the States (in the Chair):

The Assembly now turns to the amendment in the name of the Minister for Home Affairs, paragraph (b), and I ask the Greffier to read that amendment.

The Deputy Greffier of the States:

Page 2 paragraph (b), delete the words: "And Officer of the States of Jersey Police."

The Greffier of the States (in the Chair):

Minister?

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

I am now in some difficulties in relation to this debate generally because the amendment which I put was, of course, put in conjunction with that of the Chief Minister, at least the first part of that, which has now disappeared. But the problem that I have got, and I think it is a problem that the

House now will have as a whole, is I want to strongly maintain the position which I have already set forth in detail in relation to the special position of the States of Jersey Police but the problem that I have got is this: that I understood the proposition to have 2 parts and mean the following. I am saying this so that I can explain what my amendment is intended to mean. That the first part (a) requests various parties, including myself, to bring policies, procedures and, if necessary, relevant legislation before the House. I understood part (b)'s intention to be simply this: not to set a time scale for the legislation but rather to say that, even before the legislation et cetera has come into force, that it should apply within 42 days; now, of course, amended to 90 days. Hence the purpose and the meaning behind my amendment at the time was to make it clear that we could not start implementing things in relation to the police, whatever might be agreed, until such time as legislation has been passed because the procedures, the disciplinary procedures, including the suspension procedure in relation to the police, are governed by law. They are governed by the Police Complaints and Discipline (Jersey) Law 1999 and by the Police Complaints and Discipline (Jersey) Order 2000. So the purpose behind my amendment was simply this: to say that we cannot have a situation in which the House, having passed matters, now says it must come into force because, in relation to the police, the matter cannot come into force until such time as legislation has been passed. But I now have a particular difficulty, for the reasons I have pointed out and which is going to become apparent when I speak at greater length in relation to the proposition in relation to part 3, but if things go ahead, even if my amendment is now passed, and I am going to urge Members of the States to pass this by way of signalling to me clearly that you accept that the position of States Police is different. But even if that occurs, I am going to be in a peculiar difficulty because if the House then goes on to pass (a)(iii), I will still be being instructed to bring forth legislation which would affect the police which does not recognise the special status of the police. So I have a difficulty; I brought an amendment for a particular purpose which was to make it clear that we could not start applying matters to the police until such time as we had legislation. But now I am overtaken by a turn of events which I did not anticipate, namely, the Chief Minister withdrawing his amendments. I could be left in a situation in which part (a) and part (b) appear to contradict each other. Nevertheless, if the Members of this House accept that the situation of the police is different, I have gone into it in some detail, and I want to read one further section from the very significant letter of the President of the States of Jersey Police Association who represents the lower ranks. He says: "I am of the opinion that the area of suspension and subsequent review and representation is more than adequately covered in existing legislation and force policy. While accepting that the purpose of this proposition is an attempt to reduce the number of States employees suspended, and thereby save an unnecessary burden on the public purse, I do not believe that this will work in practice." He is talking in relation to the police: "Moreover, I do not believe that it is appropriate to include the police in this proposition which is clearly designed to address the shortcomings in other States departments. But, as mentioned earlier, there is adequate provision within existing legislation to the police. The Police Association would like to see an amended proposition put forward removing all references to the States of Jersey Police." That is now what I wish I had done because I have not, in fact, done that; I have simply put it into part (b) and the reason I did that was that I wanted to be as positive as possible in relation to those parts of changes which I could support. Unfortunately, I am now undercut in that, and I hope Members understand what I am saying; I am undercut in that the amendments have now gone, and this is going to pose an invidious situation whereby however people vote in relation to (b) I could be left in a situation, if you vote in relation to the main proposition, of being required to do something which, in my view, is really contrary to the special status of the police, et cetera. So I do urge you to support this but, unfortunately, as worded I accept it has a limited purpose and this is creating a most undesirable state of affairs. Unless, of course, the Deputy of St. Martin were willing to withdraw references to the police in his main proposition. **[Approbation]**

The Greffier of the States (in the Chair):

Is the amendment seconded? **[Seconded]** Deputy of St. Martin?

8.1.1 The Deputy of St. Martin:

If one looks again, I remind Members to look at what the amendment was from the Home Affairs. The reasons he did not want it included was because the Home Affairs needed more than 3 months to adjust their regulations. It was not because of all the other issues and I think it is a bit late in the day now for the Minister to say: "Well, of course, I did this in conjunction with anything else." The reason here quite clearly states - and that is what we are debating here; we are debating what it says here - that it cannot be achieved within the 3 months. I had discussions with the Police Association, as I have done with a lot of other associations, and, regrettably, the Police Association are the only ones who were not supportive here and I asked: "What legislation are you going to have to change?" and I am grateful to the Bookshop Manager who has given me this piece of legislation here today because I asked the Police Association what laws did they have to change, what regulations? I will ask the Attorney General if he could agree with me that the legislation here names nothing about procedures. If there is anything to be adopted or amended, I stand corrected, but I believe it is only procedure because I have asked the Police Association. They have given me reference to these documents and I have gone through the documents and it makes no references to procedure. It does say, under Article 4, and I will read Article 4, Suspensions: "Where a member of the force or police control has been charged with a criminal offence or there has been a complaint, report, allegation or indication that a member of the force, port, et cetera - a port control - may have committed an offence against a citizen or whether or not it has been investigated, the Chief Officer may suspend him or her in the case of a member of the force" and so on. There is nothing in the law here that needs to be amended to affect procedure and we are right back to what Mr. Moulin said, that, generally speaking, most procedure can be adopted almost like an exchange of letters; it is quite simple. Again, I do not want to argue with the Minister, who was a lawyer, but if he can tell me where or what law and what regulations have to be altered, that have to come to the States, well, quite happily I will agree to withdraw. But unless it can be proved, I feel I must stand by here because his amendment is he wants to withdraw because it cannot be done in 42 days. Could I ask the Attorney General if he agrees with me that there is nothing in these 2 pieces of legislation that deals with the procedure for how a police officer is suspended and, also, if he is right to question whether the suspension should be continued? Is it possible, Sir?

The Attorney General:

Could I just have a moment on that?

8.1.2 Senator S.C. Ferguson:

In the previous session of this House, Members who were present at the time will perhaps recall that I had considerable concerns regarding the number of police officers suspended and their treatment under the Police Complaints and Discipline legislation. I am convinced of the impartiality, integrity and experience of the current Minister in this context and I would be prepared to support his amendment provided he can give an assurance that he will review the operation of the Police Complaints and Discipline Jersey Law with regard to the States of Jersey Police.

8.1.3 Deputy R.G. Le Hérissier:

It was a similar point to Senator Ferguson's. I am just wondering, it strikes me this is an issue where we have got stuck on a highly technical matter and it strikes me the Deputy of St. Martin's interpretation is that change is easy to make, so why are we making such a fuss, which is in contradiction to the Minister's point which is the police have a fundamentally different ethos and a

different disciplinary system and, for that reason, he cannot accede to the Deputy of St. Martin's point. I would have thought a possible compromise to avoid us getting totally bogged down in this debate - it was meant to be a side issue but which could rapidly become a dominant issue - would be to adopt a variation of Senator Ferguson's suggestion; namely, that the Minister for Home Affairs promises this House, with a deadline, and he will come back with a report on suspension policy within the force and then the Deputy of St. Martin can review that and decide whether he wishes to push ahead with the integration of the police into his overall system. Otherwise, I think we are going to be bogged down with this issue.

Deputy S. Power:

Sir, can I make a very fundamental point about the Chamber before the Attorney General reverts to the Deputy of St. Martin? I do not know whether other Members have noticed it, but the temperature in the Chamber is uncomfortable; according this thermometer, it is 26 or 78 degrees.

The Greffier of the States (in the Chair):

There is a slight technical problem with the air conditioning.

Deputy S. Power:

I did ask about this in March but I notice a number of Members using improvised fans and it is difficult to concentrate. It is okay to be on the beach at 78 but not with a suit and jacket on, Sir. Can I ask that it is looked into as soon as possible?

The Greffier of the States (in the Chair):

There is apparently, according to the usher, a technical problem with the air conditioning, Deputy. Does any other Member wish to speak on the amendments? Deputy Fox?

8.1.4 Deputy J.B. Fox:

I would like to reiterate my past concerns about the time delays that there are where police officers are suspended, and sometimes up to 2 years, for a result of no criminal action, some minor disciplinary offences that could well have been conducted, in my belief, a lot sooner than that was. I recognise there is a new Minister in charge now and new people that are responsible at Police Headquarters and, as we are looking at reviews at the moment; could I ask that once and for all can we try and obtain the protection of our officers? But let us not forget the families; they are the ones that suffer really badly when there is suspension and you cannot expect people with children going to school and grandparents, et cetera, to have the member of their family being suspended in a small community like this without regular reviews. I have heard the expression saying: "If nothing happens, there is no point in a review." I think there is a point in a review. There is a point if, for nothing else, to reassure the family and the officers that their case is still there and is still at the top of the tray and not at the bottom of the tray. **[Approbation]** I think it is important and I will say exactly the same to the civil servants. Sorry, I have gone beyond this particular one; I will leave it there, thank you.

8.1.5 The Connétable of St. Helier:

I think it is unfortunate that, in his otherwise very well-researched proposition, the Deputy of St. Martin did not tell us at the beginning that he had not had the support of the Association of Police Officers. He says he did say at the beginning but I certainly did not pick that up. When the

Minister produced the letter and read to us from it, I think it made it very difficult for us to push through these changes in the face of opposition from the body representing the majority of the police officers. So I think reassurance would be appreciated from the Minister that he will address the issues here; the principles that the Deputy of St. Martin is asking for, particularly the principle of being accompanied to review of receiving written explanation of what one is being suspended for and of having regular reviews. I think these are very important things and police cannot be exempt from that kind of protection. However, I think that, under the circumstances, I am going to have to support this amendment of the Minister because, as I say, without that call for it by the Association, it would be difficult to force it through.

8.1.6 Deputy M.R. Higgins:

Just while we are waiting for the Attorney General, obviously, the Constable of St. Helier has made the point that we should allow the Minister to do it but I think the key thing is to see whether legislation has to be changed. If it does not have to be changed, then these changes can be done within the time and therefore we should wait to hear from the Attorney General before deciding this matter.

8.1.7 Deputy J.A. Hilton:

Just briefly, I agree with what the Constable of St. Helier has just said and I do not think the key thing is the change in legislation. What is puzzling me is if we were bringing something forward which maybe involved members of the Transport and General Workers Union and we were proposing to do something that they were very blatantly against, there would be uproar in this House if we proceeded to go ahead and do that. We have heard the Minister explain to the House that he has had a letter from the Jersey Police Association and that they are against the proposals in this proposition. Deputy Le Hérissier has suggested that the Minister would look at the suspension policy, and I hope the Minister would agree with me that we would do that; there is no reason why we should not do that. So I would just ask States Members to take note of what the junior ranks in the Police Association are saying to you within that letter and support the amendment of the Minister for Home Affairs. Thank you.

The Attorney General:

As I understand it, the question was whether or not any amendments to legislation are necessary for the purposes of giving effect to the Deputy of St. Martin's proposition in relation the police. The suspension provisions under the Police Complaints and Discipline Procedure (Jersey) Order 2000 confer on the Chief Officer the power to suspend a member of the force from membership of the force. They do not confer that power on anybody else. It appears to me that the procedures by which the Chief Officer may get to the point of effecting that suspension are, therefore, something that could be changed without any change in the legislation, which I think is directly the question which the Deputy put to me. But I just add that I am not entirely clear from the proposition which is to request the States Employment Board and the Minister for Home Affairs to ensure that items then one, 2 and 3, paragraphs 1, 2, 3 and 4, I am not sure whether that is carrying the implication that the person who is doing the review, the Review Panel, would have some power in law to overturn the decision of the person who has the power in law to suspend that officer in the first place. Because if that were the case, then clearly of course, you would need an amendment to the legislation. But if that is not the provision, if that is not the intention, if the intention is only to have a review then I do not think that it is necessary to amend legislation, although it may be necessary to amend some procedures.

8.1.8 Deputy T.M. Pitman:

If I could just be devil's advocate and ask the question which I think a lot of the public will ask and if I could ask the Minister for Home Affairs to comment, would he agree that this might be seen as the amendment has a whole lot more to do with the situation Mr. Power finds himself in at the moment and an attempt to possibly allay that situation? I am not saying that, I am just raising the issue.

8.1.9 Deputy G.P. Southern:

Whether or not we accept this amendment, I believe Senator Syvret summed up, during the debate on the last amendment, where the position is. The House is requesting various authorities to produce something which does put into effect this idea of a review and the timing nature of suspensions. Whether or not we accept the amendment or not, I believe that can be proceeded with. I would urge Members to come to a vote on this quickly and then we can proceed onwards from there. I do not see a problem either way so let us get to a vote and get on with doing something about the timing nature of suspensions and a mechanism to ensure that suspensions are dealt with in an appropriate manner.

8.1.10 Deputy I.J. Gorst:

I just wanted to reinforce a point made by the Minister and his Assistant Minister. One of the reasons I think Members are finding favour with the Deputy of St. Martin's proposition as a whole is because they feel that they are adding protection to States employees who might find themselves in a vulnerable position at a difficult time when perhaps accusations have been made against them. That is only right that we, as an Assembly, should consider how we treat our employees and that they are dealt with fairly and that they are afforded appropriate protections. The point I wanted to reiterate was that we appear to hear from the police body, as the Minister has read out, that they do not feel that the proposition before us is appropriate for themselves and, therefore, I believe that it would be wholly inappropriate for us, as an Assembly, to foist upon them something that we believe is going to add protection to them when, in actual fact, it is not what they want. I am certain that the Minister will be prepared to enter into discussion and communication with Scrutiny, as has already been mentioned, and that I believe is the appropriate way forward; that we should, in this case, reject or approve the amendment to the Deputy of St. Martin's main proposition, because that is what we are being asked to do by the people concerned and that is the appropriate way forward. Thank you.

8.1.11 The Deputy of St. Mary:

It is just a quick question to the Minister and I hope he can deal with it in his summing up. Just the detail of the letter from that Police Association you quoted, exactly who was it from, what is their role, what was the meeting or process which led to the sending of the letter to you? Thank you.

8.1.12 Deputy P.V.F. Le Claire:

I find it quite bizarre, and am I not one that has really studied this to a great extent so I am just really trying to keep up with changing pace of the debate and trying to keep up with what has been going on. But I find it bizarre that, introduced during the middle of the debate, is the letter from the police to say that they do not want to be treated like everybody else when that is the first thing we are told when we are arrested by the police: you are treated just like everybody else; that is the way it is. Everybody is treated the same. So I find that rather bizarre. I think if there is just a review that is going to occur then, surely, everybody that is in the States employ should be looked at on a parallel. I am just saying what I feel; some Members are shaking their heads. I cannot understand, when I am arrested as a States Member - and I have been - the first thing they say to me is: "You

will be treated exactly like every other member of the public.” Yet, here we have a message that we should be treating them somehow differently, serving members of the police force. There is a double standard aura about this and I am not an expert in it so I am not suggesting that their concerns are not valid. But if it is good enough for the goose then surely it is good enough for the gander and everybody should be looked at in a wholesome capacity if they are employed by the States of Jersey. Why should there be special cases, special sections, special sectors? I do not say that there should not be and I am not saying that, perhaps, in this instance there may not need to be; there may need to be special consideration, but I do not see any evidence on that at the moment. So I am going to, unfortunately, not support the amendment of the Minister for Home Affairs because I think, having accepted the logic and rationale of the police, when they are quite abruptly telling you you will be treated exactly the same way as everybody else; well, sorry, if that is how you are treating everybody else, stop treating them like that.

8.1.13 The Connétable of St. Ouen:

I would like to seek clarification of what we are trying to debate because the amendment of the Minister for Home Affairs is merely to delete the words in paragraph (b) of the proposition and yet (a) of the proposition, the first paragraph of it, also brings into the proposition Officers of the States of Jersey Police. So taking them away from (b) does not take them away from the proposition. It may be the heat has got to me but I do not understand that.

The Greffier of the States (in the Chair):

I think the Deputy Bailiff did touch on this matter before, and the Minister will no doubt clarify, but my understanding is it simply takes them out of the timescale for the implementation, so it would give the Minister for Home Affairs an indefinite timescale to make the changes requested of him.

8.1.14 Deputy D.J. De Sousa:

In the beginning, section (a) of the proposition, it says that it is to: “Request the States Employment Board and the Minister for Home Affairs to amend policies, procedures and, if necessary, relevant legislation in relation to the discipline of States employees and officers of the police and then to report back.” So where is the problem in this and his Assistant Minister has already said that they are willing to look at this. So the proposition should be accepted.

8.1.15 Deputy M. Tadier:

I just need to seek a clarification from the Attorney General. It has just been point out to me that even if we did remove the words: “And officer of the States of Jersey Police” could it be construed that the States Police are, by their very nature, States employees and so would it change anything? I see some heads shaking there.

The Attorney General:

The States of Jersey Police are not States employees; in my view, they are Officers of the Crown by the nature of the oath which they take which is scheduled in the Police Force (Jersey) Law 1974 and, if it assists Members, I understood the debate earlier in the contribution of the Chief Minister to be that paragraph (a) was treated as a request to the States Employment Board and Minister for Home Affairs to amend policies, procedures and legislation and that seems to me to suggest that there will be a review of all these matters at a subsequent date; as I understood it, in conjunction with Scrutiny. I add that because, for example, in relation to my own department, there is a provision under the Department of the Judiciary and Administration Law that precludes the States

Employment Board having any power of direction over the lawyers employed in my department. So there are obviously some small matters which need to be finessed in conjunction with any review of this kind. So I hope the Members find that helpful.

The Greffier of the States (in the Chair):

I call on the Minister to reply.

8.1.16 Senator B.I. Le Marquand:

I will, of course, be very happy if the House so wishes to produce a report on suspension policy or indeed to review the suspension policy of the police. That presents me no difficulty. I would remind Members, of course, that the President of the States of Jersey Police Association expresses the opinion; he says: "I am of the opinion that the area of suspension and subsequent review and representation is more than adequately covered in existing legislation and force policy." But I am willing to review it, notwithstanding the fact that the representatives of the more junior officers take that view. Deputy Trevor Pitman asked the question as to whether this would have anything to do with Mr. Power. In my view, it has absolutely nothing to do with Mr. Power because issues in relation to him - I am hesitating lest we need to go into camera - but I do not think we do. Issues in relation to him are governed both by law, by the States of Jersey Law, and by the terms of the side agreement which was entered into in relation to disciplinary matters. So as far as I am concerned, this has no effect whatsoever in relation to that. The Deputy of St. Mary has asked me to explain the circumstances of the letter. Firstly, the person who wrote it is the President of the States of Jersey Association. This is a body, as the letter makes clear, which in fact normally represents its Members at suspension hearings and such matters. This letter was not solicited by me in any way; it simply arrived on the 22nd April and, presumably, was their response to their awareness of this debate. It was not, as far as I am aware, solicited by anybody else. It certainly was not solicited by me.

The Deputy St. Martin:

I raised the issue with them.

Senator B.I. Le Marquand:

Perhaps it is a response then to that.

The Deputy of St. Mary:

On a point of clarification, I did ask for the circumstances surrounding the sending of the letter; not just whether you solicited it but what the democratic process within the States of Jersey Police Association was which led to the sending of the letter, or did the President send it off his own bat? Those are important issues because this is a very important part of your case.

Senator B.I. Le Marquand:

I am afraid I do not know; I simply do not know. The letter simply arrived, that is all I can say. In relation to the point made by Deputy Le Claire, the fact is that there are different employment groups within the States. I personally have held 2 public offices which were dealt with differently: that of Judicial Greffier and that of Magistrate and they were different things. Indeed, if I can come back for a moment, as I have mentioned already to the Chief Police Officer, the arrangements for him are different and there are reasons for that. The States of Jersey Police are not States

employees, they are, so I am now assured by the learned Attorney - as indeed was the opinion of the Police Association - Officers of the Crown. There is therefore a difference ...

Deputy P.V.F. Le Claire:

May I ask the Minister to give way for a second. My position was ill informed when I spoke and has now better been informed by the Minister and previously by the A.G. (Attorney General) so I do accept that and withdraw that point. I beg your pardon.

Senator B.I. Le Marquand:

Thank you. That brings me to the last point which I want to make which was in response to the Connétable of St. John. He is absolutely right, we are going to be in a terrible muddle here because, whether or not the Members support this amendment, and I hope they will, we are going to be in a terrible muddle because the amendment does not cut across sufficiently part (a). Unless the Deputy of St. Martin is willing to withdraw his proposition insofar as it applies to the police, Members are going to have to decide whether to go with the whole of it and thus to tie me into amendments which would change the status of the police and change the constitutional position which is, in my view, unacceptable. So I again call upon him to withdraw that part and I maintain the amendment.

Deputy A.E. Jeune:

Sir, may I just ask for a point of clarification. With the Officers of the States of Jersey Police, are they all required to be a member of the Police Association who sent you that letter?

Senator B.I. Le Marquand:

If I can answer that. I think I read that part out but it is complex and difficult to carry the detail. They represent the members of the States of Jersey Police up to and including the rank of Superintendant. In other words, they represent everybody other than the Chief Officer and the Deputy Chief Officer, if I can make that clear.

Deputy P.V.F. Le Claire:

I beg your pardon, may I ask for a point of clarification because I did think that I had been completely wrong on something that I had formulated in regards to the police and how they were treated and we were informed by Her Majesty's Attorney General that the police are Officers of the Crown because of the oath that they take. Is that the case when some officers, in my understanding, affirm an oath and they do not swear allegiance? There has been recently some officers that have been employed by the States of Jersey Police that I believe do not affirm an oath to the Crown. Is there any disparity in that analysis?

The Attorney General:

There is no difference to that notion. There is a difference but it has the same effect.

The Greffier of the States (in the Chair):

Very well. Do you wish the Appel, Minister? Yes, the Appel is called for on the amendment of the Minister for Home Affairs. If Members are in their designated seats, the Greffier will open the voting.

| POUR: 38 | CONTRE: 11 | ABSTAIN: 0 |
|------------------------------|----------------------------|-------------------|
| Senator T.A. Le Sueur | Senator S. Syvret | |
| Senator P.F. Routier | Connétable of St. Lawrence | |
| Senator P.F.C. Ozouf | Deputy R.C. Duhamel (S) | |
| Senator B.E. Shenton | Deputy of St. Martin | |
| Senator J.L. Perchard | Deputy G.P. Southern (H) | |
| Senator A. Breckon | Deputy of Grouville | |
| Senator S.C. Ferguson | Deputy S. Pitman (H) | |
| Senator A.J.D. Maclean | Deputy of St. Mary | |
| Senator B.I. Le Marquand | Deputy T.M. Pitman (H) | |
| Connétable of St. Ouen | Deputy M.R. Higgins (H) | |
| Connétable of St. Helier | Deputy D. De Sousa (H) | |
| Connétable of Trinity | | |
| Connétable of Grouville | | |
| Connétable of St. Brelade | | |
| Connétable of St. Martin | | |
| Connétable of St. John | | |
| Connétable of St. Saviour | | |
| Connétable of St. Peter | | |
| Connétable of St. Mary | | |
| Deputy R.G. Le Hérissier (S) | | |
| Deputy J.B. Fox (H) | | |
| Deputy J.A. Martin (H) | | |
| Deputy of St. Ouen | | |
| Deputy J.A. Hilton (H) | | |
| Deputy P.V.F. Le Claire (H) | | |
| Deputy J.A.N. Le Fondré (L) | | |
| Deputy of Trinity | | |
| Deputy S.S.P.A. Power (B) | | |
| Deputy K.C. Lewis (S) | | |
| Deputy I.J. Gorst (C) | | |
| Deputy of St. John | | |
| Deputy M. Tadier (B) | | |
| Deputy A.E. Jeune (B) | | |
| Deputy A.T. Dupré (C) | | |
| Deputy E.J. Noel (L) | | |
| Deputy T.A. Vallois (S) | | |
| Deputy A.K.F. Green (H) | | |
| Deputy J.M. Maçon (S) | | |

9. Suspension of States Employees and States of Jersey Police Officers: Revised Procedures (P.46/2009) (continued)

The Greffier of the States (in the Chair):

Very well. So the debate resumes on the proposition of the Deputy of St. Martin, as amended by the fourth amendment of the Chief Minister and the amendment of the Minister for Home Affairs. Does any Member wish to speak on the proposition as amended? Deputy of St. John?

9.1 The Deputy of St. John:

Having heard the Minister for Home Affairs, I just wonder how, in fact, this is all going to pan out, given that there is going to be a certain amount of difficulty and I was wondering if the proposer was minded to take it away and come back in a slightly different format. It will be interesting, when he turns up, whether he is going to do that or whether we are going to finish up with something that is not quite in the right format. It is of concern that we might be putting something in place that does not tick all the right boxes and I think we should be careful that what we are putting in place is fit for purpose.

9.2 Deputy G.P. Southern:

I think it is, yes, about 2 and a half hours. I would have thought the great public out there, anyone still awake or alive and listening, would think: "What a meal we are making of this." This has been completely overcooked, done to death. Let us get on with the vote, let us get on with summing up and get on with the vote.

9.3 The Connétable of St. Brelade:

It concerns me somewhat that very little heed seems to have been taken of the H.R. professionals or indeed J.A.C.S., who are a well known body who support the employee in particular as well as the whole area. There is very little comment in the Deputy's proposition towards them and I feel that more note should have been taken with what their thoughts are on this. I feel we are making it too complicated; we are making what is a simple system rather complicated. Having said that, I agree that suspensions or extended suspension periods are not something which any of us would condone but they have occurred for a reason. I note in the report on employee suspensions that there is definitely a downward trend and the numbers are much reduced on what they were earlier. It seems to me that it is a natural progression from a suspension for it to go to the States Employment Board route. The States Employment Board are at the apex of the H.R. pyramid, if you like, and it seems logical that these things would be referred to them as a final arbiter. Finally, Sir, I am concerned that the cost implications are really left a little bit woolly in that the Deputy suggests that if the reviews are carried out in-house there should not be any great financial manpower implications. It is suggested that a panel be drawn up from civil servants. There will be a cost to that because, if those civil servants are doing this sort of work, and which could be relatively onerous, there will be a cost because their duties will have to be undertaken by others. So perhaps in his summing up the Deputy could allude to the projected costs involved for this proposition. Thank you, Sir.

9.4 Senator A. Breckon:

Just a couple of points. In part, this is about dispute resolution, albeit with the individual grievance and set of circumstances and commonsense says that anything like this must be done in a timely fashion, that is to say, as soon as possible; getting people to prepare their case or whatever may be. It must be with the people involved. It is okay bringing in people to have a look. The people involved with the direct experience might have an axe to grind but they also have the knowledge of the situation and there will be occasions when there are professional organisations involved; the Royal College of something-or-other, or accountants or medical professionals and they must sometimes have a part, so there will be a delay. But I think what we see is some of the figures that were produced by the Deputy of St. Martin are unacceptable because when these things go from weeks to months to years, then these things put a tremendous strain on the system, if you like, and then it is a file on somebody's desk. I noticed in the stuff that the Deputy of St. Martin produced was a case that was with Education and it went on for 16 months - 16 months - and then the file went missing; well, it would do, would it not. But then where is the justice in this: was the case proven? I think the person resigned in the end, I do not know. I did not go into great detail and I do not know names - and it is right that they should not be disclosed - but this is a disgraceful

situation when this is allowed to run and somebody is blaming somebody else and it is this department or it is that, and somebody else is having a look. But somebody, if we have a professional human resources department, should be proactive in looking not just at where we are, but where the failures are in a system that is treating people like this. Because we are talking about people and their daily lives have been disrupted, changed, altered; sometimes their professional competence has been called into question and there must be a better way. If you look at the whole workforce then you say: "It is only a very, very small fraction of a percentage" but to those people, it is very, very important. I hope the Chief Minister and the Employment Board will take this on board; we need to look at it, step back from it and look and perhaps learn from some of the case histories. There always will be cases that will take some time because perhaps there is a criminal element to it, professional element, so we need to give that the option to run its due course but where it is possible - and I believe it is to resolve some of these matters sooner - then I believe it should be done. I think, if anything, what the Deputy of St. Martin has done, he has brought this out into the open to public attention and perhaps we should be, as an employing organisation, paying more attention to some of the detail and put processes in place - which should be there anyway - that react to these situations and I will support it, as it is, for these reasons.

9.5 The Attorney General:

I was criticised this morning for not speaking and I have no doubt I shall be criticised this afternoon for speaking; but that only goes to show the Attorney General can never win, but, nonetheless, there are 2 issues here: there is a narrow issue which is the policies in relation to the imposition and review of suspension, and a broader issue which is why some disciplinary matters appear to take so long. I do not wish to comment on the narrow issue which is the precise subject of the proposition but I do wish to comment on the broader issue because the proposer set out quite a number of things in relation to some disciplinary cases in the course of his speech. The first thing I wish to say is that generally speaking a suspension, in my experience, comes around where there is a serious matter which is to be investigated. In the context of being serious, generally speaking, that often involves the possibility of a criminal offence having taken place. There is a long-standing maxim of Jersey law that: "*Le criminel tient le civil*" in other words, the criminal process must take priority, must have happened first. The reason for that is that, essentially, the liberty of the subject is the most important thing ahead of the rights of the subject to be employed; his contractual position or whatever that might be. So the reason that the criminal matters must be dealt with first is - there are several - they include the need to ensure that the evidence that might be given in a criminal trial is not contaminated by the witnesses being called into a disciplinary hearing first and given evidence before a disciplinary tribunal. It may be because Jersey is a small place and there is a need to ensure that there is not a disciplinary result which is known, potentially, to members of the jury or somehow or other influences the integrity of the trial. Sometimes because it would be unfair to the person who is being suspended to adduce evidence of what he may need to show to deal with the disciplinary matter when his trial on a criminal case has not yet come forward. So for all those sorts of reasons, and there are others, the criminal process needs to go first. Of course, the thing that that draws then with it is that a criminal investigation often takes time, particularly if it is a serious investigation and, once it is decided that prosecution is to be brought, charges are brought, there is a process in the court which requires that the rights of the accused to a fair trial often generate some delays. Because the defence will say, entirely legitimately: "I am not ready to go to trial just yet. I want to go and get an expert's report on this or on that. I cannot get my witnesses forward on a particular day and therefore the trial must be deferred" or for whatever reason, he comes forward and says: "I am not able to have a fair trial on that particular day." So while it is very frustrating to have the disciplinary process delayed from these courses, it is inevitable, if one is going to put the priority where I believe the priority must be, which is ensuring that the criminal process comes before and is dealt with before the disciplinary one. The Deputy of St. Martin in the course of his speech earlier took the opportunity of castigating the law officers for some delay in

relation to one particular case which, I think, concerned 2 police officers. I would just like to say that the decision in that case, the file in that case, remained in my office for a total period of 6 weeks which, in the context of the entire investigation, does not seem to me to be a particularly long time considering that quite serious matters were being reviewed. But I also wish to say this about the police, because it is relevant I think to some of the concerns which the Minister was expressing earlier: the way the system works is that the police obviously investigate the allegations of criminal offences. They produce a file which goes to lawyers to review. It sometimes goes merely to a Centenier to review and there has long been established in the department, long before I arrived - I am not sure, Sir, if it was before you arrived - that in the case of a potential prosecution of a police officer, that the case file would be reviewed, first of all by a lawyer within the department and then afterwards by one of the law officers personally. The reason for that was to ensure that the lawyers who would perhaps be dealing with the police officers regularly and therefore would not have the same distance that the law officer himself - or in the case of the Solicitor General preceding, herself - would not have the same distance that the law officer might have. That is why we have the system we do. Of course, that does introduce some extra delay from time to time in dealing with the review of files involving police officers. It is an important protection nonetheless and a protection that I would hope Members would think is important and would support. As I say, I am really only dealing with the broader issue and the broader issue is that in relation to criminal matters these must come first. I would hope that in the context of any reviews about suspension that will play such a part as it is necessary for it to play. I particularly wish to address some of the comments which the Deputy made earlier in his early speech, which, with respect to him, I thought were unfair. Thank you.

9.6 Deputy D.J. De Sousa:

The A.G. has just stated that usually suspensions are done for serious or criminal reasons. Looking at the table at the back of current suspensions in the last 12 months or so we have some that have been re-instated, 9 in all; 8 of them have been re-instated now and one is restricted. Those time periods lapse from one year and one month to various, 2 months, 5 months, or a matter of weeks. These suspended people would not have been re-instated if they were suspended for either serious or criminal reasons.

9.7 The Connétable of St. Lawrence:

I wish to commend the Deputy of St. Martin for bringing this proposition, albeit based on a number of questions that I, myself, have put over a number of years. Perhaps I should have brought it myself. Nevertheless, the Deputy has brought it. He has drawn to the public's attention the cost of continued suspensions. It seems to me that my annual questions should indeed have been enough to alert the Chief Minister's Department and the States Employment Board to the concerns that there were regarding suspensions and delays in dealing with them. Notwithstanding the Attorney General's comments regarding criminal proceedings these matters should be addressed on a very time-restricted basis. I hope when I put my question next year to the Chief Minister that there will indeed be fewer suspensions referred to in his response. It remains for me to urge Members to support the proposition of the Deputy of St. Martin.

9.8 Senator T.A. Le Sueur:

Like the Constable of St. Lawrence, I too hope that the table next year will show a reduced number of outstanding suspensions because that is States Employment Board policy. We are concerned when we see ongoing suspensions. That is why we call for regular reports of people still under suspension and ascertain the reasons why that is ongoing. In extreme cases we have written formally to express our concern at the ongoing delay because I share, and my fellow board

members share, the concerns of Members for those individuals facing suspension. I can assure the Deputy of St. John that I meant no offence to the people who were suspended beyond 8 weeks and suggesting that they were only a handful and so it did not matter. What I was saying is that every employee suspended is of concern to us, but where a suspension takes more than 8 weeks it is almost inevitably for the reasons which the Attorney General has just outlined. I think it is important that I make that point because there might be an impression that either the States Human Resources Department or the States Employment Board are indifferent to these needs. We are not. That is why we have set a target of a maximum of 8 weeks for every suspension; a target which we generally achieve, except when there are exceptional circumstances of criminal or police or legal ongoing inquiries. So, I do think that while welcoming the thrust of the Deputy of St. Martin's proposals, I do not want to make it to sound like sour grapes but I do also want to pay tribute to the fact that our Human Resources Department, and the Chief Officers concerned, strive whenever possible to resolve suspensions in the shortest possible time. It is those that are beyond anyone's control to do in that short time which I think give all of us concern. I think that is why when I look at the proposition from the Deputy of St. Martin the first 2 parts of part (a) really deal with the initial suspension of people and with the first 2 parts of the proposition I have absolutely no problems whatsoever. I believe that it is right that we should improve our procedures if we possibly can and I will work with the Deputy and the Scrutiny Panels to ensure that our revised procedures improve on what is already, I think, an improved situation but we can improve it still further. It is the ongoing situation for longer-term suspensions which causes me concern, just as it causes the Deputy of St. Martin concerns. Whether his amendments by themselves will resolve the issue in the way which would satisfy everybody remains to be seen. Certainly, in a spirit of co-operation I am willing to work with him and with States Members to ensure that we get an outcome that is as good as we can possibly seek to achieve. If that message equally goes out to all concerned that the people concerned in suspensions are human beings who have a particular difficulty which they face, I am sure we all seek to try to improve that position as soon as possible. Inevitably, justice has to be done and justice has to be clearly demonstrated as being done. Meanwhile, for the sake of formality, I applaud the Deputy St. Martin for bringing this matter to our attention.

9.9 Deputy P.V.F. Le Claire:

I support the Deputy of St. Martin in his proposition and congratulate him for bringing forward these amendments. I think on the words of the Chief Minister I would just like to say in my time in the States, the States of Jersey have sometimes demonstrated some quite questionable practices. I have served on the Human Resources Committee. I have been a member onboard the Ill Health Retirement Subcommittee and signed off as political responsibility for States employees over several years. In my experience there is also an issue that needs to be looked at in this regard as to when the States choose not to suspend somebody but merely let them go into retirement because it is a quicker method. Most recently, a very high profile individual was highlighted as wanting for suspension or firing and they just decided to let him coast into retirement. Also, other issues in relation to when members are promoted or moved sideways within the civil service rather than suspended. I think that if you talk about an ethos of the States employment then surely that must factor in in the future as well, because just to look at suspensions and the practice of suspensions in isolation, just to look at the ... I am trying to address the Deputy of St. Martin because it is his proposition. Just to look at suspensions as something that we need to tighten up on, I think the States as a whole needs to look at its ethos of employment and its practice of discipline and its practice of suspension intervention, and holding account, where necessary. Even if somebody only has 2 weeks to go before retirement they need to be held to account. I think lapse practices of employing people on contracts that can be easily terminated rather than having somebody make a fuss of things they can just be moved on because their contract has expired after a certain period, I think all of that needs to be looked at as well. So, I would ask the Deputy of St. Martin, when he

has finished doing this - hopefully he is going to be supported today - I would like him to get his head around that and see if he cannot come back with something like that because the Chief Minister has told us about our responsibility and an ethos that we need to move forwards with. We have ticked a lot of the boxes today if we approve this, but there is still a lot more to tick.

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

I am sure that all of the Members in the House really support the aims of this proposition. Tidying up these problems is something that is long overdue and I think we would all like to see it done. However, I have been worried by the matters brought forward by the Minister for Home Affairs and the Attorney General and I am deeply concerned that we could end up introducing flawed legislation. I would hope the proposer can in his summing up suggest ways which these problems can be overcome.

9.11 Deputy A.K.F. Green:

Several Members have mentioned the human costs of people that have been suspended and I unfortunately have a very close friend that was suspended for quite some time without ever being told - it was the public sector - why it was that they were suspended, so I understand firsthand the human cost. I again congratulate the Deputy for bringing it forward. I would just ask when he is bringing it forward that he has a look at one or 2 issues and I apologise for not looking at it more closely and perhaps bringing my own amendment. First of all, I support totally that it has to be an independent review because otherwise there is little point if the same people who will be hearing the case are also carrying out the review. In fact, I think it could corrupt the procedure. I also have doubts as to whether the Chief Officer should be at that review. He may be the very person that is going to be hearing the disciplinary hearing if there is one later on. So, I would rather the Deputy consider changing that to, or at least put in words, something similar “not likely to be involved in the disciplinary hearing or process”, or something like that, somebody from the department. The other comment ... there have been several comments about the 3-year case and I, without naming names, was involved in that for some time. I believed there were other ways of dealing with that and had we had some sort of regular review we might have brought that one to a satisfactory conclusion. Because at the end of the day, whether that person was found guilty or not guilty, they were no longer suitable to work with vulnerable children and that is what should have been dealt with. I will leave my comments there but I will be supporting the proposition.

9.12 The Connétable of St. Helier:

First of all, I would like to reassure the Constable of St. Saviour that his concern about legislation is perhaps not founded given that the proposition requests the Employment Board and the Minister to amend policies, procedures and, if necessary, legislation. Obviously, if legislation is to be amended it must come back to the Assembly. So, I think what we are approving, if we approve this proposition, is really a root and branch review of the policies and procedures that we have and which govern suspensions in the public sector. Notwithstanding an earlier comment by a Minister that it is not our job to set H.R. policy, well, I am afraid I believe that it is. I was really quite struck by the Chief Minister’s speech supporting the proposition, particularly given that we have not had a report from the Council of Ministers on the Deputy of St. Martin’s proposition. What we have was their amendments. Their amendments, of course, began with a swinging attack on the Deputy of St. Martin in the name of the Chief Minister for what he was seeking to achieve. So, clearly somebody else wrote it because it was not the person who just spoke to us a few minutes ago commending the Deputy for bringing this forward. This is a completely different voice here on page 4 of the amendment. The bullet points simply brush aside as unfounded allegations all of the grounds which led the Deputy to bring his proposition. So, I am confused. Clearly, there is more

than one Chief Minister at work here, but anyway. I just want to remind Members that the bullet points on page 4 of the Council of Ministers' comments - and that is what they are, they are comments on this proposition - the bullet points do need challenging. Just to take the first one, the report says: "It is alleged that some employees are still being suspended without receiving anything in writing." This is highly unlikely and where is the evidence of the allegation? Surely the Chief Minister must know that there has been very recently a high-profile case of an employee [**Approbation**] being suspended without receiving anything in writing, without being allowed to have a friend - whether it is a lawyer or not - without being even warned that they were facing a suspension and therefore they went unaccompanied. Is this an unfounded allegation? We have a recent example of a high profile and respected member of the States employees, perhaps not technically an employee but we will let that pass, certainly somebody in the pay of the taxpayer, somebody whose initial interview ... the notes of the initial interview when requested were not verified with, "Do you agree this is a fair account of our meeting?" No, they were sent a typescript and then told that the original notes had been destroyed. These are recent events in the world of States H.R. That is why the Deputy of St. Martin has brought this proposition and that is why it deserves our full support. While I welcome the Chief Minister's support, and hopefully the rest of the Council of Ministers will go with him on this, I welcome that; I wish they had done something earlier because then the Deputy of St. Martin would not have needed to have brought this proposition in the first place.

9.13 Senator P.F.C. Ozouf:

I am quite clear that this issue has been rushed as far as the comments of the Council of Ministers. I take my part in being responsible for that. I would just point out to the Deputy of St. Martin this issue was lodged on 31st March. The Easter break has been in between. I am afraid some Members obviously like to criticise the Council of Ministers. This is one of a number of pressures that the Council of Ministers have had to deal with. I would appreciate that sometimes it is easy to have snide remarks about the Council of Ministers in relation to every matter. We are a parliament, we are a democracy, and not everything is perfect all of the time. The proposition is certainly not perfect. I do take the mood of the Assembly, as I am sure other members of the S.E.B. that there is an issue of the need for reform here. I take that on board as a member of the S.E.B. and I am sure all members of the S.E.B. will deal with that and reform and review procedures. However, I am afraid I am not going to vote in something that is imperfect. I take the spirit of some issues, but I am not going to vote in favour of something that is clearly imperfect. Clearly the Minister for Home Affairs has highlighted issues which are not possible to deal with. I am very concerned about the issue of the disconnect between the proposition we have before us now to vote on and the employment law in dealing with issues of legal advice. I will vote against it, but certainly support the review that must now follow. It is a request, after all.

9.14 Senator B.I. Le Marquand:

There are many good things in the proposition and I would like to be able to support it. I accept that there have been deficiencies in the past in relation to the States of Jersey procedures for suspension in relation to civil servants. That is not so in relation to the States of Jersey Police as indeed confirmed by the letter which I have much quoted. I wanted briefly to explain what the existing States of Jersey Police procedures comprised in connection with the proposition. In relation to (a)(i), that is already done. Now, they do not rush into suspensions; they have a suspension hearing before a suspension is administered. In relation to (ii), that already occurs except for the issue that I explained before about the problems with a friend and the issue of confidentiality. In relation to (iii), I am still fundamentally against the part which deals with the police because the concept of bringing in non-police as a reviewing body is simply unacceptable and that does not occur. The current procedure is not always to hold monthly meetings if nothing

has changed, but I could live with the change in relation to that. In relation to (iv), there are 2 issues. Firstly, the same issue that I mentioned before in relation to confidentiality of highly sensitive matters in relation to the issue of a friend and it would be totally inappropriate for the Chief Officer of Police to be present at any suspension hearing because he ultimately judges the matter. So, there are a number of difficulties. Now, I am well aware of the stressful aspects, the human aspects, of people being suspended. Being suspended is a very stressful process and that is a matter that we always need to bear in mind. I am also aware of the fact that, although the impression may have been given otherwise, people are not generally gung ho in relation to the maintenance of suspensions, particularly not in my own department, simply because it is very expensive. It is in a sense self-correcting. The longer a person is suspended the more it costs. I would like to be able to support the proposition in relation to the civil service, but I am still fundamentally opposed to a proposition that requests me to do things that are totally inconsistent with the status of the police. I am fundamentally opposed to that. Members must now choose whether to go with the whole proposition or whether to go with me and to oppose, simply because lumping the police officers in is unacceptable. I do draw some comfort from the last vote and I will take cognisance of that vote because I believe the Members have clearly indicated a great deal of sympathy for my position in that regard. This is after all a request, but nevertheless I feel obliged to oppose.

The Deputy of St. Martin:

Can I just clarify a point from the Minister; I thought we had voted to exclude the police under (b)? That was your amendment.

Senator B.I. Le Marquand:

That is right.

The Deputy of St. Martin:

I cannot understand why you are opposing something that we have already agreed to.

Senator B.I. Le Marquand:

Sorry, my problem is the ruling that you gave before which was that all it really did was deal with the timing and not with the substance.

The Deputy Bailiff:

Yes, that is right. Paragraph (b) of the proposition says that it has now taken out reference to the States of Jersey Police, but paragraph (a) still says at (i): “When any States employee or officer of the States of Jersey Police is suspended they shall, within 3 days ...” and so on. It appears still to relate to the States of Jersey Police.

Senator B.I. Le Marquand:

That is why I have repeatedly invited the Deputy of St. Martin to withdraw (a) in relation to the police because he does. My difficulty disappears, it is civil service matters, I am happy with what he proposes.

9.15 Deputy M. Tadier:

Just to follow on from the last speaker, surely if there is an issue with part (a) one would have thought that an amendment would have been brought before. Anyway, to carry on with the main part of my speech I would like to add my congratulations to the Deputy of St. Martin. I believe this is an area which is of great public importance. I would also like to congratulate other Members who have been pressing for the cause of suspensions. The reason it is of a huge public concern, I believe, is twofold. Perhaps primarily members of the public are quite rightly concerned about the vast amounts of public money that are effectively being wasted while people are suspended for long periods of time. Also, they are concerned about justice. Obviously, justice should be seen to be swift. They are concerned about miscarriages of justice as well, I believe. Miscarriages of justice, it should be pointed out, are twofold. They can involve people who are innocent being dragged across the coals, but it can also involve people who maybe should be suspended who have not been suspended. This is certainly an area that many constituents have been concerned about and are talking to me about. Of course, I am not going to mention any names, it is not appropriate to do so in an open session, although some disagree with that, of course. So, I welcome the proposition, largely because it is taking us in the right direction. It does start to shine a light, I believe, in some of the more murky corners that need to be brought to light. I would suggest, and I suspect, that this is not the last time that we will be discussing suspensions this year. I do want to just express my concern that it is very difficult for us as States Members to find out any information. The public do expect us to be in a better position than they are to find out information and it has been very difficult, and I would direct this in particular at the Education Department when they have been asked very candid questions to give us information of whether any of their senior staff are being investigated for child abuse and they have not been able to give a categorical answer, yes or no. That to me can only seem to suggest that someone is and this does not provide any kind of reassurance for the public. I think there needs to be consistency throughout all departments. I will close by, once again, welcoming the Deputy of St. Martin's proposition and it has my full support.

9.16 The Deputy of St. Mary:

Nice one. Touché. Yes, just to be clear, it will be probably quite brief. Before I start I wanted to ask the Chief Minister - because I am not clear about this - whether he supports the proposition because it sounded as if he did and then I was not sure because he did not say. I would gladly not speak if he was to assure the House that he does support the proposition. Can I stop there and wait for a response?

Senator T.A. Le Sueur:

I certainly support the spirit of the proposition. I acknowledge the fact that in my view, like the Minister for Home Affairs, I believe the proposition ... the wording, particularly in respect of the latter part of part (a), is flawed, but I am taking it on the basis of the spirit of the proposition that the Deputy of St. Martin has put forward and would endeavour to work within the spirit of that proposition. I ask the forbearance of Members to appreciate that I will bring forward proposals that reflect that spirit and also, I think, reflect the difficulties created simply in respect of the police. I think on that basis the answer is a guarded yes.

The Deputy of St. Mary:

On that basis I think I better give a guarded speech then. **[Laughter]** Just briefly then, the proposition, to be quite clear, seeks to embed proper procedures for all States employees and for the States of Jersey Police; that is under section A. It does not specify exactly how this is to be done. It requests the States Employment Board and the Minister for Home Affairs to carry out this review and then embed these procedures. It is quite specific. The result will be that (i), (ii), (iii) and (iv) will be embedded in the new procedures. If they are not, then the States Employment Board and

the Minister for Home Affairs have not complied with the wishes of this House. That is if the proposition goes through. But, in fact, as this proposition now stands, these revised procedures bizarrely will not apply to the States of Jersey Police because we have voted through an amendment whereby, on my reading of the proposition (b), these revised procedures will apply to every States employee but not the States of Jersey Police because we just took them out. Although the procedures will be embedded for both the employees of the States and for the States of Jersey Police, nevertheless they will not apply to the States of Jersey Police unless the States takes a further measure down the line. I just wanted to clear that because that is my interpretation and I think that is the correct interpretation. Just a couple of points about what the Council of Ministers have been saying ... sorry, the Chief Minister's comments have been saying about this proposition, because there still seems to be a little bit of doubt as to the level of support or whether it is really concrete. It does worry me that some of these arguments have not been made or addressed. In paragraph 4 on page 5 ... sorry, in his paragraph 4 on page 5 we read: "It is a fact that the vast majority of suspensions which exceed 28 days do so because of complicated internal investigations, police inquiries and legal proceedings involved and that the procedures proposed in the proposition would have minimal effect on these." You see, we have this in the document of the Chief Minister and yet he is saying that in principle he supports the proposition. This paragraph 4 says that these procedures proposed by the Deputy of St. Martin will not have an effect on the length of suspensions, but the whole point is they will have an effect because there is a 28-day deadline every 28 days, effectively. So there is this panel that sits independently calling the Chief Officer to account and saying, "How are you getting on with this particular suspension, and this one, and this one?" Surely that will have an effect on the whole process and that is why that paragraph is being brought, the subsection (iii). There is a further comment that really worries me in the Chief Minister's report on page 5, equally page 5, the top bullet point. It is interesting because these bullets are prefaced with a comment: "The report which accompanies the proposition (that is the Deputy of St. Martin's report) is based on inaccurate, misleading and unsubstantiated comments." That is quite a grave accusation. Then this bullet, which is the sixth bullet: "The report says (that is the Deputy of St. Martin's report) that 'The suspended person is presumed guilty, therefore there is no need to rush things.'" Then the comments carry on: "This is a gross exaggeration. The employee is not presumed guilty. He or she is presumed to be innocent until at least the investigation and hearing are completed, let alone any appeal." That sounds as if the Deputy of St. Martin is writing tosh. I did not think he usually does so I checked what it says in his proposition. What it says is: "It should be noted that the current policy provides for no specific review after 8 weeks. Such a policy gives one the impression that if an 'investigation' is not completed within 8 weeks the suspended person is presumed guilty, therefore there is no need to rush things. Even if that is only a perception it is unacceptable to the employee and the taxpayer." Those 2 versions are completely differently. To accuse the Deputy of St. Martin that his report says something that he has completely qualified in what he said is ... well, I do not know how to describe it. It is not below the belt; I have got a note in my margin, "God help us". If that is the level of thought out written comment then I am really, really anxious about the level of debate and discussion. So those 2 are quite important points in the comments of the Chief Minister and they both do not stack up. Put them alongside the examples I brought earlier about when we were discussing his amendments, the reasons for having a panel and the strange idea that the panel would go down the road of looking at the actual reasons for the suspension and would usurp the authority of the agreed procedures - which I pointed out was unlikely, and would there not be a chairman to make sure this did not happen - and the argument about resources where he claimed that this would be a very resource-hungry process to have a panel and then he backed away and said that that argument simply did not stack up at all. The case against this proposition is very, very weak. Whenever you look at it, it falls apart and I do urge Members to support this proposition.

9.17 Deputy R.G. Le Hérisier:

Very quick because I want to give time, 5 minutes, for the Deputy of St. Martin to sum up because he is on a winner and if he does not do it quickly he might lose. Back to the issue, I should add to the Deputy of St. Mary, he obviously had not understood that the Chief Minister has had a conversion on the road to Damascus and what he sees in writing is not necessarily what is emanating from the Minister's mouth at the moment. Two wrap-up, or a few wrap-up points, and Deputy Tadier of St. Brelade has raised disclosure notices. This is the issue in education. This has been a contentious issue and it strikes me when, as in a small community, it gets out that people are subject to these notices, the stigma, the venom, the inferences and so forth are as serious, if not more serious, than those that surround a fully formalised suspension. I would ask the Chief Minister's Department to look at this and look at the procedures by which they are handled and whether trying to hold the line, as they do at the moment on these notices, and keeping the decision-making process rather secret really achieves what they are seeking to achieve because it leads to very, very perverse results. It has to be looked at from both sides of the story. The other thing I have noticed is there is, to put another negative thing, this issue of sick notes as well where employees do fall sick during an inquiry and sick notes come one after the other. It has the effect, as I know it had in one of these very lengthy cases, of delaying the process and we need clarity on what the sick note process is and when independent doctors, for example, get involved in the process. The third issue, and Senator Breckon mentioned a case in a Ministry, I understand this was a 14-month suspension which then got transmogrified, so to speak, into a voluntary separation at the end. Why did that happen all of a sudden? What went wrong? I understand what went wrong happened at the very beginning of the case. Had Deputy Hill's precautions been in place somebody would have picked this up and that organisation would not have been in a defensive mode as it appeared almost from the beginning of this perverse process. Somebody would have picked that up. The other thing that has to be said ... why I have mentioned things like disclosure notices and so forth, we are going to get cases where people are going to get very upset that people are apparently spinning out the process, they are apparently doing this and doing that, but the issue is no matter how horrendous - unless it goes immediately into criminal justice mode - the issue it has to be the situation where justice is seen to be done because otherwise you will be left with all sorts of comeback, all sorts of claims for compensation. I commend the Deputy of St. Martin. I am sure he will make a very brief summing-up speech having gained the moral high ground and will make an appropriate adjustment to deal with further views from the police.

The Deputy of St. Martin:

Could I just make a comment? I am looking at the time and in fairness the Chief Minister made some very serious comments about me and with respect I wanted to make them during the course of my speech because I felt that was the time to make it before we had the debate. It would be doing an injustice to this debate if having spent so much time that I have to sum it up within 2 minutes to make sure people get off at 5.30 p.m. What I would ask is if we do adjourn and I can finish completely tomorrow.

Senator S. Syvret:

Can I ask the Deputy not to move for adjournment? I am quite sure we could remain for 10 or 15 minutes while we conclude this matter. I really do not ...

The Deputy Bailiff:

It is a matter for the Assembly. First of all, Deputy, could you assist the Members as to roughly how long you would propose to take in summing up?

The Deputy of St. Martin:

At least 20 minutes. It is not really fair if there are a number of issues to be drawn out.

The Deputy Bailiff:

Is any other Member going to wish to speak before I call upon the Deputy of St. Martin to reply? So we have no one else wishing to speak. So then the matter for the Assembly is simply whether to continue until this matter is finished today, which will be another 20 minutes or so, or whether to adjourn until tomorrow?

Deputy J.A. Hilton:

Can I speak against that proposition? The Deputy of St. Martin has obviously spent a tremendous amount of time to bring this proposition to the States and he is quite entitled, I believe, at 5.30 p.m. to say whether he wants to come back and sum up in the morning. Notwithstanding that, there are female Members in the States Assembly who have school-aged children. We know we are coming back into the States tomorrow ... and men, sorry. I have no doubt that there are men in here also who have responsibility for their children after 5.30 p.m. So for that reason alone I think we should adjourn and come back tomorrow morning at 9.30 a.m.

The Deputy Bailiff:

The position on the Standing Orders is that we will adjourn unless somebody proposes that we continue. Does anyone wish to propose that we continue?

The Deputy of St. John:

I propose we continue until the summing up is complete.

The Deputy Bailiff:

Is that seconded? No, it is not. Very well, in which case we will adjourn then until tomorrow.

ADJOURNMENT