

STATES OF JERSEY

OFFICIAL REPORT

THURSDAY, 19th JANUARY 2017

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

[9:30]

PUBLIC BUSINESS – Resumption

1. Future Hospital Funding Strategy (P.130/2016) - Suspend the debate for the Corporate Services Scrutiny Panel to review under Standing Order 79 - resumption

The Bailiff:

We adjourned last night in order that the Minister for Treasury and Resources might provide Members with figures. As requested, he has done so and I am grateful to him. The figures should be on Members' desks. There is nothing you want to add, Minister, is there?

Senator A.J.H. Maclean (The Minister for Treasury and Resources):

I would like to just briefly add something, if I may? I would like to first of all apologise to Members for the uncertainty created yesterday with the inability to confirm the figures. The reason for that is that these figures are based on Quarter 3 estimates. Estimates are permitted within the law for this purpose and since the estimate was given in Quarter 3 at the time of lodging of this proposition, there have been a number of updates on the figures and I was seeking clarification of what the latest updated figure was as opposed to the figure used at Quarter 3. But what I can say to Members is that the figures before them which were provided this morning are the position which demonstrates that the States would be compliant with the law in terms of approving this proposition, the borrowing up to £400 million. There are many other considerations I know Members have but with regard to this particular issue, we are compliant with the Public Finances Law and these figures demonstrate that point.

Deputy M.R. Higgins of St. Helier:

Point of clarification? Just looking at the figures, it mentions various guarantees and everything else. I can see no reference to the Depositors' Compensation Scheme which, if a bank fails, the first call for paying depositors is taken from the States reserve. Surely those figures should be included in the figures we have here? Is that not correct?

Senator A.J.H. Maclean:

It is not borrowing. So the advice that we have is that it would not be included in the figures before Members at the moment.

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

Can I ask some questions of the Attorney General?

The Bailiff:

I was going to come to the Solicitor General for some advice in a moment. This question is for the Minister for Treasury and Resources on the figures produced?

Deputy J.A. Martin of St. Helier:

Yes. Could the Minister for Treasury and Resources then explain because he has the chance to, luckily, why again the long-term care charge is in? Because to me you can only borrow against things literally that you can spend. I and every other Member in this House who passed the long-term care charge knows it goes to a ring-fenced fund. So it is collected through tax but it is not there to spend. So it should not be ... and you take that off, you are very close to that magic figure. In fact, you could be breaking it. I am very concerned, and the Minister needs to explain this to us.

The Bailiff:

Deputy, I think perhaps if we hear from the Solicitor General first because I think it really is a question of law that has been raised as to whether or not Article 21(3) is engaged. If it is not engaged, then the question you have just put is a political question which does not arise out of this debate. Solicitor General, you were asked whether or not Article 21(3) is infringed and whether it is legitimate?

Mr. M.H. Temple Q.C., H.M. Solicitor General:

Yes, I have considered the matter overnight and I have reviewed the Public Finances Law and the Long-Term Care Law. I have also had regards to English case law concerning tax and contributions. Those are obviously not Jersey cases but in my respectful view they would be highly persuasive to the Royal Court in considering this issue. So in terms of how legally a tax is viewed and defined, in law there is a distinction between charges levied by a state which are contributions and those which are taxes. So the classic example of a contribution is social security whereas the latter taxes comprise all compulsory charges and taxes. So the distinction between a tax and a contribution is, essentially, one of personal entitlement arising by virtue of having made contributions and being calculated with respect to the amount of the contributions. So a classic example is National Insurance, or social security contributions which in English law are not taxes. There is a case in England concerning Goldman Sachs where it was held that social security contributions are not taxes whereas a tax is one where a person is required by virtue of having done something or because the State's permission is required to do something simply because the person exists. A tax is, it might be said, to be something which the citizen does not really get any rights in return whereas a contribution is something where the payer accrues an entitlement. It does not need to be the case that a person who pays the contribution necessarily becomes entitled in due course. Other factors may affect that entitlement such as where the individual lives in the future but the causal link between the contribution and the entitlement must have some degree of reality. So here indirect taxes such as the impôt, stamp duty, land transaction taxes are taxes for the purposes of Article 21 of the Public Finances Law. So in my submission, that is made clear by the definition of taxes and taxation in Article 1 of the law. So tax includes a duty and taxation shall be interpreted accordingly. That is the definition of taxation in the law. Rates are also taxes because the legislation imposes an obligation to pay rates by virtue of land ownership or occupation. However, social security contributions are not taxation. So they are not included for the purposes of Article 21. However, taxes that are levied for specific purposes are taxation notwithstanding there may be legal limits on their use. All tax is levied for a purpose or a range of purposes but a particular tax is legally directed towards a single public purpose, so-called hypothecated taxes, does not make it any less the use of State power to levy taxation. The fact that it is a hypothecated tax still means it is taxation. So a person who makes no contributions will still be able to benefit from long-term care in this case, whereas a person who makes large contributions to long-term care will not receive any additional entitlement under the Long-Term Care Law to benefits.

[9:45]

In this case, the long-term care fund is not separate from the States. It is not a fund like P.E.C.R.S. (Public Employees Contributory Retirement Scheme) or the Teachers' Superannuation Fund which are separate funds from the States. The Long-Term Care Fund is a fund that is managed by the Minister for Treasury and Resources that is set aside to pay a particular purpose. So ultimately it is a means by which the States will be able to meet expenses currently met by tax going into the Consolidated Fund. If the States were to stop paying someone out of tax paid to the Consolidated Fund but it allocated tax into a tax into a ring-fenced fund, has the States lost income? No, it is still meeting public purposes through taxation. I repeat, a hypothecated tax is still a tax and the expenditure it meets is still public expenditure. It changes nothing but appearances that the tax is being accumulated to meet future expenses, long-term care costs in this case. So for the purposes

of Article 21(3) in my opinion in legal terms I view the long-term care contributions as a hypothecated tax and I do see it as income of the States for the purposes of the limit that is in Article 21(3) of the Law. That is my advice.

The Bailiff:

That is the advice from the Solicitor General that what the States are borrowing is lawful. Is there any question for the Solicitor General?

Deputy J.A.N. Le Fondré:

Can I just ask 2 very minor queries on the long-term care thing and then I have a more fundamental query on the law itself. The 2 minor queries which I am sure ... I just wonder if the Solicitor General could just expand on given his last opinion because the actual ... and I think it is the Income Tax Law seems to distinguish between tax and a long-term care contribution. That is his phraseology. So for example: "An employer shall not be required to deduct tax and a long-term care contribution commitment." I am just curious, you said obviously social security is not a tax which I think we all agree with, and one example that he used was that people for the long-term care charge was that people who pay a large contribution will not get a commensurate increase in benefit they are receiving whereas people who do not contribute to long-term care could receive the benefit of it. I was slightly curious because the analogy that sprung to mind, and I may not be perfect on this I hasten to add, it seems to me that long-term care is similar. You pay a large contribution in potentially at the higher end but your benefit is capped but I believe potentially with social security if you pay a large contribution in your benefit is taxed because it is a maximum pension you are going to be receiving, and potentially I think somebody on income support who may not contribute in themselves to the scheme will receive contributions ... somebody pays contributions on their behalf, which is the States. Therefore, I was trying to work out the distinction of the 2 analogies? Can I stop there? I do have a more fundamental question to ask the Solicitor General.

The Solicitor General:

I think that is quite a technical question. As I understand it, and as I am instructed, the fact that someone pays in quite large contributions does not mean that they are entitled to extra benefits in the form of long-term care whereas someone who pays in nothing to long-term care because they do not meet the measure at which long-term care contributions are levied, is still entitled to benefits under the Long-Term Care Law. So I think that is important in terms of analysing whether the long-term care contributions are best viewed as a hypothecated tax for purposes of this particular provision in the Public Finances Law. In terms of whether someone pays contributions of someone who is not able to make them, whether the Social Security Fund pays contributions, I regret I do not have that information to hand. I am not aware whether someone who is not able to pay contributions themselves has the contributions paid on their behalf by the fund. It may be that those who are closer to the detail of that will be able to assist.

Senator I.J. Gorst:

Perhaps the Solicitor General would give way on that point?

The Bailiff:

If it is in connection with social security contributions which have not been taken into account anyway, so I cannot see that it is relevant.

Deputy J.A.N. Le Fondré:

Can I ask my more fundamental query which is ... the second query is that Article 21(3) talks about the States should not authorise any borrowing, and part 2 talks about security of the loan and in the

law I could not see any definition of loan or borrowing. The reason I have raised that is I have always understood, and if I can talk for 30 seconds to inform the Solicitor General, that if it is not defined in the law then it becomes what is commonly understood, and I have to say that is when the accountancy hat goes on because definitions and all those sort of things can get technical. But certainly under the Oxford English Dictionary: "Borrowing is to render oneself indebted for. A loan is a thing lent, especially a sum of money lent for a time. A loan is the act of giving money, property or other material goods to another party in exchange for future repayment of the principal amount along with interest." The reason I have mentioned that is what actually is a borrowing? For example, would it include things like finance leases which are about £4 million? Is it an obligation or a debt? I think I will stop there. There is a follow-up question depending on the Solicitor General's thoughts.

The Solicitor General:

I could not catch all of the question but in terms of the bits that I did catch, it is correct that borrowing and loan are not defined in the Public Finances Law so therefore it follows that their definition is a matter ultimately for the court to decide and looking at how English case law has viewed as borrowing or loan, then they are essentially determined in accordance with their ordinary and natural meaning and the court ultimately has to find what the ordinary natural meaning is and that may be different from how accountants view borrowing and loan. So there are many accounting practices and conventions such as G.A.A.P. (generally accepted accounting principles) as to how accountants view borrowings and loans. But those might be quite different from how a court would find borrowing and loan would be for the purposes of 21(3) of the Law.

Deputy J.A.N. Le Fondré:

The definitions I read are not accounting definitions. One was from the Oxford English Dictionary. The reason I mention that is if it was an obligation or a debt, we have a thing called the Pre-1987 Debt which is pensions, which is approximately £300 million.

The Solicitor General:

I am not familiar with this pension debt. I would need to have further information about it before I could say.

Senator I.J. Gorst:

Perhaps I could help? If the Solicitor General ...

The Bailiff:

It is described as a debt as unsolicited deficit or theoretical deficit on the pension scheme?

Deputy J.A.N. Le Fondré:

No.

The Bailiff:

Is that what you were referring to?

Deputy J.A.N. Le Fondré:

No, the Pre-1987 Debt is an obligation to pay by the States over a period of time for what is called pre-existing liabilities prior to 1987 under an agreement reached with the trustees of the day and the amount is approximately £300 million.

The Bailiff:

These are legal questions for the Solicitor General, he is not able to answer that particular one?

Deputy G.P. Southern of St. Helier:

If I may to give the Solicitor General a little break, return to the Minister for Treasury and Resources and ...

The Bailiff:

No, forgive me, I really want to finish with the Solicitor General.

Deputy G.P. Southern:

Okay, then I will wait.

The Bailiff:

Then he can have a break. Chief Minister, did you have a question of the Solicitor General? Senator Ozouf, you did.

Senator P.F.C. Ozouf:

I know that it is not practice of the Law Officers' Department to say otherwise about legal advice being taken but could I just with the Solicitor General inform the Assembly whether or not the Law Officers' Department were consulted in any way prior to the Minister for Treasury and Resources or his officials working out exactly what they were to be doing way back before even this proposition was before the Assembly because obviously it is incumbent upon Ministers to take advice and I know advice has now been confirmed, but could I just ask delicately whether or not the Law Officers' Department with qualified advocates was consulted and gave observations? Am I able to ask that?

The Bailiff:

I do not know whether the Minister for Treasury and Resources objects? I suspect he may not but Solicitor General do you know the answer to that question?

The Solicitor General:

The Minister for Treasury and Resources is shaking his head. So yes, in that case then I can confirm that my department was asked for advice by the Treasury Department. That advice, the way it came in would ... it did not seem to be specifically in relation to borrowing for the hospital, which is why it was not on my file yesterday, or the Attorney General's file yesterday, which is why we have had to look at it overnight. But having looked at it overnight, yes, the Minister for Treasury and Resources did receive some detailed advice from my department and that advice did state in terms that long-term care contributions should be considered as income derived from taxation for the purposes of Article 21(3) of Public Finances Law.

Deputy M. Tadier of St. Brelade:

Seeing as we are in the unusual position where the client has waived his legal privilege for confidentiality with his legal adviser, in this case the Solicitor General, would the Solicitor General with the permission of the Minister for Treasury and Resources say whether he was ... or just confirm, was he specifically asked at any point by the Minister for Treasury and Resources or officials for advice regarding Article 21(3) and whether it was a consideration for this debate for bringing it to the States?

The Solicitor General:

I repeat that the advice did not appear to be requested specifically in relation to borrowing for the hospital. Yes, I do confirm that my department was specifically asked for advice in relation to Article 21(3). The request for advice was not specifically in relation to long-term care contributions. It was asked for slightly differently. It was asked for whether income from the

States should be limited to certain classes of taxation such as impôt and stamp duty, and long-term care contributions was not specifically requested. But in the course of dealing with the request for advice, yes, my department did confirm that long-term care contributions did count as income of the States for the purposes of Article 21(3) of the law.

Senator P.F.C. Ozouf:

Would the Solicitor General kindly confirm that this, of course, was not just a one single piece of advice but there were a number of files existing in the Law Offices as would be expected in dealing with the whole definition of what this law meant when the previous, for example, housing bond was taken. So there was a general set of files, which build upon advice over a period of time. It is not just one-off advice because I was there and I know the consultation that was made. I could do all the mathematics in my head, but of course that was when I was there. It is not just a one-off issue and law officers are always consulted appropriately. Were they consulted previously, so it was not just a one-off? Of course. I am just trying to get to the question, that it is not just a nit-picking issue, that there is a general issue and good communication with the Treasury and law officers over a substantial period of time, that that is the case.

The Solicitor General:

I have only looked at one specific bit of advice, which is the advice that I have alluded to in my previous answers. I have no reason to doubt that there is no other advice that has been given to the Minister for Treasury and Resources and previous Ministers for Treasury and Resources, in the way that Senator Ozouf has suggested, but I have not seen further advice myself specifically.

The Bailiff:

Deputy of St. John, do you have a question for the Solicitor General?

[10:00]

Deputy T.A. Vallois of St. John:

Yes. Can I ask the Solicitor General, from the information he has provided today that the long-term care charge is now classed as a taxation?

The Bailiff:

As I understood it, only for the purposes of Article 21(3).

The Solicitor General:

Exactly, Sir. My answer was limited to that paragraph, so it is treated as income derived from taxation for the purposes of Article 21(3). My advice goes no wider than that paragraph.

The Deputy of St. John:

Sorry, can I just seek some guidance from yourself, Sir, with regards to that? Because how can it be defined purely for that paragraph and not for anything else?

The Bailiff:

The question which is before the Assembly is whether or not the current proposition is lawful in the sense that the States are able to authorise borrowing and therefore it is necessary to look at that question by reference to Article 21(3), which creates the restriction. The advice which the Solicitor General has been giving the Assembly is limited to saying that in relation to the long-term care monies, they count as taxation for the purposes of Article 21(3). That is his advice. That really ought to be conclusive as far as this Assembly is concerned. We do not have legal debates in this Assembly. You have got the advice.

Deputy J.A. Martin:

Sorry, Sir, this will turn the debate or not. I do not disagree with the Solicitor General - I would not dare - but did the Solicitor General say he had to look at English case law, and in England, this fund would be out? It could be tested here. I think somebody will test it if it goes through today, because nobody was under the impression it was a borrowing against. Could he define that point? Because I am sure he said in English case law it would not be in the pot to be borrowed against.

The Solicitor General:

I am not sure I did say that. I looked at English case law for guidance as to what was a tax and what was a contribution and my comments were limited to that. I was not saying that in England if this question were to be considered by the House of Commons or by a court in England that the contributions for long-term care would be excluded as income derived from taxation. My answer was not to that effect. I am not sure that it is appropriate for me to be opining on what would be done in England or English law.

The Bailiff:

Deputy Brée, you had a question for the Minister for Treasury and Resource, did you?

Deputy S.M. Brée of St. Clement:

No, Sir. It is a bit more fundamental than that. The discussion and seeking of advice on what is classified as income based on the sheet that was provided today, I would raise the issue that there is a fundamental error in the sheet that has been provided to us, insomuch as the unsecured housing bond has a nominal amount of £250 million. The obligations on any issuer in the bond market is to repay upon maturity the face value or nominal amount of the bond issued. The fact that it was issued at a discount refers to the amount of money that was received by the issuer from that issue. The obligation on the issuer upon maturity in 2054 is to repay in full the face value of £250 million. That fact alone means that the balance to borrowing limit after guarantees is less than £400 million and therefore I would suggest that this information that has been provided to us is based on an incorrect premise and I would seek advice on what we do now.

The Bailiff:

Thank you, Deputy. I think the first question which arises from that is one for the Minister for Treasury and Resources and that is why, Minister, in your figures you have put a detail of the borrowing figure at less than the amount which, according to Deputy Brée is the nominal amount which falls to be repaid?

Senator A.J.H. Maclean:

That is correct. The advice we received was that was correct. This figure is carried in the States accounts at £243 million, as Members will have noted. In fact, this is a result of the way in which the bond market functions and quarter point differences in terms of issuance. Effectively, as the Deputy has quite rightly pointed out, £250 million was the figure sought, but in fact that was at a strike rate of 3.84 per cent. It was discounted to the nearest quarter, which was 2.75, which represents a discount over the term of the borrowing, and as such, although £250 million will ultimately be paid back, the advice we have received is carrying this amount in this way and showing it in this way is correct, because that is the amount we received. We did not receive £250 million, we received the amount shown.

Deputy S.M. Brée:

Excuse me, if I may clarify the situation. As a qualified bond dealer through the International Securities Markets Association, there are 2 prime obligations on any issuer in the debt market. One

is to repay the nominal value, face value, at par, which is 100 per cent of the issuance amount. The second obligation is to meet the terms of the issue, which is to pay a set coupon or an interest rate to investors in the bond. The bond market details the fact that the States of Jersey have an outstanding debt in the bond market of £250 million. That is the amount that is required to be repaid upon maturity.

The Bailiff:

Deputy, I think we are only dealing with a question of law at the moment. I wonder if I can just put a question to the Solicitor General. For the purposes of Article 21(3), are you able to say whether the word “borrowing” should include the nominal amount or the amount that was received, as an issue that this is a matter of construction of law?

The Solicitor General:

As I understand it, it should be the amount that is received because the amount seems to me to be just a form of interest or deferred interest. I would say it is the amount received.

The Bailiff:

I suspect that we have got as far as we are going to get in terms of legal matters. Members will have to make up their minds in due course on what they think is the appropriate way to ...

Deputy J.A.N. Le Fondré:

Sorry, Sir, only on the basis that Solicitor General did elaborate slightly on the advice that was sought. May I ask whether the advice included consideration of what constituted borrowing?

The Solicitor General:

The previous advice that was given to the Minister back last summer, I think it was, did not include specific consideration of whether it should be £243 million or £250 million.

The Bailiff:

No, but I think what you are being asked is what does the word “borrowing” mean for present purposes.

The Solicitor General:

For present purposes, I think it is the £243 million in terms of that.

The Bailiff:

I think it is wider. I think the Deputy’s question was wider than that. The question is what sort of liabilities amount to a borrowing? Is that what you are asking?

Deputy J.A.N. Le Fondré:

If he can give that answer: was advice given to the Minister for Treasury and Resources on what constituted borrowing? It is whichever way you want to phrase the question, Sir.

The Bailiff:

This question arises on whether or not the States would be acting lawfully and that is really a question of advice for the Solicitor General to give now. In that context, it is important that he is able to say to us that the borrowing figures which are shown on the information given to him by the Treasury are appropriately referred to as “borrowing.” That really amounts to it, does it not?

Deputy J.A.N. Le Fondré:

Yes. As I have asked earlier, would finance leases have been pulled-in to that and that type of idea?

The Solicitor General:

I think in terms of finance leases that was also specifically considered in the advice that was requested by the Minister for Treasury and Resources. There are distinctions between different types of finance lease, but as I understand it, the relevant finance leases in this case, which I have not seen, but it was considered in that previous advice could be discounted for the purposes of this calculation in terms of Article 21(3) and the borrowing limit. But I repeat my earlier answer: borrowing is not something that is defined in the law. It is something that would ultimately have to be found by a court. In terms of the English case law, it gives it its ordinary natural meaning. Leases, finance leases, it really depends on the terms of the finance lease, but as I understand it, the particular finance leases in this case can be discounted for the purposes of the calculation.

The Bailiff:

A legal question for the Solicitor General?

Senator P.F.C. Ozouf:

It is a point of clarification on the legal question.

The Bailiff:

It sounds like another speech.

Senator P.F.C. Ozouf:

No, it is not. It is to assist Members, because I know this Article well and I think I brought it.

The Bailiff:

It does sound like a second speech. We are dealing with questions to the Solicitor General.

Senator P.F.C. Ozouf:

Yes, questions. It relates to the issue that Deputy Brée raised.

The Bailiff:

What is your legal question?

Senator P.F.C. Ozouf:

The point is that a ...

The Bailiff:

What is your legal question to the Solicitor General?

Senator P.F.C. Ozouf:

The legal question is that would the Solicitor General also agree that there is an apples and oranges comparison that case law also will be aware of - or is he aware of it - whereas the net present value of the borrowing, while today £250 million, we are comparing it with the estimates of income today and just a discount rate of 2 per cent would mean that that borrowing in 40 years' time would be £120 million? People are putting sound up and sound can be put up on both sides. I am confident from what I have heard from the Solicitor General, who has been put under a very unfair situation... I am allowed to speak, if I may, am I not? It is just it is sound and you can argue things both ways.

The Bailiff:

No, I think the answer is, Senator, no, you are not allowed to speak because you have spoken already. But the Solicitor General has given advice that on the figures which have been given to him, the borrowing is lawful. That is the advice which the Assembly has and Members must make what they will of it.

Senator P.F.C. Ozouf:

Exactly, Sir. It is lawful, as it would be. Advice is always taken and it is lawful.

Senator I.J. Gorst:

I thank you for your last intervention, because I just wanted the Solicitor General to reconfirm that, because all the questions that Members have had here have been an ongoing dialogue between Treasury officials and the Solicitor General's Department. As the Minister said, there is lots of detail about that. But could the Solicitor General please, for clarity, confirm - we may not have liked his advice about what was in and what was out - absolutely categorically that what is before the Assembly is lawful, in his opinion?

The Solicitor General:

My advice is that on the basis of the figures that are provided by the Minister for Treasury and Resources, the amount of borrowing sought is lawful for the purposes of the calculation in 21(3) of the Public Finances Law.

Senator I.J. Gorst:

Could I thank the Solicitor General for his advice and the way he has handled those difficult questions? **[Approbation]**

The Bailiff:

We now return to the debate. Deputy Southern, you wish to speak?

Deputy G.P. Southern:

I wish to ...

The Bailiff:

You have spoken already. You cannot speak. Do you have a question?

Deputy G.P. Southern:

I have a question/clarification from the Minister for Treasury and Resources, if I may. It is this: that Article 21(3) of the Public Finance Law refers to estimates. We are told that this is the latest estimate from Quarter 3 last year, and that gives us a margin of £2.3 million to play with. The question is what we are debating today is whether to refer this proposition to Scrutiny and that may well cause a delay. Is it the case that by, let us say, April of this year, we have time to do the end of year estimate on 2016 and might that show a different figure? Will it be available come April?

Senator A.J.H. Maclean:

Yes, I can help the Deputy with that. These figures are based on estimates at Quarter 3, which was the time clearly that we were lodging the proposition or preparing the proposition for lodging. I mentioned earlier on that there had been a number of updates since then, hence the confusion yesterday. What I can tell Members is that the position has improved quite significantly in terms of our income.

[10:15]

That has not yet been finalised, but we can provide figures to Members later on which will show a significantly improved position with regard to our income, which ensures that this proposition is, without doubt, compliant. New estimated figures are available now, which are significantly higher, but yes, indeed, they will be updated. The final audited outcome from 2016 will be available by the end of February/March, the usual time.

The Bailiff:

We are going to go back the usual rules of order and resume the debate on the proposition to refer the matter to Scrutiny. Does any other Member wish to speak? If not ...

Deputy M. Tadier:

Yes.

The Bailiff:

I am sorry. Deputy Tadier.

1.1 Deputy M. Tadier:

It has been a busy couple of days, has it not? If you are listening at home on the radio, I am sure that the public will have their own opinions of what they have heard after the eventful day that we had on Tuesday, only to be topped by yesterday's what one might call shenanigans. It seems to me that if ever we needed something to be put before Scrutiny, it is this. It was this already before we had the debate and how much more after the debate and the ensuing confusion, the late figures that we have been given, the controversy over what counts as legitimate taxation and what does not, what should be put in, what should not be. Then at the very last moment of course we have the Solicitor General quite helpfully confirming what most of us, I think all of us, already knew in our heart of hearts, is that the long-term health charge - known as the L.T.C., not the L.T.T. - is lo and behold a tax, which is something, as I have said, we have been saying all the time, which means presumably that the Council of Ministers will have to issue a press release for the locals, because at the last election they were saying: "No, it is not a tax, it is a charge." I am sure the international community will also be interested in the fact that we no longer have a headline tax of 20 per cent, but we have a headline tax of 21 per cent going north as we go along. Who knows where it will end up, like G.S.T. (Goods and Services Tax)? It is worth remembering, of course, that political assurances are not always worth the paper that they are written on, because we know that G.S.T. was promised to stay at 3 per cent. As soon as the person in charge of that got elected it went up to 5 per cent. Some of us have short memories, but I think the public and many of us have much longer memories than that. At least one thing that has come out of this debate is that we know for sure now that we have a 21 per cent headline tax rate in Jersey. Now, why is that relevant? I think not just this, but it shows that the Council of Ministers have lost the confidence of the public and they should be losing our confidence. Not just the events of Tuesday, but certainly yesterday and today, what has happened in the way this has rolled out, anywhere else it would be completely unsustainable for the this Government to even remain in office. There would be demands, if not from the Parliament, but from the public and the media that they stand down immediately and hold a brand-new election to see if they can form a new Government. Now, we know we have a completely different set-up in Jersey, but were it not for the fact that yesterday a very diligent Back-Bencher in the Deputy of St. John stood up and said: "Hang on a minute. Is Article 21(3) not a factor here?" Then we have all this running around and we had to be saved from what I perceive from the Chair, who quite rightly made some correct decisions, and said: "Are we sure we are going in the right direction?" and took an adjournment. When I was at home - was not well yesterday - trying to get on the iPad, on the iPlayer, it said: "This session has been paused." Quite rightly, because some thing, some answers, some information quite urgently needed to be provided. Now, does this mean that it should just be passed through on the nod or does it mean that this

should go to Scrutiny? I heard the Chief Minister say yesterday that there are strong arguments for and against referring this to Scrutiny, to be called in for Scrutiny. For him to say that it is a margin call shows that I do not think the arguments are on his side. He talked about: "Well, the markets could go up, they could go down. The interest rates could go up. We could find ourselves paying more in the long run, we live in volatile times, but they could also go down, at which point you should be thinking: 'Oh, we made the right decision.'" But it should not be a coin toss. We are not financial clairvoyants here, we are politicians. We should not be speculating on what the markets may or may not do. We should be observing political best practice. The political best practice is to use the long-established processes that we have in this Assembly, the checks and balances, which is the formal Scrutiny process. The Council of Ministers, quite frankly, should be biting the hand off Scrutiny to look at this, saying: "Look, we have got these figures. We think it is important to work together." How often are we told that it is important to work together, saying: "We think we have got the figures right, but what do you think of them?" A 6-week delay, it is not even 6 weeks, I do not think, is it? But a 6-week delay is not going to make the world of difference, but what it will do is ensure that we can make the right decisions, we can have the confidence not simply of what we are being told by the Ministers, who obviously have their own political agenda, and nothing wrong with that. The Minister for Health and Social Services wants to be seen, after years of prevarication and getting it wrong about the site of the hospital, that now we are taking firm steps. But in the context of that, surely the right thing to do, no matter which side of this Assembly you are on, is to refer this to Scrutiny so that the public, and equally as importantly, we as Members can have full confidence on what we are voting for, which is the largest sum of money that Jersey has ever borrowed. People not only of my generation, but the generation to follow, who will be saddled potentially with that debt anyway, and even more so if something happens to go wrong, how can we look them in the eye and say: "We just took it on trust, irrespective of the fact that all these questions have come up. There was so much uncertainty, even at the last minute, to pushing the button, but we just took a blind leap of faith"? No, we do not do that. We use the processes that we have. If the interest rates go up, so be it; if they go down, the most likely I imagine is that there is no real change, but that is not really relevant for us. We must stick with the political processes that are in place. Please refer this to Scrutiny. This should not be something which is Ministers versus anyone else, as it was said. This is about doing the right thing. The right thing is to vote for this reference to Scrutiny, surely.

1.1.1 Connétable J. Gallichan of St. Mary:

I find myself in a position where I am in agreement with so many things that the previous speaker has said, but I have fundamental problems with other things that he said in that one speech. That is the only reason I have risen to speak, because I have got a sort of mantra that I have been banging on about for the last few months definitely, perhaps longer, that we are not communicating what we do. I would just like to say - this goes to the heart of it - to lay my cards on the table, absolutely without question, this must go to Scrutiny, I completely agree with that. But having said that, like many Members, I think, here who were in that debate when we brought in the long-term care allowance, I sat through the debate. I heard an amendment brought by Deputy Young, at which time he said: "Basically, if it looks like a tax, it is tax", whatever, then I heard another Member, who is also not here with us now, say: "No, it is more like an insurance scheme." That was picked up in the Minister's summing up. All the way through that debate the question of tax was bandied around. Now, where I differ from Deputy Tadier is while he said we are not all financial - I do not know what the word he used was - experts, we are certainly not, most of us, lawyers either. The Solicitor General was quite specific. Often things have different meanings, depending on how they are construed within the law. We know that. The Solicitor General has tied-in this meaning of taxation to a specific Article, nothing broader. My own personal views on that are quite clear, but we are not talking about anything wider than that Article at this moment, but I can be sure that if I

do not do it, and I think I probably will, other Members here will be asking for clarification of exactly how that charge sits in the taxation structure through the proper venue, whether that is questions or whatever, in probably the next sitting. I agree, and completely obviously we take the advice of the Chair. That is not the debate we are having here, certainly, but what I have to say about this is going back to the clarity, we cannot carry on ... I do not know, it is not double-speak. I am sure it is not a deliberate leading away, but we cannot use jargon and we cannot do anything else than be crystal clear in what the meaning of what we are doing is, because if this Assembly, which has access to more information directly from the office, directly from the Ministers that can ever have the general public, if we cannot be clear about what is being said and what has been said and where it sits, what hope is there for the public to have confidence in us? In the 11 years I think I have been in the Assembly now, for lots of reasons, for the lack of clarity, for the lack of clear procedure, for the behaviour, I will say, of some Members in various contexts, this is the least satisfactory sitting of the States that I have ever been party to. We have to do better. We must do better. It took through all the to-ing and fro-ing, all the difficulty, and I thank goodness that I am not in the chair, that somebody inexperienced is not in the chair today to have seen through this. It took a simple question, a straight question from the Chief Minister: "Can the Solicitor General assure us that this thing that we are discussing now is legal?" to have a straight answer: "Yes, it is legal." That cut through everything. It was a simple, direct question. I have such fear that we do not do that often enough. We are not playing a bluffing game here. We need to know exactly what we are doing. I really feel that the Council of Ministers - again, I have said it a couple of times in recent debates - where things have come to light at the last minute or interpretations have been opened up at the last minute. We are not doing ourselves any favours, we really are not. The public must have the confidence that we understand what we are doing and that we are doing it for the right reasons. I think there are much bigger questions to be answered by us now as an Assembly than simply this matter. But this must go to Scrutiny. There is no alternative how. The wait for that decision of: "Will we gain? Will we lose?" is now firmly on the shoulders of the Assembly. That is what our decision is, but that is what we do, we make decisions like this all the time. It is no big mystery. I would like to tell the people of the Island that this will go to Scrutiny. Please do not make me wrong in that, because we have to get the confidence back. There is a process to do it. We all share in that process, no matter which side we sit on. It is not Scrutiny versus Executive, it is the States Assembly for the people of the Island. Remember that message. I have got a lot more to say about how close we almost came with the health charge and would that have been another taxation for this purpose? We did not go there. We wanted clarity on that. Let us carry on in that spirit of clarity. Let us put all this divisiveness behind us, because that is what we need to do. We need to lead this Island. Now, if people say we do not have the right people leading us, where are the people who can step up to the mark and do that job? Where are they? Let us get them in here, because we have a duty now, for the next year and a few months, to lead this Island, to take it forward and to do it and to get the people of the Island behind us. So please, just get on and do it. Really I cannot see why we need to debate this anymore. I think it is a very brave Member of this Assembly who is going to say: "This is fine. Let us do it without Scrutiny."

The Bailiff:

Does any other Member wish to speak? If not, then I call on the Deputy of St. Ouen to reply.

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

It really seems an age since I stood here and proposed a reference to the Scrutiny Panel. It is an age, but I would first like to start by thanking all those who have contributed to the debate. It has been an extraordinary debate, but one that was needed. Some have described this as a contest between the Council of Ministers and Scrutiny, but I would prefer to regard it much as the Constable of St. Mary has said, as a struggle that we have had to determine where the greater public

interest lies and how we can give confidence to Islanders that a sound decision can be reached in this matter, which is hugely important to the Island.

[10:30]

We are elected to be the decision-makers and I think it is clear from this last day that we have taken those duties seriously. Surely all that has happened yesterday and today shows how decision-making is improved and becomes a better-informed process when questions are asked when assumptions are challenged, and with a careful examination, an examination by others who stand at a distance from the original proposal and separated from those who have worked day in, day out on the proposal. That is what Scrutiny provides; that is what is needed. I ask Members, do we not do this in our daily lives? If we have an important decision to make, we may have worked it out in our heads and have some feel for the way we think we might want to go, but do we not often seek out the advice of friends and family? Because we recognise, as humans, that a different perspective can sometimes provide that valuable insight and that can change our minds and that can alert us to dangers. Why should it be different in Government, as Government is made up by those same incomplete, frail humans, who do not always have the same picture? It is not different. Scrutiny, the critical friend, I have heard that said. Now, why is that not accepted? I believe the issues we have discussed yesterday and today would have come to light in a Scrutiny examination. A panel and its adviser would have begun by looking at the authority quoted in the proposition, the authority to borrow funds and the scope of that authority, but we were not allowed to do that, because the Council of Ministers was refusing for this issue to go to Scrutiny, so instead this Assembly had to start acting as the Scrutiny Panel. So we have begun the work of Scrutiny, we have begun to ask those very technical, detailed questions which needed asking and which caused difficulty to our advisers sitting at the back there, difficult questions asked on the hoof, which should not be asked on the hoof, which deserve detailed consideration. But we have to do it, as Assembly Members, because we have been refused the alternative avenue, which is the right avenue. The sort of information we have been seeking should have been provided in the proposition. Clearly the Council of Ministers, the Minister for Treasury and Resources took advice. That advice was complex. We should have known how close we are to the margin and we should have known that the calculation now includes the long-term care charge. Oops, it is a tax now, but we have been told all the time: "No, it is not a tax. We do not include that in taxation. Our standard rate of taxation is 20 per cent." It is not, and now we have got other elements of taxation for this purposes. Of course, the advice can only be for the purpose, but what are the ramifications of that? There is the long-term care issue; there is the discounting, which Deputy Brée has raised, which requires some expertise to understand; there is the question of the finance leases. There are all sorts of questions. There is the issue that the figure given here of total forecasted taxation is different from a figure that was given to the Education Scrutiny Panel just in November in a public hearing. There is that uncertainty. That transcript is not on the website yet, but I have seen a copy of it. We are advised that ultimately all these questions of definitions are ultimately up to a court to decide. Such uncertainty and yet we were not advised. We were told to take everything on trust. The Connétable of St. John is a member of the Corporate Service Scrutiny Panel. The issues covered by his amendment were seen at an early stage by the panel and they were brought before us by way of an amendment from the Connétable because it appeared Scrutiny were not going to be permitted to investigate and to report. Yesterday the Chief Minister accepted the original proposition was ambiguous and he thanks the Connétable for his amendments. All that we have been through yesterday and today, the fact that the Connétable was compelled to bring his amendment to improve the proposition, just shows how much Scrutiny has to offer in this process. Yet the Council of Ministers yesterday throughout and still now is saying that there is no need for Scrutiny, that we should trust, that they do not wish Scrutiny, that they do not agree that Scrutiny should be permitted without arguing this matter in this Assembly. You have to fight. It is not

ridiculous that Members have to fight to have this matter scrutinised? Council of Ministers, please do not do this again. You have created such embarrassment. This has been an embarrassing day. The Assistant Minister for Treasury and Resources, when he spoke yesterday, told us the options were well-laid out in the proposition to give us confidence. He also said we can rest assured in the advice given by EY, the Treasury Advisory Panel, various other bodies. Senator Ozouf asked why we could not trust that advice. He told us that the Treasury knows what it is doing, but we have not seen that advice from EY or others. It is not here to contribute to this debate on funding. We cannot interrogate it to satisfy ourselves, as the decision-makers, that it is sound advice. Now, as Deputy Southern freely admitted yesterday - and I am in the same position - not all of us are familiar with all these borrowing terms and processes, so I cannot adequately test that advice. Who usually does that for us as Assembly Members, that detailed examination on our behalfs as decision-makers? Well, it is a Scrutiny Panel, it is a panel that takes advice with assistance from experts in their field. We know that is the way ministerial government was set up, to give Members that assurance that there is an independent examination of ministerial proposals, not just Members, but to give Islanders that assurance that what Ministers want to do is tested out by their elected representatives, but instead we are being asked to take it all on trust, that everything had been thoroughly researched within the Treasury and the advice is comprehensive, clear and incontrovertible. We are asked to be nodding dogs to do the bidding of the Council of Ministers, but as I said when I proposed this reference back - but I think it bears repeating - every Minister could say about every proposition that comes forward that if their proposal is not immediately implemented, there will be undesirable consequences. There could be financial consequences; they could relate to manpower; they could delay the introduction of a service. But Ministers usually accept, because it is the parliamentary procedure, that there is a process to undergo that involves Scrutiny. Like or lump it, Ministers have to incur the consequences and sometimes they come through the process and they say their proposals are all the better for going through Scrutiny, just sometimes. But it seems to me yesterday Ministers were sending out the message there are places where Scrutiny cannot go, where a proposal, in the opinion of the Council of Ministers, has significant risks attached, this Assembly should approve it without delay, because the Council of Ministers have got it right. But I say definitely not. Where a proposal has significant risks attached, there is all the more reason to refer it to Scrutiny for a detailed examination. Have we not seen the necessity of that when we have been forced into beginning the work of Scrutiny as an Assembly we have seen how much comes out that has not been clear, has yet to be thought through, questions are still to be asked? The Council of Ministers would say that delay risks incurring cost. It might do, but Scrutiny is the safeguard. It is the quality assurance label for the members of the public to ensure that Ministers' proposals are robust, they are properly planned, and they are the best possible solution for this Island. Scrutiny is a process to highlight errors where greater cost might otherwise be incurred or to suggest improvements where costs might be saved. I ask Members to bear in mind that Ministers have lived with the volatility they so fear since 2012. It was in 2012 that there was a first shortlist of sites for the hospital and 2012 that there was the beginning of the arguments over site selection. That hospital site selection process has been protracted over 4 years. The funding proposals have been under examination by Treasury since at least the Future Hospital Scrutiny Sub-Panel, which I chaired, was formed, not last year, but in 2015. I still do not understand why it has taken so long to bring these funding proposals when the only 2 viable options for the site selection were costed at broadly the same amount and that information was known for many months before the proposition was lodged. Yet the Corporate Services Scrutiny Panel asked for additional 2 weeks to carry out its review and that was refused. Suddenly 2 weeks is a step too far, it is too great a risk and there should be no delay. We have heard the forecasts, the Minister for Health and Social Services: "If we delay, quite likely it would cost more." The Assistant Minister for Treasury and Resources, who told us: "The situation can only get worse." Deputy Lewis, who told that interest rates will rise. Yes, Deputy Lewis of St.

Helier. The briefing note that we were provided with on 13th January, a few days ago, speaks about advice: “Most market commentators and strategists see a gradual grind higher in gilt yields.” Those are the forecasts. They may or may not be right. The Chief Minister accepted that interest rates might also fall. There is uncertainty; there is volatility. But are these warnings about the risks, warning us about a catastrophic cliff edge, a great disaster? No, these are the type of risks that are always with us, the type of risks that the Council of Ministers has been bearing for the last 4 years while it has had its discussions. Having carried that risk for so long, we need to decide now whether we can bear them for a few weeks more. There is nothing I have read in the proposition and nothing I have heard yesterday and nothing I have heard today that tells me the situation has changed so fundamentally that we need to take this decision immediately and we should abandon the normal Scrutiny process, nothing at all. Yesterday we were also told the total construction costs would increase if there was a delay. It seems to me this is a total red herring.

[10:45]

At this very moment and for the rest of this year, a business case is being drafted for the hospital preferred sites, detailed designs are being worked up and a planning application is being prepared. Nothing is going to move onsite until summer of 2018, subject to planning consent, subject to further votes in this Assembly. Is it being seriously suggested that the future hospital project team are going to set down their pencils, their set squares, their slide rules and their calculators while Deputy Le Fondré and his panel take a few weeks to prepare a report for us? Of course not. The work they are doing is continuing, is going to continue and there is nothing about referring this question to Scrutiny, which will delay the hospital construction. When that point was raised by more than one speaker, it became abundantly clear to me that there was much over-egging of that particular pudding. It is still being suggested by some Ministers that Scrutiny is at fault for not searching out a draft proposition before it was formally lodged. Now, if Ministers want to play that sort of blame game, then I would like to remind them that on 7th November when the proposition was apparently discussed in the Council of Ministers, my Future Hospital Sub-Panel was still operating. We had not reported and I would ... if Members will give me a moment to fire up, to reboot. Remembering the Minister for Treasury and Resources had given us a briefing in only the month previously, why did the Minister for Treasury and Resources not forward to my sub-panel a copy of his proposition, especially bearing in mind the code of practice for Scrutiny Panels, which has been agreed by this Assembly, which says: “It is expected that written submissions from the Executive will be based on the formal request from the panel. However, it is beneficial to the overall process for the Executive to provide any additional relevant information, whether or not this is specifically requested, to ensure that all aspects of the topic are comprehensively covered.” That proposition was not provided to my sub-panel. Is it not the most significant proposition that we have debated for a long, long time? But it is ridiculously, really, to argue over whether Scrutiny could or should have begun a review a few days before formal lodging. The fact of the matter is that the proposition seems to have been agreed in the Council of Ministers on 7th November, but only lodged on 30th November. I am not sure what happened between and why it could not be lodged before, but here we are 6 weeks later with the responsibility of deciding upon it, just 6 weeks. Now, I am certain from only 2 years as a chair of a Scrutiny Panel that it is just not possible to complete a review into an issue of this magnitude, with the need to engage professional advisers in that 6-week period, let alone having Christmas and the New Year holidays intervening. I believe those of us who serve on Scrutiny or have served on Scrutiny will know that almost by instinct. I find it very regrettable that Ministers, many of whom have not served on Scrutiny, fail to understand that, and going further and casting blame on a panel for its failure to do so. If the Ministers feel that the Scrutiny process should be more fleet of foot, let us discuss it in a different context without casting aspersions. We would like to improve procedures in Scrutiny, and believe it or not, we have some ideas to improve Ministers also. Some have suggested that we can make

the decision today, but Scrutiny can still go away and do its work. Deputy Le Fondré has spoken to that and I concur with what he has said. If we reject a reference back to Scrutiny and decide to fund the hospital funding proposals today, this matter cannot come back to this Assembly for debate. Any findings and recommendation that Deputy Le Fondré's panel may come up with could not inform any sort of decision on this proposition, so what point? There is no point. It would be hard for us, as Scrutiny, to justify the cost of advisers. Finally - I am sure Members will be pleased to hear - I am sure Members need no reminding, but I want to emphasise the explanation of Scrutiny's work which is given on the States Assembly website. It is this: "Scrutiny helps to improve the delivery of public services by ensuring that decisions are soundly based on evidence." Therefore I maintain my proposition and I call for the appel. **[Approbation]**

Senator P.F.C. Ozouf:

A point of clarification. I asked the Deputy in his summing-up if he could clarify, because there are a number of questions I posed to him. In the spirit of the wise words of the Constable of St. Mary, I say this with the respect that communication is vital, so I just would invite the Deputy, for the avoidance of doubt, if he could confirm the questions that I asked him and that the matter is referring the whole proposition back, but that part (c) ... Sir, this is the question.

The Greffier of the States (in the Chair):

As I understand it, the proposition is to refer the entire proposition to Scrutiny full stop.

Senator P.F.C. Ozouf:

I asked him specific questions about different parts of the proposition, which if he could convince me that there was a case for the whole of it, I would, if I would not.

The Greffier of the States (in the Chair):

Sorry, the proposition is to move the whole of this proposition to Scrutiny under Standing Order 79, not to carve off bits to go in one direction and bits in other directions.

Senator P.F.C. Ozouf:

I just asked him to clarify ...

The Greffier of the States (in the Chair):

I have clarified it, so can we move on to the appel?

Senator P.F.C. Ozouf:

My questions have not been answered, Sir.

The Greffier of the States (in the Chair):

I think we have reached the end of what was a very long debate. The appel has been called for and I think it is time to sit down ...

Senator P.F.C. Ozouf:

Fine, fair enough.

The Greffier of the States (in the Chair):

... as I am now speaking.

Senator P.F.C. Ozouf:

I have a question which has been ruled out of order. Fine.

The Greffier of the States (in the Chair):

Senator Ozouf, thank you. The appel has been called for. Members are invited to return to their seats. I asked the Greffier to open the voting.

POUR: 29

Senator S.C. Ferguson
Connétable of St. Helier
Connétable of St. Clement
Connétable of St. Lawrence
Connétable of St. Mary
Connétable of St. Ouen
Connétable of St. Martin
Connétable of Grouville
Connétable of St. John
Connétable of Trinity
Deputy J.A. Martin (H)
Deputy G.P. Southern (H)
Deputy of Grouville
Deputy J.A. Hilton (H)
Deputy J.A.N. Le Fondré (L)
Deputy K.C. Lewis (S)
Deputy M. Tadier (B)
Deputy of St. John
Deputy M.R. Higgins (H)
Deputy J.M. Maçon (S)
Deputy S.Y. Mézec (H)
Deputy of St. Ouen
Deputy R. Labey (H)
Deputy S.M. Wickenden (H)
Deputy S.M. Bree (C)
Deputy M.J. Norton (B)
Deputy T.A. McDonald (S)
Deputy of St. Mary
Deputy G.J. Truscott (B)

CONTRE: 13

Senator P.F. Routier
Senator P.F.C. Ozouf
Senator A.J.H. Maclean
Senator I.J. Gorst
Senator L.J. Farnham
Senator A.K.F. Green
Connétable of St. Peter
Deputy of Trinity
Deputy S.J. Pinel (C)
Deputy of St. Martin
Deputy R.G. Bryans (H)
Deputy A.D. Lewis (H)
Deputy P.D. McLinton (S)

ABSTAIN: 1

Deputy E.J. Noel (L)

The Greffier of the States (in the Chair):

If I can just be clear on what has happened, the debate is formally suspended until the next meeting, so it will be on the Order Paper for the next meeting, at which point Deputy Le Fondré, Chairman of the Corporate Services Scrutiny Panel, will be asked whether he wishes to scrutinise the matter. I assume he will say yes. The States must then agree on the return date for the proposition under Standing Orders.

2. States of Jersey Law 2005: proposed amendment - States Members' qualifications for election (P.138/2016)

The Greffier of the States (in the Chair):

We will now move on to P.138, which is the States of Jersey Law 2015: proposed amendment - States Members' qualifications for election, lodged by Deputy Higgins. I ask the Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion – to request the Privileges and Procedures Committee to bring forward amendments to the States of Jersey Law 2005 to – (a)

repeal Articles 4A, 7 and 8 of the States of Jersey Law 2005 and to replace them with a new Article or Articles to standardise the requirements relating to the qualification and disqualification for election in the States Assembly, so that all members (Connétables, Senators and Deputies) are subject to the same requirements; (b) further amend Article 8 of the States of Jersey Law 2005, in order to bring the disqualification period for bankrupts into line with the Bankruptcy (Désastre) (Jersey) Law 1990.

2.1 Deputy M.R. Higgins:

I hope all those who have just left the Chamber, a mass exodus, will listen to what I am going to say. I believe that this proposition is straightforward, and I hope non-controversial. Now, the actual proposition itself came about by accident. I was doing some research into another proposition and came across some anomalies and inconsistencies in the States of Jersey Law 2005, which I believe should be addressed by P.P.C. (Privileges and Procedures Committee) so that there is consistency between all classes of membership in the States Assembly and between States Members and the general public. Now, over the last 8 years, the States have enacted various changes to the States of Jersey Law 2005 that have had the effect of removing virtually all the distinctions between Senator, Constable and Deputy. Now all Members have the same terms of office; they are elected on the same day and they can serve in any capacity, whether it be a Back-Bencher, Assistant Minister or Minister. One area, however, that has not been updated are the different legal provisions regarding who may or may not stand for election to the States of Jersey or the grounds on which Members may cease to be a Member. At present, there is only one provision relating to persons wanting to stand for election as a Constable and many more relating to those who wish to stand as a Senator or Deputy. While there are 10 provisions that will disqualify a Senator or a Deputy from sitting in the Assembly, there is only one relating or applying to Constables. For example, Article 7 of the States of Jersey Law: “A person who seeks to stand for the States Assembly as a Senator or a Deputy must be of full age and be a British citizen who has either been ordinarily resident in Jersey for a period of at least 2 years up to and including the day of the election or ordinarily resident in Jersey for a period of 6 months up to and including the day of the election, as well as being ordinarily resident in Jersey at any time for additional periods that total at least 5 years.” There are no equivalent provisions in the States of Jersey Law for Constables. Moving on to disqualification, under Articles 7 and 8 of the States of Jersey Law: “A person will be disqualified for election as for being a Senator or a Deputy if they are a paid officer in the service of the States or any Administration of the States unless they have been permitted under the Employment of States of Jersey Employees Law.” They can be disqualified if they hold any paid office or other place of profit under the Crown; they can be disqualified if they are a member of the States of Jersey Police Force; they can be disqualified if they are compulsorily detained or subject to a guardianship order under the Mental Health (Jersey) Law; they be disqualified if a curator has been appointed for his or her property; they can be disqualified if an attorney has been created who will act on details of their properties; they can be disqualified if they are convicted of any offence under the Corruption (Jersey) Law while they are a public employee; they can be disqualified if within the 7 years immediately preceding the date of his or her election or since his or her election, they have been convicted in Jersey or elsewhere of an offence in order to be imprisoned for a period of not less than 3 months without the option of a fine; they can be disqualified if they become bankrupt from being a Senator or a Deputy, or entering into a composition arrangement with their creditors; they can be disqualified if they cease to be a British citizen or if they cease being resident in Jersey for a period of more than 6 months. If we can remember some time ago, when Senator Syvret stayed out of the Island for over 6 months, we had to have a by-election. All these provisions apply to Senators and Deputies alone. The only disqualification provision in the States of Jersey Law for Constables is Article 4A, which states that: “They would be disqualified for election as a Constable if he or she is a paid officer in the

service of the States or any Administration or the States unless they have been permitted to do so under the Employment of States of Jersey Employees (Jersey) Law 2005.”

[11:00]

Now, I think Members will agree that these are major inconsistencies in the law and that the law should be standardised so that all members are subject to the same provisions. Now, in the report I stated that it will be noticed that only the States Members who can be disqualified from sitting in the States Assembly by virtue of becoming bankrupt or entering into a composition arrangement with their creditors are Senators and Deputies and not Constables. I was going to say that surely there should be consistency on that. However, as the P.P.C. in their comments paper pointed out, there is a separate provision in the Article 24 of the Bankruptcy (Désastre) (Jersey) Law 1990, that even Constables can be stopped from being in States for being bankrupt. But my point is it should be in the States of Jersey Law. Now, the second part of this proposition also relates to another inconsistency. The inconsistency is between what applies to States Members and what applies to ordinary members of the public. Again, it is to do with bankruptcy. The essential thing is that if a person becomes bankrupt, yes, if they pay their debts then they are discharged from the bankruptcy. If they cannot pay their debts, they are discharged under the States of Jersey Law after 5 years. If you are a member of the public, then you can be discharged after 4 years. What I am saying here is this is an inconsistency. It places States Members and people wanting to be States Members at a disadvantage. In other words, I am asking that again we amend the States of Jersey Law to reduce the discharge period from 5 years to the 4 years that applies to every other member of the public. Now, I want to just come on to and discuss some of the comments in the paper put forward by P.P.C. They mention that ...

Connétable L. Norman of St. Clement:

For clarification, P.P.C. have not produced any comment on this proposition. We did on the one that the Deputy brought last year, but not on this one.

The Greffier of the States (in the Chair):

I think it might have been the Comité who have commented on this occasion.

Deputy M.R. Higgins:

Sorry, yes, it is the Comité of the Constables, yes. Thank you for the correction, Constable. In the comments paper, it mentions that for complete parity, Article 7 of States of Jersey Law should be included as well, which includes the term of full age and being a British citizen and the various periods of residency. What the Comité des Connétables did not notice is that the original proposition did not include that, but this one does. I am saying that they should be taken into account as well when P.P.C. redraft it. Now, what the Constables have been saying is that there was no need to change this law because the Royal Court exercises a supervisory jurisdiction when the Constable is in office and similar jurisdiction is exercisable by the Royal Court on representation by the Attorney General to decline to administer the oath of a person elected as a Constable if that person is considered to be unfit for office. Well, yes, it could be that people may be happy with that. Personally, I think that is the wrong way to go, first of all because of the costs involved. If, for example, a Constable is challenged and it has to go to the Royal Court, there are costs that may involve costs to the Parish or to the individuals concerned. Again, we are then going to come down to the argument: what makes them unfit? There is no definition of what it is and therefore the court will have to decide whether they are unfit. My own personal belief is that it is far better to have the law stated in the States of Jersey Law so we all know exactly what makes us qualified to stand or what disqualifies. To give an example of the cost issue, Deputy Wickenden, as we know after the last election, when there was confusion over his nomination paper, that issue had to be resolved in the Royal Court. He incurred £24,000 of costs to do that and therefore I would

argue that it is far better that we rely on statute law. The other point I would make on that is what we would be doing if we allow the court to continue on that basis is allow the court to determine what the law is, to make the law, because they would have to say what makes a person unfit. This Assembly is supposed to be making the law and the courts can decide whether the law has been broken after we have the various provisions. Now, I have already made the point again, I was just going to go back on to the bankruptcy argument. I do believe that the law should be contained in the one States of Jersey Law setting out specifically how you would be bankrupt and the times concerned. The only other point I think I will make is that in terms of law drafting time, the amendment that I am putting forward would take a qualified law draftsman 20 minutes, at the most, to make. It is such a minor provision, because quite simply, all we are asking them to do is to delete one Article and rewrite another one to incorporate all Members. That is the argument that I am putting forward. It is quite simply let us try to get the law consolidated, codified in one document.

The Greffier of the States (in the Chair):

Is the proposition seconded? **[Seconded]** Does any Member wish to speak on the proposition?
Connétable of St. Mary.

2.1.1 The Connétable of St. Mary:

It was just a question for the proposer. As the Constable of St. Mary, I am required to live in St. Mary. For equal parity, is the Deputy proposing that Deputies must stand in the district in which they live?

2.1.2 The Connétable of St. Clement:

Just briefly, Sir. This proposition was lodged just before Christmas, so I have to say that P.P.C. nor the Connétables have had a lot of time to examine it in a great amount of detail. It is similar, if not identical, to the proposition the Deputy brought back in the summer and eventually withdrew. I did not understand that one. I quite honestly did not understand this one until the Deputy explained what he was trying to do in his speech just now. I must admit, he has got great faith in the powers of P.P.C. looking at the proposition, because part (a), among other things, asks us to repeal Article 8; part (b) asks us to amend Article 8. Now, the P.P.C. are very good, but whether they can amend or repeal an Article I think it might be beyond us. Now, I am certainly in favour of consistency of the rules among Members. That is something we have been working for the last number of years, certainly since the Connétables volunteered to remove their policing powers and so on. The consistency among how the rules apply to Members will be much easier, of course, if we only had one type of Member, but the more types of Member we have elected on different bases, different criteria, very, very difficult to get the rules exactly the same, although I am sure they can be improved. Obviously if this proposition is adopted, P.P.C. will look at it, bring back recommendations to the States and it will be up to the States to decide whether to approve them or not at that stage. But I do have a slight difficulty personally with part (b). It asks us to bring the disqualification period for bankrupts into line with the Bankruptcy (Désastre) (Jersey) Law 1990, but there is no disqualification period in the Bankruptcy Law. The Deputy, in his report, towards the end of his report, refers to Article 40 of the Bankruptcy Law, where it says: "At the expiration of 4 years from the date of declaration, the Viscount shall apply to the court for an order discharging the debtor." What he does not mention is that that law also goes on to say: "Applications can be made for a reduction or extension of that 4-year period" and the court does have discretion in that area. I think that would be difficult to replicate that condition, which is in the Bankruptcy Law into the States of Jersey Law, but of course it is something that we can look at, because I do not know who would apply to the court to have a period extended or reduced if someone who was a bankrupt wanted to stand for the States. I think that would be very difficult.

There is a lot of merit in what the Deputy has said. Clearly we will look at with the Comité des Connétables also, if the States approve it, and bring back appropriate regulations for the States to consider.

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

I would like to clarify one thing, if I may. In the course of his proposition, Deputy Higgins suggested the Senators and Deputies were not discharged from bankruptcy for 5 years after bankruptcy and members of the public were discharged after 4 years. Now, it is important not to conflate the 4 and 5-year periods, as they are entirely different things. Under the Désastre Law, the position is that the average bankruptcy for all people lasts 4 years, but that period can be extended or shortened on the application of the Viscount, a debtor or a creditor, so that is the position in relation to bankruptcy. For all of us, they normally last 4 years. What Article 8 says, which is quite different, is that at the end of a bankruptcy of a Senator or a Deputy, if they have not paid off their debts in the course of that bankruptcy, they will not be qualified, they will be disqualified to stand for the next 5 years. They are quite different periods with quite different intentions. The 5-year period has been a feature of the States of Jersey Law since it was passed in 1966. That is merely by way of clarification, so that the 4-year and 5-year periods are understood by all Members to be quite different things with different purposes.

2.1.4 Deputy J.M. Maçon of St. Saviour:

Very quickly, Sir, and it is a question for the A.G. (Attorney General) and it relates to the point that the Constable of St. Mary raised. While I personally have no problem in Members living and standing in their own electoral district, my understanding was there was a slight anomaly in the Constable's issue, in that the Constable of St. Helier did not have to live in the Parish, whereas the other Constables do. I wonder if the A.G. can just confirm whether that is a correct understanding of the law.

The Attorney General:

I think that is correct. I need to look at the law, but I think that is correct.

2.1.5 Deputy J.A. Martin:

Just briefly, I do thank Deputy Higgins for bringing this, because Deputy Maçon, going back to when we were looking at Standing Orders, I think we did talk to the then Constable who was in charge of the Comité. We pointed out that the law that the Constables are elected under, I think it dates back to the 1300s, there is nothing about even residency. You do not have to be a British citizen to stand as a Constable. We thought that was quite wrong because it does apply to the others, so I am quite prepared, like my chairman has said, the chairman of P.P.C., I think it brings up some interesting points, and why, as the Deputy says, we are not all equal under the law. That is the way I have always looked at simple laws: we should all be equal. I know we are not. We do slightly extra jobs. It is an extra job being a Constable, but in this House, in this Assembly, it is the job as a States Member. Under that law, I think it is sensible that we should look at this, because it always amazed me that the Constables are working on a law that is so old it really would not function today.

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

Just briefly to say that I have no issue with those in public office having to meet a higher bar. I think that is a good thing, so I find it difficult to support this proposition. I can see where the Deputy is coming from, but a higher bar in public office can only be a good thing, particularly with some of the things we have seen happen in recent history.

2.1.7 Senator P.F.C. Ozouf:

We should not be lowering the bar; we should be bringing it up if there are any lacunas. It is Members of this Assembly who pass important bits of principle: if you are a bankrupt, there are of course changes going to be made to bankruptcy arrangements and there are some changes, arrangements with creditors and the fast track and all the rest of it where there are circumstances, but we should not be lowering the bar, we should be having a common bar.

[11:15]

There are changes, of course, with bankruptcy that need to be made in order to deal with an arrangement of creditors, but those are issues not for today, those are issues that are matters for later. But there is no case at all for the Deputy to lower standards for Deputies, as I read this proposition.

2.1.8 Deputy M. Tadier:

It is just a general observation. I think it is interesting we have debates about prisoners' voting rights and in the future we will have a vote about who is eligible to stand for public office in Jersey. Now, as a democrat, I firmly believe that the say about who ends up representing them and who, by extension, can stand for election should be up to the public. It should be up to the public to decide whether they want to vote for, you could argue, somebody who is bankrupt and still bankrupt or somebody who is, you could argue, a criminal or has a certain conviction. We know that that is another issue perhaps not immediately being looked at. But for me the test is not so much about financial bankruptcy but about morally being bankrupt. It seems that we do not have any bar to say that morally bankrupt people can get elected to the States Assembly, people who are politically bankrupt not only can get elected but can leave the Island and form a Council of Ministers at the leisure of this Assembly, but people who are financially bankrupt, who may have made bankrupt by other people, arguably through no moral fault of their own, are then debarred from standing for election. There are of course a whole hinterland of reasons and themes that come out from this debate, but I am quite happy to support what the Deputy is proposing here, because I think we do need a level playing field, and no doubt these kind of issues are ones that need to be kept under constant review by P.P.C. and more generally the Assembly.

The Greffier of the States (in the Chair):

Does any other Member wish to speak in the debate? If not, I call on Deputy Higgins.

2.1.9 Deputy M.R. Higgins:

If I can just ask the Attorney General a question first before I do so. For the Attorney General, the provisions in Bankruptcy (Désastre) Law whereby someone can apply to the court to extent the period of bankruptcy would only, I assume, be where someone has shown absolute bad faith and not assisted the court and the Viscount and others in paying those debts. Is that correct?

The Attorney General:

I think in general terms that is correct in the sense that I think generally the court and the Viscount would be keen to resolve any désastre within 4 years and it would only be an unco-operative debtor that would generally be a subject of an application to extent the period beyond 4 years.

Deputy M.R. Higgins:

Very well. Then to sum up. The Constable of St. Mary has made a point about the requirement of some Constables to reside in the Parish and we know the Constable of St. Helier does not have to. As far as I am concerned that can be resolved by P.P.C., they can look at the issue and decide on what it should be. It should be consistent. The Constable of St. Clement, I acknowledge what he said about P.55. When I brought P.55 in 2016, it was a bit rushed, and I must admit, it did not make sense and that is why I withdrew it. Also, I did not choose a title for it, I did not make clear

what it was about. It was P.55 and it was to do with bankruptcy. Bankruptcy was just one element. I was still looking at the standards for States Members and so it gave everyone the wrong stick and confused everyone, so I apologise for that. Now, so far as some of the problems that may arise, I have tried to highlight some of the differences that are there. I have got faith in P.P.C. that they can look at it and they can come up with a standard set of provisions that should apply to all Members and we can review that when it comes before the States. So far as lowering the standards, I am not talking about lowering the standards for States Members at all. I believe States Members should be subject to the same law as every other citizen in this Island. So far as the bankruptcy provision that the Attorney General has told us about, if a States Member also was obstructing the court or the Viscount trying to pay off the creditors, then yes, it should be an extended period. What I am asking P.P.C. to do is to look at the law in the States of Jersey Law and the Bankruptcy (Désastre) Law and standardise it so that States Members and members of the public are treated in exactly the same way: 4 years is in the Bankruptcy (Désastre) Law, unless an application is made to the court. That provision could quite easily be put into the law for States Members as well. What I hope Members will see is we have all accepted that there are ... sorry, I will just make one other point too. I fully agree with the Constable of St. Clement, really there is no need to have 3 classes of Member. There is nothing to distinguish between the 3 of them except for the name. If P.P.C. wanted to go forward with that, I would support it, but we have accepted in this House since the referendum Constables are looked on as being a Member of the States of Jersey as *ex officio* Members, they were not elected to the States. The Constables are in the States, we all accept it, they do a valuable role, Deputies and Senators do a valuable role as well. What I am saying is we should all be treated equally, the same. Unless there is an exceptionally good argument, which I cannot think, maybe P.P.C. when they bring it back will, but I hope that Members will agree that there should be one set of standards for all and I ask for the appel.

The Connétable of St. Clement:

I wonder if I could ask the Attorney General just to clarify something the Deputy said there. I thought that under the Désastre Law currently, States Members and members of the public were treated equally under that law.

The Attorney General:

Yes, that is quite right. All Members, anyone in Jersey is treated the same for the purpose of the Désastre Law. Normally a désastre will last 4 years and what the States of Jersey Law says, which is quite different, is that a person is disqualified from a Senator or a Deputy for a period of an additional 5 years after the end of the désastre if they fail to pay their debts in full. In relation to Constables, they are disqualified for the period of the désastre and they of course are subject to a separate supervisory obligation to the Royal Court, because of course they have fiduciary duties towards their parishioners and that would be considered on a case by case basis in terms of their position and their finances after any désastre.

The Greffier of the States (in the Chair):

Very quickly, Deputy.

Deputy M.R. Higgins:

If I can just thank the Attorney General for that. I think the thing is that again, it is showing this inconsistency between Constables and other Members, which perhaps P.P.C. could look at. I am going to ask for the appel and I am going to ask it in 2 parts, part (a) and part (b).

The Greffier of the States (in the Chair):

The appel has been called for and so ...

The Connétable of St. Clement:

I wonder if the Deputy will agree to take the 2 paragraphs separately, Sir.

The Greffier of the States (in the Chair):

He has just asked to do that, I think, Constable. The appel has been called for on paragraph (a) of the proposition. I ask Members to return to their seats and if they are all here, I ask the Greffier to open the voting.

POUR: 26

Senator P.F. Routier
Senator P.F.C. Ozouf
Senator A.J.H. Maclean
Senator I.J. Gorst
Senator L.J. Farnham
Senator A.K.F. Green
Connétable of St. Helier
Connétable of St. Clement
Connétable of St. Ouen
Connétable of St. Martin
Connétable of Trinity
Deputy J.A. Martin (H)
Deputy G.P. Southern (H)
Deputy of Grouville
Deputy J.A. Hilton (H)
Deputy J.A.N. Le Fondré (L)
Deputy of Trinity
Deputy K.C. Lewis (S)
Deputy M. Tadier (B)
Deputy M.R. Higgins (H)
Deputy J.M. Maçon (S)
Deputy S.Y. Mézec (H)
Deputy R. Labey (H)
Deputy S.M. Bree (C)
Deputy of St. Mary
Deputy P.D. McLinton (S)

CONTRE: 14

Connétable of St. Lawrence
Connétable of St. Mary
Connétable of Grouville
Connétable of St. John
Deputy E.J. Noel (L)
Deputy of St. John
Deputy S.J. Pinel (C)
Deputy of St. Martin
Deputy R.G. Bryans (H)
Deputy A.D. Lewis (H)
Deputy of St. Ouen
Deputy S.M. Wickenden (H)
Deputy M.J. Norton (B)
Deputy G.J. Truscott (B)

ABSTAIN: 0

The Greffier of the States (in the Chair):

We now move on to the appel on paragraph (b) and I ask the Greffier to open the voting.

POUR: 14

Senator L.J. Farnham
Senator S.C. Ferguson
Connétable of St. Helier
Deputy J.A. Martin (H)
Deputy G.P. Southern (H)
Deputy of Grouville
Deputy K.C. Lewis (S)
Deputy M. Tadier (B)
Deputy M.R. Higgins (H)
Deputy S.Y. Mézec (H)
Deputy R. Labey (H)
Deputy S.M. Bree (C)
Deputy of St. Mary

CONTRE: 29

Senator P.F. Routier
Senator P.F.C. Ozouf
Senator A.J.H. Maclean
Senator I.J. Gorst
Senator A.K.F. Green
Connétable of St. Clement
Connétable of St. Peter
Connétable of St. Lawrence
Connétable of St. Mary
Connétable of St. Ouen
Connétable of St. Martin
Connétable of Grouville
Connétable of St. John

ABSTAIN: 0

Deputy P.D. McLinton (S)

Connétable of Trinity
Deputy J.A. Hilton (H)
Deputy J.A.N. Le Fondré (L)
Deputy of Trinity
Deputy E.J. Noel (L)
Deputy of St. John
Deputy J.M. Maçon (S)
Deputy S.J. Pinel (C)
Deputy of St. Martin
Deputy R.G. Bryans (H)
Deputy A.D. Lewis (H)
Deputy of St. Ouen
Deputy S.M. Wickenden (H)
Deputy M.J. Norton (B)
Deputy T.A. McDonald (S)
Deputy G.J. Truscott (B)

ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

The Greffier of the States (in the Chair):

That concludes the Public Business. It just remains to ask the Connétable of St. Clement to tell us about the Arrangement for Public Business next time.

3. The Connétable of St. Clement (Chairman, Privileges and Procedures Committee):

Yes. The proposition for the Arrangement of Public Business is as per the Consolidated Order Paper, except I would say this - and I did ask the Greffier to send an email around to Members - for the next sitting on 31st January, we have a terrific amount of business. We have a vote of no confidence in the States Employment Board and we have the debate on the composition election of the States Assembly, as proposed by Deputy Lewis. There is already one amendment been lodged. I understand there are some further amendments or at least one further amendment to come. That is going to take a tremendous amount of time and I would to suggest that in view of that, the States sit on Monday the 30th at 2.45 p.m. in the afternoon for questions and any statements and also be prepared to sit on the Friday of that week, because I suspect that this could be a significantly longer day. I make that proposition.

Deputy G.P. Southern:

I seek a direction from you, Sir. At the next meeting I wish to ask further questions on the Innovation Fund and I wish to know who to direct that to, because as far as I know, the Assistant Minister has not yet resigned.

The Greffier of the States (in the Chair):

I can assist with that one. The answer is the Chief Minister. Secondly, if the States agrees to sit on the Monday, that will have, I believe, a knock-on effect on the deadlines for written and oral questions. I am looking at the nodding heads of my colleagues, which we will be able to provide further guidance on. The deadline for raising questions will be tomorrow if we sit on Monday, 30th January. Deputy Maçon.

3.1 Deputy J.M. Maçon:

I just wonder if the chairman of P.P.C. will make his proposal in 2 parts for the Monday and the Friday, because I think some Members will already be committed. I wonder if we could just proceed in that manner.

3.2 Senator P.F. Routier:

It has been the practice in the past when additional sittings have been arranged at short notice that Members who have had prior commitments have been excused being in the Assembly. I know we have a duty to be here, but some people may have specific things which they are unable to rearrange. If they could be looked upon favourably ... I am not saying that I am out of the Island or anything, but I just saying an observation, that sometimes some Members have found it difficult to rearrange things, so they might be excused.

3.3 Senator I.J. Gorst:

During question time earlier this week it was suggested that Members would like to understand what proposals might be being brought forward for the machinery of government, and I suggested that I would have a conversation with Deputy Andrew Lewis about moving his electoral reform proposition. We have not yet had that conversation, albeit we have had one, a short conversation. I intend to do that and ask him if he would consider deferring it until a later sitting so Members just need to be mindful of that as well.

The Greffier of the States (in the Chair):

Sorry, I think that is putting the Assembly in quite a difficult position, because the Assembly has to decide now whether it wishes to sit, in particular on Monday the 30th and obviously there would be no need to do that, I imagine, if that particular proposition was moved.

3.4 Deputy A.D. Lewis:

Perhaps I could assist. As far as I am concerned, there is a significant amount of information out already of reviews and reports that have been done over many years about the machinery of government. I would urge Members to read that before the debate on the 31st. I think that would inform them quite well, although I am more than happy and intend to have a conversation with the Chief Minister on the matter of P.133 anyway.

The Greffier of the States (in the Chair):

Deputy Tadier, do you still ...

Deputy A.D. Lewis:

In other words, I am not prepared to defer it unless the Assembly was to vote that way, Sir.

The Greffier of the States (in the Chair):

Deputy Tadier, did you still wish to ...

3.5 Deputy M. Tadier:

I was going to ask whether it is possible for the head of the Government to make his position clear on the reform proposals, because I think that is a matter of not just public interest, but specifically for the Assembly, to know what the Chief and the Council of Ministers think of the reform proposals and if they were intending to support any.

The Greffier of the States (in the Chair):

I am not sure that is a matter for now, otherwise we may well sit on for quite a further period.

Deputy M. Tadier:

I do not need a decision, but maybe the Minister could ponder that and circulate information.

3.6 Senator P.F.C. Ozouf:

I am the Member with an amendment and I think the reality is we have just had a debate this morning about whether or not things should be scrutinised and good information before Members. We may be faced with, I understand it, last-minute amendments, which while there has been a lot of work, the implications of this are at the fount of our democracy. The implications of this are even bigger, if I may say, than the matters that we were discussing earlier. I just wish to say I unfortunately have a longstanding personal engagement on 14th February, where I am out of the Island.

[11:30]

I can be in the Island later that week, if that is what Members would wish to do, but I have an amendment in and I have a longstanding personal matter which I cannot ... it is States business, but I cannot - which is a result of States business obligations - do it on the 14th. It is a matter obviously for Members, but I would have thought that from what I hear is the further amendment before Members, if there has been chaos this morning understanding things and having proper information, then we are going to be at serious risk for that. I would have suggested, respectfully, that in fact there is ... and I also, Sir, as a member of P.P.C., have received your advice in your position as Greffier in relation to needing to deal with matters within a year. I think the P.P.C. has discussed the matter of the absolute clarity you need to deal with matters. I think your advice has been a year and that is a general principle advice. Legislation may possibly be able to come later, but the principles need to be absolutely clear. But I would have thought that a 2-week delay, knowing that there are amendments down and further amendments being drafted, this is the most important thing that the Assembly will discuss.

The Greffier of the States (in the Chair):

I do not want to interrupt, but I think I have got the gist. I think we are on the Arrangement of Public Business, not an opportunity to have a speech. Can I finish? It is up to Deputy Lewis what he wants to do with his proposition and I think he has made it clear this morning that he does not intend to move it. The Assembly I think has to proceed on that basis that that proposition will be there and therefore the arrangement that is down here on the sheet for 31st January is the one that will reach us. That is the basis on which the Constable has made his comments. Senator, did you want to ...

Senator P.F.C. Ozouf:

A point of order, Sir, if I may. It is up to the Deputy to propose, but it for the Assembly to decide.

The Greffier of the States (in the Chair):

That is very true, but there is not a proposition to move it at the moment.

Senator P.F.C. Ozouf:

I make it, Sir. I was just trying to take the mood of the Assembly as to whether or not a proposition should be made in order to deal with it in the sitting of the 14th, which is 2 weeks later. It cannot be done later than that, clearly, but I will make arrangements that I am back for the 15th. This is the second item of business. I am trying to be reasonable, as always, and to make sure ... clearly we have this morning information chaos and I just want to make sure that we do not have information chaos.

3.7 The Connétable of St. Clement:

This is absolutely bizarre. The proposition that I have made is as per the Consolidated Order Paper, which includes on 31st January Deputy Lewis of St. Helier's proposition on reform of the States and any subsequent amendment. No one has proposed that it should be on 14th February, when Senator Ozouf is away. If someone wishes to do that, of course they are perfectly entitled to do so,

I believe, but let us get real: the proposition is quite clear. Items on the Consolidated Order Paper of the 31st is what I am proposing. I am also proposing we meet at 2.45 p.m. - and it is 2.45 p.m. because there is a school assembly beforehand - on Monday the 30th. The States should be prepared to continue after the Thursday, and I have suggested probably the Friday, but let us not confuse matters. The proposition is a simple one. If someone wants to propose it is a different date, that is fine, but no one has done that so far.

Deputy M. Tadier:

I think the Constable has made the point that we are all thinking.

3.8 Deputy A.D. Lewis:

We have put this off for 16 years. I think Members hopefully will accept that the Order Paper is the Order Paper. I have lodged it in good time and I am not proposing to delay it. If nobody else is, I would like to propose that we accept the P.P.C. chairman's recommendation.

The Greffier of the States (in the Chair):

I think that is the key bit. Sorry, Constable, I will come to you in a second. As I understand it, the only proposition on the table at the moment is to sit additionally on the Monday afternoon and on the Friday, which we may take separately. That is the only actual proposition. Deputy Tadier.

Deputy M. Tadier:

I do have a question. Now that we know Senator Ozouf is away on 14th February, are there any propositions we want to move to that date?

The Greffier of the States (in the Chair):

I regret calling you. Connétable of St. Mary.

3.9 The Connétable of St. Mary:

In all this time, what has just been said, I have talked a lot about clarity and certainty today and I always do. We have a procedure in Standing Orders for what we do with business that is unfinished. I understand the merits of starting early. We do it for the set pieces, the budget, *et cetera*. Are we really saying that we are going to chop and change on uncertainty? We do not know how long any particular debate would happen; we do not know whether things will happen in the interim that will change people's minds about things. Surely the thing to do is to go by our Standing Orders and start as normal, follow through and then move the business to the next sitting, as we have already to do.

The Greffier of the States (in the Chair):

Does any other Member wish to speak? I think you have already spoken, Senator Ozouf. Is this a point of order or a point of clarification?

Senator P.F.C. Ozouf:

I want to make a proposition, Sir, because it is only right to test the mood of the Assembly. That is right, is it not?

The Greffier of the States (in the Chair):

Absolutely.

3.10 Senator P.F.C. Ozouf:

Fine. I move that the proposition for Deputy Lewis, in view of the fact that there is going to be further propositions lodged which will not have proper time for reports, 16 years or otherwise, they

need to be properly analysed, *et cetera*. If it is the mood of the Assembly not to take it, I will be here if it was to be put on the Order Paper for the 14th, I will be here for the 15th, *et cetera*. That can be organised, quite clearly. I will not be prejudiced in any way. I think that the mood of the Assembly should be tested so that they have the option, there is time. The most important issue, we have had a debate this morning about detail, 16 years, but nevertheless we have been talking about the hospital for 16 years, but we are still unclear. I move the proposal, to move it to the bottom of the Order Paper or just the penultimate, after perhaps discussions with whoever is there and also to receive and to support the proposal of the Constable of St. Mary that my 2-part proposal is we meet on Tuesday morning and that this matter is not dealt with on the sitting of the 14th.

The Greffier of the States (in the Chair):

Sorry, which day and month are we referring to here? Is this the sitting of 14th February?

Senator P.F.C. Ozouf:

No, 14th February stands, as usual, on a Tuesday, matters are dealt with ...

The Greffier of the States (in the Chair):

So it is the end of the list on 14th February you would like this proposition?

Senator P.F.C. Ozouf:

Or in consultation with Members further up the list, but on the sitting of the 14th.

The Greffier of the States (in the Chair):

On the sitting of the 14th. Is that proposition seconded? [**Seconded**] Deputy Mézec.

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

There is a fundamental flaw in the argument that Senator Ozouf is making when he says we should delay P.133 so that we have got more time to consider the amendment, which is that if P.133 is delayed, so is the deadline for amendment, so we can still get amendments coming in a week before it is delayed. There is no logic behind this argument and I would ask States Members to reject this. As Deputy Lewis said, we have put off having this debate, this real debate, for 16 years. The public are fed up with it and want us to get on with it, so let us just do it. Members have had since before Christmas to know that this is on the agenda and lodge amendments if they want. There is still time to do so, so let them do it and we can have that debate.

3.10.2 Deputy J.A. Martin:

Just briefly, I am very concerned, and it follows on from what the Constable of St. Mary has said and now this proposition. If we move this debate to 14th February and we do not finish, we do not sit again until 14th March and that is too long. We cannot be in the middle of a debate. I absolutely reject this. We need to get on with this P.133 and I support the Constable of St. Clement.

The Greffier of the States (in the Chair):

Just to clarify, the proposition is to move it to the sitting on 14th February. What would then happen if at the end of that last continuation day the business was not concluded it would be decided at the time. This is not ... does any other Member wish to speak? In that case, I call on the Senator to start.

3.10.3 Senator P.F.C. Ozouf:

I am grateful for Members' observations. I am looking forward: the matters down for 14th February would mean that we would be able to deal with on the sitting, the S.E.B. (States

Employment Board) matters. We would not have to sit on the Monday afternoon. We can deal with all of these massively important issues and we can start on 14th February and deal with the most important thing, which is the foundation of our democracy and we can conclude that and certainly I will make myself available to be here. I would suggest Members that would then be putting propositions would not seek to try to put late amendments. I also remind Members that Deputy Lewis put his proposition. As I have said in my own remarks in my own amendment, it was my proposition anyway, I did not know anything about it, but it has been put forward. I have amended it in the proper way. There are other Members that I know are going to put further amendments. We can deal with a good foundation of good information presented more properly on the sitting of 14th February and avoid the kind of chaos that we have this morning. On that argument, I ask Members to agree that it is moved to 14th February so that we can have proper information and deal with this most important issue in proper time. I move my proposition and ask for the appel, please, Sir.

Deputy M. Tadier:

I do have a point of order.

The Greffier of the States (in the Chair):

I hope it is, Deputy Tadier.

Deputy M. Tadier:

I think it is a point of order. We need to know at which point on the Order Paper for the 14th ... I know it is academic, presumably, but we need to know at which point it would come, because the Senator has told us he is not here on the 14th when it will be debated. He has got an amendment, which would be put in. Is he going to be here on the 14th to move his amendment to the proposition that afternoon?

Senator P.F.C. Ozouf:

I always put my public duties first. If that is the will of the Assembly, I will be here.

The Greffier of the States (in the Chair):

I think the proposition will be placed at the end of the Order Paper. There is obviously scope for further discussion further down the line as to exactly where it goes and the Assembly always has the discretion to take things earlier if it wishes to during the sitting. I think that is the position we are in and the appel has been called for. Members are all here, I suspect, so I ask the Greffier to open the voting.

POUR: 8

Senator P.F. Routier
Senator P.F.C. Ozouf
Senator I.J. Gorst
Deputy of Grouville
Deputy of Trinity
Deputy S.M. Wickenden (H)
Deputy M.J. Norton (B)
Deputy of St. Mary

CONTRE: 31

Senator A.J.H. Maclean
Senator A.K.F. Green
Senator S.C. Ferguson
Connétable of St. Helier
Connétable of St. Clement
Connétable of St. Lawrence
Connétable of St. Ouen
Connétable of St. Martin
Connétable of Grouville
Connétable of St. John
Connétable of Trinity
Deputy J.A. Martin (H)
Deputy G.P. Southern (H)
Deputy J.A. Hilton (H)
Deputy J.A.N. Le Fondré (L)

ABSTAIN: 2

Connétable of St. Peter
Connétable of St. Mary

Deputy K.C. Lewis (S)
Deputy M. Tadier (B)
Deputy E.J. Noel (L)
Deputy of St. John
Deputy M.R. Higgins (H)
Deputy J.M. Maçon (S)
Deputy S.J. Pinel (C)
Deputy of St. Martin
Deputy R.G. Bryans (H)
Deputy S.Y. Mézec (H)
Deputy A.D. Lewis (H)
Deputy of St. Ouen
Deputy S.M. Bree (C)
Deputy T.A. McDonald (S)
Deputy G.J. Truscott (B)
Deputy P.D. McLinton (S)

The Greffier of the States (in the Chair):

So we return to the arrangement on 31st January sitting. Does any Member wish to speak on that subject? Deputy Southern.

Deputy G.P. Southern:

Just briefly, the amendment by the Constable of St. Mary is ...

The Connétable of St. Mary:

A point of order, Sir. I have not made an amendment. I was just explaining why I was not going to be supporting the ...

Deputy G.P. Southern:

She has not made an amendment, okay.

The Greffier of the States (in the Chair):

I do not think she has.

Deputy G.P. Southern:

A suggestion by the Constable of St. Mary that we should carry on as normal, which is not to meet on the Monday, but to meet on the Tuesday as normal I am fully in support of.

The Greffier of the States (in the Chair):

Does any other Member wish to speak? I ask the Connétable of St. Clement to wind-up.

3.11 The Connétable of St. Clement:

I am already well wound-up, Sir. **[Laughter]** I am not sure if we need to take this proposition in 3 parts. First, that we take the items on the Order Paper; secondly that we meet on the Monday afternoon, and thirdly, that we continue on the Friday, if necessary. It seems to me we need to make those 3 separate decisions. I would firstly propose the items on the Consolidated Order Paper be taken at the next sitting.

Deputy M. Tadier:

Can I just check that P.117, my TV licences, has been moved to the 14th? I think that is what the Greffe and I agreed. I would like it to be taken as the first item, but I know that is not necessarily ... that is in the hands of the Assembly.

The Greffier of the States (in the Chair):

We can confirm it has been moved to 14th February. I think we will leave it at that for now. Those Members who are in favour of the items on the Order Paper being taken on 31st January, kindly show. Those not in favour? That has been agreed. Connétable.

The Connétable of St. Clement:

The second part of the proposition is that the States should sit on 30th of January at 2.45 p.m. in the afternoon for the purposes of taking questions and any statements that may be made.

The Greffier of the States (in the Chair):

The appel has been called for. Members are invited ...

Deputy A.D. Lewis:

It is a proposition. We are entitled to speak, Sir.

The Greffier of the States (in the Chair):

No, it is not. The proposition has been debated throughout and this is the putting of the questions at the end. The appel has been called for. Members are invited to return to their seats.

Deputy A.D. Lewis:

Are you saying that we cannot speak on this bit of the proposition?

The Greffier of the States (in the Chair):

We have had a debate on the Arrangement of Business for 31st January and the 3 components of that are the items which are on the Order Paper, number one; whether to sit on the Monday, number 2; whether to sit on the Friday, number 3. That has been the subject of the debate, subject to the additional discussion about 14th February. That debate is now finished. The Connétable is now putting the questions one by one to the vote. We are on the second question. The appel has been called for and I ask the Greffier to open the voting.

POUR: 28

Senator A.J.H. Maclean
Senator A.K.F. Green
Senator S.C. Ferguson
Connétable of St. Clement
Connétable of St. Lawrence
Connétable of St. Ouen
Connétable of St. Martin
Connétable of Grouville
Connétable of Trinity
Deputy J.A. Martin (H)
Deputy of Grouville
Deputy J.A.N. Le Fondré (L)
Deputy of Trinity
Deputy K.C. Lewis (S)
Deputy E.J. Noel (L)
Deputy of St. John
Deputy S.J. Pinel (C)
Deputy of St. Martin
Deputy R.G. Bryans (H)
Deputy A.D. Lewis (H)
Deputy R. Labey (H)
Deputy S.M. Wickenden (H)

CONTRE: 11

Senator P.F.C. Ozouf
Connétable of St. Helier
Connétable of St. Peter
Connétable of St. Mary
Connétable of St. John
Deputy G.P. Southern (H)
Deputy M. Tadier (B)
Deputy M.R. Higgins (H)
Deputy J.M. Maçon (S)
Deputy S.Y. Mézec (H)
Deputy of St. Ouen

ABSTAIN: 0

Deputy S.M. Bree (C)
Deputy M.J. Norton (B)
Deputy T.A. McDonald (S)
Deputy of St. Mary
Deputy G.J. Truscott (B)
Deputy P.D. McLinton (S)

The Greffier of the States (in the Chair):

The Monday meeting proposition has been agreed to: 28 votes to 11. Connétable, you wish to proceed with the Friday proposition?

The Connétable of St. Clement:

I ask for the appel, Sir.

The Greffier of the States (in the Chair):

The appel has been called for. This is whether to extend into Friday, if necessary. I ask the Greffier to open the voting.

POUR: 29

Senator A.J.H. Maclean
Connétable of St. Helier
Connétable of St. Clement
Connétable of St. Ouen
Connétable of St. Martin
Connétable of Grouville
Connétable of Trinity
Deputy J.A. Martin (H)
Deputy G.P. Southern (H)
Deputy of Grouville
Deputy J.A.N. Le Fondré (L)
Deputy of Trinity
Deputy K.C. Lewis (S)
Deputy M. Tadier (B)
Deputy E.J. Noel (L)
Deputy of St. John
Deputy M.R. Higgins (H)
Deputy S.J. Pinel (C)
Deputy R.G. Bryans (H)
Deputy S.Y. Mézec (H)
Deputy A.D. Lewis (H)
Deputy of St. Ouen
Deputy S.M. Wickenden (H)
Deputy S.M. Bree (C)
Deputy M.J. Norton (B)
Deputy T.A. McDonald (S)
Deputy of St. Mary
Deputy G.J. Truscott (B)
Deputy P.D. McLinton (S)

CONTRE: 9

Senator P.F.C. Ozouf
Senator A.K.F. Green
Senator S.C. Ferguson
Connétable of St. Lawrence
Connétable of St. Mary
Connétable of St. John
Deputy J.M. Maçon (S)
Deputy of St. Martin
Deputy R. Labey (H)

ABSTAIN: 1

Connétable of St. Peter

The Greffier of the States (in the Chair):

I am pleased to say that concludes the business for this sitting and the States is adjourned until Monday, 30th January at 2.45 p.m.

ADJOURNMENT

[11:45]