

# STATES OF JERSEY

## OFFICIAL REPORT

**TUESDAY, 3rd FEBRUARY 2009**

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

## **MATTERS OF PRIVILEGE**

### **The Bailiff:**

I have been notified that the Chairman of the Privileges and Procedures Committee wishes to raise a matter of privilege.

### **1. Connétable J. Gallichan of St. Mary (Chairman, Privileges and Procedures Committee):**

I wrote to you last week to give notice as required under Standing Order 8 but I wish to raise a matter that my committee considers affects the privileges of the States. Following the in camera debate during the last sitting on the proposition of the Connétable of St. Helier, Senator Syvret published information about the content of the in camera debate on his internet blog site. It would clearly be inappropriate for me to refer to what he wrote except to say that he made it very clear that he was aware that he was knowingly publishing this material, even though the debate had been held in camera as required by the Police Force (Jersey) Law 1974 and that he might be sanctioned for that action. If you agree that this matter affects the privileges of the States, Standing Order 60 allows me to propose any matter relating to it without notice. I do not believe that it would be appropriate to hold any substantive debate on this matter today but I would like to propose that the issue is formally referred to P.P.C. (Privileges and Procedures Committee) to allow my committee to investigate it, to allow Senator Syvret to address us if he wishes to do so and to consider what action, if any, is appropriate. I appreciate that the information in question has also been published in the *Jersey Evening Post* and it is therefore possible that one or more other anonymous Members may have revealed this information to a journalist. If that Member or those Members were to reveal who they are I would also propose that this issue be referred formally to the P.P.C.

### **The Bailiff:**

I am satisfied, Madam Chairman, that the matter raised by you is a matter which affects the privileges of the States. I take it now that Member wishes to disclose that he or she has spoken to a journalist in which case Madam Chairman, how do you wish to proceed?

### **The Connétable of St. Mary:**

As indicated, I would wish to make the proposition that the issue is formally referred to the P.P.C. to allow the committee to investigate it.

### **The Bailiff:**

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

### **Deputy P.J. Rondel of St. John:**

I saw the Senator's light on the far side prior to you referring back to the president of P.P.C., Sir, I believe he did have something to say.

### **The Bailiff:**

If you had been not rising from your seat, Deputy, I was going to turn to Senator Syvret to invite him to speak.

### **1.1 Senator S. Syvret:**

I have really no idea why this matter should be referred formally to P.P.C. They plainly have the power quite autonomously to investigate any matter they consider to fall within this kind of remit. So, this exercise is largely symbolic. It will also be a waste of the committee's time and the staff's resources because I have absolutely no regrets whatsoever about publishing the information I did. It was a profoundly important piece of public disclosure information, the public good required that it be known. I am not going to withdraw anything I said. I am not going to apologise for anything

I have done so really the committee or the Assembly may as well just decide what they want to do because that is the decision.

**1.2 Deputy P.V.F. Le Claire of St. Helier:**

Just to say, I do find it bizarre that in a grandstanding way this has been requested to be referred to the P.P.C. when it is completely within their power to investigate which matters they choose to, and if they need to seek clarification on whether the matters of privilege affected the States, they could write to you, they could meet with you, as I have done in the past, to discuss those issues and there is no need to prejudice any outcome by grandstanding this issue or other issues in the future by requesting formal referrals.

**The Bailiff:**

Deputy, if I may say so; I think that the Privileges and Procedures Committee is proceeding entirely in accordance with Standing Orders. Standing Orders requires the committee or any Member who thinks that a matter of privilege is in question to refer the matter to the Bailiff, the chairman has done that, and then to raise it on the floor of the Assembly, the chairman has done that, and the chairman could proceed this morning to raise a substantive proposition, but she has told Members that she wishes to give Senator Syvret the opportunity to say anything to the committee which he might, on reflection, wish to do. That seems to be an entirely proper way to proceed.

**1.3 Deputy M.R. Higgins of St. Helier:**

Just as a point of information for the States; this matter was referred to P.P.C. at its previous meeting by the Bailiff himself who brought up the question of privilege, so in the interests of transparency that should be revealed.

**The Bailiff:**

Does any other Member wish to speak?

**1.4 Senator S. Syvret:**

If I may make a further point in relation to what Deputy Higgins just said? I was going to say this at some point in any event, but it is clear you have played a role in this action. You are personally conflicted in this. You have made your views abundantly clear - for example, the Liberation Day speech - exactly what you thought of the child abuse investigation, all of which has a bearing on the suspension of the Chief Constable of the States of Jersey Police Force so you, personally, have a clearly biased position in this and you are conflicted. So it seems to be wholly inappropriate for you to be chairing any such matter.

**The Bailiff:**

I do not wish to enter into the debate, Senator. I am sitting in the Chair, but I will say in response to Deputy Higgins' intervention that I was invited by the Greffier in the light of the matter which had been raised to give advice to the Privileges and Procedures Committee and I attended on the Privileges and Procedures Committee for that purpose. Now, Madam Chairman, do you wish to respond to any of the points made? Sorry, the Deputy of St. John.

**The Deputy of St. John:**

I do not know if this is the right moment to raise this, but it is to do with the procedures during an in camera debate and also obviously because P.P.C. are on their feet at the moment, but at the end of the debate when we took the vote, the vote is usually pour or contre and it was given in English, hence I voted when the chair is it for or against immediately I pressed the A, my mind was still in the ...

**The Bailiff:**

Can we come to that in just a moment, we are in the middle of a debate. Anything you wish to say in response, Madam Chairman?

**1.5 The Connétable of St. Mary:**

Merely, that the concept of parliamentary privilege is an extremely important one. I fundamentally believe that the privileges of the States must be defended, just as I believe that all Members of the Assembly are equally bound by the Standing Orders and should be treated without partiality. I attended the traditional welcome for the new Members which was given earlier this year as part of the induction programme and it was given this year by the Deputy Bailiff. He was at great pains to inform the new Members that they would be entering a parliament, not a debating club, not a county council. I seem to recall that you, yourself, have given that advice before. There is a great difference and I believe that we must strive to uphold our standards and to defend the privileges of the States. I would remind Members that this proposition is merely calling for the matter to be investigated formally. I make the proposition, and ask for the appel.

**The Bailiff:**

I invite any Member in the precinct who wishes to vote to return to his or her seat. I ask the Greffier to open the voting which is for or against the proposition of the chairman of the P.P.C.

<b>POUR: 38</b>		<b>CONTRE: 5</b>		<b>ABSTAIN: 1</b>
Senator T.A. Le Sueur		Senator S. Syvret		Deputy D. De Sousa (H)
Senator P.F. Routier		Deputy R.G. Le Hérissier (S)		
Senator P.F.C. Ozouf		Deputy P.V.F. Le Claire (H)		
Senator T.J. Le Main		Deputy M.. Tadier (B)		
Senator B.E. Shenton		Deputy J.M. Maçon (S)		
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				

Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy A.E. Jeune (B)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				

**Senator S. Syvret:**

Might I, through the Chair, ask if the Privileges and Procedures Committee when they consider this matter will be so in open session?

**The Connétable of St. Mary:**

The Privileges and Procedures Committee will pursue this matter strictly in accordance with the guidelines in Standing Orders.

**Senator S. Syvret:**

Will the chairman answer the question? Will it be dealt with in open session or not?

**The Bailiff:**

The chairman has said that the committee will follow the appropriate procedure. Perhaps she wants to think about it, Senator.

**Senator S. Syvret:**

The appropriate procedure is to either have it in secret, as is usually the case, or it is to be open. Can the chairman make a decision?

**The Bailiff:**

No, I am sorry, Senator, the Privileges and Procedures Committee is entirely entitled to proceed in accordance with Standing Orders as it thinks fit, and the chairman has said that is what she is going to do.

**NOTIFICATION OF VOTING ERROR**

**2. The Deputy of St. John:**

The issue that I raised about the vote at the last meeting which it was given in English although all our controls here are in French - I appreciate we are a dual Parliament. I would like to... as I said

at the time, I was opposing the Constable of St. Helier's proposition and because of all the papers, *et cetera*, on our desk, it came out in English. I immediately went for the A button instead of the pour or contre button and therefore I would like to appeal that decision. I am given to understand that the Deputy Bailiff may be or is looking into the procedure, but could I formally notify the Chamber that I am appealing that decision, that my vote recorded against the proposition.

**The Bailiff:**

Deputy, the procedural position is that once you have cast your vote and the vote has been announced by the presiding officer that vote cannot be changed, so I am afraid it is not possible to appeal against the casting of your vote. You have cast your vote mistakenly or otherwise, as the case may be, but the record is there. What you are entitled to do, I think, is to ask the Assembly, if the Assembly is prepared to do this, to note that you cast your vote in error and if the Assembly is prepared to allow you to do that, that will be recorded in the minutes of the States.

**The Deputy of St. John:**

Therefore I formally ask the Assembly to allow me to beg their permission to note that I voted in error on the in camera debate and therefore ask for their support in accepting that the error was made. In doing so, could I ask, through the Chair, the P.P.C. to put in place an appeal procedure so that in the event of this happening to others in the future it can be dealt with.

**The Bailiff:**

I think the second matter you can raise by letter to the Privileges and Procedures Committee. Are Members prepared to have a record in the minutes of the States? Do you wish to make a proposition to that effect?

**The Deputy of St. John:**

Yes please, Sir.

**The Bailiff:**

The proposition is ... what is it, Deputy?

**The Deputy of St. John:**

The proposition is for the Members to note that an error was made in my voting procedure. In fact I intended to vote against the proposition on the in camera debate and therefore I ask the Members to accept that.

**The Bailiff:**

In short, the proposition is that the Assembly noted that you voted in error on the vote on whatever this proposition was; is that right?

**The Deputy of St. John:**

Correct, Sir.

**The Bailiff:**

Is the proposition seconded? **[Seconded]** I take it no Member wishes to speak, so may I put the matter to Members. Those Members in favour of the proposition kindly show. I think we better have an appel. The vote is for or against the proposition of the Deputy of St. John and I ask the Greffier to open the voting.

<b>POUR: 32</b>		<b>CONTRE: 8</b>		<b>ABSTAIN: 3</b>
Senator T.A. Le Sueur		Senator S. Syvret		Connétable of St. Mary
Senator P.F. Routier		Senator T.J. Le Main		Deputy J.A. Martin (H)

Senator P.F.C. Ozouf		Senator S.C. Ferguson		Deputy M.. Tadier (B)
Senator B.E. Shenton		Connétable of St. Ouen		
Senator J.L. Perchard		Connétable of Grouville		
Senator A. Breckon		Connétable of St. Lawrence		
Senator A.J.D. Maclean		Deputy R.C. Duhamel (S)		
Senator B.I. Le Marquand		Deputy J.B. Fox (H)		
Connétable of St. Helier				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Deputy R.G. Le Hérisier (S)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy A.E. Jeune (B)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D. De Sousa (H)				
Deputy J.M. Maçon (S)				

## QUESTIONS

### 3. Written Questions

#### 3.1 THE CONNÉTABLE OF ST. LAWRENCE OF THE MINISTER FOR EDUCATION, SPORT AND CULTURE REGARDING SCHOOL SUSPENSIONS:

##### Question

For the academic years 2005 to 2008 inclusive, would the Minister inform members -

- (a) of the total number of pupils in the non fee-paying secondary schools who have been suspended;
- (b) how many of those pupils have been suspended for a period of more than five days or an aggregate period of more than fifteen days in any school term;

**Answer**

- (a) and (b)

By their very nature suspensions are temporary and are designed to underline that certain forms of behaviour are unacceptable in schools, and also, where appropriate, to provide breathing space so that support arrangements can be put in place either for successful reintegration or for transfer to alternative provision.

The information requested in parts (a) and (b) of the question is set out in the table below -

Academic year	Total number of pupils in the non fee-paying secondary schools who have been suspended	Number of pupils who have been suspended for a period of more than five days	Number of pupils who have been suspended for an aggregate period of more than fifteen days in any school term
2005/2006	163	0	1
2006/2007	176	11	5
2007/2008	224	7	3

**Question**

- (c) of the current policy for deciding upon suspension;

**Answer**

- (c) Under Article 36 of the Education (Jersey) Law the headteacher has the authority to suspend a pupil for a period of up to five days, or an aggregate period of up to 15 days, in any one school term. Suspension is used as a sanction according to a tariff reflecting the severity of incidents, and this is to ensure consistency across schools. The tariff for suspensions was developed in cooperation with Kathie Bull as a follow-up to the Bull Report published in 2003.

Any suspensions exceeding 5 days, or totalling more than 15 days, in any term must be authorised by the Chief Officer of the Education, Sport and Culture Department.

**Question**

- (d) whether that policy will be reviewed?

**Answer**

- (d) I have already stated that in 2009 I will review the application of the suspensions policy and the guidance provided to schools. Furthermore, this will also be considered as part of the inclusion review to be conducted across schools in 2009.

### **3.2 THE DEPUTY OF ST. JOHN OF THE MINISTER FOR SOCIAL SECURITY REGARDING A REVIEW OF OFFSHORE COMPANIES' REDUNDANCY POLICIES:**

#### **Question**

Following the demise of Woolworths, will the Minister review those companies operating in the Island who do not pay local income tax and undertake to bring forward the relevant legislation to ensure that any such companies extend their redundancy policies to their staff in Jersey and if not, will he explain why?

*(For clarity I am a shareholder of Woolworth or was depending on the outcome.)*

#### **Answer**

I am committed to lodging draft redundancy legislation by the end of this month, for States debate in April 2009. The new law will give employees in Jersey a statutory right to a redundancy payment, as well as associated rights, that have been consulted upon and are appropriate to our local situation.

These rights will apply to employees in Jersey whether they work for locally owned companies, branches of overseas concerns, or any other ownership arrangement.

### **3.3 THE DEPUTY OF ST. JOHN OF THE CHAIRMAN OF THE COMITÉ DES CONNÉTABLES REGARDING THE 2008 ELECTIONS:**

#### **Question**

Can the Chairman inform members if he is aware of any complaints from electors of the Island in respect of the 2008 elections, particularly in relation to persons being disenfranchised by not being on the electoral list despite evidence existing that the electoral form had been returned, or having filled in a postal voting form and forwarded it to the Judicial Greffier's Office but never receiving a voting slip, and if so, how many?

Were there any fraudulent forms returned to the Judicial Greffier's office, if so, how many and what action has been taken?

Have any complaints been received about voting irregularities in any parish, and if so, would he advise which parish, how many complaints and what action, if any, has been taken?

#### **Answer**

Neither I nor my fellow Connétables are aware of any person being disenfranchised by not being on the electoral list despite evidence existing that the electoral form had been returned.

We are aware of a very few persons who attended to vote during the autumn 2008 elections and Referendum who found that their names had been omitted from the register. In accordance with the Public Elections (Jersey) Law 2002, as soon as evidence was provided by the parish that the electoral form had been returned and the name had accidentally been omitted from the electoral register, the Autorisé provided the person with a ballot paper and noted in the return that the person was allowed to vote – such instances are known as 'administrative errors'. Thus no-one in that situation was disenfranchised and all were able to cast their vote. Only persons who had failed to

make a return were not allowed to vote on the day but each was given an application form so that they might register for the next election.

Every Autorisé makes a return to the Royal Court on the conduct of the election and this *procès verbal* is a reconciliation of the number of ballot papers issued, including postal and pre-poll, and those counted. It also records any irregularities for example damaged or cancelled papers.

The administration of postal and pre-poll voting is a matter within the province of the Judicial Greffe but the Comité is confident that if the Deputy will contact the Deputy Judicial Greffier he will be duly assisted.

I am not aware of any complaints about voting irregularities received in any parish. I am aware – as has been previously reported in the media - that some allegations of voting irregularities have been reported to the Law Officers and are under investigation but I do not have any details relating to those investigations.

### **3.4 THE DEPUTY OF ST. JOHN OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE ANNUAL FUEL COSTS TO ALL STATES DEPARTMENTS:**

#### **Question**

Would the Minister advise the Assembly of the annual cost of providing electricity to all States departments broken down as follows:

1. States offices;
2. Schools;
3. Leisure facilities;
4. Main roads i.e. Victoria Avenue;
5. Other main roads;
6. By roads;
7. States accommodation (communal areas only);
8. States quangoes (such as WEB offices);
9. Any others not already specified.

Would he also advise the -

- (a) annual cost of heating States departments by other means such as oil or gas;
- (b) cost of gas heating per annum and which properties;
- (c) cost of oil heating per annum and which properties;
- (d) cost of other types of heating such as coal.

#### **Answer**

The Deputy's questions are open to interpretation, as the categories listed are not definitive.

Information on energy costs is currently not held in manner that is capable of producing a detailed response to all elements of the request, however in the short time available, the following

response has been developed to address most of the Deputy's requirements:

*1. States Offices:*

This information is not readily available from the existing data, however examples of office buildings are:

South Hill            £ 10,899

States Building    £ 34,767

Morier House £ 56,985

*2. Schools:*

The total annual electricity cost for Educational Buildings is £ 525,126

*3. Leisure facilities:*

The total annual electricity cost for Leisure facilities is £304,192

*4. Main roads ie Victoria Avenue:*

*5. Other main road.;*

*6. By roads:*

The total annual electricity cost for street lighting to all public roads is £160,795

*7. States accommodation (communal areas only):*

The total annual electricity cost for States Housing Landlord supply is £709,028

*8. States quangos (such as WEB offices):*

This information is not readily available from the existing data.

*9. Any others not already specified:*

The cost of electricity for the other areas not specified above is £3,983,730, therefore the total annual States expenditure on electricity is £5,682,871.

**Question:** *Would he also advise the:*

(a) *annual cost of heating States departments by other means such as oil or gas:*

The total expenditure on Gas and Oil for all States properties is £3,532,476

Within the time available it is not possible to provide an accurate breakdown on a property by property basis.

(b) *Cost of gas heating per annum and which properties:*

The total expenditure on Gas for all States properties is £1,048,501

Within the time available it is not possible to provide an accurate breakdown on a property by property basis.

(c) *Cost of oil heating per annum and which properties:*

The total expenditure on Oil for all States properties is £2,483,975

Within the time available it is not possible to provide an accurate breakdown on a property by property basis.

(d) *Cost of other types of heating such as coal:*

None

These questions would potentially be best dealt with, in the first instance, by a request for information to the relevant department. The department can then establish with the Deputy a clear understanding as to exactly what information is required and determine the most appropriate format.

If the Deputy is wishing to progress a States Energy Efficiency savings campaign across the whole of the States, this is something that I am giving consideration to.

This will also be something to consider as an effect to the Island energy policy report, which is being currently worked on.

### **3.5 DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING THE PROVISION OF BAGGAGE SPACE ON BUSES TO THE AIRPORT:**

#### **Question**

Given the Minister's acknowledgement during the election for his post that it was 'completely daft to have an airport bus that cannot accommodate suitcases' when is it intended to provide suitable baggage space on buses serving the Airport?

#### **Answer**

Transport and Technical Services are working with Connex to provide luggage facilities on the Route 15 serving the Airport and I have asked for both a short term fix (ideally to be in place before the main summer season commences) and also a longer term solution to this problem. I am keen to minimise the loss of seating given the numbers of passengers regularly travelling on this route so I have asked for a range of options to be considered. I will advise the Deputy as soon as Connex is able to provide this facility.

### **3.6 DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR OF THE MINISTER FOR EDUCATION, SPORT AND CULTURE REGARDING GREATER EFFICIENCIES WITHIN THE EDUCATION, SPORT AND CULTURE DEPARTMENT:**

#### **Question**

Given the Minister's oft repeated calls for public service cutbacks and efficiencies, what steps, if any, is he proposing to bring about greater efficiencies within the Education, Sport and Culture Department?

#### **Answer**

As a past member of the Public Accounts Committee, the Deputy will be well aware that my efforts and that of the PAC and the Comptroller and Auditor General have been focused on identifying the full cost of services provided and improving the overall efficiency and effectiveness of all States expenditure.

I am pleased to say that, as a result, improvements have been made and a major step forward will be the States accounts becoming fully GAAP compliant.

In the report entitled Emerging Issues, the Comptroller and Auditor General identified a number of savings which could be realised across the whole of the States, including Education Sport and Culture. I intend to explore whether any of these savings are realistically achievable, desirable and acceptable.

As the Minister of Education Sport and Culture I will continue to promote improved accountability and efficiency throughout my department whilst at the same time identifying the need for additional funding if required.

I have already identified areas where funding issues have not been addressed or understated and as a consequence, require immediate attention, if the department is to avoid having to reduce current services. One such area is Culture.

In order to encourage greater efficiency throughout my department I aim to:

- Maintain the department's focus on delivering services in a cost effective manner;
- Work with all partners to identify the full cost of services provided and where necessary highlight the need for additional resources;
- Ensure that all improvements in financial management identified by the Internal Audit Division and the States external auditors are implemented;
- Encourage greater dialogue with members of the States and the public on what services are required in order to meet the expectations of those supported by the department;
- Maximise the use of all facilities administered by the department.

### **3.7 DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING LAYING NEW POLICY INITIATIVES BEFORE THE STATES:**

#### **Question**

What steps, if any, are in place to ensure that new policy initiatives from the Minister are first notified to the States, prior to media publicity?

#### **Answer**

Whilst there is nothing in Standing Orders which deals specifically with such matters, as a matter of traditional parliamentary practice, all Ministers, make best endeavours to ensure members are informed first of new policy decisions. This is normally done by way of a Ministerial Statement, publication of a Report under the "R" system or in an electronic communication via the States Member email system.

The media are sometimes pre-briefed for reasons of practicalities (for example the States are sitting, or there is a briefing is organised to co-occur with the publication of a report or reading of a

Statement to the Assembly), In such circumstances, embargos are normally used (although they are not binding on the media).

There was one occasion recently, when a Treasury Ministerial Statement was delivered after a media report. This was due to the unexpected and usual late commencement of States Statements until after the lunch time adjournment.

As a matter of practise, the Minister will continue to endeavour to ensure that the States are the first to hear of new policy initiatives.

### **3.8 THE DEPUTY OF GROUVILLE OF THE MINISTER FOR PLANNING AND ENVIRONMENT REGARDING THE APPOINTMENT OF A U.K. CONSULTANT TO DRAW UP A SOCIAL NEEDS HOUSING POLICY:**

#### **Question**

1. Given that in a response to my oral question on 20th January 2009, the Minister indicated that a UK Consultant had been appointed to draw up a policy and implement a States decision to require developments of over a certain size to provide a percentage of their build for social need, could he indicate:-

(a) when the UK Consultant was appointed?

#### **Answer**

I approved the appointment of Kelvin MacDonald Associates on 20 June 2008.

#### **Question**

(b) why the Minister's own senior officers could not draw up such a Policy, given the template is available under section 106 of the UK Planning Guidelines?

#### **Answer**

The Department generally uses consultants for two reasons: where specialist knowledge is required and where there is no capacity in the Department due to other workload. For this project both factors applied.

This planning policy needs to be evidence-based and defensible in law, particularly as the policy is likely to be controversial with landowners and developers as it could have an effect on land values and profitability – an effect which could be magnified as we seek to meet future housing needs from previously developed sites.

Until now, the planning process in Jersey has delivered 'affordable' housing by restricting development of green-field sites to certain tenures and controlling onward sales to first-time buyers. The new policy will aim to deliver housing which is genuinely affordable.

The project required research on the local housing market to establish the need for affordable homes of different types, and how a policy could be devised to meet those needs through private sector development.

This has necessitated consultation with different stakeholders in the provision of affordable housing. It also involved research into different methods of procuring affordable housing in the UK and evaluation of their effectiveness.

The subject of delivering affordable housing is a very complex area and requires highly specialist knowledge of mechanisms used in other jurisdictions and a very clear understanding of their success or otherwise. There are a large number of primary mechanisms and hybrids available as options and this is not a specialism that the planning department could reasonably be expected to have internally.

### **Question**

(c) how much the appointment is costing the tax payer?

### **Answer**

The fixed price for this contract is £23,250 plus expenses.

### **Question**

(d) how long it will be before the Policy is implemented and used as part of the Planning process?

### **Answer**

Implementation of the policy will require the Minister to propose an amendment to the 2002 Island Plan in the States Assembly. When the final report is received and I am satisfied that it is soundly-based and workable in the local market then I will undertake consultation on it as the Law requires me to do. Having reviewed the results of that consultation, I will lodge a proposition to this effect. The policy can only be implemented when the States has adopted it as an amendment to the plan.

### **Question**

(e) whether the delay in implementing a relatively simple policy which already exists elsewhere is acceptable?

### **Answer**

I need to make it clear that this is most definitely not a simple policy to introduce. Although similar policies exist elsewhere, they are, or need to be, based on accurate evidence if they are not to be challenged successfully in law.

It represents a fundamentally different method for the Island to procure affordable housing, and it will have a considerable impact on the development industry.

There are a number of significant issues that have to be addressed in preparing it, including:

- Defining “affordable” in meaningful terms;
- Understanding market conditions at any particular time;
- The viability of development;
- The possible disincentive to landowners and developers to release land or to build;
- The evidence of need;
- Defensibility in law;

- Where to set thresholds for developments to which the policy to apply; and
- Establishing the mix of affordable housing (size and tenure) to be provided where the policy does apply.

### Question

2. Could the Minister detail how many developments, if any, he has he approved since the States decision on 2nd April 2008, which would have fallen under the policy?

### Answer

An amendment to the Island Plan is legally necessary to effect a policy change of this nature. After 2nd April 2008 this involved the gathering of evidence, drafting of the policy, consultation under Article 3 of the Planning Law, a response to the consultation, a report and proposition and a States debate.

Given that there were elections last autumn and limited States sittings, and most importantly, that the evidence gathered had to be reviewed in the light of the change in economic circumstances (particularly the restricted parameters for borrowing to purchase property: eg. for first-time buyers and Jersey Homebuy qualifiers) it is most unlikely that a proposition would have reached the stage for debate until this year.

Accordingly, I do not consider that the policy would have applied to any developments granted permission since 2nd April 2008.

The only delay that has arisen in bringing this policy into force has come about through the need to review the effects of the economic recession on the housing market.

### Question

3. Does the Minister accept that, had the policy been implemented before the re-zoning debate in July 2008, some areas of the countryside could have been saved from development, and opportunities to require developers to contribute to the supply of first time buyer and sheltered housing in the Island have been wasted?

### Answer

This question is entirely hypothetical as there is no possible way that the policy could have been amended before the July 2008 rezoning debate.

## **3.9 THE DEPUTY OF GROUVILLE OF THE CHAIRMAN OF THE COMITÉ DES CONNÉTABLES REGARDING THE CRITERION FOR ADMITTING PEOPLE ONTO PARISH WAITING LISTS FOR SHELTERED HOUSING:**

### Question

Given that on 2nd April, 2008, the Assembly agreed by 40 votes to 6 that a consistent criterion for admitting people to parish waiting lists for Sheltered Housing would be brought forward by the Housing Minister. Since that time, could the Chairman confirm:-

- (a) how many meetings have been held between the Connétables and Housing Minister to develop such a criteria?

(b) at what stage of development it is?

Would the Chairman confirm whether the numbers of people on the Parish waiting lists were used to imply during the Re-zoning of the Countryside debate (P75/2008) that there was an “urgent, desperate need” for sheltered housing, even though that was not a requirement for admissibility and, if so, what definition of “desperate” and “needy” was applied?

Did some of the people on the Connétables waiting lists also appear on the Housing department’s central list for States Housing?

#### **Answer**

(a) No meetings have been held to date between the Connétables and the Minister for Housing to develop criteria for admitting people to parish waiting lists for Sheltered Housing. However, the Comité des Connétables has invited the Minister to attend its meeting on 9th February 2009 to discuss this matter.

(b) No meetings have been held and so development of the criteria has yet to be considered. The proposition “Provision of land for lifelong dwellings (for people over 55) and first-time buyers - amendment to Island Plan (2002)” (P.75/2008) was prepared by the Minister for Planning and Environment. The Comité des Connétables met with the Minister and Assistant Minister for Planning and Environment in September 2007 to discuss the draft consultation report and pointed out that it was the Minister for Housing, and not the Connétables, who had specified the number of units required. The Deputy should seek a reply to her question of whether the Parish waiting lists were used from the Minister for Housing.

To date, the waiting lists maintained by Connétables have been for persons over the age of 65 who have an interest in being offered the opportunity to move into sheltered housing owned by the parish. The Connétables are each aware from their own waiting list for existing Parish sheltered housing that many people ask to have their names added early as they wish to be assured of such accommodation in the longer term. The allocation criteria in such cases is dictated by the specific needs of the individual at the time and not specifically by the length of time on the waiting list.

The Minister for Housing has not to date provided to the Connétables any details of those persons on the Housing department’s central waiting list and so it is not possible to say whether or not any of those persons also appear on the Connétables waiting lists.

### **3.10 DEPUTY P.V.F. LE CLAIRE OF ST. HELIER OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING THE HEALTH AND SOCIAL SERVICES DEPARTMENT’S TRAVEL POLICY:**

#### **Question**

What is the Travel Policy of the Health and Social Services Department for patients and relatives requiring off-Island treatment and are the Income Tax Department and Social Security involved and if so, in what way?

#### **Answer**

The Health and Social Services Department has a comprehensive Travel Policy which has been in effect in different guises since 1998, but which has been adapted during the interim period in the

light of circumstances. The aim of the policy is to provide financial assistance to certain categories of patients who will require travel to the mainland to receive specialist health care services. The current version of this policy was approved in February 2008.

My Department will meet the travel costs and make financial assistance available to a patient or client provided:

- That the patient or client income is below defined financial thresholds (depending on their marital status and family circumstances)
- That the patient or client is a Jersey resident (or covered by a reciprocal health agreement)
- That the patient or client has been referred to the UK Health Services provider by a consultant employed by the Health and Social Services Department.

My Department will meet the travel costs and make financial assistance available to a patient or client's relatives:

- When the patient or client is a child under the age of 18 years.
- When the patient or client is over the age of 75 years.
- When the patient or client is registered as disabled.
- When the patient or client is unable to travel unescorted due to his/her clinical condition (as defined by the referring consultant).

My Department will not reimburse costs associated with:

- Relatives' accommodation
- Food and meals
- Childcare
- Private arrangements
- Care of animals
- Maintenance of property and vehicles
- Loss of earnings

### **Involvement of Income Tax and Social Security**

The main purpose of the Travel Policy is to define a patient or client's eligibility for financial assistance. Whilst the policy always had an element of 'means testing' within it, it was never possible for my Department to verify the statements and declarations made by prospective patients about their income levels. I am very sorry to say that there have been a number of attempts made over the years by prospective patients and clients to be less than truthful about their financial status and this obviously means that this is an abuse of tax payer's money (tax payer's money that funds my Department, that is). I have a duty to protect the tax payer's interests, as well as a duty to ensure appropriate health care.

In 2007, the onus was changed in that it became the duty of the patient or client to demonstrate that they were eligible for financial assistance – rather than my staff having to attempt to verify a patient or client's income levels in the face of hostility from that individual.

### **Involvement of Income Tax:**

The Travel Policy does not require the specific involvement of the Income Tax team, but since 2007 it has been recognised that if the patient or client provides a copy of their agreed tax return this can be used as evidence of their income levels (from all sources) and support their claim for travel assistance.

(It is important to note is that whilst individuals are encouraged to keep copies of their original tax returns, an individual already has the right to request a copy for any reason).

### **Involvement of Social Security:**

The Travel Policy does not require the specific involvement of the Social Security Department - but a patient or client can provide their Income Support notification as evidence to support their claim for travel assistance, this is the same notification that they would have received informing them of their income support status.

The Travel Policy is a fair and reasonable policy which directs financial assistance to those Islanders who demonstrably require it. I am saddened that some Islanders have sought to mask and hide their true financial status in order that they can exploit the taxpayer's generosity by seeking to obtain free travel to the mainland. I am equally saddened that some patients have sought to vent their dissatisfaction with this policy on junior staff who work in the Travel Office (who incidentally, are all female). I do not take kindly to such belligerent behaviour and my Department is currently considering what action to take against such behaviour on the part of a few members of our community.

### **3.11 THE DEPUTY OF ST. MARTIN OF THE CHIEF MINISTER REGARDING THE ARCHITECTS EMPLOYED WITHIN THE PROPERTY HOLDINGS SECTION:**

#### **Question**

With regard to the architects employed within the Property Services Department, could the Minister confirm:-

- (a) how many architects, technicians, engineers and supporting staff are employed within the Department's Architectural section?
- (b) at what cost are all of these posts for the year ended 2008?
- (c) at what grade and cost are each of the architects?
- (d) what specific projects have they completed since the end of 2006?
- (e) when was the last time the Department entered a design into the Jersey Design Awards and, if not last year, why?

#### **Answer**

There are three separate areas within the "Architectural section" led by the Assistant Director who is a qualified architect. The staffing level in each area is as follows:

(i) Architectural Design - 10

Comprising Principal Architects, Architect, Senior Architectural Assistants, Architectural Assistants, Trainee Architectural Assistant

(ii) Mechanical & Electrical Design - 5

Comprising Principal Engineer, Senior Assistants, Energy Management Engineer

(iii) Clerk of Works - 4 Senior Clerks of Works

(iv) Support Staff - 1 Senior Secretary

***Question (b) At what cost are all of these posts for the year end 2008?***

The total salary cost including pension and social security contributions in 2008 was £1,272,873.

In addition there are other ancillary costs totalling £44,758.

It should be noted that the income generated for the professional services provided totalled £1,139,581.

Income is received on completion of specific stages of work within a project and may not align to input costs incurred.

***Question (c) At what grade and cost are each of the architects?***

The three Architects in the design section are in Civil Service salary bands 12 to 14 grade. The costs incurred in 2008, including employers costs for social security and PECS pension contribution, for these individuals ranges from £65,163 to £84,098

***Question (d) What specific projects have they completed since the end of 2006?***

It is assumed the Deputy of Grouville's question relates to architectural projects which have been constructed and occupied since the end of 2006. These would include the following:

Alterations to the East Shed at Bellozanne

Mont a L'abbe School Phase 1

St Clements School

St Peters School

Airport Departures Security Area

Mont a L'abbe School Temporary Kitchen

Magistrates' Courts (Alterations to Court No.1)

Alterations to Cyril Le Marquand House

Store extension to Hautlieu School

Alterations to the “Blue Light” Workshop

Phased upgrade of wards at the General Hospital

Infrastructure improvements to Central Market

In addition to these contracts designed “in-house” the other sections were actively involved with other contracts administered by private sector architects.

***Question (e) When was the last time the Department entered a design into the Jersey Design Awards, and, if not last year, why?***

Since the introduction of the Architectural Design Awards sponsored by the Environment and Planning Department submissions have been made by the Architectural Services section. In the inaugural year, 1998, the top award was presented for the design of First Tower School. In the same year commendations were also awarded for St Johns School and the Jersey Airport Departures Building. In subsequent years awards were received for Grouville School, Overdale Rehabilitation Unit, States Building Refurbishment, Mont Nicolle School and Hautlieu School. In 2006 four submissions were made in the prescribed format for the Magistrates’ Courts, St Clements School, D’Auvergne School and Oakfield (Hautlieu) Sports Facilities.

No submission was made in 2008 as none of the contracts completed in the previous two years were considered appropriate. Mont a L’abbe School Phase 1 could have been submitted however the conceptual design was prepared by another architectural practice as part of a feasibility study.

Should the competition continue in 2010 it is anticipated that the recently completed St Peters School and the new Air Traffic Control Centre will be submitted.

### **3.12 THE DEPUTY OF MARTIN TO THE CHIEF MINISTER REGARDING THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES:**

#### **Question**

Given that in R3/2009, presented to the States on 20th January 2009, reference is made to the United Nations Convention on the Rights of Persons with Disabilities and that Jersey has been asked to consider whether they wish to extend the United Nations Convention on the Rights of Disabled People to the Island, would the Minister advise –.

- (a) whether the Island Authorities have been notified whether the UK has ratified the Convention?

#### **Answer**

- (a) The Government of Jersey has been informed that the United Kingdom signed the Convention on 30th March 2007. A target for the UK ratification was initially proposed for the end of 2008, which has now been delayed to early this year. Consideration has been

given to a large number of reservations. However, a final date for ratification has not, as far as we are aware, been agreed.

**Question**

- (b) when and who will be examining the legislative and administrative implications for the Island?

**Answer**

- (b) The relevant Ministers and officers, together with relevant legal opinion, will be examining the legislative and administrative implications for the Island. Initial consideration of the Convention has indicated that implementation is substantially dependent on the introduction of a new Discrimination Law in Jersey. The Home Affairs Minister's consultation paper in 2008 on a draft Discrimination Law proposed that disability Regulations might be included in phase 3 of the programme, following adoption of the principal Law and the introduction of Regulations to address race discrimination and sex discrimination. The position regarding the Convention on the Rights of Persons with Disabilities will therefore be reviewed when the Discrimination legislation is further advanced.

**Question**

- (c) whether the public and States Members will be consulted?

**Answer**

- c) The 2008 consultation paper on the draft Discrimination Law indicated that further consultation will take place regarding proposed Disability Discrimination Regulations.

**Question**

- (d) who will be scrutinising the findings of any consultation process?

**Answer**

- (d) Any consultation would necessarily be a public process, open to scrutiny by any appropriate individual or body. A Scrutiny Panel review would be welcomed.

**Question**

- (e) whether States Members will be able to consider the outcome of any investigation into the legislative and administrative implications?

**Answer**

- (e) If any Law or Regulations are required, these would be presented to the States for debate. Any significant administrative implications, particularly those that had resource requirements, would be included in the Annual Business Plan. All these would be subject to States consideration.

**3.13 DEPUTY S.S.P.A. POWER OF ST. BRELADE OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE USE OF STATES LAND FOR ALLOTMENTS:**

**Question**

Can the Minister assure the Assembly that he will use his best efforts in 2009 to work with other States Departments, particularly Planning and Environment and Education, Sport and Culture, to encourage the use of States land for allotment farming purposes?

**Answer**

In principle the Minister is supportive of the concept of allotments in appropriate locations. Therefore the Minister sees no reason why allotments should not be allowed on States controlled land. However this does have to be practical, subject to agreement, and in particular be subject to Planning regulations.

Accordingly, whilst no proposals to utilise public land for allotment farming are currently included in Jersey Property Holdings' Business Plan, and subject to resource constraints, the Minister will consider the merits of any sites proposed that are in public ownership.

**3.14 THE CONNETABLE OF ST. LAWRENCE OF THE CHIEF MINISTER REGARDING THE TOTAL NUMBER OF STAFF SUSPENSIONS DURING 2008:**

**Question**

Would the Chief Minister advise the Assembly of the total number of staff, by Department, who were suspended as a result of disciplinary infractions during the year 2008 and, in each case, identify the employee group concerned, the period of suspension, the means of disposal of the case and, in those cases where the time between the suspension date and the disciplinary hearing was greater than the eight weeks recommended by the States Employment Board, the reason for the extension?

Would the Chief Minister advise the Assembly of the total number of staff who were suspended during the period 2007 to 2008, and who remain suspended, identifying in each case the employee group concerned, the period of suspension and the reason why the employee remains suspended?

**Answer**

**EMPLOYEE SUSPENSIONS**

**Table A** – This table depicts the number of employees (defined by Department) who were suspended between January and December 2008

Department	Employee Pay Group	Suspension Commenced	Suspension Finished	Method of Disposal
Home Affairs	Civil Servant	06/12/07	17/01/08	Dismissed
	Prison	28/12/07	01/02/08	Disciplined
	Prison	12/02/08	29/09/08	Dismissed
	Prison	17/04/08	12/06/08	Disciplined

	Police	16/04/08	22/09/08	Reinstated
	Police	21/07/08	Ongoing	N/A
	Police	26/08/08	Ongoing	N/A
	Police	01/09/08	Ongoing	N/A
	Chief Officer	12/11/08	Ongoing	N/A
P&E	Civil Servant	12/06/08	13/06/08	Resigned
HSS	Civil Servant	12/06/08	Ongoing	N/A
	Doctors & Dentists	19/10/06	Ongoing	N/A
	Nurses & Midwives	07/12/07	18/01/08	Reinstated
	Nurses & Midwives	25/02/08	26/03/08	Reinstated
	Civil Servant	13/03/08	19/05/08	Disciplined
	Civil Servant	28/03/08	20/11/08	Disciplined
	Nurses & Midwives	31/03/08	26/06/08	Disciplined
	Manual Worker	02/06/08	13/06/08	Resigned
	Health Care Asst.	20/06/08	14/07/08	Reinstated
	Health Care Asst.	22/08/08	15/09/08	Dismissed
	Nurses & Midwives	03/10/08	17/10/08	Disciplined
	Health Care Asst.	16/10/08	Ongoing	N/A
	Health Care Asst.	31/10/08	Ongoing	N/A
	Health Care Asst	10/12/08	Ongoing	N/A
	Civil Servant	05/11/08	Ongoing	N/A
ESC	Highlands College	30/04/07	30/08/08	Resigned
	Teacher	21/12/07	21/03/08	Dismissed
	Manual Worker	08/01/08	17/01/08	Reinstated
	Teacher	02/06/08	10/06/08	Reinstated
	Youth Worker	24/10/08	19/12/08	Reinstated
	Manual Worker	11/09/08	20/10/08	Disciplined
TTS	Civil Servant	28/02/08	10/03/08	Reinstated
	Manual Worker	25/06/08	15/08/08	Disciplined

T&R	Civil Servant	01/10/08	15/10/08	Dismissed
EDD	Civil Servant	20/11/07	04/02/08	Disciplined
	Airport Fire	03/07/08	05/12/08	Action Pending

**Notes to Table A:**

There were a total of 36 employees who were either suspended in 2008 or whose suspension carried over into 2008. The 36 employees in question belonged to the following pay groups:

9 x Nurses and Midwives

9 x Civil Servants

4 x Police Officers

4 x Manual Workers

3 x Prison Officers

2 x Teachers

1 x Youth Workers

1 x Airport Fire Service

1 x Highlands College Managers

1 x Chief Officer

1 x Doctors and Dentists

As previously reported to the Connetable, the States Employment Board (SEB) in May 2006 agreed a number of recommendations relating to the suspensions of employees, foremost of the recommendations were:-

- All suspensions be notified to the Employee Relations Section of the Chief Minister's Department at the time of the suspension thus enabling the level and duration of the suspension to be monitored; and,
- Chief Officers to ensure that all suspensions were formally reviewed one month from the suspension date and no less frequently than a month thereafter.
- The maximum time between suspension date and the disciplinary hearing be 8 weeks (with an expectation that it will be done before that time if possible).

The SEB continues to review all employee suspensions by way of a twice yearly report which also identifies those suspensions exceeding the 8 week recommended duration and the reasons for the delay.

Of the 36 employees suspended in 2008 (or whose suspensions continued into 2008 from 2007, and in one case, 2006), 17 met the SEB target of being resolved within 8 weeks. Of those that failed to meet the target, in the main, these are cases where complex external investigations, usually involving the police, are necessary and almost always result in a lengthy delay before applying the internal

disciplinary process. However, I am satisfied that where there are no such external influences impacting on a case, it is almost always the case that the 8 week deadline is met.

### **EMPLOYEE SUSPENSIONS (CONT)**

**Table B** – This Table depicts the number of employees by Department who were suspended during 2006 and 2007 and who remained suspended.

DEPARTMENT	EMPLOYEES WHO REMAINED SUSPENDED
HSS	One

#### **Notes to Table B:**

There is only one employee who was suspended by his Department in 2006 and who remains suspended and there are no employees suspended during 2007 who remain suspended. As identified in Tables A and B, the employee in question is a member of the Doctors and Dentists pay group employed in the Health and Social Services Department. The employee remains excluded due to a very complex and exceedingly lengthy police investigation and subsequent court case.

### **3.15 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR PLANNING AND ENVIRONMENT REGARDING THE NUMBER OF ONE-BED FLATS UNDER CONSTRUCTION OR WITH PLANNING PERMISSION IN 2008 AND 2009:**

#### **Question**

Will the Minister release to members the number of (under 55) one-bed flats under construction or with planning permission for 2008 and 2009 that he agreed would be made available as soon as possible in his response to my question on the oversupply of such dwelling on 15th July 2008?

#### **Answer**

I said in my answer last July that the provision of accurate figures would require recourse to original source material on all permissions and commencements, and matching them. Although the work had commenced in researching permissions granted in the years 2003 to 2008 (anything older than 2003 will have lapsed) which were either extant but not commenced, or were under construction, unfortunately, it was delayed as resources had to be allocated to the new Island Plan.

I would like to make Members aware how much work is necessary to produce this information. Our applications software is not designed to retrieve this type of information in a simple report, and the research has to be done manually.

In practice firstly an officer has to research the lists of every application from 2003 to 2008 (about 11000 records) to establish how many permissions have been granted for I-bedroom flats that do not have an 'over-55' condition: then, they need to compare these to the lists of completions (about 6,000 records) under the building bye-laws to establish whether they have been completed, and deduct this figure; and, finally, check this against our records of sites which currently have works under construction (about 1400 records).

As I have made clear on many occasions the department is significantly under resourced and we have to prioritise work.

I hope Deputy Southern will understand if this work is now prioritised to be provided as part of the “Planning for Homes” report into the supply of housing of different types against predicted needs, which is scheduled to be published in Spring 2009.

**3.16 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR TREASURY AND RESOURCES REGRADING THE ON-LINE AVAILABILITY OF THE OXERA REPORT INTO LAND VALUE TAX:**

**Question**

In a response to a question on further research on Land Value Tax on 1st July 2008, the then Minister stated that the results of work done by Oxera on the subject were available on-line, but as I have been unable to access this report electronically, will the Minister state whether it has been withdrawn from the site and if so, will he arrange to provide members with a copy of the report either in hard copy or electronically?

**Answer**

The document in question has not been withdrawn from the [www.gov.je](http://www.gov.je) site. It is available on <http://www.gov.je/TreasuryResources/Tax/TaxProposals/>.

**3.17 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE IMPACT OF CHANGES IN CIRCUMSTANCES TO INCOME SUPPORT RECIPIENTS:**

**Question**

Will the Minister inform members what steps, if any, have been taken to prevent those in receipt of Income Support having to repay the costs of additional GP visits, such as a recent case where a claimant was advised by Social Security staff that she would have to pay back to the department the cost of additional visits to and from her GP, totalling over £300?

In particular what steps will the Minister take to ensure that –

- (a) all staff are fully trained in handling such matters; and,
- (b) both GPs and Income Support recipients are fully informed what funding arrangements are in place to deliver full and flexible GP access?

Will he further inform members what guidelines, if any, are now in place to ensure that those who find or return to work are not charged for overpayment for the time taken by the Department to calculate the new level of benefit? In his answer will he indicate for members what targets, if any, are in place for addressing changes in claimants’ circumstances promptly?

**Answer**

**GP Costs**

To help cope with the cost of GP visits, Household Medical Accounts (HMA) are available to some Income Support households. In particular, the great majority of those who previously had HIE status were set up with an HMA at the start of Income Support.

Each week, a small proportion of their Income Support benefit is set aside in the HMA. The value of 4 visits per year per person is deducted on a weekly basis from the basic living component. For individuals receiving clinical cost components, the full value of that component is also included in the amount to be saved. Anyone previously with HIE status is allocated at least an additional 4 visits per year (through Clinical Cost level 1), and some have been allocated an additional 8 visits per year (through Clinical Cost level 2).

When a member of the Income Support Unit visits their GP, the Department provides a medical benefit (£15 at present) towards the cost of the visit. This payment is made under the Health Insurance Law, which is not part of the Income Support system.

The remainder of the cost is deducted from the HMA.

The HMA allows the Income Support Unit to budget for GP visits steadily, throughout the year, regardless of when the visits actually take place. If the Income Support Unit does not have an HMA, the full (co-payment) cost of the GP visit must be paid by the person at the time of the visit.

The HMA account is designed to meet the cost of typical visiting levels. However in some situations, the Income Support claim may need to be adjusted or a special payment made. In particular, an individual who has a short, but serious illness may need extra visits which are covered by special payments. Patients who are terminally ill at home are likely to need extra home visits. This cost is also met through special payments.

Sometimes, the patient's medical condition is slowly deteriorating and they will be reassessed to check whether they now need a higher level of personal care, mobility or clinical cost element.

Regular reviews are undertaken with GPs and, at any time, a GP can inform the Department of a patient whose needs have increased.

If the patient chooses to visit the GP more often than is necessary on clinical grounds, then the patient will be asked to save a higher amount to ensure that the cost of all visits is covered by the HMA.

The question refers to a single instance in which an individual needed extra visits to cope with a specific illness and, as explained above, this is dealt with by a special payment. I have already met with the Deputy and this case has been resolved.

I can assure Members that the Department takes staff training very seriously and managers continually monitor and update training requirements amongst all staff.

The Department is in regular contact with the Primary Care Body, the organisation that represents local GPs, and we provide ongoing support to individual GPs and the profession as a whole to ensure that all local practices are kept well informed of current Social Security benefits and the operation of HMAs. Prior to the introduction of Income Support, Social Security staff visited the great majority of local GPs to explain the new arrangements.

Income Support claimants who transferred from the previous HIE benefit were sent details of the HMA system when it started. New claimants receive advice when their Income Support claim is set up.

### **Claimants moving into work**

Income Support claimants are not charged for overpayments in respect of the internal processing time of their change of circumstance within the Department. All claims are dated on the day that

they arrive in the Department and, in most circumstances, benefit is paid or adjusted from that day. The sanction of overpayment is applied if the claimant fails to inform the Department of their new employment and continues to claim benefit at a higher rate, in the knowledge that they have now increased their household income.

As a general rule, earnings are included in the calculation of Income Support from the day on which they are due to be paid. For example, a jobseeker moving into full time paid employment with a monthly salary will continue to receive Income Support until the end of the first month of employment when they receive their first wage payment.

In some situations a 28 day disregard of additional earnings is also applied to people moving into work if the position is a permanent job or a contract position that lasts at least 6 months.

The 28 day disregard is applied to :

- Starting a job with a new employer
- Receiving promotion to a new job with the current employer
- Moving from part-time to full-time work with the same employer (at least 10 additional hours per week).

If the 28 day disregard of additional earnings is applied, the person moving into work will continue to receive Income Support at the previous level for an additional 28 days, after their first pay day. The claimant must inform the Department of the change in earnings when they start work in order to qualify for this additional disregard.

### **Processing Changes in Circumstances**

Following an amendment to the 2009 States Business Plan proposed by the Deputy and accepted (subject to some amendment) by the Minister, the Department has included in its Departmental business plan the following objective:

PR.24	Establish a minimum service level for processing changes of circumstances relating to Income Support households occupying rental accommodation	2009	Service levels established	March 2009
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The amendment only covers households occupying rental accommodation, as specified by the Deputy.

In reality, the Department does not distinguish between tenants and other types of household in applying targets to processing changes in circumstances. The current internal target for dealing with changes in circumstances for all types of claim is 10 working days from receipt of claim accompanied by appropriate evidence.

In the week beginning 19th January, these changes were being dealt with within 5 working days.

**3.18 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING A LIKE FOR LIKE COMPARISON OF BENEFIT SYSTEMS:**

**Question**

In the light of the Minister’s commitment to “working closely with scrutiny” (speech to members 11th December 2008) will the Minister assure the Assembly that he will co-operate with the Chairman of the Income Support Scrutiny Sub-Panel to establish a “like-for-like” comparison of benefit systems requested of his predecessor on 1st July 2008 and ,if so, will he undertake to do so in a timely manner so that the impact of the new system on claimants can be understood before the cuts in benefits take place in October of this year?

**Answer**

I can assure Members that I am fully committed to working with Scrutiny. I am appearing before the Scrutiny panel on Monday 2nd February to discuss the departmental business plan for 2009 and at officer level, I can confirm that a meeting has already been held and information requested and provided.

My predecessor gave a commitment to provide raw data to the Scrutiny panel in order for the “like-for-like” comparison of benefit systems to be undertaken. I can confirm that this data was provided to the panel’s advisor last year. I will co-operate with the Chairman to provide any additional information the Panel may require in order for them to complete their investigations.

The question refers to “cuts in benefit” and I would like to reassure Members and Income Support claimants that there is no cut in Income Support benefit planned for October 2009. When Income Support was introduced, claimants were assessed under the Income Support benefit criteria. If the value of their Income Support benefit was greater than their previous benefit entitlement they transferred to Income Support at the new, higher rate from day one. If their previous entitlement was greater than their income support entitlement, then they received their income support benefit plus an additional sum (a “protected payment” or transitional benefit) so that their total benefit matched their previous benefit level.

These protected payment benefits have been paid at the full rate since the end of January 2008. They are funded separately from Income Support benefits and are designed to be withdrawn over a number of years. Additional funding provided in the 2009 Business Plan has extended the period of 100% protection until October 2009. The first reduction in protected payments will then take place. The rate at which the protection is reduced is shown in the table below and depends on the characteristics of the household at the date of the introduction of Income Support. The percentage reduction refers only to the value of the protected payment and not to the total amount of benefit received. Protected benefits will be fully withdrawn by October 2014.

Period	Household previously receiving a disability benefit*	Household with high legacy benefit	Household with high income	Household including someone aged 65 + or previously receiving DTA**	Other households
From 1st October 2009 to 30th September 2010	100	80	0	75	66

From					
1st October 2010 to 30th September 2011	80	60	0	50	33
From					
1st October 2011 to 30th September 2012	60	40	0	25	0
From					
1st October 2012 to 30th September 2013	40	20	0	0	0
From					
1st October 2013 to 30th September 2014	20	0	0	0	0

\* Attendance Allowance, Adult Disablement Allowance, Child Disablement Allowance

\*\* Disabled Transport Allowance

### **3.19 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING CHARGES FOR X-RAYS AND OTHER SCANS FOR THOSE ON INCOME SUPPORT:**

#### **Question**

Given that in response to a question asked on 16th September 2008 regarding charges for X-ray and other scans for those on Income Support, the Minister stated that the Health and Social Services Department was “currently undertaking a review of these services”, will he advise what progress, if any, has been made in allocating the costs of these services, which used to be free to recipients of HIE, between the 2 departments?

Will he further indicate, what the current charges for such scans are and what proportion of X-ray and other scans are undertaken at the request of GP’s and therefore incur a charge?

#### **Answer**

In March 2008, in collaboration with the Social Security Department (SSD), Health and Social Services (H&SS) advised its service areas that where services were previously offered free or at a reduced cost to patients who had a current Health Insurance Exemption (HIE) card, that services would continue to do this for anyone with a card. This arrangement still applies to date. If a patient is unable to produce their card, staff at H&SS will contact SSD with patient consent to confirm their previous HIE status.

The most recent full year data shows that in 2007, the Radiology Department performed approximately 16,000 GP examinations on 10,000 GP referred patients. Of those 10,000 GP patients who attended Radiology, approximately 850 claimed HIE status and were therefore not charged. Total income for the remaining GP referred patients who were eligible to pay was £159,394 for the year 2007.

Approximately 90% of patients eligible to pay would have paid the lower amount of £15.70 (X-ray, Ultrasound, Mammography), which has increased to £16.10 for 2008 and the remainder at £21.00

which has increased to £21.50 for 2008 (CT/MRI). The amount for patients who claimed HIE status, and were therefore not charged, represents approximately another £14,000 for 2007.

An estimate for 2008 shows that the proportion of GP referrals overall remains the same as 2007, which was 1 in 5. The total activity for 2008 will be available during February 2009.

#### **4. Oral Questions**

##### **The Deputy Bailiff:**

We come to oral questions and the first oral question is in the name of the Deputy of St. John of the Minister for Economic Development.

##### **Deputy P.J. Rondel of St. John:**

I would like to withdraw this question at this time and it will come up at a future debate. Thank you.

##### **4.1 Deputy R.G. Le Hérissier of St. Saviour of the Minister for Health and Social Services regarding the policy in respect of private work undertaken by Hospital consultants:**

Is the Minister satisfied with current policy in respect of private work undertaken by hospital consultants?

##### **Senator J.L. Perchard (The Minister for Health and Social Services):**

I am satisfied that the long-standing arrangements in place work well and are of benefit to both public and private patients. As we are a community with only one general hospital it makes good sense to use the facilities that we have for the benefit of all Islanders who require treatment. Health and Social Services derive an annual income of approximately £3 million from private patient services and this resource is ploughed back into improving patient services for everyone. Within the terms of service outlined in consultants' contracts an allowance is made in respect of their on-call commitments, for them to take time off to undertake private work. The service is proud of the very significant achievements made in abolishing waiting times for periods in excess of 3 months. In reality this means that the vast majority of public patients are seen within weeks, rather than months. Many Islanders will be aware of this from their own experiences. These achievements have been made possible through the hard work and commitment of many staff, ensuring that urgent, soon and routine cases are not compromised within the current system. The co-existence of public and private patient care works well and very importantly - very importantly - continues to be a factor that attracts high calibre clinicians to live and work in Jersey.

##### **4.1.1 Deputy R.G. Le Hérissier:**

Notwithstanding the recitation of all the achievements of the Health Service, would the Minister acknowledge that defects in the system were demonstrated in a recent court case and would he not acknowledge that this is one of the areas where in order to restore public confidence he needs to revamp the whole system?

##### **Senator J.L. Perchard:**

I will be announcing later this morning my intentions to hold an inquiry into the situation regarding the fallout from the recent court case and if the Deputy is patient we can explore the matter further then. However if and when time permits I will be meeting with all those involved in providing care to the people of Jersey and discussing with them their roles in the provision of this care.

##### **4.1.2 Senator S. Syvret:**

Could the Minister explain what the current procedures are for enforcing and monitoring the split between private work and public work undertaken by consultants and indeed monitoring how much of the public work is undertaken by the consultants themselves or their juniors or locums?

**Senator J.L. Perchard:**

The procedures have been updated of late and there is a sophisticated matrix system being used, the detail of which would need to be presented to the Senator in a form that I am unable to give, but there is a more sophisticated system to ensure that consultants are delivering the amount of public private partnership that has been agreed with them when they were commissioned.

**4.1.3 Deputy R.G. Le Hérisier:**

Would the Minister confirm that notwithstanding the rightful need to attract consultants, that the hours paid for for public work are being worked to the full continuously and that there is no dereliction in this regard?

**Senator J.L. Perchard:**

As I said earlier to the questioner, I will when time permits be making the rounds of all those providing healthcare to the people of Jersey and I will be exploring the issues such as that just raised by the Member. I am not able to categorically stand here and say: "Everything in the garden is rosy." I have been in this position but weeks but I shall endeavour to ensure that best and proper service is provided to the people of Jersey.

**Deputy R.G. Le Hérisier:**

Sorry, could the Minister say "yes" or "no", having been Assistant Minister for a lengthy period as well?

**Senator J.L. Perchard:**

No, I am not able to say "yes" or "no".

**4.2 Deputy S. Power of St. Brelade of the Minister for Economic Development regarding the costs of travelling to St. Malo by Condor from Jersey to Weymouth:**

Would the Minister advise Members what action, if any, can be taken to ensure that Jersey travellers are charged a fair rate by Condor to travel to St. Malo given that passengers from Weymouth travelling to the same destination are charged a lower fare, despite the fact that the passage time is an average 3 times that of the Jersey passage?

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

Firstly, the Deputy is absolutely right to raise this matter. I very much understand the concerns expressed by some Islanders over fares. It must be frustrating for Jersey travellers to discover that at times they pay more to get to St. Malo from Jersey than those travelling from the U.K. (United Kingdom). The hard reality however is that there may be sound economic reasons why such price differences exist. I recognise that this is a difficult area and that is why we have asked Oxera (Oxford Economic Research Associates) to consider whether something more is required to protect the interest of Islanders and how best to ensure that States' sea transport policy objectives are met. Oxera's report is expected by the end of March. The States of course has already put safeguards in place when Members approved changes to the Harbours (Administration) Law and the Harbours Regulations in 2007 and 2008. The operator must seek approval for increases in maximum fares and public fare pricing policy must not discriminate on the basis of origin of customer booking. However it would be wrong to prejudge the outcome of Oxera's work but if it is necessary to introduce further measures I would not hesitate to bring such proposals to the States.

#### **4.2.1 Deputy S. Power:**

Is the Minister aware that the fares to St. Malo have on average doubled since September while fuel prices have almost halved since the August peak, and what has the Minister or his department done about this in that time?

#### **Senator A.J.H. Maclean:**

We are clearly very aware of the fall in oil prices during the period. We monitor on an ongoing basis fare prices and indeed it is a requirement under the agreement - the ramp permit agreement with the operator - that they notify the department in advance of any increases in the maximum fare price. There are concerns, as I have pointed out, with regard to ferry prices and that is exactly why we have asked Oxera to look at the options available for possible price regulation, if that is deemed to be necessary.

#### **4.2.2 Deputy J.B. Fox of St. Helier:**

I would be grateful if the Minister could explain what "sound economic reasons" are, because the public do not see it that way.

#### **Senator A.J.H. Maclean:**

There is a difficult equation with a small catchment area in Jersey with 90,000 population compared to the very substantial market in the U.K. There are issues of competition that the operator faces from other companies serving mainland France and clearly their pricing structures drive volume and the volume, of course, is in some respects advantageous to local Islanders because it sustains the service. There is in fact a shipping review that was undertaken by the J.C.R.A. (Jersey Competition Regulatory Authority) in 2006, which identified the competition by low cost airlines in particular, that made pricing on the northern route very much more susceptible, but again these are very complex issues and it is one of the reasons why we have asked Oxera to look in some depth at the options to protect consumers and ensure fair pricing.

#### **4.2.3 Deputy R.G. Le Hérissier:**

Would the Minister not acknowledge, despite the myriad of inquiries he announces, the tremendous overview he has taken over the last several years that the end result is no improvement of the situation and all we hear are quite frankly meaningless and anodyne statements, time after time?

#### **Senator A.J.H. Maclean:**

No, I would not. **[Laughter]** It is an extremely complex market. The ferry operators are not just serving the Channel Islands, the ferry operators serving the Island and serving France have gone through very difficult times. They have difficult competition to deal with from low cost airlines, they have all seen a fall-off in passenger numbers travelling, both with passenger-only and cars. It is a competitive market, and a number of operators have gone out of business. We want to ensure that we maintain long-term sustainable ferry services to and from the Island and to do that we have to support the operator and we have to make sure, where possible, that we can get fair and competitive prices. We have seen numbers falling over the last year, 6 per cent down on the northern route, and 4 per cent down on the southern route. Less people are travelling, it makes it less sustainable for the operator and input costs have been rising. It is a difficult equation but we are determined to find the best possible solution. Thank you.

#### **4.2.4 The Deputy of St. John:**

I note the Minister stated that they have meetings each time there is a fare increase. How often are these meetings held? Obviously you do get statistics from the Statistics Unit to have a meeting to decrease the fares.

#### **Senator A.J.H. Maclean:**

I think the Deputy of St. John misheard me. We do not have regular meetings to discuss fares *per se*, however the operator is required to notify the department of an increase in its maximum fares. The operator does function with a fluid pricing system similar to the low costs airlines and many other airlines for that matter. I know that Condor are looking... the new owners Macquarie are determined to overcome some of the concerns that Islanders have on the disparity of fares; they are looking at their fare structures, they are looking at their entire business model. They want to work to deliver the best possible ferry services they can for the Island. It is a very important market for Condor. The new owners, Macquarie: we have had meetings with them. They are determined to resolve some of the issues and some of the concerns both expressed by Members in this House and also the wider public.

#### **4.2.5 Deputy M.R. Higgins of St. Helier:**

The Senator has just mentioned the difficulties faced by the ferry companies and also the falling numbers of people coming to the Island and elsewhere. It sounds very similar to an argument that he has been putting forward for the airlines. Is he also proposing a subsidy for Condor?

#### **Senator A.J.H. Maclean:**

We would look to support any operator providing there is a sound economic base and yes, that could well include Condor but I would not suggest it would be in the form of subsidy. I think we can look to operators and if Condor is the only operator for example on the southern route then we may well look to enter into strategic marketing opportunities with them in France to help drive tourism numbers and passengers to the Island. Indeed the same could happen if we could prove it through a sound economic base from the U.K. What we want to do is make sure the operator is sustainable, provides the lowest possible fares and if we can drive more passengers on to the ferries we are going to meet that objective.

#### **4.2.6 Deputy S. Power:**

The Minister referred to the complexities of the ferry market and Condor's competition and I take it he means from the U.K. to France. Would the Minister not agree with me that in relation to the Channel Island market, which is what I was referring to, that there are no complexities and it can be simply referred to as a monopoly and a monopoly dictates the pricing policy?

#### **Senator A.J.H. Maclean:**

Yes, the northern route clearly is a monopoly and it is highly likely that the southern route this year is going to be a monopoly operator as well because it does not look like we have got anybody else looking to run that route, car and passenger that is. Of course we do have passenger only. Nevertheless we do attend to the matters regarding ferry services and their effectiveness and their cost. It is an issue that we will continue to work on and again I have stated the point about the Oxera report looking specifically at the options of price regulation, and that may not be the best outcome but it is something that we are looking at and we should have the report by the end of March and will act accordingly after that.

#### **The Deputy Bailiff:**

Questions 4 and 5 are due to be asked by Deputy Pitman. May I suggest to Members we put them to the bottom of the list and if he is here at that stage he can ask them. So we come then to question 6.

### **4.3 Deputy G.P. Southern of St. Helier of the Minister for Social Security regarding the introduction of protection for Jersey employees from redundancy through insolvency:**

Will the Minister inform Members what plans, if any, he has to introduce protection for Jersey employees from redundancy through insolvency and if so in what timescale his plans can be introduced?

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

Members will be aware that redundancy provisions within the current employment legislation have already been drafted and I am planning to lodge these provisions at the next States meeting. Advice received from the Employment Forum which was accepted by the previous Minister for Social Security was that the setting up of an insolvency fund was a complex matter, particularly in terms of the funding and administration of such a scheme. Rather than hold up the introduction of redundancy legislation the matter of insolvency will be treated as a separate project following the introduction of legislation relating to redundancy and business transfers. Given the current economic situation and the possibility that there may be additional redundancies in Jersey due to the insolvency of the employer my department is now preparing advice on any practical means by which an insolvency fund could be introduced in the near future. It would be foolish of me to commit to timescales today. I can however assure all Members that this matter has been given the highest priority and as soon as I am able to come forward with firm details regarding an insolvency fund and in what timescales that it can be set up I will make a statement to the Assembly.

**4.3.1 Deputy G.P. Southern:**

Can the Minister at least in order to have a S.M.A.R.T. (Specific, Measurable, Attainable, Realistic and Timely) answer - and the T in smart stands for timed - can he at least give some indication as to whether or not there will be a package in place this year?

**Deputy I.J. Gorst:**

I am aware that the Deputy would like to draw me on a timescale. I cannot and I am not in a position to give him a timescale. I can reassure him, as I said to him yesterday in a Scrutiny hearing, that this is one of my priorities for the year. My department have already started work on it. I have already chased them and I am expecting them to come forward with proposals in short order. My aim at the moment is to do this as quickly as possible, but we must bear in mind some of the complexities that the Employment Forum raised when they first made the recommendation and therefore I cannot be drawn at this stage on a timescale.

**4.3.2 Deputy G.P. Southern:**

If I may, again? Surely given the size and scale of emergency packages being knocked together to help businesses, to help building on the Island, the Minister for Social Security can surely come up with something in short order to cover issues that will affect employees of redundancy through insolvency in the very near future? He surely must see this as his prime duty in the present economic circumstances?

**Deputy I.J. Gorst:**

Exactly, as I have just been saying.

**4.4 Deputy F.J. Hill of St. Martin of the Chief Minister regarding the implementation of the Draft Human Rights (Jersey) Law (P.197/99):**

Given that when the States approved the Draft Human Rights (Jersey) Law P.197 of 1999, Members were informed that the key requirement would be that of training and a working group would be established to organise and oversee the training of relevant staff. Would the Minister advise whether the working group remains active and if not explain why, particularly given the changes in personnel for States Members?

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

After the Human Rights (Jersey) Law was adopted by the States in February 2000 a working group was established. That human rights working group implemented a number of public awareness initiatives, co-ordinated a comprehensive audit of human rights compliance and it initiated

extensive programmes of training for public sector staff. In 2002 the human rights working group concluded that this task had largely been completed and that group was dissolved. A key message in the training programmes has been that human rights are a fundamental part of everything we do in the public sector and staff throughout the States and the Parishes have a core duty to respect and protect the rights of the public they serve. Human rights awareness has been actively and effectively promoted throughout the public sector and while there will always be a need for refresher courses and induction of new staff the responsibility for this has now been transferred to individual departments within the States. Human rights are not just the responsibility of one department or any working group but they are the responsibility of every States department and the duty of every States employee.

#### **4.4.1 The Deputy of St. Martin:**

Would the Chief Minister not accept that if it was considered to be important enough to give training for those people involved in the States work in 2000 that work should be continuous and leaving it down to departments is really an abdication by the States? Could the Minister give us some idea as to what form of training is given to departments and in particular maybe even to States Members?

#### **Senator T.A. Le Sueur:**

I believe that departments very often are in a far better place to deal with the particular nuances of their particular organisation rather than have it done in a central way. Some of the examples that we have are the works done with the Portuguese community through A.C.E.T. (AIDS Care Education and Training), the internet website that there is, work with the Citizens Advice Bureau, compliance audits. For the training of States Members there is a guidance booklet for all staff in public service and that is updated. There is a webpage under my section of the website [www.gov.je](http://www.gov.je). There are staff awareness training sessions attended over that period by over 1,000 States employees. There are special training sessions in particular for Honorary Police and States Police and generally for all departments including further training in particular on the Modern Management Development Programme.

#### **4.4.2 Deputy M.R. Higgins:**

Would the Chief Minister not acknowledge that unless the human rights training involves updates on recent court decisions any training is worthless? Because the human rights law is constantly evolving with the decisions of judges, it is not laid down, as for example in U.K. law, where the decisions of the House of Lords will last for many years. In European law it is changing constantly and unless Members are kept up to date with each change it becomes a totally worthless exercise.

#### **Senator T.A. Le Sueur:**

I agree, and while changes do occur very frequently our programme does need to be updated on a regular basis and I agree with the Deputy in that respect.

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

Is the Chief Minister aware of the U.K. Audit Commission's publication *Human Rights - Improving Public Service Delivery* of 2003 which suggests that, 3 years on, the impact of the Act - the Human Rights Act - is in danger of stalling in the U.K. and the initial flurry of activity surrounding its introduction has waned? Will he ensure that the Human Rights Act does not stall in Jersey and will he in particular ensure that training takes place for States Members among others, as a matter of some urgency?

#### **Senator T.A. Le Sueur:**

I hope we can learn from the evidence and the shortcomings in the U.K. and that we do indeed keep our Human Rights Law up-to-date and as part of that if needs require training for States Members

then in conjunction with P.P.C. (Privileges and Procedures Committee) I will be happy to pursue that matter.

**4.4.4 Senator S. Syvret:**

The Chief Minister listed a number of different staff categories, public employees who would receive training in the Human Rights Law. Could he give the Assembly an assurance that that training will also be given to the judiciary and the Law Officers?

**Senator T.A. Le Sueur:**

I am not sure that the Law Officers and the judiciary count as States employees and I think they may well have their own training programmes. I can only speak on behalf of those members of staff employed by the States of Jersey.

**4.4.5 Deputy A.E. Jeune of St. Brelade:**

May I just say as a new Member of this Assembly I seem to recall that in our very comprehensive induction programme we have had human rights addressed.

**The Deputy Bailiff:**

Is that a question, Deputy?

**Senator T.A. Le Sueur:**

I am grateful to the Deputy for pointing that out to me. Not being a new Member I was not present at those meetings but I am pleased to know they took place.

**4.4.6 The Deputy of St. Martin:**

I am pleased to hear some of the answers from the Chief Minister but I would be even more pleased if the Chief Minister had given assurance that he will liaise with the Council of Ministers to ensure that all States Members are given training in human rights awareness and some time, possibly within 2 months, he will come back with some information about what training is going to be undertaken.

**Senator T.A. Le Sueur:**

I can certainly discuss that matter with the Council of Ministers and if a training course is needed I will certainly put them on. Equally I hope that in that case States Members will attend those meetings.

**4.5 Deputy P.V.F. Le Claire of St. Helier of the Minister for Health and Social Services regarding the policy for overseas travel support for patients:**

Would the Minister advise the Assembly whether patients are required to provide the Health and Social Services Department with copies of their income tax forms in order to assess overseas travel support and if so when was this policy introduced?

**Senator J.L. Perchard (The Minister for Health and Social Services):**

The Deputy has today submitted both an oral and written question which cover exactly the same territory. I refer him to my detailed response to his written question. It is though worth repeating a few important points. My department has a travel policy which was introduced in 1998. The aim of the policy was to give financial assistance to Islanders who were required to travel to the mainland for specialist healthcare services. The travel policy sets out the criteria for the receipt of financial assistance. My answer to the Deputy's written question explains the circumstances in which a patient or client can or cannot receive assistance from the States. The 2007 revision of the travel policy introduced a requirement for a patient or client travelling to the mainland to provide

documentation which attested to his or her financial status. Such documentation might be a statement about the patient's or client's income support status or their previous year's income tax statement. Before the 2007 revision members of my staff had to somehow determine whether a patient or client had such eligibility. I am saddened to report that there were a number of blatant attempts by relatively wealthy people to suggest that they did not have the required resources to travel to the mainland. The 2007 policy revision requires a patient or client who wishes to receive financial support for travel to provide demonstrable evidence of their financial status. I believe this process works well. It is fair and is in the taxpayers' best interests. It also permits my department to apply a greater financial resource to the provision of free healthcare for all Islanders.

**4.5.1 Deputy P.V.F. Le Claire:**

Such a comprehensive answer, and I do thank the Minister because in the written answer he gave me this morning there is a lot of rationale behind the policy itself and obviously we want to ensure that people are not accessing taxpayers' money in the wrong way. But could I ask 2 points from this? The first one is what is the threshold that determines whether or not people are able to access free travel, and why does the department insist on knowing people's income when they are paying their own travel and making their own travel arrangements? What is the purpose of the department needing to know that?

**Senator J.L. Perchard:**

I have a comprehensive list of additional information which it is not appropriate to read out. I will share it with the questioner immediately and I am not aware that the department requests financial information from somebody who is prepared to resource their own travel. I do not believe that to be the case but I can check.

**4.5.2 Deputy P.V.F. Le Claire:**

Is it not possible for him to give me a general understanding of the threshold that the department sets in order for people to access travel?

**Senator J.L. Perchard:**

It is not. It depends whether it is a single person with children, with one child, 2 children, married couples. I have a whole page here which I will share.

**4.5.3 Deputy P.V.F. Le Claire:**

I appreciate the answer that he has given me. I would just like as a final supplementary to ask if that is confidential information and if it is not could he share it with all Members please?

**The Deputy Bailiff:**

I think an answer must be concise and I do not think it sounds as if ...

**Senator J.L. Perchard:**

Yes, I am happy to share information with regards to the thresholds to all Members.

**4.6 Deputy S. Power of the Minister for Economic Development regarding airlines' limits on hold baggage at holiday times:**

Would the Minister consider that a 20 kilogram limit on hold luggage is unreasonable at holiday times and if so would he undertake to persuade those enforcing such a limit to increase it to 30 kilograms during these times as part of the conditions to operate in and out of Jersey Airport?

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

I have delegated responsibility for the airport to Senator Routier, my Assistant Minister. I wonder if I could ask him to take the question? Thank you.

**Senator P.F. Routier (Assistant Minister for Economic Development - rapporteur):**

Hold baggage allowances vary from airline to airline and the amount people are entitled to before charges are incurred is dependent upon the type of aircraft used on a route and the maximum load a particular aircraft can carry. Airlines therefore apply network-wide baggage allowances and do not differentiate between varying routes. This is not a Jersey-specific issue and as a result Jersey Airport has limited ability to influence these global or even European baggage policies. Passengers are advised when making a booking what their permitted baggage allowance is and excess baggage charges imposed are also well documented. It remains the passenger's freedom of choice in selecting a flight and whether to keep within the permitted allowance or be prepared to pay any subsequent excess costs. While I am certainly prepared to contact our airline partners I realistically expect it to have little or no impact on their network-wide policies. Furthermore I would also urge caution in seeking to impose a different baggage limit specifically on Jersey routes which could have a serious impact on the airline's assessment of the Island as a financially viable destination, particularly in the light of the current instability and fragility of routes and services we are currently experiencing right now.

**4.6.1 Deputy S. Power:**

The Minister alluded to different types of aircraft and different airlines having different rules. There are airlines that only allow 10 kilograms on a 737 or an Airbus 320 and there are airlines that allow an unlimited amount. Is the Minister aware that a suitcase can weigh as much as 2 kilograms and that the net amount that is available would then be something that is between 15 and 16 kilograms? I would like the Minister to give an undertaking that he will hold discussions with those airlines that are restricting hold baggage limits to Jersey passengers. I would like him to give that undertaking.

**Senator P.F. Routier:**

I think in my answer I said that I was prepared to have those discussions. Each airline makes their commercial decision about the charges which they make. Certainly there are some airlines that advertise very low fares and then make up their costs through charging for bags and charging for paying for their seats or choosing the seats, so I mean everybody is aware when they book a seat of the conditions of the airline and I think to a certain extent it is 'buyer beware.'

**4.6.2 Senator S.C. Ferguson:**

Would the Minister not agree that further discussions are required with the airlines, for instance if you have a family travelling, a family of 4 with 4 suitcases and 2 suitcases are overweight and 2 are underweight you get charged for the 2 that are overweight, they do not net the whole thing into a family group. If you are ongoing and you are changing flights in London then you are given the higher allowance that the ongoing flight takes. Does the Minister not think that it is time to have a sensible discussion with the airlines about their attitude to baggage and the way the weights are applied?

**Senator P.F. Routier:**

The Senator makes a point which is very open in the way that the airlines do charge for their services for carrying bags. There are some airlines that do aggregate the weight of the bags and not everyone does, I understand that, but it is literally, as I said earlier, when you are buying a ticket for a particular airline you need to look at all the circumstances of the way that people charge. Some do charge as the Senator would prefer and others do not, but as I said earlier I am certainly prepared to speak to the airlines.

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

The Senator in his first response said that it is not a Jersey-specific issue, the baggage allowance. However I think for our university students it is a Jersey-specific issue and I am concerned that they are facing excess baggage when they go to university or return from it, particularly in view of the books that they need to carry with them, and I would ask the Senator whether there has been any discussion with the airlines and indeed with the Education Department or certainly the Minister regarding allowances for our university students?

**Senator P.F. Routier:**

I have had a discussion with one of the airlines about this particular issue and the response that I have had was that they advertise their fare structure and their baggage allowances and that is well known, and particularly in the case for university students Members may be aware that many students are taking the opportunity to post their extra luggage to the university ahead of the time that they are travelling. They keep within the airline limit when they take their luggage but if they are aware that they are going to be outside of the particular airline's baggage limit they arrange to post their excess luggage forward on.

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

A supplementary if I may. The Senator knows full well that I discussed this with him recently. The fact is that the airport has an advertising feature for the posting of baggage to the U.K. particularly aimed at students and yet when I spoke to one of the airport personnel they told me that it could not be displayed prominently because it would upset the airlines because they see it as competition to them and so frankly bearing in mind that Economic Development ...

**The Deputy Bailiff:**

Yes, the question.

**The Connétable of St. Lawrence:**

Okay, I am coming to my question, Sir. Will the Assistant Minister confirm that this has been reviewed and that in fact the advert is now being made more prominent at Jersey Airport?

**Senator P.F. Routier:**

The advertising of the postal service at the airport has been carried out in several ways. Certainly on local commercial radio there has been advertising and also in our evening paper. The control of the advertising around the airport is a contentious issue for all the airlines, not only the postal service but the competing airlines. We need to get some balance and fairness to the amount of adverts which are placed around the airport because if one service has priority over another there is obviously some controversy with that so I know that even between the airlines that is an issue, so we have to play fair to ensure that everybody has a fair crack of the whip, that they do have the ability to know what services are available and I think Members have it in their own hands to pass on that message that all the varying services are available within the airport building.

**4.6.5 The Deputy of St. John:**

One of my parishioners recently had to attend the U.K. for medical treatment. He on returning to Jersey was asked to pay because he was given a certain piece of equipment, similar to a shoe, and he had to carry this in his wheelchair. Will the Minister please take up through the airport, but also with the hospital, that people who attend the U.K. for treatment, if they are given special equipment, should not have to pay a fee for carrying that additional equipment back?

**Senator P.F. Routier:**

I will certainly ask the airlines involved if that is the case and see what can be done.

**4.6.6 Deputy G.P. Southern:**

Will the Assistant Minister for baggage handling or the airport inform Members whether the airport is now being run for the benefit of residents or for the benefit of airlines?

**Senator P.F. Routier:**

The airport is a strategic asset of the Island and it is there for the Island to benefit as a whole.

**4.6.7 Deputy J.B. Fox:**

I would ask if the Assistant Minister could arrange a meeting for those States Members wishing to attend because clearly we are not going to get down to the bottom of this subject today. The only thing guaranteed is the excess baggage policy. Everything else is subject to variation and therefore I would ask if we could have a meeting with the Assistant Minister and indeed the Minister to look at this in much more depth for the benefit of the public.

**Senator P.F. Routier:**

I am very happy to meet with any Members at any time.

**4.6.8 Deputy S. Power:**

I preface the question by saying Channel Islanders do not have the choices or availability of flights at U.K. mainland airports, and I suggest to the Minister that we are drifting into the area of absolute farce when somebody going on a camping holiday has to post their tent; somebody going on a motorcycle holiday has to post their helmet and some student based in the Channel Islands has to forward their books.

**The Deputy Bailiff:**

Coming to your precise question, Deputy.

**Deputy S. Power:**

The question is; would the Minister please comment? **[Laughter]**

**Senator P.F. Routier:**

I think we do take for granted ... we do have for the size of our community we have a superb network of airline services. **[Approbation]** To compare ourselves to the sister islands, we have a tremendous network service and we should be really pleased that we have that and we are very fortunate to have that. The contentious issue of excess luggage applies to every jurisdiction. If you look at the airline companies, which I have done in preparing for this question, if you look across all of their services across Europe they have conditions and, I repeat again, the conditions are there, open and people can see them and they need to, when they book a flight, abide by those conditions or pay the extra costs.

**4.7 Deputy J.A. Martin of St. Helier of the Minister for Social Security regarding appropriate replacements for H.I.E. Travel cards and free Active cards:**

Would the Minister advise the Assembly how many meetings, if any, have taken place with the Ministers for Transport and Technical Services, and Education, Sport and Culture, to bring forward proposals for appropriate replacement for the H.I.E. (Health Insurance Exemption) Travel cards and the free Active cards as charged by the States on 22nd November 2007, when adopting P.145 of 2007?

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

As Minister, I have not attended any meetings with the Minister for Transport and Technical Services or the Minister for Education, Sport and Culture in this respect. As far as I am aware, however, the obligations placed on the Minister for Transport and Technical Services and the

Minister for Education, Sport and Culture by P.145/2007 are being met in full. Individuals who hold a free bus pass as a consequence of H.I.E. status are currently covered by a Ministerial Decision made by T.T.S. (Transport and Technical Services) last year in February 2008, and are still eligible for free bus travel. Education, Sport and Culture are now providing a free Active card to any income support claimant who has successfully completed the exercise referral scheme. Regular discussions take place at officer level in respect of these 2 schemes and these will continue.

#### **4.7.1 Deputy J.A. Martin:**

I fully understand that we do have a new Minister and I do understand that the transition is protected until October this year. I am fully aware that with these 3 Ministries there is a lot of work to be done and I want the assurance that if this is not sorted out before October this year, when the transition falls away and the proposition P.145 falls away, that this will carry on until the appropriate meetings and appropriate other facilities are put in place for these people.

#### **Deputy I.J. Gorst:**

**[Interruption]** The Minister for Transport and Technical Services is probably trying to help me out. It is not for me to second guess. I am aware that the Minister is due to consider this issue. He might have considered it since I was informed of that fact. I am very supportive and did, in fact, support P.145 and very supportive that those who struggle with using money on public transport do have a scheme whereby they do not have to do that. I support the recommendations of P.145 and I, for one, will want to ensure that with regard to transport they are fully met. With regard to Education, as I indicated in my answer, it is my understanding that Education are now meeting the requirement of P.147 and will continue to do so for income support claimants, as I said, to successfully complete the exercise referral scheme.

#### **4.7.2 Deputy P.V.F. Le Claire:**

In the ethos of value for taxpayer; do free bus passes get handed out to everybody that is pensionable, and is there going to be any consideration of means testing in the future?

#### **Deputy I.J. Gorst:**

I think that really is straying outside of my particular area and is a question which should be addressed to the Minister for Transport and Technical Services.

#### **4.7.3 Deputy J.A. Martin:**

I think the Minister may be missing the point. What my concern is; yes, we are facilitating those who were covered by H.I.E. in 2007. All new entrants on income support, some of very low, much lower income than these people who are getting free bus travel and maybe free Active card, are not receiving them. Now, this needs to be sorted out and I would like the Minister for Social Security to say that it will be the top of his agenda and not T.T.S.

#### **Deputy I.J. Gorst:**

With regard to the Active card, it is my understanding that has been sorted out and that is now happening. If the Deputy has information to suggest that that is not the case then certainly I would wish to consider it because as far as I am aware that scheme is now operational. I can confirm that with regard to Transport and Technical Services, I am supportive of that and I continue to support a scheme where those, be they individuals who were holders of H.I.E. cards or be they individuals who are now claimants of income support and were not previously H.I.E. card holders - I am thinking particularly of clients with learning difficulties - I do support them having some means of free access to ... it may not need to be free, they may be prepared to pay for it, but some form of access to transportation that means they do not need to be carrying money with them because sometimes they have difficulty with using that.

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

Will the Minister put the sentiments he has just expressed of support into action and ensure that a replacement scheme for H.I.E. with the added benefits is put into place come October of this year when P.147 falls away?

**Deputy I.J. Gorst:**

I think I am getting a little bit confused of where one department starts and another one stops. I am not certain whether other Members are, but I am certainly prepared to take it up have meetings with both those 2 Ministers. As I say, perhaps the Minister for Transport and Technical Services knows slightly more about this than I do, but I can give that commitment.

**4.7.5 Connétable M.K. Jackson of St. Brelade:**

Would the Minister agree that he would be supportive of recommendations coming from the officer group who have met on the subject, that the Minister for Transport and Technical Services and myself continue or approve the continuation of the H.I.E. concessionary pass scheme with a review during 2009, and that checks be undertaken with Social Security on the renewal of each card and that the introduction of prepaid books of tickets to facilitate bus travel for those individuals who have difficulty in handling cash? Would he support those recommendations?

**Deputy I.J. Gorst:**

I have not seen those recommendations but from what the Minister has just told me, it sounds as though they are completely supportable but I would obviously need to give a little bit more of an in depth look at them.

**4.8 Deputy C.F. Labey of Grouville of the Minister for Housing regarding waiting lists for housing built on re-zoned land:**

Would the Minister confirm that he has established a policy with rational and consistent criteria for determining admission on to waiting lists for housing built on rezoned land?

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

Members will recall that I supported this part of the Deputy's proposition last year and I certainly intend to work with the Connétables in establishing these criteria. Members will know that I have commissioned a review of social housing provision in the Island and one of the key terms of reference for that review is the analysis of present regulatory structure and, importantly, allocation policies. It will be compared to regulations in other jurisdictions and a recommendation of a suitable framework for Jersey. Professor Christine Whitehead from Cambridge University, Centre for Housing and Planning Research is due to report shortly and that report will be issued as a Green Paper for extensive consultation. This will provide a platform for discussing the issue of allocation criteria with the Comité des Connétables, once Professor Whitehead's report has been presented to me. This should be in the next few weeks.

**4.8.1 The Deputy of Grouville:**

As the criteria had not been developed at the time of the rezoning debate, could the Minister explain exactly how and why the numbers of people on the waiting lists made up the Ministers urgent, desperate need for sheltered housing? In other words, how did he know they were desperate and needy if there was no criteria established at the time?

**Senator T.J. Le Main:**

I have been very clear with this Assembly and Members, that the Housing lists provided to Planning were actual cases registered with Housing that were live cases and still the same position today. They are real people in real need and nothing has changed.

#### **4.8.2 Deputy J.A. Martin:**

I would like to press the Minister for Housing because in the written response from the Constables, and we have had this debate, they have not compared their waiting lists with Housing's waiting list. I think what the Deputy of Grouville is trying to get at, we need to know how many are on the waiting list ... and because the information is not going from the Constables to the Housing Department, are their duplications? It is quite simple. Is the same person on the Housing waiting list on the Grouville waiting list, or on the St. Ouen's waiting list? Could the Minister agree to find this out urgently and let the House know?

#### **Senator T.J. Le Main:**

I am not prepared to find this out urgently. The position is quite clear that within a month, I hope, there will be this report from Professor Whitehead. Then we will be able to discuss with the Connétables and Members on the whole issues about the need and allocation and waiting lists. I am duty bound, at present, with not being able to give names and addresses to Connétables over the data protection issue, and I have been invited. I am not trying to make any excuses, Deputy Le Hérisier is saying, but as you know that I have had one or 2 problems with data protection [Laughter] and I am very careful of what I can and what I cannot do. But I have to advise this Assembly that there is an increasing amount of accommodation in the private sector ...

#### **The Deputy Bailiff:**

I am sorry, Minister. A concise answer I think to the question. I had seen the Deputy of St. Mary next.

#### **4.8.3 Deputy D.J.A. Wimberley of St. Mary:**

Would the Minister for Housing confirm that in the statistics produced by the Statistics Unit on housing and housing need, that there are projections forward of how many units we need in different categories and different types of household and the overall demand? Can he confirm that, and if not, what are the implications of this lack?

#### **Senator T.J. Le Main:**

I can confirm that there have been projections made over the next 5 and 10 years and the actual issue is that these projections are changing on a weekly basis. As I say, the issues are becoming more serious with the amount of accommodation in the private rented sector and becoming unsuitable for elderly people's needs and more people are coming and requesting parochial and States rental accommodation.

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

Will the Minister assure the House that Professor Whitehead's report will be based on accurate and sound numbers for this particular area?

#### **Senator T.J. Le Main:**

The information that will be coming forward as a Green Paper, the report, will have the support, as we always do, of the Statistics Unit and other States departments to provide up-to-date information.

#### **4.8.5 Deputy T.M. Pitman of St. Helier:**

Could the Minister just give assurances that there is no-one on this waiting list for urgent re-housing who might have just sold a property for £1 million?

#### **Senator T.J. Le Main:**

I cannot give any assurances such as that, but if any case came to the department we have to meet a financial criteria and they are for people in actual need - on very low incomes - and if the Deputy knows of any case that has come ... he has obviously asked that question, he may have some information, I would be very, very happy to chase it up. But certainly no one, as far as I am aware,

in all the years that I have been around Housing, would ever be housed on the basis that they have sold properties for that sort of money.

#### **4.8.6 Deputy J.A. Martin:**

Maybe I can help the Minister out, because what I think the Deputy is alluding to is the simple fact is we do not know who in the country Parishes do have half a million, £1 million houses and are in unsuitable, I may say, private accommodation. But unless they are going to share this information these people are being included on rezoned land and may be on the Minister for Housing's list. He needs to start talking somehow to the Constables because they are not in urgent need. They may be in urgent need of different accommodation but not social rented.

#### **Senator T.J. Le Main:**

I have to say I think that is an unfair statement pitting me to the Connétables because the Connétables know the people they are dealing with in their Parishes. I cannot think of any sheltered housing development in any of the Parishes or any of the Constables are going to house people that have just sold properties at a high price. The Constables and the Housing Department have a criteria that they will assist those in need, and the kind of people that the Deputy is speaking about, I am sure - and I cannot speak for the Constables - but I would respectfully say that the Constables know their clients, they know who they are dealing with and they certainly would not accept those kind of people on the housing lists.

#### **4.8.7 The Deputy of Grouville:**

The Minister has confirmed that he cannot speak for the Constables. There was no criteria at the time of the debate. He does not know whether the people on the Constables' waiting lists were the same people on his housing lists; would he not say that he misled this House at the time of the debate because he categorised everybody as in urgent, desperate need.

#### **Senator T.J. Le Main:**

Absolutely untrue. I still stand on what I said, that currently we have something like ... currently, right at the moment, 350 people that are urgently in need of accommodation to suit their medical and physical needs and 140 of those currently are on the urgent waiting list, and I am well aware that even the rezoned land would not even have met anywhere near what we have as requirements of the Housing Department. So I did not mislead the House. My officers have told me only yesterday again, that within the next 5 or 6 years there is an urgent need for housing themselves, to realign the stock and provide 400 units for retired and elderly people that have medical difficulties, apart from what has already been rezoned. I stand by my guns and I stand with the real people that I meet on a daily basis that need help.

#### **4.9 Deputy A.E. Pryke of Trinity of the Minister for Health and Social Services regarding the provision of care beds for the elderly in the Island:**

Will the Minister advise this Assembly what impact there would be on the provision of care beds for the elderly in the Island if the current U.K. health provider should cease operation due to financial difficulties?

#### **Senator J.L. Perchard (The Minister for Health and Social Services):**

There are 5 U.K. based providers of care beds for the elderly in Jersey. I suspect however that the Deputy's question is prompted by the informed press comment regarding the financial circumstances to one of these providers. I am pleased to advise the Deputy that my department has a contingency plan to manage the unexpected closure of any nursing or residential home in Jersey, be it a private provider, a charitable provider, an institution owned by Islanders or an institution owned by persons from outside the Island. This plan is based on practical and real experience

which the department gained some years ago when Bon Air Nursing Home suddenly closed. Much was made of this closure at the time and it was to the department's credit that the residents were transferred to other institutions, which included directly managed services, in a seamless transfer which took account of the wishes of clients and their families. The plan includes seeking additional capacity in other institutions and would include reprioritising care within the department to ensure that such residents at risk were placed in facilities which were safe and conducive to their needs. My department maintains a positive working relationship with the Jersey Care Federation which is the body that represents many of the institutional care homes in Jersey, and would very quickly become aware of any likely closure and therefore would make the necessary preparations to invoke the plan.

**4.9.1 The Deputy of Trinity:**

Could the Minister confirm if any financial check was done prior to any signing of contracts with health care providers?

**Senator J.L. Perchard:**

I am unable to confirm as to whether any financial checks were done of the parent companies of health care providers.

**4.9.2 Deputy P.V.F. Le Claire:**

Do those contingency plans that the Minister has spoken of include allocating clinical beds in the hospital to people who require care beds? Do clinical beds form part of that contingency?

**Senator J.L. Perchard:**

Yes, they would absolutely. All nursing and residential beds would form part of the contingency.

**4.9.3 Deputy R.G. Le Hérisier:**

Could the Minister confirm whether or not there is a financial viability study done before contracts are awarded to private providers?

**Senator J.L. Perchard:**

I thought that was the same question that the Deputy of Trinity asked. I am unable to confirm that but the previous Minister on my left advises me that there were, but I would need to check before I could give a categorical answer to the States and am prepared to do so.

**4.9.4 Deputy P.V.F. Le Claire:**

Given that clinical beds have recently been in short supply, are these contingency plans adequate knowing full well that the hospital has been stretched to the limit? Is a contingency plan that includes clinical beds not a contingency plan that is also stretched to the limit?

**Senator J.L. Perchard:**

With respect, the contingency plan is realistic. It probably would one day be found short.

**4.9.5 The Deputy of Trinity:**

I am very surprised that no financial check might have been done. Does he think it prudent in this day and age that there should be a financial check done?

**Senator J.L. Perchard:**

I refer the questioner to my exact answer.

**4.10 The Deputy of St. Martin of the Minister for Home Affairs regarding the involvement of the Association of Chief Police Officers in the Historic Child Abuse Enquiry:**

Will the Minister outline what the Association of Chief Police Officers role was in the historic child abuse inquiry; at what stage of the inquiry the Association became involved; whether it is still involved; its cost to date; and whether the Minister is satisfied with the Association's involvement?

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

The Association of Chief Police Officers was not directly involved in the historic abuse inquiry, however following contact between the local force and members of the Association of Chief Police Officers with the Association of Chief Police Officer's Homicide Working Group, a number of individuals were engaged to assist in providing advice to the local force in connection with the inquiry, which they did. The Homicide Working Group is no longer involved in any way in the ongoing inquiry. The costs involved were approximately £7,000 which, of course, formed part of the costs of the historic abuse inquiry. The Association's involvement is in an area which is being investigated and I cannot properly express an opinion.

**4.10.1 The Deputy of St. Martin:**

Could I ask the Minister why is the Association of Chief Police Officers not still involved with the investigation oversight of it?

**Senator B.I. Le Marquand:**

Well, they never were involved, as I understand it. With oversight they gave advice in relation to it and it was not thought that further advice is currently required.

**4.10.2 The Deputy of St. Martin:**

It is my understanding that the role of the Association of Chief Police Officers was to oversee the conduct of an investigation and that investigation is kept within guidelines. I do not know whether the Minister is able to answer this question, but given that the Chief Police Officer is suspended, has he been suspended because the investigation of historic child abuse inquiry was not within those guidelines?

**The Deputy Bailiff:**

As you are aware, discussion of suspension has to take place in camera. So I do not think you can ask the Minister to give detail of the reasons for the suspension.

**4.10.3 Senator S. Syvret:**

Has the Minister read any of the A.C.P.O. (Association of Chief Police Officers) reports, including their recommendations?

**Senator B.I. Le Marquand:**

No, I have not, and the reason for that is because I felt it desirable - and that is the advice I have been given - that I should distance myself from investigating this, at this point. It is currently part of a matter under investigation which I will subsequently have to judge and it is thought better if I wait until later.

**Senator S. Syvret:**

I take it from that answer that the Minister would not like me to furnish him with copies?

**Senator B.I. Le Marquand:**

Thank you very much for the offer, but I would not want to read them at this stage.

#### **4.11 Deputy P.V.F. Le Clare of the Chief Minister regarding the need for passports when travelling to the United Kingdom from 2014:**

Would the Minister advise whether passports will be required to travel from Jersey to the United Kingdom from 2014 and what negotiations, if any, have occurred between the Chief Minister's Department and the U.K. on this matter?

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

The Ministry of Justice informed Jersey on 18th December 2008 of proposals in the Draft Borders, Citizenship and Immigration Bill which could amend the Immigration Act of 1971, that is the U.K. Act. The Ministry of Justice advised that the draft Bill was to be introduced to Parliament in January and requested the comments of Jersey's Government. The change is part of a U.K. Policy to enable the Borders Agency to increase vigilance at the U.K. borders, for example, with regard to the movements of suspected criminals and terrorists, including movement between the U.K. and Ireland and between the U.K. and the Crown Dependencies. The U.K. will propose that any passport checks carried out would only be on an *ad hoc* intelligence-led basis. However, the potential for permanent fixed controls would exist. The Government of Jersey has replied through the official channel to say that it is opposed to such proposals with further discussions on anticipated official level and we will continue to press our case. The Bill is at a very early stage of consideration and will be subject to numerous amendments before it is finally brought to a debate in the House of Lords, and after that it will have to go through the House of Commons. The opposition of the Jersey Government may be taken into account at any stage in the process. It is, however, impossible to say at this point what any legislation may finally contain and whether or not passports will be required for travel from Jersey to the U.K. from 2014.

##### **4.11.1 Deputy P.V.F. Le Claire:**

I am delighted to hear the Chief Minister saying that the Government of Jersey, under his leadership, is opposed to these proposals. Although they are still in the early forms of being agreed, they do represent a serious impingement of the freedom of people of the Channel Islands, and would this also include an impact perhaps of what has been effectively agreed under Protocol 3 of the Treaty of Rome?

##### **Senator T.A. Le Sueur:**

Certainly the matter does impinge on the common travel arrangements which currently exist and that will have to be taken into consideration as part of our submissions and part of the deliberations in the House of Lords.

##### **4.11.2 Deputy P.V.F. Le Claire:**

Subsequently to that may I ask a supplementary question? If there are going to be negotiations in regards to the freedom of movement of Channel Islanders to and from the United Kingdom bearing passports, if those discussions are opened up will there be discussions in relation to the stamps that are currently being displayed within Jersey passports; not only those who have historically been living in Jersey but those are now finding themselves third or fourth generation in Jersey and their children are finding those restrictions in their passports. Will that not also be an opportunity and a time to discuss that matter given that we have always said there has been a reluctance to reopen Protocol 3?

##### **Senator T.A. Le Sueur:**

I suspect that that issue would be very much peripheral to the main arguments. I have to point out that this is U.K. draft legislation and the U.K. draft legislators and the select committee looking at this will perhaps be less interested in Jersey-particular arrangements in respect of Protocol 3. The point of issue here, which I think is a far more fundamental one, is the right of entry to and from the U.K.

**4.12 Deputy G.P. Southern of the Minister for Treasury and Resources regarding the deferral of “20 per cent means 20 per cent” taxation proposals on middle and high earners:**

Would the Minister agree that having given an undertaking during his election campaign to give further consideration to delaying the start of ‘20 means 20’ taxation proposals on middle and high earners, and in the light of the impact of the recession on the economy, a deferral of this measure could help to boost the economy and, if so, what action, if any, will he be taking?

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

I have given consideration to the issues of ‘20 means 20.’ As I explained to the Assembly at the last sitting, I plan to first seek the advice of the Fiscal Policy Panel to determine whether economic conditions this year justify us taking action to boost the economy by using the Stabilisation Fund. Assuming that the panel indicate that this is the case they have already stated that in determining what action is required we should assess the options on the basis of 3 Ts. They must be timely, targeted and temporary. My preliminary view is that delaying the introduction of ‘20 means 20’ does not and will not meet the requirements of the 3 Ts. ‘20 means 20’ affects higher earners in Jersey. The fiscal stimulus packages being developed by governments around the world target those groups most likely to boost demand the most. General tax cuts have lower multipliers and this does not meet that test. Delaying ‘20 means 20’ would also struggle, I am afraid, to meet the timely objective. The nature of our tax system where we pay in arrears would mean that at this stage it would be very difficult to delay the impact to boost the economy immediately, i.e. this year. Delaying ‘20 means 20’ also means that a decision would turn out perhaps not to be temporary as it is sometimes difficult for the States to reverse decisions such as that and there would be a temptation to prolong and delay the introduction of ‘20 means 20.’ I am determined that we take the best advice based on sound empirical evidence for the most effective fiscal stimulus to the economy and the people of Jersey.

**4.12.1 Deputy G.P. Southern:**

Does the Minister not agree that a simpler way to boost the economy rather than by piling money into the economy from his Stabilisation Fund is not to take the money out of the economy via taxation, and in the light of the now approval that the reduction in V.A.T. (Value Added Tax) is receiving in the U.K. as an effective measure, would he also consider removal of G.S.T. (Goods and Services Tax) on food and children’s clothing.

**Senator P.F.C. Ozouf:**

I suggest the Deputy carries out a little bit more research on what the economists around the world are suggesting works as far as the fiscal stimulus package. I would draw the attention of the Deputy to what the I.M.F. (International Monetary Fund) said, that in current circumstances spend increases as in targeted tax cuts are likely to have higher multiples, rather than general tax cuts or subsidies. I suggest that the Deputy reviews what other governments are doing, notably France yesterday in terms of fiscal stimulus package, rather than announcing populous gestures on the floor of this Assembly.

**4.12.2 Deputy G.P. Southern:**

I presume then the Minister has not read the Institute of Fiscal Studies approval of the reduction in V.A.T. in the U.K.?

**Senator P.F.C. Ozouf:**

I have actually. I would draw the Deputy’s attention to other commentators who are casting some doubt on the whole issue of the reduction of a general cut in V.A.T. and also I would draw the

attention of the Deputy of the other measure that the United Kingdom Government have made; not only cutting V.A.T.

**4.13 Deputy R.G. Le Hérissier of the Minister for Health and Social Services regarding lessons learnt following the death of a patient during an operation:**

Would the Minister outline the lessons, if any, that have been learnt following the tragic death of a patient while undergoing an operation?

**Senator J.L. Perchard (The Minister for Health and Social Services):**

I am sure that all Members will join with me in expressing sadness at the unexpected death of Nurse Elizabeth Rourke following a routine surgical operation on 17th October 2006. I know she is remembered by her colleagues at the Jersey General Hospital with great affection. I am sure that all Members would also understand the predicament which many of the staff at the Jersey General Hospital have had to endure for the last 2 years. The staff during the criminal investigation have had to continue to provide a professional service to patients and clients, and yet have not been able to be informed about or talk about the circumstances which resulted in the death of their colleague. The General Hospital is proud of its record of providing health services to the people of the Island for countless generations. While the Hospital provides a high standard of healthcare to Islanders, the staff working there are professional people who understand that they must always strive to improve upon what they do. I assure Members there is no place for complacency in this department. Our surgical services were improved prior to 2006 with the development of the new Day Care Surgery unit at a cost of £7.6 million. At this time a £2.2 million refurbishment of the Central Sterilisation and Supplies Department at Five Oaks took place - significant investment. We hope to make further investments in the future, particularly if the recommendations of the independent review which will be carried out should identify further changes to be necessary. I do recognise that the improvements made in the past years and improvements which may be required in future years provide no comfort to Mr. Rourke's family. States Members need to be mindful of 3 actions which will take place in the coming weeks. The first, I am advised is that the Deputy Viscount will reconvene the inquest into the death of Mrs. Elizabeth Rourke. The second is the commissioning of an independently-led inquiry. This independent review is where there will be, to use the questioner's phrase "lessons to be learnt." The third is that an external review will consider whether the policies and procedures of my department might have been broken. If so; who might be accountable and what procedures were broken. States Members will appreciate I cannot say anymore on this subject at this moment.

**4.13.1 Deputy R.G. Le Hérissier:**

Notwithstanding the excellent work and the sense of sadness we all feel about this, would the Minister confirm whether or not he is fully satisfied with the governance procedures in operation? Second, would he not say that for the Chief Executive to state the day after the court case that all procedures were validated was, at the very best, very unwise? Thirdly, would he not say in the constant confusion about responsibility and accountability that to announce an independent investigation is to totally miss the point?

**Senator J.L. Perchard:**

I find the first point of the 3 questions, and the third point of the 3 questions, raised by the questioner contradictory. We need to get to the bottom of this. We need to understand what has happened, and the only way to do that is to handle this through an independent, transparent, rigorous inquiry, and that is what I intend to do.

**4.13.2 Deputy R.G. Le Hérissier:**

Would the Minister confirm that he has abandoned the idea of an internal investigation because it will be people who themselves whose names, rightly or wrongly, have been besmirched will be conducting the inquiry?

**Senator J.L. Perchard:**

I will, if the questioner permits, be making a statement in about half an hour on this very subject.

**4.13.3 Senator S. Syvret:**

Could the Minister explain to the Assembly why were anxieties about the locum's abilities not passed on to all of her relevant colleagues? Also, why was the Medical Director appointed as the case manager when, in fact, he had been a key actor in the incident himself?

**Senator J.L. Perchard:**

Unlike the Senator, I am unaware of the actual facts surrounding this matter. I intend to pursue the facts of this case through an independent, rigorous inquiry and that will be seen to be transparent, open and just and I will presume nothing until the results of that inquiry are made public.

**4.13.4 Deputy P.V.F. Le Claire:**

Would the Minister, when he undertakes this independent inquiry, also undertake and provide to the Assembly full disclosure of what the findings are in these regards and also at some point in time explain to Members how contradictory answers are given to the media and then corrected when the media presents accurate information presented in court? How is it that the Chief Officers are saying one thing and then when confronted with evidence are then retracting those statements and saying something else? But more importantly ...

**The Deputy Bailiff:**

That is your question then, Deputy.

**Deputy P.V.F. Le Claire:**

One last second, Sir. More importantly, if the policies are going to be checked to see if they are broken can they also be checked to see if they are robust?

**Senator J.L. Perchard:**

If the questioner is referring to an *Evening Post* report quoting different people saying different things, I will leave it at that.

**Deputy P.V.F. Le Claire:**

He did not answer the second part of my question which was, are these findings to be made transparently available, fully disclosed to States Members? Also ...

**The Deputy Bailiff:**

I think you asked whether they were robust.

**Deputy P.V.F. Le Claire:**

With respect, Sir, I did say that leading up to the robust part, which he did not answer either. Will his policies be investigated to see if they are robust and will the reports be issued unedited to States Members and the public?

**Senator J.L. Perchard:**

There will be a robust inquiry into all the circumstances surrounding the death of Elizabeth Rourke. I can only repeat my intention to make this a transparent and open inquiry and there will be no hiding place for anybody.

**4.13.5 Deputy R.G. Le Hérisssier:**

Can the Minister assure us that the self-restraint he has imposed upon himself is a policy he would wish imposed upon all managers, so no premature statements are made in these kinds of situations?

**Senator J.L. Perchard:**

I would be delighted to confirm that that will be made obvious when I make my statement.

**4.14 The Deputy of St. John of the Minister for Treasury and Resources regarding staff purchase cards:**

Could the Minister advise the Assembly why so many States employees have purchase cards, the value of spend allowed on each card and whether there have been any instances of abuse by States employees in the last 5 years and if so, how many cases and to what value?

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

Purchase cards were introduced in the late 1990s to reduce administrative costs, specifically to reduce the significant cost of processing literally hundreds, if not thousands, of invoices on low value items. Generally, purchase cards are considered to be an effective and efficient way to purchase certain items, such as travel costs, airline tickets, low value items and things like stationery. But, as we roll-out more centralised procurement policies to save money across the States the need for staff to hold purchase cards will diminish. The use of them is, however, very strictly controlled. Firstly, managers must authorise the issue of each card. Secondly, a limit is set on the value of each transaction for each card. Thirdly, a limit is also set on the monthly spend for each card. Fourthly, receipts must be retained for all purchasers and finally, and most crucially, every transaction on every card must be authorised by the relevant manager. I can advise that there has been one recorded incidence of abuse since the purchase cards have been introduced. Money spent using a purchase card is, of course, subject to rigorous procedures. As the States continue to seek the best value for money and the most efficient ways to operate, departments will continue to review and change existing procedures and change them as appropriate.

**4.14.1 The Deputy of St. John:**

Given that the Minister, himself, has mentioned we have a Central Purchasing Department, can he please justify and give us the actual number of cards because when we put the Central Purchasing Department in place it was to prevent this type of thing, loads of people having to go and purchase various items. It was all supposed to come from the centre.

**Senator P.F.C. Ozouf:**

There are 1,600 cards across the States of Jersey in operation 700 in Health and 500 in Education, are the biggest users. They were brought in at the time when the central stores were shut down which was effectively, I think I recall a budget cost of about £600,000. Over the last few years there have been significant new initiatives in order to save money. One of the things... and since the media report on the cards, I have reviewed the arrangements for cards and the whole procurement strategy and what I have to say is we are in somewhat of a transition. The Central Procurement Department under the excellent leadership of the manager is reviewing all States purchases, identifying where we can save money, looking at where individual transactions are spent, looking at how we can get in place better procurement arrangements for individual items. There is a wealth of information being gathered from the procurement cards which are going to inform us to get better deals and get better value for money.

**4.14.2 Senator S.C. Ferguson:**

Given the lack of a good States-wide fraud policy as highlighted by the P.A.C. (Public Accounts Committee) can the Minister be sure of the evidence supporting his assertion?

**Senator P.F.C. Ozouf:**

I am surprised that the former chairman of the P.A.C. would even suggest such a thing. I have explained very clearly in my answer the rigorous procedures that are in operation for each card, each review of every transaction, and I have confidence in departmental managers across the States of Jersey to ensure that.

**4.14.3 The Deputy of St. John:**

Can we have details of the misuse of the credit card and the outcome?

**Senator P.F.C. Ozouf:**

I am happy to share that with the Deputy in confidence. I would need to know the full circumstances of the area. But can I assure the Deputy that there are rigorous new plans and tough targets in place for States procurement of which the use of purchase cards - not credit cards - is designed to ensure.

**The Deputy Bailiff:**

There were 2 questions put to the bottom of the list because Deputy Pitman was detained, so Deputy would you like to put question 4?

**4.15 Deputy T.M. Pitman of the Minister for Chief Minister regarding an inquiry into the suspension of the Chief Officer of the States of Jersey Police:**

I would like to thank the House for its understanding in moving the questions and also thank my wife for carrying me up Bonne Nuit Hill. In the light of allegations of evidence relating to the suspension of the Chief Officer of the States of Jersey Police being destroyed by the States Chief Executive Officer, will the Chief Minister immediately implement a full independent inquiry and suspend the Chief Executive Officer until such an inquiry is completed?

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

The short answer is no. I do not consider it necessary to implement a full independent inquiry into the issue referred to in the question. The handwritten notes taken at the meeting in question were subsequently used to produce a typed document which was then countersigned by the former Home Affairs Minister and distributed to all 3 persons who had been present at the meeting. The handwritten notes were subsequently destroyed. This is perfectly normal procedure in relation to employee disciplinary or grievance hearings in the public sector.

**4.15.1 Deputy T.M. Pitman:**

With due respect, in making such replies and in issuing statements about mischief-making, does the Chief Minister not accept that he really misjudges the seriousness with which the public view this and, in fact, it will just be viewed as a smokescreen for him perhaps not possessing the political testicular fortitude for suspending the C.O. (Chief Officer).

**Senator T.A. Le Sueur:**

No, I do not believe I do misjudge the public and I believe that if the public were aware of the facts, as I have just outlined them, they would not be at all concerned.

**4.15.2 The Deputy of St. Martin:**

I heard the Chief Minister say that the typed document was signed by obviously the Chief Officer and also by the Minister and passed on to the 3 people involved. But was the draft signed by the third person involved? In other words, did the third person agree with what had been typed?

**Senator T.A. Le Sueur:**

In view of the fact that the matter is still under consideration from a disciplinary point of view, I do not think it would be appropriate for me to comment on the reaction of the suspended Chief Officer.

**The Deputy of St. Martin:**

I would have thought it was quite a straightforward question. Was it signed or was it not?

**Senator T.A. Le Sueur:**

I have nothing to add to my previous answer.

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

The Chief Minister said that it is perfectly normal procedure when conducting disciplinary hearings to circulate notes from typewritten drafts from handwritten drafts and then to destroy the notes before the typewritten minutes are agreed; does he stand by that statement? Is he not aware that the normal procedure is to check that all parties have agreed that the minutes represent a fair comment?

**Senator T.A. Le Sueur:**

I rephrase that that is the procedure which is currently adopted throughout the States in regard to disciplinary proceedings. I am happy to review those and agree that those procedures need to be reviewed on a regular basis. If they require updating they will be but certainly what was carried out here is in compliance with the normal procedures currently in force.

**4.15.4 Deputy P.V.F. Le Claire:**

Could the Chief Minister circulate to Members the procedures that are written that outline this practice please so that we can establish for our own minds what has been written down and what is the practice and what is the policy? Can he also let us know at what time that was agreed, how was it agreed, where it was agreed, who drew them up, so we can see where the policy exists in writing that this is the common practice?

**Senator T.A. Le Sueur:**

Practice evolves over a period of time. I shall endeavour to find out what is available in written form to submit to Members. I cannot guarantee at this stage how comprehensive that would be.

**Deputy P.V.F. Le Claire:**

Are there no guidelines?

**4.15.5 Deputy M.R. Higgins:**

Can I ask the Chief Minister, when the former Minister for Home Affairs signed the written document that he referred to, did he also have sight at the same time the handwritten notes? Was he comparing the handwritten notes with what was on the typewritten notes?

**Senator T.A. Le Sueur:**

I cannot speak for the former Minister but I believe that was the case.

**4.15.6 The Deputy of St. John:**

I refer back to a yes or no answer; did the 3 people concerned all sign the document?

**The Deputy Bailiff:**

That has already been asked, Deputy.

**The Deputy of St. John:**

It was not answered, Sir.

**The Deputy Bailiff:**

It is up to the Chief Minister whether he wants to change his answer.

**Senator T.A. Le Sueur:**

The document was signed by the Chief Executive and the Minister for Home Affairs, it was not signed and it would not be expected to be signed by the suspended Chief Officer.

**4.15.7 Senator S. Syvret:**

In a matter of such gravity as the suspension of the Chief Officer of the States of Jersey Police Force, really does the Chief Minister not find it extraordinary that such a piece of evidence as the contemporaneous handwritten notes was destroyed, especially as I have learnt in the course of the last 2 years that one of the very first things the police want and require on an evidential basis are the handwritten notes of any meetings or discussions that have taken place? **[Approbation]**

**Senator T.A. Le Sueur:**

I do not find it extraordinary at all. I agree a full record of what happened at the meeting was required and is required and is available in identical form and, you would think, far more of use than some illegible ... I must not cast doubt on people's handwriting, but some more illegible handwritten form.

**The Deputy Bailiff:**

I am afraid that completes matters as the time has now expired for questions. We come to Questions to Ministers Without Notice and the first period.

**The Connétable of St. Brelade:**

If I may, I know that Deputy Pitman did ask me a question. I am happy to circulate those figures round for his and Members' benefit.

**The Deputy Bailiff:**

Very well, thank you.

**Deputy T.M. Pitman:**

I think the Minister for that.

**The Deputy Bailiff:**

We come first to the Questions Without Notice to the Minister for Education, Sport and Culture.

**5. Questions to Ministers Without Notice - The Minister for Education, Sport and Culture**

**5.1 The Deputy of Grouville:**

Jersey's most celebrated poet since Wace and certainly our most published currently lives on the breadline. He is in urgent desperate need, to coin a phrase, of help from his home island. Would the Minister investigate how he can be helped, sponsored or given some acclaim in recognition from his native home?

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

It distresses me to hear that any individual is suffering financial difficulties at this time and I would ask that the Deputy of Grouville speaks to me directly afterwards so that myself and perhaps other Ministers that provide financial support can help this particular individual.

**5.2 The Connétable of St. Helier:**

Could the Minister give us his views on the current opening times of the Jersey Archive given that it is supposed to provide access to information and to the many documents which have been placed

there by members of the public and public authorities? In case he does not know, the Jersey Archive is only open on Tuesdays, Wednesdays and Thursdays. People using it are required to leave the building during the lunch hour. It is open, I believe, one evening a month until 7.00 p.m. Does he believe these times are adequate and would he look sympathetically on any request to find the additional resources required to provide a greater degree of opening for our major archive?

**The Deputy of St. Ouen:**

First of all, I am aware of the Archive opening times, and I equally am aware that in, I believe, the Constable's strategy he flagged this up as an issue. If we are to provide archive facilities that need certain rules and regulations, one of the issues is that the opening times need to be extended. However, it has equally been drawn to my attention that in order to do this the Archive needs additional funds and currently we are looking at how or if indeed we are able to fund the additional opening.

**5.3 Senator B.E. Shenton:**

The Education Department currently has a policy of means testing university funding but nursery care is not means tested. Will the Minister be looking at bringing in a more consistent policy throughout education?

**The Deputy of St. Ouen:**

Even in the recent months, I am well aware of the concerns that parents and others have raised regarding university fees and the cost of educating our children at higher education. It is an area that I am paying particular attention to. I have recently just received a copy of the last major consultation that took place with the general public in this matter and I am going to be working in conjunction, not only with my department, but with Guernsey and the Isle of Man to see whether or not some of the issues that this Island faces cannot be addressed.

**5.4 The Deputy of St. Martin:**

During the last oral question time the Minister gave an undertaking to provide Members with the department's suspension policy and I thank the Minister for circulating on it. On reading the policy, would the Minister not agree that the policy is not in what I would call parent or even school user-friendly mode, and it would be beneficial if both parents and schools were issued with a much more user-friendly policy? If, indeed, the parents and schools knew exactly what their rights and responsibilities were at the outset of a suspension, policy requirements could be adhered to. If the Minister agrees will he take steps to ensure that such a user-friendly policy is drafted without any further delay?

**The Deputy of St. Ouen:**

I would like to draw the Deputy of St. Martin's attention to the answer to a written question that was provided today based on a question raised by the Constable of St. Lawrence and, indeed, part D confirms that, as I have already stated, that this year I will review the application of the suspension policy and the guidance provided to schools. This is quite clearly an area that the Deputy has had his attention drawn to and I, likewise, would like to see greater clarity in this area.

**5.5 Deputy G.P. Southern:**

Will the Minister inform Members what the state of the current salary negotiations is with representatives of Teachers' Unions and will he assure Members that he will work through the States Employment Board to progress these negotiations to prevent further erosion of salaries?

**The Deputy of St. Ouen:**

I am aware that presently the salary negotiations are still ongoing with the Teachers' Union. I am unclear of the States position regarding the increase in pay awards that the States have chosen to

follow. I, for my part and the department's, will continue as always to discuss with the Teachers' Union how best we can deal with this.

**5.5.1 Deputy G.P. Southern:**

Is this not the correct word to use that the pay negotiations are stalled rather than ongoing?

**The Deputy of St. Ouen:**

I do not believe that is the case.

**5.6 Senator S.C. Ferguson:**

Following on from that, will the Minister undertake to review the measures by which the performance of teachers are evaluated which could well lead to the possibility of having differential salaries for better teachers and improving the performance in our schools?

**The Deputy of St. Ouen:**

I find that quite a strange question because I firmly believe that the performance in our schools is very good. We have demonstrated that year on year. Equally I am also aware that the teachers themselves are always seeking to improve the methods and the curriculum and all the other areas that go to support our young people, and in many respects the improvements are driven by the teachers themselves. I would suggest that the department will continue in its own inimitable manner as it has done in the past.

**5.7 Senator S. Syvret:**

The Minister is Minister for Education, Sport and Culture. Quite rightly, we are very proud of our sporting success and the amount of sporting activity engaged in by Islanders. Again, quite rightly, a very substantial amount of money gets spent year on year on sporting facilities and supporting sports people. Will the Minister not therefore undertake to, perhaps in co-operation with the Deputy of Grouville, look urgently at the possibility, using the culture part of his portfolio, to examine the possibility of establishing some kind of stipend or honorarium for the poet referred to by the Deputy, a man who has won the Somerset Maugham Award, who is clearly the greatest indigenous writer Jersey has produced since Wace? It really is quite preposterous and disdain, I think, that we are not supporting him in some way.

**The Deputy of St. Ouen:**

I would love to comment further, but indeed I do not and have not been made aware of this particular issue. I underline the commitment that I gave earlier to the Deputy of Grouville to deal with this matter. Thank you.

**The Deputy of Grouville:**

Could I just say the department has been aware of this.

**The Deputy of St. Ouen:**

I have not been notified and it is unfortunate the Deputy of Grouville could not email me or copy me into that information.

**5.8 The Connétable of St. Clement:**

I heard on the radio this morning that despite the weather our schools were to be open today. A few moments later I heard on the same radio that school buses were to be cancelled. Could the Minister comment on this apparent lack of co-ordination?

**The Deputy of St. Ouen:**

I would like to show you that the co-ordination between both the Met Office, the Education Department, indeed Transport and Technical Services, and Connex has been extremely good;

however, firstly, I would obviously like to apologise for any inconvenience caused to individuals faced with the weather conditions we saw this morning. The department has kept in regular contact. Indeed, we did have information early on because we wanted to make parents aware, and children, of whether the schools would be open or not, that the buses were running. Consequently, it was noticed when the buses started going out that indeed this was not the case. Also, that there were areas on the Island that were far worse than others. Again, I just apologise to the inconvenience caused, but it is obviously our department's responsibility to ensure that children get educated where possible. Thank you.

**5.9 Deputy S. Pitman of St. Helier:**

In the recent report the Comptroller and Auditor General recommended that the Youth Service budget could be reduced by £500,000. Does the Minister support this conclusion and will he give assurances that he has no intention to move youth provision into school premises as an excuse to then sell off a number of youth centres, saving the department money?

**The Deputy of St. Ouen:**

Two parts to the question: first of all, I do appreciate that the Comptroller and Auditor General did raise the fact that he suggested that there could be a reduction in expenditure within the Youth Service; however times have moved on. I would point the Deputy and others to the recent Williamson Implementation Plan, which flags-up the issue that our Youth Service should play a major part in working with other agencies to support young people. As such, I will be working with the Minister for Health and Social Services and others to ensure that the proper provision for our young people, especially those perhaps that we class as hard to reach, is provided.

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

Many of our university students have to take out student loans to enable them to manage financially on the mainland and I believe it is a Jersey-specific issue that we have to export them, as it were. I am concerned, to go back to earlier questions regarding the excess baggage issues, and I ask whether the Minister will undertake to have direct discussions with the Assistant Minister, whose responsibility is the airport, to explore the possibility of reducing excess baggage charges for our students as we have no university provision on the Island. Thank you.

**The Deputy of St. Ouen:**

I am well aware of the difficulties faced by students coming to and fro. I am more than happy to discuss with the Assistant Minister, and indeed the Minister, for the Economic Development Department to see whether or not we could introduce or discuss with carriers the opportunities to provide a discount or a provision for our students. Thank you.

**5.11 Senator P.F. Routier:**

Does the Minister share the view that Liberation Day is an important cultural day? Will he do everything he possibly can to enhance our national day?

**The Deputy of St. Ouen:**

Absolutely. One of my aims, I hope, over the next 3 years is to increase - for want of a better word - pride in who we are and a greater understanding in how we arrived here. Part of that obviously includes Liberation Day and understanding the occupation and the effects that that had on this Island and the wider issues with obviously the concentration camps and all the suffering that was had, if you like, at that particular time. Indeed, Liberation Day, as far as I am concerned, is a very important day. I would like to see, and I think the Deputy of Grouville had a view, that we should look at extending that particular day to encompass perhaps a Jersey week. Any ideas obviously will be very welcome. Any individuals that would like to promote a greater understanding of Jersey people and who we are please contact me.

**5.12 Deputy R.G. Le Hérissier:**

Apropos the figures issued by the Minister this morning, would the Minister explain why there has been a fairly rapid rise in suspensions, and would he confirm that suspensions are on average the same across all the schools, or are there any major disparities in terms of how certain schools deal with suspension?

**The Deputy of St. Ouen:**

I do believe that the table that has been provided needs to be interpreted properly and that although it could be argued that the number of suspensions has increased over a 3-year period, you have to understand that we are talking about in total over 3,000 children involved. Suspensions are a temporary measure designed to help both the school, the pupil, the parents, to step back, consider the issue and deal with it. As such, I believe that we are doing and utilising suspensions in a proper manner. Are there differences between schools? I do not believe that there are large differences; however, as I said before, I am undertaking a review of how this policy is applied to ensure that where possible we have an equitable system across all schools. Thank you.

**Deputy R.G. Le Hérissier:**

Just to confirm, can the Minister therefore confirm that as far as he is aware suspensions are on average the same *pro rata* in all the secondary schools?

**The Deputy of St. Ouen:**

As far as I am aware, within certain parameters, suspensions are of a similar amount, thank you.

**Deputy R.G. Le Hérissier:**

What are those parameters?

**The Deputy Bailiff:**

I am sorry, time has now expired for questions to the Minister. We come then to questions for the Minister for Health and Social Services.

**6. Questions to Ministers Without Notice - The Minister for Health and Social Services**

**6.1 Deputy J.A. Hilton of St. Helier:**

It is my understanding funding for the Jersey Psychology Service was promised and assured by the Chief Executive Officer in May 2008. I understand the funding has been withdrawn. Can the Minister explain how he came to this decision and whether he is prepared to change his mind in light of the appalling impact it will have on the Island's most vulnerable adults and children?

**Senator J.L. Perchard (The Minister for Health and Social Services):**

I met with representatives from Autism Jersey last week and informed them of the financial dilemmas and prioritisation process that happens within our department. Unlike the suggestion made by the Deputy in her question, there was no promise made. Having said that, there is a general acceptance by my department and certainly me that psychological counselling services for autistic young people and adults is a priority. We need to find the resource to enable this provision. There is no immediate source available. I will endeavour to work with my department to access such a resource so that we can deliver this very important counselling service. I have been working closely with Autism Jersey on this and it is my intention to try and assist, but we are limited by resources. We do not have an unlimited financial resource.

**6.1.1 Deputy J.A. Hilton:**

Just as a follow on, is the Minister able to give an assurance that he will come back to the House within 3 months and indicate whether or not he has found where he is going resource this very important service?

**Senator J.L. Perchard:**

I will give an assurance that I am going to do my utmost to find the necessary resource to supply the service and I intend to do that. I understand. I have worked closely with autism. I understand the problems they have. I have done the S.P.E.L.L. (Structure, Positive, Empathy, Low Arousal, Links, Attendees) training with Autism Jersey. I want to support those with special needs and autistic people and disabled youngsters in their transition from Mont à l'Abbé into Adult Services. We just need to find the resource.

**6.2 The Deputy of Trinity:**

Does the Minister and all his officers meet regularly with the board and Chief Executive for Family Nursing Services? If they do, was the issue of transfer of health visitors to Health and Social Services discussed?

**Senator J.L. Perchard:**

I have not met, since becoming Minister, with the board of Family Nursing and Homecare, probably for obvious reasons; they have been otherwise occupied. I have, however, been in regular communication, either by email or on the telephone, with the Chairman of the Board. I am not prepared at this stage to discuss contractual relationships with the Deputy across the floor of the Chamber. They are relationships that I will have with Family Nursing and Homecare when they are appropriately geared-up to have proper service level agreements with our department.

**6.3 The Connétable of St. Helier:**

On a related point, the Minister recently attended an extraordinary general meeting with his Chief Officer called by Family Nursing and Homecare members and he will be aware that several million pounds of States expenditure goes into that organisation every year. Would he give a view on the prolonged suspension of the Chief Executive on full pay and without explanation of the grounds of that suspension? Will he be doing his utmost to bring about a speedy resolution of this deeply unsatisfactory situation?

**Senator J.L. Perchard:**

The Constable is aware that I was at the extraordinary general meeting called by certain members of the Association and heard the arguments being promoted. Health and Social Services allocates an inflation-proof grant each year to Family Nursing and Homecare. In 2008 the grant was just over £5.8 million. Yes, I am aware that the Director of Family Nursing and Homecare is currently suspended from duty. It is for the management of Family Nursing and Homecare to manage this matter. I do not consider that there is a role either politically or managerially for me or my department in this matter.

**6.4 Senator S. Syvret:**

The Minister is shortly going to publish his departmental response to the Williamson Report and perhaps the Howard League as well. Could he give the Assembly an assurance that these policy proposals will be published firstly in Green Paper form and that after a suitable period a public consultation and scrutiny the new policy package will be brought to the States as a projet for debate and approval?

**Senator J.L. Perchard:**

It is my pleasure to inform the Senator and Members that tomorrow the Williamson Implementation Plan will be laid on Members' desks. I am delighted that we have after this long haul reached a document where it has the approval of Mr. Williamson himself; Professor June

Thoburn, the Chair of the Jersey Child Protection Committee; approval of the Council of Ministers; and yesterday I met with Scrutiny and we went through the document in some detail. It will be on Members' desks tomorrow. I am absolutely delighted. There is a proposal being lodged also tomorrow for the Minister for Treasury and Resources to bring forward funding proposals for 2009. We intend to instantly kick-start the reaction to the Williamson Plan, subject to States approval. We should be debating the resource implications for 2009 by the end of March or the very first week of April.

#### **6.4.1 Senator S. Syvret:**

A supplementary; I really have to press the Minister. What he has just suggested about a debate for funding is putting the cart before the horse. I do not think the Assembly, nor the public, given the controversy, really need a debate about the funding at this stage. What we need is, firstly, debate on the actual policy proposal package. Will he answer my original question and say will he bring a new policy package to this Assembly for approval?

#### **Senator J.L. Perchard:**

The Williamson Implementation is a structural reform of the Children's Services, which was long overdue. The consequences of the reforming of the Children's Service means a total reform of Social Services. It is a departmental decision that I will make. In my duty as Minister for Health and Social Services it is a departmental decision that I will deliver.

#### **Senator S. Syvret:**

To be clear, the Minister is saying that he is not in fact going to bring this policy package for remodelling of Children's Services and Social Services to the States for approval, which is quite an extraordinary state of affairs.

#### **6.5 Deputy R.G. Le Hérissier:**

Would the Minister confirm whether *New Directions* has become mis-directions or old directions? Does it have any life in it? If so, when will it surface in its regenerated form? Thank you.

#### **Senator J.L. Perchard:**

The *New Directions* policy has suffered as a result of changing Ministers and more recently of course the global economic downturn and the fear of the cost of its full implementation on Jersey at this time. Having said that, *New Directions* is divided strategically into different sections and there are some sections which will undoubtedly be addressed in short order, particularly that of long-term care for the elderly. I am delighted though that as we unroll our initiatives or develop our initiatives for the Strategic Plan, much of *New Directions* will be sitting in the policy, which I hope the States will approve when we debate the Strategic Plan.

#### **6.5.1 Deputy R.G. Le Hérissier:**

Could the Minister inform us, for example in terms of the credit crunch, what parts of *New Directions* have been dropped, for example?

#### **Senator J.L. Perchard:**

None have been dropped, but the consequences of investing now to save later are not quite as attractive to the Council of Ministers when we discuss the full implications of the financial downturn. It is not a 'never say never' situation; it is just we are trying assess the full consequences of the financial downturn on Jersey's income in 2010, 2011 and 2012. Unwarranted expenditure or unnecessary expenditure will have to be considered very, very carefully. I can assure Members that this will not be the last time they hear of these types of pressures on different subjects that they may wish to invest in.

#### **6.6 Deputy A.E. Jeune:**

This morning the Minister advised us that he will be instigating independent inquiry following the recent Royal Court case. Could the Minister now please inform us when this is likely to start and when the outcome is likely to be known and will it all be made public and does he know at what cost?

**Senator J.L. Perchard:**

I will be making a statement under agenda item K, which I think will follow immediately after this moment of questioning time, with regards to the exact questions posed, and others, by the Deputy. I hope that the statement will satisfy her when read.

**6.7 The Deputy of St. John:**

A senior member of medical staff has been suspended for nearly 2 years. When will the case be dealt with? Does the Minister accept that having somebody suspended for such a long period of time not only affects that person's health, but also the health of his family? All of the other parties involved are also under a lot of stress. Given you are in the medical profession, or you represent the medical profession ...

**The Deputy Bailiff:**

Through the Chair.

**The Deputy of St. John:**

... can he please get these cases resolved so that the Island do not have to pick up additional bills for looking after the people who are suffering with stress caused by these long delays.

**Senator J.L. Perchard:**

I agree with the sentiments raised by the questioner. I consider it completely unsatisfactory that the judicial process has taken so long. The questioner and Members must understand that it was impossible - it has been impossible - for my department to conduct any internal review or consider any disciplinary action or any contravening of protocols and work good practice while there has been a judicial process. We simply had to sit on it. Now the judicial process is completed I will be making an announcement, as I keep telling Members, in a statement as to what happens next.

**The Deputy of St. John:**

Will we be permitted, through the Chair, to question the Minister after his statements?

**The Deputy Bailiff:**

As the Deputy will be aware under Standing Orders there are 10 minutes of questioning the Minister after that. Senator Ferguson?

**6.8 Senator S.C. Ferguson:**

Since the States pay taxpayers' money and they pay the bulk of the income of Family Nursing, something at the last count when I looked at it, around about 75 per cent or 80 per cent, will he ensure that the accounts are presented formally to the States rather than Members having to go around digging for them?

**Senator J.L. Perchard:**

I consider that to be a very reasonable request and I will request, when the Family Nursing and Homecare have sorted out their internal problems, that be the case. I think it is perfectly reasonable as that so much money is being invested in the service, taxpayer's money, that Family Nursing and Homecare should be accountable for it.

**The Deputy Bailiff:**

Very well. I am afraid that brings questioning of the Minister to an end. There are no matters under J, and then under K the Minister for Health and Social Services will make a statement. Minister, do you wish to make your statement?

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

### **7. Statement by the Minister for Health and Social Services regarding a review following the death of a patient during an operation:**

#### **7.1 Senator J.L. Perchard (The Minister for Health and Social Services):**

I am not sure if it has been distributed, unfortunately. Perhaps it could be distributed and Members could follow me. Is it in order to continue without the statement on Members' desks?

#### **The Deputy Bailiff:**

That is up to you, Minister.

#### **Senator J.L. Perchard:**

Okay. This statement concerns the Royal Court verdict delivered on Tuesday, 27th January 2009 in relation to Dr. Dolores Moyano Ontiveros, who was employed as a locum registrar at the Jersey General Hospital in 2006. I know that all States Members wish to join me in expressing sadness at the unexpected death of Nurse Elizabeth Rourke following a routine surgical operation on 17th October 2006. Elizabeth Rourke is remembered by her colleagues with great love and affection. I know too that Members will wish to join me in thanking all of those doctors and nurses and support workers who sought to intervene on that sad day to try to save Mrs. Rourke's life. The Royal Court heard, and we did also via the media, that heroic steps were taken by a very special group of people who came together to do all they could to save the life of a patient and colleague. I am sure that Members will understand the predicament which many of our staff at the General Hospital have had to endure for the last 2 years. When a death occurs it is always a sad time and the way in which survivors, families and friends and colleagues are able to come to terms with their grief is by talking about that death, what happened, why it happened, and what the deceased meant to them personally. This natural grieving process has not been able to take its course in the General Hospital. The matter almost immediately became the subject of a criminal investigation and we know as such participants and witnesses could not discuss any aspect of those tragic events. Accordingly, many staff groups throughout the General Hospital and beyond have had to continue to provide a professional service to patients and to clients and yet have not been able to obtain comfort and resolution. I would like now to advise Members on what is to happen next. Firstly, Members will appreciate that the judicial process falls outside my authority; however, I expect the Deputy Viscount will now seek to reconvene the inquest into the death of Mrs. Rourke. Secondly, I have determined that the circumstances surrounding the death of Mrs. Rourke require a significant variation to the established departmental practice which is activated when a serious untoward incident occurs. What will now happen is that an internal team of trained senior health and social care practitioners who are working in other parts of our department unrelated to surgical services will be formed. The team will work alongside one of the United Kingdom's experts in the field of investigation. This team and expert will then work under the leadership of, and will be accountable to, a senior and eminent professional drawn from one of the mainland's prestigious bodies; an agency such as the Royal College. This person will be recommended to me by the National Director of the National Clinical Assessment Service, which is a service which has great experience in this arena. I have determined that the name of this professional and his or her background will be published as early as it is possible so to do. The terms of the reference for this systemic inquiry will be agreed by me. In the interest of openness and transparency the findings of this review will be placed in the public domain. Thirdly, the Health and Social Services Department will need to determine whether an individual or individuals have contravened the rules and regulations which

are in place to satisfy good governance at all times. It is not possible for me to say more on this matter at this time. The States of Jersey has a duty of confidentiality to all its employees and I wish to respect and comply with that duty. I have one more important matter left to relate to Members. A little has been made of 2 incident reports which were referred to in Saturday's edition of the *Jersey Evening Post*. This implication has been that these reports in some way rang alarm bells about Dr. Moyano Ontiveros' competence that were ignored. It will come as no surprise to Members that I have read these reports and I can assure Members that these reports are entirely innocuous. They are routine reports. Having said that, these 2 innocuous reports will form part of the review in order that my observations about them can be confirmed. Members and the public of large will also be able to make their own judgment on these reports. I repeat, there will be a systemic independent review undertaken into the circumstances surrounding the tragic death of Mrs. Rourke. It is in everyone's interest that this review is conducted promptly but with due regard for the need for diligence and detailed investigation. When the results are known they will be placed in the public domain. Until that time I have requested that no one in my department give further comment, however helpful they may wish to be. Other than divulging the terms of reference for the inquiry and the name of the person who will lead the inquiry I expect to be making no further comment until the results of the review are known. I ask Members similarly to act in a considered way, understanding that in due course the truth will out.

**The Deputy Bailiff:**

Now 10 minutes is allowed for questioning. Senator Syvret?

**7.1.1 Senator S. Syvret:**

Will the Minister undertake then to distribute the 2 warnings that he described as innocuous to Members and to indeed make them more publicly available? If he does not have them I am happy to do so.

**Senator J.L. Perchard:**

The review that I have announced a moment ago will have the reports. There is a process here, even if the Senator is not prepared to be patient. The review will consider the reports that I have referred to. The reports will be put in the public domain in due course. I do not intend to have mob rule decide this case. [Approbation]

**7.1.2 The Deputy of St. Martin:**

Again, I do not know whether the Minister will be able to help answer this one, but the case occurred 2 years ago. Has the Minister any idea why it took 2 years for the case to come to court, bearing in mind a not guilty verdict was reached? Why did it take 2 years plus to get to the Royal Court?

**Senator J.L. Perchard:**

I suggest the Deputy of St. Martin refers his question to the Attorney General.

**7.1.3 Deputy R.G. Le Hérissier:**

Notwithstanding this excellent initiative, would the Minister not acknowledge that by setting up an internal group to work to outsiders he may be setting up people who, for example, may be reluctant to question people higher up the management or surgical or professional hierarchy than the members of the team? Would it not have been advisable to set up a team totally divorced from the management and professional structure of the General Hospital?

**Senator J.L. Perchard:**

An S.U.I. (Serious Untoward Incident) has established, whether it be in Jersey hospitals or through the National Health, systems in place as to how the investigation takes place. Normally it would be undertaken by personnel not associated with the event but within the same health service. As I

have said, I am stepping outside the normal boundaries of an S.U.I. investigation in that the leader of the investigation will be an eminent professional, probably from the Royal College, and there will be another independent U.K. expert who is an expert in investigative matters with regards to health issues.

**7.1.4 Deputy R.G. Le Hérisier:**

A supplementary. Would the Minister not acknowledge that the Jersey Health Service is a much tighter health service than a very big trust where it would often be the case that people on such investigation would not know each other or come across each other in a professional sense?

**Senator J.L. Perchard:**

I have taken advice on how to structure this serious untoward incident review, advice from outside my department. It is imperative that there is local knowledge when undertaking a review if it is to be credible. It is also, in this case, imperative that there is neutral objective experience. I think bringing this together we have both.

**7.1.5 The Deputy of St. John:**

Could the Minister explain to us why an investigation is to be held, then why are fingers already being pointed to one person? In fact, that person has never been called to give evidence in court. Is it right that an impartial investigation is going to happen and you have already pointed the finger, or somebody has already pointed the finger, by suspending a person?

**Senator J.L. Perchard:**

The suspension of a consultant at the Jersey General Hospital happened immediately after the tragic death of Nurse Rourke. I do not consider any finger pointing has taken place. Any investigation will look at all the facts: who was involved where, what happened, where they should have been and why, if they were not, they were not there. There are no boundaries here. The investigation will be transparent. It will be decisive. I urge Members to be patient and not assume anything.

**7.1.6 The Deputy of St. John:**

Can the Minister please explain why the person who has been suspended has not been reinstated given that the court case is finished?

**Senator J.L. Perchard:**

I am not prepared to prejudice the outcome of any inquiry by discussing the detail. I think it is quite unreasonable of the Deputy of St. John to ask such a silly question.

**The Deputy of St. John:**

On a point of order, could I ask the Minister to withdraw that comment?

**7.1.7 Deputy A.E. Jeune:**

The statement that we have received from the Minister does not address my earlier questions in which I asked for when it will commence and when the expected outcome will be, i.e. can we have the timeframe start and finish, anticipated finish, date and an anticipated cost? Could he clarify for me please, on the first page of his statement where he refers to: "Require a significant variation to the established departmental practice", could he confirm that those issues have in fact been looked at and resolved already?

**Senator J.L. Perchard:**

I think there are certainly 2, maybe 3 questions there. The appointment of personnel from outside the Island to lead this inquiry, when I make this appointment, will determine as to when the inquiry will start. There is a desire to make these appointments in short order and an inquiry will assume its role immediately after. As to the cost of the inquiry, it is unknown at this stage. I have to say I

am not sure. While I am aware of the pressures on the Health Service financially I think this is important that the conclusions of this inquiry are not prohibited by cost. Sorry, I have forgotten the third one.

**Deputy A.E. Jeune:**

To clarify: “To require a significant variation to the established departmental practice.” Has that departmental practice, changed accordingly?

**Senator J.L. Perchard:**

The significant variation that I referred to was also answered a moment ago to a question. Normally a serious untoward incident is investigated within the department by personnel not involved in the incident. My departure from normal practice is to import a professional investigator and a chair, hopefully from the Royal College, who will provide neutrality and rigour to the process involving this investigation. I hope that satisfies Members.

**The Deputy Bailiff:**

Are you asking a supplementary, Deputy Jeune?

**7.1.8 Deputy A.E. Jeune:**

If I may. I just want to be clear that the errors that were highlighted in October 2007, those errors have now been remedied? We are not waiting for another inquiry in order to get them remedied?

**Senator J.L. Perchard:**

I am not sure as to what errors the questioner is referring to and I want to again warn the questioner that we must not stray into territory that may prejudice the outcome of any inquiry. I ask for restraint from Members that we need to get to the bottom of this and there is no intention otherwise. I just do not want you to start discussing the detail and any suggestion of errors.

**7.1.9 Deputy T.M. Pitman:**

Just a clarification of Senator Syvret’s earlier question. We have heard 2 reports described as routine and innocuous and yet there has been a tragic result to all this. Could the Minister just clarify what he means by innocuous, please?

**Senator J.L. Perchard:**

When the reports are presented to the review body and then become public, Members and the public will have the opportunity to decide upon the reports. I suggest they will agree with me; they are very routine and innocuous.

**7.1.10 Senator S. Syvret:**

The Minister just said he did not like talk of any errors. A person is dead needlessly. If that is not an error I do not know what is. Will the Minister say whether he considers it appropriate for a senior human resources member of Health and Social Services to write in these terms 6 months after the death of the patient: “Hi. I have been working on a timeline to cross-reference how and when we have complied with the doc’s disciplinary procedure. We are mostly okay. It is quite tricky given the level of detail in the procedure. I will forward you copies when I have finished. The bits where we have slipped a little we can justify, may need a couple of file notes. We failed to keep the Minister updated in the correct formal manner.” The H.R. (Human Resources) person goes on to say: “All this seems a bit O.T.T. (Over The Top) but the legal representative of the excluded local consultant is being so pedantic.” A man’s reputation and career being destroyed is merely a matter of pedantry, according to this H.R. manager. The same email goes on to say: “Also, I have had to allocate roles as per the procedures; the medical director, you are the case manager. The guidelines state you must consider all the issues around pay, exclusion from premises, *et cetera, et cetera.*” Here we have 6 months later file notes being requested ...

**The Deputy Bailiff:**

What is your question, Senator?

**Senator S. Syvret:**

Does the Minister consider it appropriate for a senior H.R. member of Health and Social Services to write in these terms and frankly reveal the process, the exercise of trying to cover-up their errors and omissions 6 months after the death of the patient?

**Senator J.L. Perchard:**

If the Member has evidence that will be of value to the inquiry, such as he claims to have, he must present it to the inquiry. It is a very powerful allegation he has made. I really am not sure whether it is viable or it is perhaps one of the anonymous blog writers that he receives. I want to say one thing: I urge the Senator to please stop trying to make political capital from this death. We must go through a rigorous process and ensure that justice is done. There is no attempt, certainly by this Minister, to seek cover-up.

**Senator S. Syvret:**

On a point of order, the Minister just accused me of seeking to make political capital out of something as serious as the death of a person. This I consider to be one of the most profound possible examples of accusing a Member of false motives, questioning a Member's motives, and I require the Minister to be required to withdraw that remark.

**The Deputy Bailiff:**

I am afraid, Senator, the expression "making political capital", I must confess, is an expression I have heard many a Member throw at another and I am not sure that it comes within the Standing Orders.

**PUBLIC BUSINESS**

**8. Draft Gender Recognition (Jersey) Law 200- (P.174/2008)**

**The Deputy Bailiff:**

Very well, that completes matters under K, so we come then to Public Business. The first matter on the agenda is the Draft Gender Recognition (Jersey) Law, projet 174, lodged by the Chief Minister, and I will ask the Greffier to read the citation.

**The Deputy Greffier of the States:**

Draft Gender Recognition (Jersey) Law 200-: a Law to make provision for, and in connection with, change in gender. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

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

I acknowledge that this is a subject that some Members may feel uneasy about and I can understand that. I suggest that those transsexuals suffering from gender dysphoria no doubt also feel uneasy in their bodies and in their life. It is comfortable for us to see things in black and white, but that is often rather simplistic. The reality is that for most of us there are varying shades of grey; perhaps more black than white in some cases, in others more white than black. Difficulties can arise when people reach such a stage of discomfort that they feel trapped within a body which does not match their gender identity, hence they need medical treatment which may ultimately lead to a change in gender and with it a need to change their legal identity. Matters came to a head with 2 court cases in the U.K. in 2002 which found their way to the European Court of Human Rights. It was ruled that by failing to recognise such a change in gender identity a country - and in this case it was the U.K. - was in breach of its duty under Article 8, the right to a private life, and Article 12, the right

to marry, of the Human Rights Law. As a result of that judgment the U.K. brought in legislation to provide for the legal recognition of changes in gender in transsexual people and to permit them to marry in their acquired gender. At the current time changes in the gender of transsexual people are not recognised under the law of Jersey. Although transsexual people can obtain some official documents in their new gender they cannot obtain new birth certificates locally, or enjoy any rights confined by law to people of the gender to which they have changed. For example, they cannot marry in the gender to which they have changed. Jersey has also signed-up to the code on human rights and the Human Rights Law came into force in Jersey in 2006. Consequently, Jersey has an obligation to reflect the situation in the U.K. court cases and to recognise and give similar legal effect to gender changes once those changes have been medically and legally recognised. In order to put this matter in perspective, I should point out that in the U.K. roughly one in 12,000 men feels he is a woman and the proportion of women who think they are a man is even lower. Although, therefore, we can only expect a handful of cases in Jersey it is still important for the legislation to be in place. I give those numbers simply to emphasise that we do not have sufficient numbers in Jersey to justify the medical treatments being carried out locally and so those seeking treatment could be expected to receive such treatment in the U.K. and, ultimately, receive recognition from the U.K. Gender Recognition Panel. Having obtained legal recognition in the U.K., they could then apply under the law before us today to have that recognition validated by the Royal Courts in Jersey. This draft law will amend the Matrimonial Clauses (Jersey) Law 1949 and any married transsexuals who have received recognition of their changing gender in an approved jurisdiction will need to apply for a decree of nullity. They cannot gain such recognition if they are still married. Once the individual has received recognition in an approved jurisdiction, they can apply to the Royal Court for recognition in Jersey and they will need to prove evidence of that. When the court is satisfied that all requirements have been met, an unmarried applicant will receive a full gender recognition certificate and a married applicant will receive an interim certificate until such time as their marriage has been nullified. After that they can receive a full certificate. When that full certificate is issued, the Royal Court will send a copy of the full certificate to the Superintendent Registrar who will arrange for the re-registration of that person's birth. The Superintendent will mark the person's original birth entry re-registered by the Superintendent Registrar and make any other necessary entry to the record to ensure that there is a traceable connection between the original birth entry and the re-registered entry. The reasons for these entries and markings shall not be disclosed to anyone searching the Great Register or any index or any certified copy of a person's birth certificate. A change in name will also normally be included as part of their treatments. This would normally be done by deed poll prior to obtaining legal recognition of their changing gender or they can have their name entered in the register following the issuance of a full certificate. Members should be aware that the general effect of legal recognition is that the person acquires the gender to which they have changed. So if their acquired gender is female, their gender will become that of a woman. It should be noted that the change is not retrospective. This certificate will not rewrite the gender history of that transsexual person. The Law itself sets out provisions for its effects with regards to the following: parenthood, succession, titles, trustees, executors or administrators, orders where expectations are defeated, sport, gender specific offences, foreign gender changes and marriage. For example, the provision set out for sport ensures that a person responsible for regulating the participation of persons as competitors in a gender-affected sport may prohibit or restrict the participation as a competitor. However, maybe those details can wait until we address the various articles of the Law. I would like to take this opportunity to assure Members that the Law protects the privacy of transsexual people by making it an offence to disclose protected information acquired in any official capacity to any other person. Consequently, I ask Members to approve the principles of this legislation.

**The Deputy Bailiff:**

Are the principles are seconded? [**Seconded**] Does any Member wish to speak on the principles? Would all those in favour of adopting the principles kindly show.

**Male Speaker:**

Can I ask for the appel, please?

**The Deputy Bailiff:**

The appel is called for in relation to the principles. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 38</b>		<b>CONTRE: 3</b>		<b>ABSTAIN: 0</b>
Senator T.A. Le Sueur		Deputy S. Pitman (H)		
Senator P.F. Routier		Deputy T.M. Pitman (H)		
Senator P.F.C. Ozouf		Deputy D. De Sousa (H)		
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy M.. Tadier (B)				

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

**The Connétable of St. Lawrence:**

If I may, Deputy Le Claire is not in the Chamber.

**Deputy J.A. Hilton:**

As way of explanation, there were a lot of papers on top of his voting buttons.

**The Deputy Bailiff:**

As he clearly is not in the Chamber, and was not in the Chamber, I think we can correct that to read 38 pour, 3 votes contre.

**The Deputy of St. John:**

On a point of order, can we correct something that happened because papers were sitting on top of buttons when this morning I could not have a vote annulled? We need an appeal procedure.

**The Deputy Bailiff:**

I think there is a considerable difference, Deputy. In your case, you undoubtedly pressed the button. You just regretted it. [Laughter]

**The Deputy of St. John:**

On a point of order, it was covered in papers.

**The Deputy Bailiff:**

We can be fairly certain that Deputy Le Claire did not press the button.

**The Deputy Bailiff:**

Senator Ferguson, as Chairman of the relevant Scrutiny Panel, do you wish to have this matter referred to your panel?

**Senator S.C. Ferguson (Chairman, Corporate Affairs Scrutiny Panel):**

No.

**The Deputy Bailiff:**

Thank you. Now, Chief Minister, how do you wish to proceed? There is an amendment. Do you wish to proceed by parts?

**8.2 Senator T.A. Le Sueur:**

Yes, I think so. That will affect part 4 and I will propose part 4 separately. I think I can probably propose Parts 1, 2 and 3. Part 1 deals with interpretation clauses and is fairly straight forward. Part 2 deals with the issue of a gender recognition certificate, that is Articles 2 to 7. In particular, it distinguishes between an interim certificate and a full certificate and I point out to Members that the gender change is recognised only when a full certificate has been issued. Part 3 deals with the consequences of the issue of full certificates and it talks of things like title, probate and individual

matters on which if any Members have particular views or queries I would be happy to answer questions. But I propose Parts 1, 2 and 3 of this legislation.

**The Deputy Bailiff:**

Are they seconded? [**Seconded**]. Does any Member wish to speak on any of the articles comprised in parts 1, 2 or 3?

**8.2.1 Deputy R.G. Le Hérissier.**

Part 3(2). I wonder if the Chief Minister could explain. The logic seems to be sort of counter-intuitive. (2)(a) if the applicant is unmarried, a full certificate; (2)(b) if the applicant is married, an interim one. If he could explain the difference between an interim and a full?

**8.2.2 The Deputy of St. Martin:**

It may be that the Solicitor General might be able to assist Members but I just want to seek clarification for what, to me, seems to be quite an obvious thing. Once a transsexual person has received legal recognition in the proved jurisdiction, that person for all intents and purposes is what that person there is. In other words, if it was a male before, it becomes a female and *vice versa*. So whether, in fact, it was also, save in the eyes of God that person, therefore, now becomes a legal female if that person was a male before and that, obviously, will have a due bearing when we come to debate the amendment. But can I have that assurance that legally and for all sorts of reasons, that female becomes a male or *vice versa* if they have received it through the Royal Court?

**The Deputy Bailiff:**

Mr. Solicitor General, could you deal with that matter?

**Mr. T.J. Le Coq Q.C., H.M. Solicitor General:**

The answer that I would give the Deputy would be yes, subject to the qualifications if, of course, it is possible in theory for someone to have a gender change recognised in a competent jurisdiction but nonetheless still to be married. So if that person were unmarried, he would not get a full gender recognition certificate in Jersey until that marriage was brought to an end. But aside from that, subject to the caveats, the fact that it is not retrospective or anything of that nature, yes, he would be for all legal purposes the gender of choice.

**The Deputy Bailiff:**

Does any Member wish to speak on any of the articles in Parts 1 to 3?

**8.2.3 Deputy J.A. Martin:**

Yes, it is just a question on that. So the person has a gender recognition, let us say, in the U.K., what would be the process be, then, in the U.K.? Would there be a cost and will there be a cost to our Royal Court of applying for a new certificate or a change in ... I think it is covered under that Article, thank you.

**The Deputy Bailiff:**

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

**8.2.4 Senator T.A. Le Sueur:**

I think the question of the Deputy of St. Martin will have been dealt with by the Solicitor General. For Deputy Le Hérissier, the point is that while someone who has changed their gender is still married, it is not possible for them to apply for registration but nevertheless their change in gender is recognised and is recognised in the sense that they receive an interim certificate. Once they have had their marriage annulled, it may be subsequent to the issue of that initial certificate ... if that nullity does not occur until after the interim certificate has been issued then they are in that state until such time after which they can reapply to the court for a full certificate to be issued. So it is a

transitional situation which may not arise in practice but is there for the sake of completeness within the Law. As to Deputy Martin in terms of procedures, the procedures will come up in part 4 of the documents because it is under that part that applications for such change of registration will be determined by Royal Court rules. But equally, as Chief Minister, I have power to make Orders under the Law and the applications of this Law and any matters such as cost of application will be dealt with at that time. This is the enabling Law which enables applications to be made in such form as the orders may prescribe and in such form as the court may prescribe. I think that deals with the questions raised in the first 3 parts of the Law and I maintain those 3 parts.

**The Deputy Bailiff:**

All those in favour of adopting Articles 1 to 17 kindly show. Against?

**The Deputy Bailiff:**

The appel is called for in relation to Articles 1 to 17 and I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 38</b>		<b>CONTRE: 3</b>		<b>ABSTAIN: 0</b>
Senator T.A. Le Sueur		Deputy S. Pitman (H)		
Senator P.F. Routier		Deputy T.M. Pitman (H)		
Senator P.F.C. Ozouf		Deputy D. De Sousa (H)		
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				

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

**The Deputy of St. Martin:**

Might I suggest that it might be a good time to adjourn before we move on to another Article?

**The Deputy Bailiff:**

That is a matter for the Assembly. We could certainly perhaps just pass the articles up to Article 21 and then it is a question of whether the amendment is going to be controversial or not. Do you wish to propose, Chief Minister, Articles 18 to 20?

**8.3 Senator T.A. Le Sueur:**

I am happy to do that. In proposing them, I think I probably explained what they were in my response to Deputy Martin but I propose Article 18 to 20.

**The Deputy Bailiff:**

Seconded? [**Seconded**] Does any Member wish to speak on Articles 18 to 20? Very well, all those in favour of adopting Articles 18 to 20 please show.

**The Deputy Bailiff:**

The appel is called for in relation to Articles 18 to 20. I invite Members to return to their seat and the Greffier will open the voting.

<b>POUR: 39</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 0</b>
Senator T.A. Le Sueur		Deputy of St. John		
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Connétable of Trinity				

Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy M.. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D. De Sousa (H)				
Deputy J.M. Maçon (S)				

**The Deputy Bailiff:**

In relation to Article 21, do you wish to propose that in its amended form? Do you wish to read the amendment, Chief Minister?

**Senator T.A. Le Sueur:**

Yes, if I may if the amendment requires reading but I propose Article 21 as amended by my own amendment.

#### **8.4 Draft Gender Recognition (Jersey) Law 200- (P.174/2008): amendment (P.174/2008 Amd.)**

**The Deputy Bailiff:**

In that case, I ask the Greffier to read the amendment.

**The Deputy Greffier of the States:**

On page 30, schedule 2, after paragraph 2 of schedule 2, insert the following paragraph: “3. Marriage and Civil Status (Jersey) Law 2001, in part 3 of the Marriage and Civil Status (Jersey) Law 2001, after Article 40, there shall be inserted the following Article: ‘40A Solemnisation of Marriage of Persons of the Acquired Gender. A clergyman is not obliged to solemnise the marriage of a person if the clergyman reasonably believes that the person is of an acquired gender within the meaning of Article 1(2) of the Gender Recognition (Jersey) Law 200-’.”

#### **LUNCHEON ADJOURNMENT PROPOSED**

**The Deputy Bailiff:**

Does the Assembly agree to adjourn? The Assembly will adjourn and reconvene at 2.15 p.m.

#### **LUNCHEON ADJOURNMENT**

#### **PUBLIC BUSINESS - resumption**

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

Just before lunch we began discussion Article 21 of the Gender Recognition (Jersey) Law to which there is an amendment in my own name to Schedule 2. It seems to me that from a procedural point of view, I have to propose Article 21 in its original form and speak to that and then subsequently propose my own amendment to that in order that the House can vote separately on the amendments. If I fail to do that then I think the whole of Schedule 2 would fall or sink or swim.

**The Deputy Bailiff:**

That seems to be right, Chief Minister. So do you propose Article 21 in its original form?

**Senator T.A. Le Sueur:**

Initially, I will propose Article 21 in its original form which gives the power to amend enactments and by Regulation modify that in respect of either people or descriptions of such persons.

**The Deputy Bailiff:**

Do you propose the schedule at the same time?

**Senator T.A. Le Sueur:**

I propose Schedule 2 at the same time.

**The Deputy Bailiff:**

Is that seconded? [**Seconded**] Very well, that is Article 21 and Schedule 2 proposed. Then we have the amendment. Are Members content to take to the amendment as it was read out before the adjournment? Very well, Chief Minister, so do you now propose the amendment?

**Senator T.A. Le Sueur:**

This quite a narrow point in that it only relates to the solemnisation of a marriage in the Church of England. As the main body of the Law makes it quite clear, the Registrar is under a legal obligation to register any civil marriage and that obligation cannot be changed. This is the situation that also pertains in the United Kingdom. I hate to draw comparisons because it can be misleading but if I suggest that churches are a bit like clubs or communities that should be able to set their own rules without government interference then that has to be tempered with the requirement that they do not infringe human rights. Subject to that, I do not believe it is the role of the States to interfere with the rules and procedures of any organisation such as the Church of England. When the Law was in draft form it was sent out for consultation as is customary and in the consultation document it did include the words in the amendment that we have before us today. I have to say that no adverse comment was received to the content of this amendment. The question, I think, has been raised about whether it is compliant with the code on human rights. The United Kingdom, certainly, has enacted the law and does not regard it as contrary to human rights. Our local Law Officers have reviewed it and they do not find it contrary to human rights and, finally, for what it is worth, as the sweeper-up, nor do I. On that basis, I believe that this is a matter where I am sure there may be differences of view among different members of the Church of England but from a legal point of view, and we are here to pass civil laws, I do not believe it is for us to impose that restriction on the clergy to act as they feel appropriate in accordance with their conscience. I, therefore, propose the amendment to schedule 2 as set out.

**The Deputy Bailiff:**

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

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

First of all, I would like to say that I welcome the legislation that has been passed today, effectively unanimously, in the House. I think it was long overdue. The U.K. passed similar legislation in 2004. As the Chief Minister mentioned, it was really to do with the *Goodwin v the U.K.* case in 2002 which the European Court of Human Rights found contravened Articles 8 and 12 of the European Human Rights Convention. Subsequently, as I have already said, the law was changed in 2004 to reflect that decision. I realise that the reason this amendment has been brought is not because of any maliciousness on the Chief Minister's part. It is really because it was omitted when the law was first brought in. The U.K. - the Chief Minister is quite correct - does have this provision. It is, effectively, called a 'conscience clause' which was put in following consultation with the Church of England because some ministers of the clergy said they were not happy and not everyone would feel comfortable marrying someone who was transgender. While I can to some extent sympathise, I do not agree. So I will be presenting the alternative view to that. I, basically, want to make the distinction as to why I do not think we need to follow the U.K. law and why I suspect that this amendment would be in contravention to the human rights legislation in the European Union. First of all, the amendment was brought about because of pressure from the Church of England in the U.K. I think at the time they were still obliged to perform marriages whereas Catholics and other denominations were not necessarily. So they pressed for this legislation. As far as I know in Jersey, none of the religious communities raised any objection to this Law coming in. I may stand to be corrected and I would be interested to see what the Dean has to say on that shortly. So I will say there is no pressure in Jersey for us to pass the Law and I will say again that I do not believe it is our place to speak on this issue. I would also remind people that we have all voted, effectively unanimously, behind this Law and it would make a nonsense of the Law to say: "Well, just because you are clergymen you do not have to abide by this Law. You do not have to recognise someone's new gender." Because this is, effectively, what it amounts to. If you could bear with me, I am quite new to this. I want to make a distinction. I am trying to preempt some of the arguments which I think will come back. People will say that there is a conscience law for doctors regarding abortion where a doctor who may have religious beliefs or personal beliefs for that matter does not have to carry out an abortion because he or she may think

that is murder so they will not do it. I will make a distinction with that. Under the Hippocratic Oath I would suggest that a doctor, for example, has a right to treat their patient. The patient may include the baby and it would certainly include the mother. So they can say: "I am not comfortable performing this operation, this procedure. I prefer someone else to do it," and I think that is just. But there is a distinction with this Law. I would remind everyone that we have just passed a Law to say that someone who was, for argument's sake, male a couple of years ago who has gender dysphoria - and these are genuine people who do not feel comfortable that their sex matches their gender, remember. He now is a woman. He has a piece of paper to prove it. The law and we have said this person is now a woman. What right does a clergyman have to say: "I am not marrying you because I do not believe you are a woman. You are marrying a man and you are a man so I cannot allow that." But he is disregarding the law so it is counter-intuitive and it goes against the spirit of the law, I would suggest. That is what I am putting down as the strongest argument. Also, it is the thin edge of the wedge, I believe. Why do we permit the clergy to say: "I am not marrying you because I do not recognise your new gender." But, for example, they cannot turn around and say: "I am not going to marry you because you are black or because you are from a different ethnic race." I think that would be distasteful to most people in here. Whether it is legal or not is a moot point but the fact is, it should not depend on things which are beyond someone's control and I maintain that someone's gender is not something that they are in control of. I had 2 issues raised to me by Members in some correspondence. I will not name them but I do thank them for their input. Someone made the comment that a clergyperson can already exercise discretion regarding who they marry or who they baptise, come to that matter. It is quite commonplace, for example, for a clergyperson not to marry someone if they have been divorced or if, as someone has termed them, a thricer - somebody who has been married 3 times. A clergyperson may also refuse marriage on the grounds that somebody does not come to church which, again, they are allowed to do. I would make a distinction between these acts and refusing someone on the grounds of their new gender simply because the other acts do not contravene any European human rights protocols. I have handed around some handouts. One of them includes a letter from the J.R.A. (Jersey Rights' Association). If anyone does not have one, I have a few more copies which I can circulate or perhaps you can peer over someone's shoulder. I will read it out briefly just for the benefit of those listening in the public on the radio: "The J.R.A.'s attention has been drawn to a proposed amendment to the Draft Gender Recognition Law. This amendment from Senator Le Sueur seeks to grant a priest the right to refuse to perform a marriage where he believes one of the parties to have undergone gender reassignment. Were this amendment to be accepted, it would not only vitiate one of the key purposes of the law but it would be profoundly wrong in principle. It is probably also contrary to Article 14 of the European Convention on Human Rights, the anti-discrimination article", and you will notice that I have attached the relevant Article on the back of the sheet along with other articles which I believe are pertinent to this case. He continues: "The intention of the law is to put persons of reassigned gender on an equal footing before the law with those whose gender has remained unchanged from birth. This must, therefore, include the right to marry a person of opposite gender. To entitle a priest to override this right would be to put the priest's unsubstantiated opinion and personal prejudice above the law. The J.R.A. call for all States Members to reject this amendment." I am also doing the same. If you flip over, for those of you who do have the relevant articles you will see I have selected 4 of them which I think have relevance to this debate. The first one is Article 12 which says that: "Men and women of marriageable age have the right to marry and found a family according to national laws governing the exercise of this right." That is the first one. So basically, we have just passed this law today. Civically, a transgender person can be married to someone of the opposite sex. I think that is quite normal. I do not think anyone has any objections to that. The question, of course, is why should that not apply to people in the clergy? I do not see any good reasons. I am sure some will be made shortly. Article 14 pertains to discrimination and it talks in particular about discrimination on any grounds such as sex and then it continues: "Or other status." I think this is relevant here and it was certainly relevant in the *Goodwin* case. Article 8: "Everyone has the right to respect his private and

family life.” This is one of the articles which was seen to be violated in the *Goodwin* case in 2002 and which led to the law change. It goes on to say in part 2: “There shall be no interference by a public authority with the exercise of this right.” I maintain that it is not our place as a legislature to be making legislation. At best, I think the law should remain silent on the issue. I would point out at this moment that I was considering a counter amendment to this amendment to say that we should make it illegal for clergy people to refuse marriage to someone on the grounds of transgender. I refused this on a couple of grounds because it was a knee-jerk reaction and I thought that it was too heavy handed. I do not think it was right under any circumstances to try and dictate to the clergy and I was given advice that, if anything, it was better for the law to remain silent on the issue. Conversely, I would ask for some goodwill in this matter and so I ask you to not support this amendment on similar grounds. I do not think it is our place to dictate. I think common sense should dictate within the church. In reality, we know that people are not really going to go and seek a blessing or solemnisation from someone who is not sympathetic. But that, obviously, begs the question: “Then what is the harm in passing this amendment?” I would suggest because it sets a precedent. It sends a contradictory message out to the public that on the one hand we have said that we recognise that a transgender person has new right. We recognise that medically and legally you are of a new gender for whatever reason and there are a whole host of reasons and I think that we have, as I said today, acknowledged that fact. Now, to turn around and then say: “But we are going to pass this amendment” sends a contradictory message. I will sum up because I do not want to keep anyone too long and I do want to give a chance for other people to speak. I believe I made the major points and if I have not, then I will certainly learn for next time. I do not see the issue here. We know that homosexual marriages in church are not permitted. That is a debate for a different day, perhaps. We know that soon we will be passing legislation and I am sure that will go through fairly swiftly to say that people who want to have a civil partnership - a civil union - can be married in the eyes of the law if not in the eyes of God and I would welcome that legislation, too. However, the church does not have any reason to object. We are saying: “This is a man and a woman. Can you please marry us?” Now, if they have another reason to object, as I have mentioned before, if the people have never been seen in church before, okay, that is a good grounds for not marrying them, perhaps you could argue. If they do not believe in God, some vicars may say: “I am not going to marry you because there is no point you being married in a church.” That I can understand. But the sole thing we are debating here is someone being refused marriage, a religious ceremony, on the grounds of their new acquired gender and for any religious person to turn around and refuse them on that grounds can only be to admit that they do not recognise that new gender and they are contravening the law. We cannot do anything about that legally. We cannot say to them: “You do not have the right to hold that opinion.” You can hold any opinion you want. You can believe that there are fairies living under a stone in your garden but as soon as they tell me that I have to discriminate against someone ... if someone says you cannot ... I run a translation company, for example, and if I said to someone: “I am not going to serve you because I believe in a little elf in the bottom of my garden and that elf says that I am not allowed to give translation services to black people.” Now, I know it is slightly far-fetched but I believe that the principle remains and it is exactly the same with the clergy. I am not here to debate whether any divinity exists or not. That is far too broad a subject for us to even deign to talk about today. But what I would say is that if we are going to say that someone can discriminate on the grounds that they hold a religious belief which may or may not be founded and we as a legislature are going to back that up, then I think they have another thing coming. I think my position is fairly clear on this and I would ask people to throw out the amendment. Lastly, as I say, we do not have to follow the U.K. It is quite possible the U.K. have it wrong and the time may come when they will have egg on their face. We do not have to go down that path.

#### **8.4.3 Deputy T. Pitman:**

Some people might have been surprised that I voted against the original proposition. I have spoken a lot in the past about supporting gays and lesbian people and I would like it on record that I totally,

100 per cent support transgender individuals. I voted against this proposition because I thought it was deeply flawed. That is the reason for doing so. I think it should have been taken away and reconsidered. As to the amendment, I have to congratulate Deputy Tadier on the points he has made. I think he has spoken very eloquently and I pretty much 100 per cent agree with him. The reason I would vote against the amendment is because while I think the original proposition was well-intentioned, I think this is wrong. I think it is totally unjustified to have an opt out for clergy in such a case. I think we need to find a better way of people being allowed to be seen as people rather than rubber stamps and certificates. But if we have come that far, to then come to be married and you are a man and a woman, I am sorry, opt out makes no sense to me. Again, I congratulate Deputy Tadier and I will not be supporting the amendment.

#### **8.4.4 Deputy M.R. Higgins:**

I would like to say that I am uncomfortable with the amendment for 2 reasons and I hope the Solicitor General will correct me if I am wrong. First of all, my understanding is that the European Convention on Human Rights is concerned with public authorities and abuse of power by public authorities and I do not see the clergy as being a public authority. So some of the questions about E.C.H.R. (European Convention on Human Rights) are irrelevant in terms of that anyway. But the States, as a body-passing law, is in effect providing positive discrimination for Church of England ministers and I think it is wrong that any law that we pass should bring in positive discrimination to give anyone the right to discriminate against others and, certainly, going back to the convention in terms of ... I am not sure if the Assembly would qualify as a public authority under the E.C.H.R., but certainly, we are the people who are enacting the laws which would be giving people the right to discriminate and, effectively, prevent under ... sorry, I have forgotten the Article, but the discrimination against people on the grounds of sex. I do not think the States should be doing that. So I shall be voting against the amendment because I think it is wrong for those reasons.

#### **8.4.5 Deputy J.A. Martin:**

I think I will not be supporting the amendment. I do not know if anyone else is going to speak but I shall tell you why as well, just very briefly, and I may be wrong on the understanding of the law as to the Dean. Not this Dean, any Dean. I think a transgender person who may have a problem with their Parish priest may find a sympathetic one in St. Ouen but under Jersey Law, if you are not in that Parish you have to go to the Dean. Now, whoever that Dean will be, can use this get-out. So that would then, in Jersey being a small place, it would also discriminate against all the Parish churches in the Island. Now, my understanding might be wrong but I did a lot of work on the Marriage and Civil Status Law when it was upgraded in 2001. I do not think it has changed. I do believe that, as I say, any person who finds a clergyman sympathetic would have to go on the Island to the Dean whoever he may be. I am not talking about the Dean. I am talking about the job. This, again, one year or 3 years it may be a yes and sympathetic to the Dean of that time's discretion and then 3 or 4 years down the line or whenever we have a new Dean, it may be a no. I do not like that. At the moment I am of the mind not to support the amendment unless the Chief Minister can convince me otherwise.

#### **8.4.6 Senator S.C. Ferguson:**

I always have trouble with human rights discussions because they always seem to be one-sided. What about the human rights of the other party, the clergy? Just because something is legal does not mean to say that everyone agrees with it. It is absolutely ridiculous. The Church of England is the only denomination affected by this. The non-conformists, like myself, are not and I spoke to the particular minister in my area about it last night and I do not think he has quite made up his mind because Synod certainly has issued no directions about this. As Deputy Tadier said, I would certainly equate this to ... or as Deputy Tadier objected to, I would equate this to marrying divorced people. There we have a situation where something is legal in the secular world but the church can

follow its own conscience and, of course, the civil option is always open. I wonder if perhaps the Dean might care to comment in the debate? I would welcome his advice on this.

**The Deputy Bailiff:**

The Dean? I do beg your pardon. I have seen Senator Shenton before. I am so sorry. We will have Senator Shenton first.

**8.4.7 Senator B.E. Shenton:**

When I sat on the Legislation Advisory Panel with my very good friend, the Constable of St. Ouen. This matter came before the Panel and it was also of interest because a constituent that would be affected by the legislation had approached me to try and speed up the legislation going through the Chamber because, as Members will be aware, we are quite far behind the U.K. on this. The whole point of the legislation is that when gender is changed, that change becomes final and from that day onwards, that gender is assumed by the individual. Now, I do not believe it is the duty or the right of the church to take that away and I would ask Members not to support this amendment. Also on a small point of order, I believe that the Dean is in here, as an unelected representative, to provide moral guidance. I do not believe that he is in here to put his point of view across in debates and I would ask him to be very careful with what he says and to limit his comments to those, perhaps, of moral guidance as opposed to putting his own view across as if he were an elected Member, which he is not.

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

On the whole, I prefer to be speaking about hold baggage at the airport. **[Laughter]** I do want to say, Sir, through you to Senator Shenton, that I have nothing prepared that said what I believed on this subject at all. I want to get as near as I can to providing advice, not only on whatever moral things there may be around this but also because part of my function is to preside as judge in the ecclesiastical court of this Island which is part of the legal framework of our society and to comment, if I may, subject to any correction from the Solicitor General, on where the established church is on marriage legally now because that goes back to our Canons under King James in 1623. As I understand it, if we do not pass the amendment, then the established church clergy will be in a different position from all the other clergy, not only of other denominations, but of other faiths in the Island. If you are going along to see Monsignor France or the Muslim Imam or you ask a Rabbi to come and preside at a wedding, it is entirely within their discretion which marriages they conduct and which they do not. This law will not change that so every other clergy person, male and female, has a discretion about which marriages they conduct. The situation is different for the Church of England in Jersey because it is the church established by law, and the 12 ancient Parish buildings are not owned by the church but by the communities and that is why the situation is different for the Church of England in Jersey. If the amendment is not passed, then it could be argued that there is a freedom of conscience denied to Anglican clergy that is accorded to every other denomination and other religion across the Island. Let me make that clear to begin with. The second thing is that, under the Canon Law of 1623, there is a presumption that everybody lives in one of the 12 ancient Parishes, therefore everybody, has a right, as bachelor and spinster - because this was done before we thought of second marriages - to get married in their ancient Parish church. That is a right. We may think that there is an assumption that it is the rector of that church who will conduct the wedding but that is not part of ecclesiastical law. That he will allow the church to be used most certainly is but not necessarily that if you are, shall we say, in the Parish of St. Saviour, that there can be a demand that Dr. Swindell will conduct the wedding himself. He might arrange for another priest to do it. He might be on holiday. He might be all sorts of things. Certainly, just because you do not go to church, he has no right in ecclesiastical law to forbid the wedding, absolutely none. If you live in this Island and you want to get married in one of the 12 ancient Parishes, then you have an absolute right, whatever your religious belief, to be married in that church. If the priest concerned has a conscience or reason for not marrying the couple or if there is

not a rector there because there is a vacancy, then I am charged, no choice at all, to provide a priest or to conduct the wedding myself as I have done on a number of occasions since arriving 3 years ago. So as I understand this amendment - and I do want to thank, in all sincerity, Deputy Tadier for putting the case and setting out everything in a very clear way - this does follow what the English Parliament did to give the same conscience opt out to Anglican clergy that is accorded to everybody else. That is where this is going. Now, why might that be important from a moral point of view? It seems to me that there are 2 things we have to hold in tension. The first is that there is an absolute duty of Christian pastoral care to every person in the Island, whether they are of a particular faith or Christian denomination or none. That is what being the established church means. You have a right to the pastoral care that the church provides, whether you are an atheist or whether you are in church 3 times every Sunday. Therefore, it seems to me that pastoral care must be given most particularly to those who are most vulnerable. Now, I am not here seeking to be patronising but I do want to say that I understand absolutely that nobody embarks on the counselling and the medical and surgical treatments that are part and parcel of gender reassignment... nobody embarks on that lightly; of course they do not. Does the church have a particular responsibility to care for people like that? Absolutely, in the same way that it has a particular responsibility to care for parents and children in those very tiny minority of cases where a child is born and either the genitalia is dual or is indistinct. Now, I have done some checking, as you would expect of me, I hope, and if that happens, then, of course, the medics do 2 things. They look to see what the internal organs say and they look to see what the chromosomes say. Secular ethicists and philosophers, including eminent feminists, take differing views on sex and gender. I have some correspondence in front of me. I will not bore Members with it but there are 2 very definitely secular authorities where one says you cannot reassign gender and the other says gender is a social, psychological, cultural characteristic. The only point I want to make is that whether you are a Christian theologian, a Muslim, a Buddhist, or a secular ethicist, there is more than one view on this subject. Even when a legislature such as ours legislates to accept one particular view that does not mean, as Deputy Tadier so eloquently put it, we can force everybody to believe that. The second moral point is freedom of conscience. I would simply ask Members - and I hope Senator Shenton does not think I am crossing a line here, I am desperately trying not to - to consider that throughout the history of democratic government, conscience opt outs have been allowed. Even when war is declared, people are allowed to be conscientious objectors. If this were asking for the established church to be saying: "We will not conduct these marriages", then I would be saying: "Please do not vote for the amendment" if I were giving you advice, and I am not. It does seem to me - I take Deputy Martin's point very clearly - that were someone to say: "Well, I am legally what I am. I have been to the rector of [let me use a Guernsey Parish] St. Sampson and they have said, in all conscience, they will not conduct the wedding, then it appears to me that the best parallels I can get from the spirit of the 1623 Canons is that it would be incumbent upon the Dean to provide a priest who would conduct that wedding." I do not think I can give any more guidance on the legal things as I understand them or on the moral things. I think what the House is charged with is holding 2 moral things in tandem. There is the duty of care and there is the duty of conscience.

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

It is always a pleasure to rise after the Dean has given us some spiritual guidance and I congratulate him for doing just that and not straying on to the political arena with his size 10s on. He does not always do it but I think he has done today and it seems to me that he has clarified the issue very simply. What he says is that there are 2 principles in tension here that we need to hold. One, he says, is the absolute duty of Christian pastoral care to everybody on the Island. Note, that is an absolute duty, not a bit of duty, an absolute; not a relative duty, an absolute duty. The other is freedom of conscience. He then went on to illustrate how freedom of conscience can be left there because there is always the avenue of applying the Dean to the problem and he will perform his absolute duty of Christian pastoral care and look after everybody, including transgender individuals. So it seems to me that the way forward is clear. It seems to me that there is not a

problem with rejecting the amendment. We can proceed; we have mechanism to get past what some would see as an objection and that it is a very clear decision we can make. One further thing - and I think it is a bit of obscurantism that has been brought in by Senator Ferguson. I am rather disappointed she did so. It seems to me that she said - and this argument is often applied: "I am not against human rights but I want to consider the human rights of others." It really is an obscure way of looking at things. It seems to me we are dealing here with a civil issue and one which is very important to a particular group of people in terms of their human rights. That must be our guiding principle and I think the grounds for rejecting the amendment are absolutely solid and I do not think it causes the church, established or otherwise, any particular significant problems that cannot be overcome in doing so, so I will support this amendment. [Aside] [Laughter]

#### **8.4.10 The Deputy of St. John:**

I am probably the only Member who, in fact, voted against the 2 lots of Articles this morning, which have been recorded, solely because, I think, it should be made clear that there are items within some of the Articles which my own conscience does not allow me to support. I supported the principle because I believe people of same sex relationships have rights but I could not support the Articles. That said, I hope Members can understand that I also have rights and I understand where Senator Ferguson came from in her speech.

#### **Deputy R.G. Le Hérissier:**

On a matter of correction, is the speaker correctly referring to them as same sex relationships?

#### **The Deputy of St. John:**

Yes, I am, and I know people in same sex relationships are super people. I do not have a problem. It is what happens after, the next generation; that is where I have concerns. Hence, I have not supported the Articles but I am going to support this amendment because I think it is only right that the person conducting a marriage will have to deal with it in his own way, according to his own conscience, and therefore he must have a right to do that.

#### **8.4.11 The Connétable of St. Helier:**

If I followed the Dean's advice correctly, he was suggesting that if this amendment is rejected and the clergy of the Church of England are required to solemnise such marriages as we are discussing, that this would be placing those clergy at a disadvantage because other faiths would not be affected. I find this a curious idea because it does seem to me that the particular freedom of conscience we are talking about here is not one that a person in that position should enjoy. I cannot myself see the difference between that freedom and the refusal to solemnise, for example, a wedding between people with disabilities, between people who have different sexual orientation, between people of colour. I cannot see the difference. Why should the clergy have this ability to discriminate on these particular grounds? Deputy Tadier put it very well. He suggested that this amendment allows a person to be refused a religious ceremony on grounds of gender and I find it very difficult, even if it does put the Church of England in a unique position. It is the established church of this Island. Perhaps it is right that it should be in that position. His remarks about the pastoral role of the clergy with regard to transgender people I did not quite follow because it seemed to be going down the road suggesting that such people who change their gender are in some way more requiring of social and pastoral care from the clergy than other "normal" people and I think that is a dangerous road to go down if that is where we were going. Finally, the Dean said it was incumbent upon him to find a priest to carry out the service, were a couple to be refused the ceremony on these grounds. Now, surely that makes it essential that we reject this amendment because it follows that if all of the clergy - we are talking about principle here after all, not perhaps it is going to happen very often - but if all the clergy in the Church of England ministry were to reject the solemnisation of that particular couple and, indeed, if the Dean himself or herself, if we ever come to that, were to be unable to carry that out, either on grounds of conscience, then this particular couple could not have

their relationship so solemnised. So that is my take on this. I think we are looking at principle but, of course, we are also looking at the message that we send out. I know a transgender person reasonably well and I would be really concerned if this Assembly sent out the message that we are going to exempt the Church of England from any solemnising of a partnership that a particular person may want to have such solemnised because they have in the past had their gender changed and I really do not want to be part of sending out that message, regardless of what the U.K. does. I do not think Jersey should be part of such a message and, indeed, I think the amendment should be rejected on those grounds.

#### **8.4.12 Deputy A.E. Jeune:**

I too thank the Dean for his comments this afternoon which gave more clarity on this amendment about which, listening to Deputy Tadier, I was starting to get somewhat confused. I think it is all about perception but I believe what we are doing here in this Assembly is in respect of civil law and, as I think I heard Deputy Tadier say at the beginning of his speech, this amendment does not state they do not have to recognise. It says they do not have to solemnise a marriage. So I feel that in order to have clarity on this particular proposition and the amendment, I personally think it should run in tandem with the U.K. Government's section 11 and I will support this amendment.

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

Could I have a point of order? Recognition and solemnising is the same. If they do not solemnise something, it is because they have not recognised that person's gender. They do not accept it and that is the point I was making.

#### **8.4.13 Deputy R.G. Le Hérissier:**

I was going to make a point which the Constable of St. Helier has made but I think it is worth mentioning. The Dean drew attention to the special status of the Church of England and why should it not operate in common with other faiths? Well, it is because it has a special status. It is the established church and, as a result, it takes unto itself certain privileges and as a result also of that, it takes unto itself certain obligations. One is to serve as a body that will solemnise these matters in the absence of other bodies so the church cannot have it both ways. It cannot seek to be the established church with the privileges that brings without addressing the obligations that such an establishment also brings. The other issue - and it was raised by Deputy Martin - it was said in a very well put - as Deputy Jeune of St. Brelade mentioned - conclusion to the Dean's speech, it was mentioned that he had an absolute right of care. Therefore he would be the repository were another priest or the rightful priest of a Parish not perform the ceremony. Of course, that assumes that the new Dean would have a similar view of the Canons of 1622 as does the current Dean and we have absolutely no guarantee that that will, indeed, be so. So that is another issue I think we need to take on board. I go along with Deputy Tadier who did put, I thought, a very eloquent case, even though it did get a bit complicated as things proceeded, in the sense that we are allowing a group of people to opt out, which I think is wrong. I also wonder if the Solicitor General could help me whether under Article 9, it states that one's religion or beliefs shall be subject only to limitations as are prescribed by law. By rejecting this amendment, we would therefore be prescribing it by law that a transgender person could avail themselves of a Church of England marriage. Would this fit in with Article 9 were we to reject this amendment?

#### **The Solicitor General:**

I am not entirely sure if I have understood the question put by the Deputy. In my view, to pass this amendment would not be offensive to human rights. In other words, the amendment is human rights compliant, in my opinion. To reject the amendment, I could not rule out that it would give rise to human rights arguments at some later time where one could anticipate, I suppose, that a member of the clergy who felt that he, against conscience, was being compelled to conduct a marriage service, might well wish to go to the civil courts and might well wish to pray in aid rights

to conscientious action enshrined in Article 9. I think, before the Assembly today, there is a balancing act to be done between the imperatives of Article 12 and the imperatives of Article 9. If I may respectfully say so, the discussion is focusing on whether one should or should not do this. I think it is defensible in law from a human rights perspective either to accept the amendment or to not accept the amendment.

#### **8.4.14 Senator S. Syvret:**

This is one of those debates I came to genuinely undecided but I have listened carefully to a number of interesting speeches that were made and my mind has been made up to vote certainly against the amendment of the Chief Minister and support its rejection. When the Dean spoke, he said there were some non-religious philosophers, ethicists, who said that it was not possible to reassign gender, the implication being that this was therefore a reasonable view to hold on the part of some clergy. The Dean quoted some secular philosophers and ethicists who have differing views on the subject. Some say that it is possible to reassign gender because it is a social construct and, on the other hand, he said that some do not hold that view and take the view that it is not possible. So to be clear, that is what the Dean was referring to. Quite rightly, that is the status of the debate out there. But even if one takes the view, as some do, that gender reassignment does not affect the chromosomal makeup of the person, therefore it is not real gender change, is that point of any relevance? Does it matter? So what? Are we into a position where the church could, say, for example, on the basis of conscience, refuse to marry somebody who had had a facelift? Perhaps refuse to marry somebody who had had a limb amputated? Why the particular obsession with sex and gender? Why this particular obsession when we would not tolerate it as a civil society if it were on the basis of race, for example? I do not hold these views but hypothetically I could say that I have a freedom of conscience to engage in racial discrimination. If I were some kind of a Nazi, I could say to constituents who were from different ethnicities: "Oh, sorry, I am not dealing with you. I am going to discriminate against you because my conscience tells me that you are some kind of *unter mensch* and that is my conscientious right to act in that way." Well, of course, it is an absolute nonsense. The U.K. law is plainly wrong in this regard too. In fact, what the amendment does is go in the wrong direction. Rather than pointing out the fact that it is only the Anglican church that would be denied the opt out, therefore we have to give the Anglican church the opt out, surely civil society and fundamental human rights and freedoms suggest that we should be moving in the opposite direction to make sure that there is no freedom to opt out on the grounds of plain discrimination - because that is what this is - to any other denomination or religion. I personally think that is the direction that we should be going in, because if not, we are supporting, essentially, a prejudice, a bigotry. We are saying that it is okay for churches, other religions, to opt out of accepting and abiding by the anti-discriminatory laws that all of the rest of civil society is expected to adhere to. I think that is quite wrong because it continues the historic view that somehow other religious beliefs are in some way apart from the rest of the considerations of civil society and deserve special status and special treatment. I think not only in our society but around the world, we need to start moving away from that and start to ideally bring all religions into the standards of equality, freedom, non-discrimination and peace. To accept that it is acceptable for religions to opt out from things on the basis of what is essentially a prejudice, a discrimination, is quite wrong, because by doing so, we are encouraging and perpetuating the concepts of, frankly, hatred. We need only look around the world to see the range of appalling wars being fought in the name of religion, to see that perhaps religion starts to need to take some guidance from civil society rather than the other way round. I could not possibly support legislation that promoted and encouraged the notion of bigotry and hatred and to cite that point, bizarrely enough, I would like to finish with a quote from Dr. Martin Luther King, one of the world's greatest religious leaders, of course. He said many great things but the quote I particularly wish to use is this. He said: "Darkness cannot drive out darkness, only light can do that and hatred cannot drive out hatred, only love can do that." I think we should reject the amendment today as a step in the direction of genuine and open societal love and acceptance of everyone.

#### **8.4.15 Senator B.I. Le Marquand:**

We are looking today at an issue which is a classic conflict between the rights of one person on the one hand and the rights of another on the other. The conflict here is between the right to marry by a person who has changed their gender in accordance with law and elsewhere which is now recognised here and the right to freedom of religious belief of individual clergy. Now, human rights matters very often take the form of the rights of an individual versus the State in which case the balance will almost always go in favour of the individual unless there are very pressing reasons. This is not such a balance. This is a balance between the rights of one individual against another individual. Now, I accept that there are cases in which the civil State must set down ground rules which override the religious rights of individuals, and classic examples of that would include such matters as blood transfusions in relation to Jehovah's Witnesses. It would include perhaps matters of animal sacrifice in relation to other groups and, indeed, we had a classic situation recently, I believe, in the news, involving a young Muslim boy whose father had encouraged him to beat himself as part of a religious observance. Clearly, there are situations in which the secular State must set objective standards which cut right across the board and override such things. The question and my concern is whether or not that is appropriate in such a case. Is the matter of such extreme importance in terms of setting an objective standard? Does it override the individual freedom of religious observance of an individual Anglican clergyman who may have genuine reasons for his views? He may take the view that it is not possible for a person to change their gender because that is set at birth. That could be the view taken by an individual clergyman who may take the view also that it is not appropriate for him to marry people of the same gender and thence he arrives at a moral conflict. I am not saying whether that is correct or not but that could be a position at which a person could arrive. Now, in this particular circumstance, are the imperatives so great as to override his freedom of conscience, particularly in a situation where a person is free to marry in a secular marriage or in another denomination which might be happy or a different clergyman. In my view, the balancing act lies overwhelmingly in favour of the individual conscience of the individual clergyman. I shall vote for the amendment.

#### **8.4.16 The Connétable of St. Clement:**

I found the arguments on both sides of this debate to be viable but I come from a slightly different angle. A wedding is a joyous event. It is joyous for the couple, their friends and their family. I ask myself why should this joy be diminished by forcing - and that is what we would be doing if we reject this amendment - forcing a priest to solemnise the marriage when, as described by Senator Le Marquand, in all conscience, he really does not want to do it. His doubts, his difficulties, are bound to rub off on those involved in the ceremony, so I say how much better for everyone that a priest who is comfortable with the situation is the one who carries out the ceremony. We have heard from the Dean they will not be denied the wedding. It is the individual priest, in conscience, that would not be allowed to do it and it therefore seems absolutely simple and right to me to accept the amendment.

#### **8.4.17 The Deputy of St. Martin:**

I have come here today wanting to be persuaded one way or the other. I welcome that Senator Le Marquand has spoken but the one thing I found disappointing is that it could be said that this is a Council of Ministers' proposition and yet never has so little been spoken by so many. I would have expected to have vociferous reasons given to me and the rest of the House here as to why we should support this. I would be still hoping, after I have spoken, that people will be able to convince me as to why I should support it or reject it but that may well come. One thing I did find interesting is when the Chief Minister spoke and he said about the wide consultation. I did listen to the Dean on Sunday morning and I was quite surprised when he said that they had not been consulted and what they were going to do was to get someone over from the U.K. to come along and speak to the clergy for them to come to some decision as to how they should go about it. I would have thought really that the consultation probably would have started with the church and I am rather surprised.

Clearly, we have not heard that from the Dean today because I think, quite rightly, Senator Shenton reminded the Dean that it would be nice to hear the moral point of view. But I was rather surprised at that because I think it might have been helpful if we indeed had been lobbied by our church, our priests, *et cetera*. I rang mine last night and he was quite relaxed about it. He did not care one way or the other. I think we ought to compliment Deputy Tadier because I thought he gave an excellent speech and he did lay out the areas that we should be looking at and he pointed out about the discretion. What we have here is a sort of unwritten discretion and unwritten law where discretion has been allowed and we have not worried too unduly if a priest or a rector has chosen not to marry someone because they are divorced. They say they can use the church but not him, find someone else to do it or, indeed, it may be because they do not attend church or they are not Christians or whatever reason the rector has chosen to say: "I would rather I did not marry you but someone else will do." In fact, whether we have this Law or not, I think that discretion will still be there so it could be argued do we need this piece of legislation anyway but that is something we will have to discuss later on. What we do have here is something which Deputy Higgins alluded to. We are going to have written law which allows us to discriminate and that is the little bit that I do find difficult to come to terms with and again, maybe, someone, the Executive aside, will tell me why we should go along with the amendment. One thing again which was asked, but we did not get an answer to, and that was from the Solicitor General. He gave an answer in a way and I think that is probably the difficulty we have. I do not think this has been challenged and I think that is why we are in this situation. I think the Solicitor General was quite correct to say you are right one way and you are right the other way. Until the decision has been challenged, it is still open to debate so, again, whether we need this piece of legislation or not remains to be seen but we do not know if it has been challenged and we do not know whether it is human rights compliant. We have an opinion on one side that says it is and another opinion on the other side that says it is not. So until it has really been challenged, which I think was what Deputy Higgins was alluding to, it will require challenge really for us to know. It may be that what the U.K. has legislated for may well be incorrect. I am still undecided, but unless I can be convinced as to why I should support this amendment, I probably will vote the other way. I would ask and I would urge Members of the Council of Ministers to convince me and others as to why we should support their amendment.

#### **8.4.18 Senator P.F.C. Ozouf:**

When I sat with the Chief Minister to be briefed on this, I will be absolutely honest and say that I have struggled with the arguments of the amendment but I do support, upon reflection, the amendment. This law requires recognition of a person that changes sex and under secular arrangements, it requires in civil society that person to be treated with their new gender and quite rightly too; that is absolutely correct. We are dealing here with an issue to do with the church. Now, the reality is that the church believes that marriage is a union between a man and a woman. Some clergy do not accept that you can change on religious beliefs - I do not - that you can change sex. Some Christian communities believe that marriage is something ordained by God. When the U.K. brought in same sex civil partnerships, something which I agree with, the Parliament and other parliaments around the world did not seek to change ecclesiastical or Canon or religious law. They changed civil law. They changed and put in place secular arrangements and I think that that is right. I believe in same sex marriages in civil society. I do not think that we should be changing ecclesiastical law. Deputy Southern, I think, in his remarks, did not explain fully. We are dealing here with Church of England clergymen and clergymen within the Church of England must, as we have heard, marry 2 people coming forward. It is not an option as it is for other religious groups. That really is the difference. We are giving clergymen in the Anglican community, who have an obligation to marry 2 people, this opt out. We are changing effectively church law. We are respecting church law as opposed to civil and secular law. For that reason, I have come down and it is a balancing. There are a number of considerations but, on balance, I think that we should preserve the laws, the arrangements, the beliefs, of the Church of England in this particular regard and therefore I am going to be supporting and have supported the amendment, as difficult as that is.

#### **8.4.19 Senator P.F. Routier:**

I think the comments of Senator Le Marquand earlier about balancing the rights of the individuals on both sides was something which really struck a chord with me because I think we have, on the one hand, the clergyman as an individual which is a lot different to the impression which Senator Syvret was giving. He was trying to give the impression that various churches would hold a particular view but that is not what we are debating today. He was trying to play off all sorts of churches and various religions against each other and against the law of the land but that is not what is being proposed here. What is being proposed by this amendment is an individual clergyman, as a matter of conscience, being able to make a decision not to solemnise a marriage and so I really wanted to make that point: that it is focused on the individual person and not the church as a whole. We do have in various areas of life where they do have these various circumstances where conscience does come into play. We heard about it when it is about war. We have also heard about it, which I thought was vitally important, in the termination of pregnancy law. There are people who do not wish to be party to the termination of a child and it is right this legislation that we have that we passed does put that in place. Deputy Tadier, in his opening remarks, did sort of push that to one side and felt it was irrelevant but I do not think that is an irrelevant argument at all. I believe that it is something that is an appropriate thing to have when there are certain circumstances where an individual does have a matter of conscience that we should perhaps draft our legislation in a way which does respect and give the opportunity for somebody to exercise that discretion.

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

I do have a point of order if the Senator will give way. I did not brush aside the comments about conscientious objection in the case of abortion. In fact, I did make sure that I highlighted them. The point I was making was that they are not the same. I did say that I think there was a difference and that the conscience clause is justified in the case of abortion and I was not belittling it in any way. I was making the distinction that there is a difference between the 2. So I would like him to retract the comment that I pushed it aside, which is not true.

#### **Senator P.F. Routier:**

Well, my view would be that I believe that there is no difference between the 2 issues. There is a matter of conscience which an individual's conscience does play into this legislation we are passing today and if I have offended the Deputy in the way I phrased that ... but I still make the point that I do believe that this is still an appropriate thing to have in this particular legislation. It has been said by other speakers that religions other than the Church of England do have the ability to make a decision whether they are going to conduct a wedding or not and I do think that it is something that we could and should afford to the clergy of the Church of England. I thought the Connétable of St. Clement's view about forcing a reluctant clergyman to officiate at a wedding was appropriate. Thinking about that, it would be not a very pleasant occasion whereby perhaps the clergyman would have to rise above it and deal with it but it obviously could reflect on the day itself. So taking all those balancing issues into consideration, I will be supporting the amendment.

#### **8.4.20 Deputy J.M. Maçon of St. Saviour:**

When I initially looked at this amendment, I was going to reject it. I have now moved into a state of confusion. My understanding previously was not that a priest from the Church of England which appears as if he has to marry a couple is forced to, is obligated, so what has come through from the Dean is saying that if a couple goes to a Church of England church and asks for a marriage, that priest has to marry them. I was not aware of this. I did not realise that that was the case in Jersey. I thought a priest on religious grounds could say: "XYZ reason, I disagree." If I am wrong, if someone could correct me, I would very much appreciate that but it appears to be the situation that if a couple goes to a Church of England priest that they are obliged to marry them.

**Deputy D.J.A. Wimberley:**

On a point of fact, that is some priest has to, not that priest.

**Deputy J.M. Maçon:**

A priest of the Church of England has to marry them, all right, in which case, then, therefore, there is still an element of discretion which any priest therefore has - if I am wrong again, could someone please correct me - in which case, this clause does not seem to make any sense in that the discretion which this is asking for already appears to exist. Of course, if I am wrong, someone please correct me.

**8.4.21 Connétable J.L.S. Gallichan of Trinity:**

I will be very brief. If it is in the Law, it is law. If it is not in the Law, then the rector will decide whether he wishes to marry that couple or not. If it is in the Law, I am afraid he will not have any choice.

**8.4.22 The Connétable of St. Mary:**

I will be equally brief. It seems to me that there might be still a little confusion but it seemed to me that when I read the report accompanying the amendment, there were a couple of words that might have been missing and that might ... I am sure I picked up when the Deputy of St. Martin was speaking and other Members, people saying that there was already an element of discretion allowed in cases of divorce, *et cetera*, so why was this different? The fact is that there is an obligation to marry couples who come as first-comers to the church to be married. In other words, as the Dean said, Canon Law says a spinster and a bachelor. So it is fundamentally a different set of tests if a divorced couple or a divorcee comes. This, however, would fall into the first category. So there is not the discretion allocated to a Church of England minister that there is over handling of a divorce case, as I understand it. It seems to me that this is totally a balance of morality and conscience. Everything plays a part. I spoke at length to my rector about this and was reassured. We spoke, for example, about what would happen, how he would view a divorce case. I asked if it was different situations and he took me through the different levels of pastoral questioning that he would go through and he would satisfy himself of the right action to take and the action would not necessarily be the same in each case. I am quite satisfied that different clergy will view this matter differently and it will not be a question that anybody would be denied a service if they were to require one but it does seem that if this amendment is not accepted, the clergy would be denied the right to make the choice of conscience. I do believe, on that ground alone, that this amendment should be supported. Just to clarify one point, Deputy Southern, I think it was, said that we are clearly talking about a civil issue. That is totally clear, I think, was what he said. The civil position is not affected by this amendment.

**8.4.23 The Deputy of St. Mary:**

I have gone from clarity to confusion. I think I have come back again. Yes, I am not comfortable either way really. Senator Ozouf said the clergy have a duty to marry 2 people who come forward and clearly that is the case or rather the clergy in the Church of England, *et cetera*, but in this case, they do not. We are being asked, as things stand... no, wait a minute, if we vote for the amendment, they would not have to marry a couple who came forward if one of them had had a gender change operation, and that seems to go against the direction of the rest of the legislation. On the other hand, Senator Syvret raised the stakes and he said that there should not be an opt out and I found that very worrying. It just grates when this Assembly thinks it can tell people out there what to think and what to believe. I do agree that there are core values and someone else mentioned those and if there is a belief, the question is, is the belief on this issue part of the core values? Someone mentioned race, I think Senator Syvret again, and pointed out that if within a church there are beliefs being propagated about race that will lead to hatred, then it lies within those core values and we would have to say you cannot say that. That is the limit; that is one of those

limiting cases and the same possibly with homosexuality. The question is does this legislation lead to bigotry and hatred? It feels to me like a sledgehammer to crack a nut. I am really uneasy with making people believe something or making people act against their conscience, even if their conscience is not in agreement with my conscience, so I will put the question another way. Does a clergyman holding this belief, i.e. that this person who comes to him is not a man because they started out as a woman, that he or she will not marry them? Does that belief threaten society or does it threaten some part of society? I am not sure that it does. Now, the other point is that the Dean says that he must find an alternate. If a clergyman of Parish X says: "I will not do this", then the Dean, when it comes to him or her later on, has to say: "I will find someone else because that is my absolute duty of care." Deputy Le Hérissier pointed out, well, another Dean in another age, 5 or 10 years from now, may say: "I am not going to find anybody. I do not agree either" and it is a pity that we cannot put in a clause saying the Dean has to find an alternate but, of course, we cannot do that. We cannot write Canon law. I do not think we can anyway. So what is the position if this amendment falls? In other words, what is the position if we simply do not talk about it, we do not action, legislate, one way or the other? What is the position of the clergyman when the 2 people come forward if this amendment falls? I would love it if somebody would clarify that.

#### **The Deputy Bailiff:**

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

#### **8.4.24 Senator T.A. Le Sueur:**

I found this a fascinating hour's discussion and I am pleased that I have brought this amendment, notwithstanding the fact that the Law, in fact, would stand by itself without the amendment. I brought the amendment because I thought it added clarity in a situation where, as the afternoon has worn on, it has become quite clear that clarity is not always universally agreed among ourselves and therefore I suspect not universally agreed across the Island. I am not going to refer to the speeches of every particular Member because I think they fall into a couple of different categories or camps, if you like, but I would echo the words of praise for the speech made by Deputy Tadier in leading the opposition to this amendment and I think it puts the arguments very clearly and very fairly. I will come back to his speech at the end but I think, in reality, this boils down to 2 differing sets of tensions, one to which the Dean alluded and that is the tension between the duty of pastoral care to the vulnerable and the freedom of conscience of the individual and I think that has exercised the minds of all Members, albeit in different directions. I think the other main issue relates to that of human rights and I know that this legislation has come about as a result of a case involving the European Court of Human Rights but I am always a little bit wary about viewing legislation simply from a point of view of human rights because human rights is not an absolute subject. There are differing rights for different people in different circumstances and, again, there is often a tension between the rights of one person and the rights of another. I cite, in this particular case, 2 Articles particularly pertinent, Article 9 and Article 12. Article 12 of the Law allows an absolute right to marry and the Articles we have passed already earlier on today enshrine that absolute right of a person who is registered as transgender status to marry, to be recognised in a civil marriage has to be and will be recognised in those circumstances. Against that human right is Article 9 of the Human Rights Law which gives people and clergymen in particular the right to express a freedom of conscience and there are times when those 2 rights may appear to be in conflict and there is tension there. I am not saying that one is any stronger than the other. I am saying that what I believe we have here is a situation which accommodates both because under Article 12 we have within the Law the ability to register a civil marriage and in Article 9, in the amendment, we do have the opt out of the clergy according to their conscience. It may well be that very few clergy choose to act in a way which would deny people that right. I do suggest, and as I said of the numbers, that we are talking of a handful of people across the Island. Half of the people in the Island, I do not really know, will not be married in a church anyway. They will use a registry office or somewhere else and of the 50 per cent who do go to church, we are talking at most I suppose 2

or 3 couples and I would be surprised if there was not one clergyman around the Island somewhere prepared to accommodate them. But I think the Connétable of St. Clements had a very good point that you do not really want a situation where there is tension in an already tense situation or difficult situation. You do not want to aggravate that tension by imposing on to a clergyman a situation which is against his conscience. I think, without going into details, Members I suspect have made up their minds one way or another on this one. The Deputy of St. Mary asked what would happen if the amendment failed. He is not here to hear my answer but maybe he will hear of it elsewhere. In my view, if the amendment fails what we have is a situation of greater uncertainty and in his opening speech, Deputy Tadier said that he thought of bringing an amendment to make it a contrary view, in the end he agreed it was better just to settle for what we have now. With respect to him, I suggest that what rejection of this amendment will lead to is a state of uncertainty. The clergy will not be clear what their position is. But that is as may be. I think what we should not be trying to do is to dictate to any Church of England clergyman or to anybody what their conscience should or should not say. In fact, I think, in reality you cannot dictate another person's conscience. That person has to make up their own minds. With that, I see no point in trying to go through everyone's speeches. If anyone feels they have missed out anything I have said, they are welcome to try to remind me of that. I think I have covered all the points and I maintain my amendment and ask for the appel.

<b>POUR: 32</b>		<b>CONTRE: 17</b>		<b>ABSTAIN: 0</b>
Senator T.A. Le Sueur		Senator S. Syvret		
Senator P.F. Routier		Senator B.E. Shenton		
Senator P.F.C. Ozouf		Senator A. Breckon		
Senator T.J. Le Main		Connétable of St. Helier		
Senator J.L. Perchard		Deputy R.C. Duhamel (S)		
Senator S.C. Ferguson		Deputy of St. Martin		
Senator A.J.D. Maclean		Deputy R.G. Le Hérisssier (S)		
Senator B.I. Le Marquand		Deputy J.A. Martin (H)		
Connétable of St. Ouen		Deputy G.P. Southern (H)		
Connétable of Trinity		Deputy of Grouville		
Connétable of Grouville		Deputy S. Pitman (H)		
Connétable of St. Brelade		Deputy M. Tadier (B)		
Connétable of St. Martin		Deputy of St. Mary		
Connétable of St. Saviour		Deputy T.M. Pitman (H)		
Connétable of St. Clement		Deputy T.A. Vallois (S)		
Connétable of St. Peter		Deputy M.R. Higgins (H)		
Connétable of St. Lawrence		Deputy J.M. Maçon (S)		
Connétable of St. Mary				
Deputy J.B. Fox (H)				
Deputy of St. Ouen				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				

Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy A.E. Jeune (B)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy A.K.F. Green (H)				

**The Deputy Bailiff:**

The appel is called for in relation to the amendment of the Chief Minister to the Article. I invite Members to return to their designated seats and the Greffier will open the voting.

**8.5 Draft Gender Recognition (Jersey) Law 200- (P.174/2008) as amended**

**The Deputy Bailiff:**

Chief Minister, we return to Article 21. Does any Member wish to speak on Article 21 and the schedule as amended? All those in favour of adopting Article 21 as amended in the schedule please show. Those against? They are adopted. Do you propose Articles 22 and 23, Chief Minister?

**8.5.1 Senator T.A. Le Sueur:**

I do. I suspect they will be rather less controversial and I propose them.

**The Deputy Bailiff:**

Seconded? [**Seconded**] Does any Member wish to speak on those 2 articles? Would all those in favour of adopting Articles 22 and 23 kindly show. Those against? The articles are adopted. Do you propose the Bill in Third Reading, Chief Minister? Seconded [**Seconded**] The appel has been asked for on the Third Reading. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 32</b>		<b>CONTRE: 17</b>		<b>ABSTAIN: 0</b>
Senator T.A. Le Sueur		Senator S. Syvret		
Senator P.F. Routier		Senator B.E. Shenton		
Senator P.F.C. Ozouf		Senator A. Breckon		
Senator T.J. Le Main		Connétable of St. Helier		
Senator J.L. Perchard		Deputy R.C. Duhamel (S)		
Senator S.C. Ferguson		Deputy of St. Martin		
Senator A.J.D. Maclean		Deputy R.G. Le Hérisssier (S)		
Senator B.I. Le Marquand		Deputy J.A. Martin (H)		
Connétable of St. Ouen		Deputy G.P. Southern (H)		
Connétable of Trinity		Deputy of Grouville		

Connétable of Grouville		Deputy S. Pitman (H)		
Connétable of St. Brelade		Deputy M. Tadier (B)		
Connétable of St. Martin		Deputy of St. Mary		
Connétable of St. Saviour		Deputy T.M. Pitman (H)		
Connétable of St. Clement		Deputy T.A. Vallois (S)		
Connétable of St. Peter		Deputy M.R. Higgins (H)		
Connétable of St. Lawrence		Deputy J.M. Maçon (S)		
Connétable of St. Mary				
Deputy J.B. Fox (H)				
Deputy of St. Ouen				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
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Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy A.E. Jeune (B)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy A.K.F. Green (H)				

**Senator B.E. Shenton:**

Just out of a point of order, is it possible to ask for the people that did not vote?

**The Deputy Bailiff:**

I think normally the only thing Standing Orders provide for, Senator, are those who are either voting pour or contre. Anybody who reads the result of the appel will be able to work out who did not vote.

**The Deputy of St. Martin:**

On a point, I do think it is unfortunate that people do not have the courage to vote. At least if they abstain they would at least be voting but not to vote at all when in the Chamber I think really does say very little for those Members.

**The Deputy Bailiff:**

That completes then Projet 174 so we come next to the Draft Amendment (No. 10) of the Standing Orders of the States of Jersey. Sorry, I think the Connétable of St. Mary is going to say something about this matter.

## **ARRANGEMENT OF PUBLIC BUSINESS**

### **9. The Connétable of Mary:**

Yes, I apologise to the Members for the lateness of this. I did try to catch your eye at the beginning of Public Business and failed. I would propose to ask the House to agree to the deferment of Projet 179/2008 for 2 weeks until the next sitting.

### **The Deputy Bailiff:**

That is something you have the right to do without the Assembly ... so you would defer it?

### **The Connétable of Mary:**

Yes, I propose, Sir.

### **9.1 The Deputy of St. Mary:**

This is in connection with Projet 8/2009 and I would like to say a few words because we need to seriously consider when it is taken and there is also the matter of the peer review of the cost of cancellation. So if I could say a few words about it and also apologise to Members I would be very grateful. The first thing is, of course, I issued the second report on this projet yesterday at about midday and I do take the comments of Members. Quite obviously it was to be regretted that it went out that late and I apologise. The only thing I can say in my extenuation is that I was caught between a rock and a hard place. Either I produce something, as I think I mentioned in my email, short and shoddy or I produce something substantial a bit later. Now, I had aimed for last weekend but it just was not possible to gather the information and write the report in that time and I hope that Members appreciate the importance of this issue. We are talking about the biggest capital project we have ever approved. We are talking about the direction of Jersey in environmental matters but also in social matters for the next 25 years. We are talking about the probity of our institutions, the way we do our business, and these are serious matters. So that partly explains the length of what I wrote. I kept on coming across new worms under stones, or anyway, something under stones. So the report grew. That is the first point. The first request is that whatever happens, even if we scoot through the rest of the business today, that we do not take Projet 8/2009 today under any circumstances because, obviously, people have not really had time to read that second report. That is the first thing. The question of whether it should be taken in 3 weeks' time is something we can come back to. The second thing I want to bring to Members' attention is on their desks at 2.15 p.m. the usher kindly put out a single sheet which maybe Members would like to look at now headed: "Energy from Waste Facility, La Collette, Jersey." That is all the heading and it is the first report of my peer reviewer who kindly agreed to do a first appraisal of the costs of cancellation with documents provided at last by T.T.S. They provided an outline of the breakdown with all the numbers blanked out for reasons of confidentiality. So this ...

### **The Deputy Bailiff:**

Deputy, I am sorry to interrupt, but I let you rise to speak to try and help on the order of business as to when this matter should be taken. I appreciate you are getting there but I think perhaps you can get there a little faster.

### **Senator J.L. Perchard:**

Just on a point of order, if the Deputy carries on for a bit longer I will just have finished through his large report.

### **The Deputy of St. Mary:**

There is a speed reader. No, the point about the peer review is that it is, obviously, information. If we have a peer review look at the costs of cancellation which have been put to us at £45.9 million. If that is in front of Members and it can be done within 5 days then, obviously, the House is in a better position to decide which way to go and I am not assuming that this is cut is dried. I do not think we have the right to do that when we are talking in this way. If people just look at paragraph

6 and paragraph 8 on the first page, they will see that there are real issues here. The costs in Fichtner's report seem to be very high level. We do not have a copy of the programme. The information required schedules and the procurement schedules. So, obviously, they could not do a full review and on the second page, the last 2 paragraphs, there are 2 more comments on what T.T.S. said that Members might like to look at. The question is, when this should be taken, either tomorrow or in 3 weeks' time which, of course, will add to any cancellation costs should we agree to rescind or, possibly, the best but of course, the least likely, is next week.

**The Deputy Bailiff:**

Deputy, it is your proposition. Which are you suggesting?

**The Deputy of St. Mary:**

The reason I spoke about the peer review is that I have an email from the person who did that appraisal who is quite highly qualified enough and I think you can see that from this other document as to the cost of what a peer review would cost and he is offering to review Fichtner's assessment of cost, 2 days, £1,500 plus V.A.T. Reviewing the contractor's potential costs, 5 days, £3,750 plus V.A.T. and I think that Members might like to consider whether that is not a good investment for this debate and whether it is not better to debate this matter when we have those additional costs. Well, I am first of all asking whether it is possible to reconvene next week which is, obviously, a tall order. No? Okay, or 3 weeks' time.

**The Deputy Bailiff:**

Deputy, at the moment this matter is listed for debate at this sitting. It is clear we are not going to reach it today because there are other matters to be dealt with. It could be taken tomorrow. If, on the other hand, you or the Assembly feel that it is premature to take it tomorrow, you have an absolute right at this stage to defer it until the next ... or to invite the Assembly to take it at the next sitting but you do not have to take it at this sitting or, other Members, of course, can by majority decide to put it off. But do you want to take it tomorrow or do you want to put it off for 2 weeks?

**The Deputy of St. Mary:**

Three weeks is the problem because that, of course, adds to any delay and I am really, I suppose, seeking a bit of guidance from Members because I can run tomorrow with this debate but the question is whether other people can respond in that very short time or whether people would rather take it in 3 weeks.

**The Deputy Bailiff:**

Firstly, I will put it to the Minister for T.T.S. Minister, are you going to be asking for this matter to be put off?

**The Connétable of St. Brelade:**

No. I am keen to have this debated as soon as possible. My officers have been busting a gut to respond to Deputy Wimberley's various requests and we have done so and I am keen to get this to the House as soon as practically possible. **[Approbation]**

**The Deputy Bailiff:**

Chairman of P.P.C., do you wish to add anything?

**The Connétable of St. Mary:**

Not in that capacity but I was just confused. I thought I saw a request for funding going to the House during that speech from the Deputy of St. Mary and I was not quite sure whether I had my...

**The Deputy Bailiff:**

You would have to bring a proposition for that.

**The Connétable of St. Mary:**

Precisely. That was my point.

**The Deputy Bailiff:**

No, I think, Deputy, then it appears that for the moment this matter remains upon the agenda unless either you defer it or somebody brings a proposition to defer it. So I think we will leave it there for the moment and get on with the Order Paper. Deputy Higgins, is there anything you wish to say?

**Deputy M.R. Higgins:**

I want to make a comment back to the Minister. To be honest, one of the problems with this debate and one of the reasons why we are considering delaying it is the lack of information we have had from T.T.S. I have asked for information which I have still not received.

**The Connétable of St. Brelade:**

That is totally incorrect.

**Deputy M.R. Higgins:**

I am sorry. So one of the things is that we have a problem. We can either debate this in the Chamber, and I am sure many Members here have been through this debate *ad infinitum*, the ones who have been here before and want to see it finished. Others when they hear the figure £50 million just roll their eyes and say: "Oh no, we are not going to sort of go ahead and cancel this because it is going to cost us that much money." We do not know how much it is going to cost. We have been trying to get the information from T.T.S. and not getting it, therefore, I think what the Deputy of St. Mary was trying to come to was that we need time for a peer review of those costs so Members are fully informed and then the Island will be fully informed of what the true cost is of this cancellation. They cannot justify a £50 million cost.

**The Deputy Bailiff:**

Deputy, I think I can only repeat what I said. The Deputy of St. Mary has an absolute right to defer debate of this matter. If he thinks that he needs further information about the cancellation cost, he can say: "I do not wish to have this debated at this sitting", and that will then happen. If on the other hand he is happy to proceed then it is open to any other Member, including you, to propose to the Assembly that the debate be deferred. But unless somebody does that, the matter rests on the Order Paper.

**Deputy M.R. Higgins:**

Okay, Sir, I understand that now, thank you. But could you just explain to me if, for example, the cost of the peer review is £5,000 that the Deputy of St. Mary is talking, how can we presumably obtain the £5,000 to be able to do the peer review before that time?

**The Deputy Bailiff:**

I am afraid that is not a matter for the Chair.

**10. Draft Employment (Minimum Wage) (Amendment No. 5) (Jersey) Regulations 200- (P.180/2008)**

**The Deputy Bailiff:**

Very well, can we then return to the Order Paper because I think, as I say, it is clear that Projet 8/2009 will not come on until tomorrow and it is for the parties to consider their position overnight. So we come next to the Draft Employment (Minimum Wage) (Amendment No. 5) (Jersey) Regulations 200- - Projet 180/2009 - lodged by the Minister for Social Security. I ask the Greffier to read the citation.

**The Deputy Greffier of the States:**

Draft Employment (Minimum Wage) (Amendment No. 5) (Jersey) Regulations 200-. The States, in pursuance of Articles 17 and 104 of the Employment (Jersey) Law 2003, have made the following Regulations.

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

This proposition amends the minimum wage Regulations to increase the maximum amounts that an employer may offset against the minimum wage from April of this year. These amounts may only be counted as part of the minimum wage when an employer provides food and accommodation to employees as part of their employment package. The proposals are based on the recommendation of the independent consultation body, the Employment Forum, which was presented to the previous Minister for Social Security on 30th October last year. Members will find the Forum's recommendation and the previous Minister's response at the annex of the proposition. I am grateful to Senator Routier for ensuring that this amendment was prepared last year in order that the public may be given and have been given sufficient notice of the new rates. If this amendment to the Regulation is adopted, I will make an Order applying the same percentage - that is 4.8 per cent - to increase the minimum wage to £6.08 per hour and the trainee rate to £4.56 per hour. I propose the Regulations.

**The Deputy Bailiff:**

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

**10.1.1 Deputy R.G. Le Hérisier:**

There is word in the body of the report that because of the economic situation there might well be an interim review. I wonder if the Minister could tell us when that will be timed?

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

I welcome the minimum wage amendment legislation. It disappoints me, however, that there is no reference or rate set for members of the community who work on therapeutic schemes. There is evidence to suggest that the minimum wage prevents such schemes. I know of many cases where for carers it has been very difficult. For example, last time when the minimum wage came in those on therapeutic work schemes that were working 5 days a week, to comply with the minimum wage legislation their working week went down to 4 days which sounds fine in principle but for those members of the community that rely on carers, it created another huge problem for the carer. At the end of the time the employee still had the same rate of pay. I know the Minister has undertaken considerable research in regard to therapeutic work schemes and would ask what plans, if any, does he have to include them in the legislation?

**10.1.3 Deputy M. Tadier:**

I will not speak too long. I have spoken enough today. I just really wanted to make some points that the Citizens Advice Bureau brought up. I did read through the Law and I do welcome an increase in the minimum wage but I suspect that the minimum wage as it is currently set is too low. Now I did not bring an amendment. I am saddened that maybe other Members who are more senior than me did not bring an amendment either. Now is not the place to do it. But I did want to note that I thought that the report itself was very skewed in favour of the industry and the employers themselves. I noted when reading through that people in the hospitality industry in particular were very begrudging of any kind of minimum wage, let alone an increase in the minimum wage. I think just for the record and for the public who are listening, I have received contact from the Citizens Advice Bureau who think the minimum wage is too low. They believe it should be set at 45 per cent rather than 40.5 which I notice is going to be incrementally increased. I just wanted to raise that issue. There was another issue which I was worried about in the report. Issues were raised about the fact that gratuities and tips currently are allowed to be issued and paid through the payroll

as if they were being paid by the employer. Thus if someone earns, for example, what will be £6.08 an hour, if £3 of that an hour is effectively a tip then the employer only needs to contribute £3.08 an hour. I think this is wrong. It is perhaps not the time to debate it today but I intend to bring a proposition to rectify that. So I just want really to raise these for information. I will be supporting the proposition which I think does need to be raised. Thank you for listening.

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

I believe the correct Radio 4 phrase is: "And for those of you have been, thank you for listening." Welcome to the real world, Deputy Tadier. Yes, there are large-scale flaws in the system we operate over minimum wage. I look forward to having the Deputy join me in what hitherto has been a very lonely crusade on minimum wage. However, I too am not bringing an amendment this time - for which much relief said the Constable of Trinity - because essentially in the last major review of the minimum wage they finally established principles which will eventually lead to lifting low paid workers out of poverty. It is not going to happen tomorrow. It is not going to happen next year but it will happen eventually because the principles under which the Employment Trust is operating are sound ones and that is the essential thing. I believe like Deputy Tadier that things can be done more quickly. I believe that, yes, the emphasis has always been and remains very employer biased and not giving proper consideration to employees. But, nonetheless, softly, softly, catchee monkey. Slowly and surely we will get there in the end.

#### **10.1.5 The Deputy of St. John:**

As a former employer, I was always conscious of the needs of my staff. In fairness, I do not think we ever paid the minimum wage to any of our staff. I do have concerns in this climate that the proposed £6.08 is sufficient for a take-home pay. In fact, you take out your Social Security and other costs there, the person concerned will take home on a 40 hour week just over £200. In this day and age, to me it is not acceptable. Many of these people, and we have seen people being put out of work at the moment, they are usually the people who cannot fight their corner. They cannot fight their corner. Whether it is the staff that you have been debating, whether it was at Woolworths and we have seen today on the paper that Pound World are going into liquidation also and many others which are going to happen in the next few weeks. These people do not have an opportunity to even save for those lean times. In fact, I am remiss in not bringing an amendment to this in the short time I have been back in the House because I think we should be taking into account the lean times that this Island is going to go through. These are the people at the bottom end who are going to be suffering more than anyone else. They are the ones who will need the help through our Social Security scheme. But in this day and age as society is, I think we are doing a disservice to the people at the bottom end of the scale.

#### **10.1.6 Senator A. Breckon:**

I am heartened by the comments that other Members have made but I would draw Members' attention to the fact that the Employment Forum do go out and consult on this so if Members have a view then ... and last year - it is on page 7 - they did this between 21st July and 1st September. The reason I say that is because there is not much difference between the U.K. really. It is £5.73 in the U.K. and the difference here is 35p and I would contend that Jersey is a much more expensive place to live and work than the U.K. But I think there are a number of issues and I think the Deputy of St. John has touched on that. If somebody receives this amount of money at the end of the week then what can they do with it? What does it buy in pound price? Apparently the answer is not a lot if you have to start paying rent and you are receiving £220 a week say. Then there is a cost to us as a government because if people are not getting the money in employment then we need to make it up in benefits. That is really where it is said we do not support low pay but perhaps we do. I think there is an opportunity in what Members have said. If they do want to have an influence on this then there will be an opportunity not very far away in the coming months where they can make submissions to the Employment Forum and say that they consider because of

circumstances in Jersey they believe that this should increase substantially. When we think of the average wage as £32,000, what we are talking about here is a sum that is considerably away from that. But I think what has happened is this has been brought in and, I think as Deputy Southern said, gradually it is establishing a benchmark and we have to consider as well those who employ people whether they are employing or they just have a hobby that they are involving other people with. So I think there are some hard choices there as well. But I think it needs to move on and it needs to move on considerably in the next round of increases. But I think it is up to us as Members of this House and to motivate the public if they have a view on that then to submit it to the Employment Forum because what the Minister is in fact doing - as his predecessor did - is accepting the recommendation of the Forum and bringing it to this House. It is not the previous Minister or the existing Minister's figure. It is something that was recommended by others and that is really where it has come from. If as Members of this House, as I have said, if we want to influence that then the opportunity to do that is throughout the summer this year and to engage others to do that. I hope Members will do that in view of some of the comments that have been made.

**The Deputy Bailiff:**

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

**10.1.7 Deputy I.J. Gorst:**

It pleases me to follow Senator Breckon because he has more or less said everything that I was about to say. He is absolutely right. This proposal is the recommendation of an independent consultation body. They are the independent body that recommends to the Minister and the Minister brings those recommendations to this place. That is exactly as it should be. So I can do not much more, other than reiterate what Senator Breckon has said. If Members are dissatisfied with this level, the appropriate course of action for them is rather than us trying to politicise in this House what economic conditions are outside of it, what employers are thinking, the balance that employers are having to find between keeping people in employment and paying them a living wage is one that needs to be considered by that independent body. Therefore, if Members are dissatisfied they should during the consultation process, either ask to meet with or communicate with the Employment Forum and make their thoughts known and they will consider that in the round with unions and employers generally. Deputy Le Hérissier asked about the economic situation and it is my understanding that the Forum were concerned that the minimum wage does not create or stimulate unemployment and, therefore, they are keen to review the effect of the minimum wage upon ... or whichever way round you like to look at it. The effect of the minimum wage upon the current situation or the current situation upon the minimum wage and the knock-on effect for jobs in general. I am keen for them to do that in the coming year. Into that review they will also putting - if Members have looked at the appendix to the proposition - the issue of gratuities and tips. Currently the situation - yes, Deputy Tadier is right - is the same as the U.K. That is something that I believe should be considered but I understand that there was not enough information forthcoming in their previous review but they have and will undertake to review that particular area to consider whether that is appropriate or not. Deputy Southern suggested that I might have been relieved that he has not brought an amendment to this proposition. Not relieved at all; merely surprised. As other Members have commented, this is an increase and it is also a slight increase in the percentage as well of weekly average earnings from 40 to 40.5. I am not giving a commitment that the Forum will recommend an increase on that in future. My position is that they are the independent body. They are the body that does the consultation and they are the body whose recommendations I wish to continue to accept in this particular regard. It is a difficult area, as the Deputy of St. John pointed out. Just because there is a minimum wage, I do not believe that that means that employers have to pay down to that level. If they feel able to pay more in recognition of the work that their employees are providing then I for one would encourage them to do that. However, I do know that the hospitality industry and the agriculture industry do sometimes

struggle to make ends meet and they are often bodies that write to the Forum and are not happy with any increases. So it is a balance to be struck. If I could just address the concerns of Deputy Green; concerns which I have stood in this Assembly and outlined before. I am grateful again that the past Assembly agreed with those concerns, recognised them and approved a proposition to ask the Employment Forum to review the effect of the minimum wage upon those in therapeutic schemes. They have now done that consultation. I met with them just before Christmas and they are in a position to bring forward their recommendations in early course. I believe they are just being drawn-up. They will have some suggestions to deal with what I believe is a pressing issue and it is going to be even more of a pressing issue in the current economic climate when perhaps some individuals who are in these schemes who might in normal economic circumstances have been able to move out in due course into open employment, they are probably going to find that more difficult in the current environment. That is something that we need to be aware of and we need to make sure that our legislation is not stopping that but is enhancing them and enabling them to have meaningful occupation and therapeutic employment in these difficult times. We must not just forget them because of economic difficulties. So I hope that I might have allayed some Members' fears and they will still feel able to support this recommendation to increase the minimum wage as I outlined at the start of this debate.

**The Deputy Bailiff:**

All those in favour of adopting the principles, kindly show. Those against? The principles are adopted. Senator Breckon, I think this is a matter which falls within the remit of your Scrutiny Panel.

**Senator A. Breckon (Chairman, Health, Social Security and Housing Panel):**

No, Sir.

**The Deputy Bailiff:**

Very well. Minister, do you wish to propose the Regulations *en bloc*? There are 3 of them.

**Deputy I.J. Gorst:**

Yes, they are very straightforward. I have already touched on them at the start so I think if we take them *en bloc*, please.

**The Deputy Bailiff:**

Are Regulations 1 to 3 seconded [**Seconded**]? Does any Member wish to speak on any of the Regulations? All those in favour of adopting Regulations 1 to 3, kindly show. Those against? Regulations 1 to 3 are adopted. Do you propose the Regulations for the Third Reading, Minister?

**Deputy I.J. Gorst:**

Yes, please.

**The Deputy Bailiff:**

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

**11. Draft Companies (Amendment No. 10) (Jersey) Law 200- (P.185/2008)**

**The Deputy Bailiff:**

We come next to the Draft Companies (Amendment No. 10) (Jersey) Law 200- - Projet 185 - lodged by the Minister for Economic Development. I will ask the Greffier to read the citation.

**The Deputy Greffier of the States:**

Draft Companies (Amendment No. 10) (Jersey) Law 200-; a Law to amend further the Companies (Jersey) Law 1991. The States, subject to the sanction of Her Most Excellent Majesty and Council, have adopted the following Law.

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

Members will be aware that there are 2 projects to be debated. The major purpose behind both the amending Law and the amending Regulations is to clarify aspects of the Companies (Jersey) Law 1991 - which I shall refer to as the principal law - following the introduction of Companies (Amendment No. 9) (Jersey) Law which came into force in June 2008. The proposed amendments strengthen the competitiveness of the Jersey company; one of the key tools used by the finance industry, taking into account the needs of both local and international practitioners, to maintain Jersey's position as one of the most progressive jurisdictions in the world. Both the amending Law and Regulations have undergone appropriate consultation with a steering group chaired by Jersey Finance. Industry were represented by the Law Society, the Jersey Society of Chartered and Certified Accountants and the Jersey Financial Services Commission. Most of the amendments are for clarification purposes. The Law Officers' Department has indicated that the proposed amendments to the principal law do not raise any human rights issues and that all tariffs for new offences created are commensurate with similar existing offences. No measurable cost or manpower implications arise for the States or indeed the Commission. The amending Law will introduce an addition right of appeal to the Royal Court for a company and/or any of its members against certain directions of the Jersey Financial Services Commission, making it easier for companies to gain access to court in appropriate circumstances and bolstering the human rights compliance of the Companies Law. There is a clarification with regard to distributions and reduction of share capital and the amending Law introduces a new offence where companies do not comply with their obligations regarding keeping of a registered office in Jersey. In particular, it will be made explicit that a company does not satisfy the existing requirement to maintain a registered office in Jersey at all times unless the occupier of the premises in which the office is situated authorises their use for that particular purpose. Currently Jersey companies can be listed on various foreign stock exchanges including the London Stock Exchange, alternative investment market and plus markets, NASDAQ, the Dow Jones and Euronext. Jersey company law currently provides for a majority of two-thirds of the passing of a special resolution but some common law jurisdictions such as Hong Kong require companies listed in their stock exchange to maintain a 75 per cent threshold for the passing of special resolutions. In order to facilitate Jersey companies being listed on additional foreign stock exchanges, the principal law will be amended to enable companies to specify in their articles a higher than two-thirds majority for the passing of special resolutions. Finally, greater flexibility will be introduced by allowing the States to amend parts 8, 12, 18B of the principal law by Regulations in the future. I propose the principles.

**The Deputy Bailiff:**

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

**11.1.1 Deputy R.G. Le Hérisier:**

I must admit I have remained totally confused. I wonder if the proposer could say what the actual purpose is? Are we referring to businesses fully domiciled on the Island or are we referring to some kind of financial structure where some element of domicilability is required? But at the moment, like a lot of Members I imagine, I am totally lost. What is the aim of this Law in 2 or 3 simple points?

**The Deputy Bailiff:**

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

**11.1.2 Senator A.J.H. Maclean:**

The principal aim, for the Deputy, is clarification. Clarification of Amendment No. 9 which was passed by the States - by this Assembly - in 2008; last year. With reference to the companies that the Deputy was querying, these are Jersey companies that would be registered here. I mentioned, for example, other stock exchanges - in particular Hong Kong. It may be that companies that wish to register, organisations that wish to register a Jersey company... Of course revenue is generated here within Island for that particular purpose so we are referring to Jersey registered companies.

**Deputy R.G. Le Hérissier:**

There is a difference between being Jersey registered and physically operating your main purpose of business on the Island. Which are you referring to?

**Senator A.J.H. Maclean:**

As far as I am aware it is a question of they are registered in Jersey for operations in other jurisdictions where they may be on, for example, a stock exchange like Hong Kong or jurisdictions which may wish to ... or individuals who may wish to operate in other jurisdictions.

**Deputy M.R. Higgins:**

As the Minister's response was a bit vague I thought, I would like this to be referred to Economic Scrutiny, please.

**The Deputy Bailiff:**

I was going to ask you in due course, Deputy, of course once the Assembly has considered the principles. Very well, all those in favour of adopting the principles, kindly show. Those against? The principles are adopted. Deputy, I think I know the answer but does your panel wish to have this matter referred to Scrutiny?

**Deputy M.R. Higgins (Chairman, Economic Affairs Scrutiny Panel):**

I think so in the circumstances, yes.

**The Deputy Bailiff:**

Very well. Then the debate must stop. However, Deputy, you have to assist us I think on when the matter would come back for continuation. It has to be not later than the fourth meeting following this. Are you able to assist on how long it would take your panel to look into this matter?

**Deputy M.R. Higgins:**

Yes, Sir, I believe we could do it by the next sitting. Three weeks? In which case I will say in one month. The sitting after next anyway.

**The Deputy Bailiff:**

The sitting after next.

**Senator A.J.H. Maclean:**

Just to try to circumvent this, can I perhaps ask for the Solicitor General to clarify? I was not obviously clear enough for the Deputy.

**The Deputy Bailiff:**

I am sorry. We have proceeded. This matter has been called in.

**Deputy I.J. Gorst:**

It strikes me that of course Scrutiny are entitled to behave in any manner that they feel fit as befits their independence. I am not sure whether the Chairman can tell us. He is just drawing in a piece of legislation because he misunderstood what the Minister was saying. It seems an extremely strange procedure, Sir.

**The Deputy Bailiff:**

Under Standing Orders, the chairman of the relevant Scrutiny Panel has an absolute right to call the matter in if he so wishes and he does not have to explain his reasons. So it has been called in and you are saying the second sitting of the States, Deputy? Very well.

**12. Draft Companies (Amendment No. 3) (Jersey) Regulations 200- (P.186/2008)**

**The Deputy Bailiff:**

Now the next matter is the Draft Companies (Amendment No. 3) (Jersey) Regulations 200- - Projet 186 - also lodged by the Minister for Economic Development. I will ask the Greffier to read the citation.

**The Deputy Greffier of the States:**

Draft Companies (Amendment No. 3) (Jersey) Regulations 200-. The States, in pursuance of Articles 2(b), 115(b), 181 and 220 of the Companies (Jersey) Law 1991, have made the following regulations.

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

Sir, I am not sure that I can take this in light of the previous amendment being called in.

**The Deputy Bailiff:**

I see. The 2 are linked, are they?

**Senator A.J.H. Maclean:**

That is my understanding.

**The Deputy Bailiff:**

So you would defer further considerations no doubt.

**Senator A.J.H. Maclean:**

I think that would be appropriate and once it goes back we will deal with them together.

**The Deputy Bailiff:**

No doubt if the Scrutiny Panel wants to look at this one beforehand, it can. Very well. So debate on this matter is deferred.

**13. Rôle of Unelected Members of the States: review (P.5/2009)**

**The Deputy Bailiff:**

Now the next matter for the Assembly is the Rôle of Unelected Members of the States: review - Projet 5. I think it preferable if I did not preside on this. I shall ask the Deputy Greffier to take over.

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

Very well. The Assembly turns to the Rôle of the Unelected Members of the States: review which was P5/2009. I invite the Greffier to read the proposition.

**The Assistant Greffier of the States:**

The States are asked to decide whether they are of opinion: (a) to agree that an independent review be conducted into the current roles of the unelected members of the States, namely the Bailiff, the Lieutenant Governor, the Attorney General, the Solicitor General and the Dean; (b) to request the Council of Ministers after consultation with the Privileges and Procedures Committee to submit to

the States for approval no later than 31st March 2009: (i) the names of the proposed chairman and members of the panel to conduct the review; (ii) the terms of reference of the panel and the proposed target dates for start of the review and the publication of the panel's subsequent report and recommendations; (c) to request the Minister for Treasury and Resources to assess whether the review can be funded from within existing resources and, if not, to bring forward for approval a request under Article 11(8) of the Public Finances (Jersey) Law 2005 for the necessary additional funding to cover the cost of the review.

### **13.1 The Deputy of St. Martin:**

Can I say before I start I am rather disappointed that over 20 Members of the Chamber are not present? I would have thought for a debate involving States Members we would have had as many here as possible. This debate is not about removing anyone from the States. It is not about the merits of individual post holders. It is about agreeing to review the current roles of the unelected officers of the States by an independent panel to see whether their current roles comply with the conventions the Island has agreed to adhere to and the States desire to enhance and promote democratic, accountable and responsive governance in the Island. If there is to be a review it will be then that Members will have the opportunity of considering whatever recommendations that may follow or flow from the review. Our States of Jersey is unique. Members will have noted that its roots go back to the time of King John when he lost Normandy and it became necessary for the king to substitute administration for the Norman Government from which the Island has just become separated. The body was appointed which formed the court which determined all civil and criminal causes. In the middle of the 14th century the Bailiff was appointed by the Crown and that arrangement remains today. In the 15th century, wardens or governors of the Island were appointed by the Crown and that arrangement remains today. Over the ensuing centuries the shape and form of the court evolves and the Bailiffs and the Jurats, as they became known, developed a practice of consulting representatives of their Parishes, namely the Connétables and the Rectors. The Code of 1771 formally recognised the separation of the Royal Court and the States although there remained a common relationship in respect of the Bailiffs, Jurats, the Attorney and Solicitor Generals. In 1856 the States introduced the first directly elected representatives, namely the Deputies and 14 were elected. Almost 100 years later and following a report of the Privy Council Committee in 1948, the States enacted legislation which brought about significant constitutional change. The rectors, the Jurats were replaced by an increased number of Deputies and 12 Senators. It should be noted that the Church continued to be represented by the Dean who retained his right to speak but not to vote. Therefore, since 1948, the Chamber has comprised of elected Deputies, Senators and Constables, all of whom are accountable to the States and electorate and the Bailiff, Lieutenant Governor, Attorney, Solicitor Generals and the Dean, all of whom are unelected but appointed by the Crown. Although the 5 officers do not have the right to vote they, nevertheless, do have the right to speak and by extension influence. Since 2005 there have been further changes in the structure of the States; the introduction of Ministerial government. This has led to the States now having a Chief Minister. The latest change came following a review of the Island's machinery government under a panel under the chairmanship of Sir Cecil Clothier Q.C. The ensuing report contained a number of recommendations, some of which have still not been implemented to this day. The Clothier Panel's terms of reference included a review of the role of the Bailiff and the transparency, accountability and democratic responsiveness of the States Assembly and the Committee of States. I should add that the last piece was included following an amendment which was approved by the States. This amendment was one from Senator Syvret. In respect of the Bailiff's role, the report gave 3 reasons of principle saying that the Bailiff should not have a role both as chief judge in the States and as chief judge in the Royal Court. The first reason - this is very important - is that no one should hold or exercise political power or influence unless elected by the people so to do. It is impossible for the Bailiff to be entirely non-political so long as he remains also speaker for the States. The speaker is the servant of an Assembly not its master and can be removed from office if unsatisfactory. The Bailiff appointed by the Queen's Letters Patent

to a high and ancient office should not hold a post subservient to the States. The second reason is that the principle of separation of powers rightly holds that no one who is involved in making laws should also be involved judicially in a dispute based upon them. The third reason is that the Bailiff in his role as speaker of the States makes decisions in the States about who may or may not be allowed to speak or put questions in the States or the propriety of a Member's conduct. Such decisions may well be challenged in the Royal Court on grounds of illegality but of course the Bailiff could not sit or hear or determine these challenges in his own actions. The report gave consideration to the reasons and eventually led to 3 recommendations: (1) the Bailiff should cease to act as president of the States or take any political part in the Island's Government and the States should elect its own speaker; (2) the Chief Minister should be the direct link to the Home Office in London; and (3) the office of Bailiff should continue to be the highest in the Island on all occasions when the Order of Precedence is observed. Now it is worth noting that while the panel recommended the States should elect its own speaker, it did not suggest whether the elected speaker should come from within or outside the States. Since the panel's recommendations, concerns have been raised regarding the Bailiff's dual role. This issue has prompted human rights audits being conducted on similar positions in Sark and Guernsey. In 2007 a similar audit was conducted by Mr. Jonathan Cooper O.B.E., who was of the view that our Magistrate's dual role was not human right compliant. This duality has now ceased. The Clothier recommendations regarding the Bailiff's role have never been addressed. Again to remind, it is 10 years on - never been addressed. Earlier I said that the Clothier Panel's terms of reference included the transparency, accountability and democratic responsiveness of the States Assembly and the Committee of States. Unfortunately, while the panel gave consideration to the democratic responsiveness of the States Assembly, I believe it fell short of giving consideration to the transparency and accountability of all Members of the States Assembly. I am not criticising the panel but it is evident that if it did consider the accountability issue it did not extend it to the accountability of the non-elected members of the States. The question of accountability and transparency has rightly become more relevant, particularly as Jersey is a signatory to the Convention on Human Rights. Therefore, the role of the non-elected members should not be overlooked just because it might interfere with tradition or might be uncomfortable. Significant too the States of Jersey Law which removed the Bailiff's vote of dissent and the Lieutenant Governor's power of veto, the preamble also declared that Jersey wishes to enhance and promote democratic, accountable and responsible governance in the Island and implement fair, effective and efficient policies in accordance with the international principles of Human Rights. Now it has gone some way of achieving that principle. At present there are 53 elected Members of the States. The 12 Connétables are governed by the Connétables (Jersey) Law 2008. The other 41 States Members are governed by the States of Jersey Law 2005 which also states that Connétables are Members of the States by virtue of their office. All 53 Members are accountable to their electorate. They are also subject to the Law and codes of practice. However, as previously mentioned, this is not the case for the Bailiff, Lieutenant Governor, Attorney and Solicitor Generals and the Dean. As stated in my report, quite understandably the 5 non-elected members are merely adhering to convention and tradition and, as such, no criticism should be levelled against them. However, I believe the time is right to review their ancient roles. If unelected members or officers are to remain, they should be subject to a process which is democratic and accountable and is also human rights compliant, not only with regard to the European Convention but also with regard to Jersey's many other human rights obligations. I have outlined why it is questionable whether some of the Bailiff's powers are Convention compliant. I also question how officers appointed by the Crown can play a part in the States Assembly when they are not accountable to it. The Attorney General and the Solicitor General have been members of the States for as long as records go, dating at least from the time when the States emerged from the Royal Court. The Attorney General wears 3 hats: that of adviser to the States, head of our prosecution service and also titular head of the Honorary Police. While the Attorney General regularly gives Members legal advice, because of his 3 hats there are occasions when he is conflicted. There are also occasions when both the Attorney and Solicitor General exercise their

right to address the Assembly. While I do not criticise their right to speak or question the content of the speeches, I do question whether as unelected and unaccountable members such practice should continue. Again it should be noted that in the 1996 Clothier Review on the police services in Jersey it was recommended that the Attorney General should no longer be titular head of the Honorary Police. Like the Clothier recommendations regarding the Bailiff, the Clothier recommendation regarding the Attorney General has also not been addressed. I have every respect for the Lieutenant Governor and the Dean. However, in a modern, democratic setting one must question how the present role can continue. I referred earlier to the Clothier Panel's comments about the Bailiff that no one should hold or exercise political power or influence unless elected by the people so to do. I submit that the same principles apply to the Attorney General, the Solicitor General, the Dean and the Lieutenant Governor because they are unelected. As mentioned previously, when the Rectors were removed from the Chamber, the Dean remained. It is highly probable that States Members at this time considered it desirable that the Church was represented, albeit that its representative no longer had the right to vote. However, that decision was made over 60 years ago before the Island approved its Human Rights Law. Since then the world has moved on and with it greater accountability is called for. It should be noted that the Dean is not a member of the States of Guernsey. I accept that the Lieutenant Governor does not exercise his right to speak. However, the office of Lieutenant Governor still retains the right and it matters not whether or not that right is exercised. I understand that in Guernsey the Lieutenant Governor has the right of attendance but cannot speak, but by concession is allowed to speak when he leaves his office. I had that checked out with Guernsey. I endorse P.P.C.'s views that Members are always welcome to see His Excellency when he attends the Assembly. I would also add that we are also pleased to welcome the Dean. However, I think P.P.C. is in good thinking if it believes that just because they perceive there are no significant concerns about His Excellency's roles in the States, we should not concern ourselves. What research or consultation did P.P.C. conduct to come to that view? I believe that to omit the Dean and Lieutenant Governor from the review on cost grounds would devalue the review. However, understandably both P.P.C. and the Council of Ministers have questioned the cost of the proposed review. When a proposition is lodged, the proposer must give the financial and manpower implications. This can be very difficult, particularly for propositions like mine. To give some indication of what my proposed review would cost, I thought it appropriate to show what it cost for the review on machinery government. The Clothier review on the machinery of government took almost 2 years and it cost in the region of £250,000; 5 of its panellists - which included - 2 lawyers were local and were not remunerated. Apart from the cost of a couple of fact-finding visits to outside the Island, their costs were minimal. I do not have a breakdown of the total cost but I understand that the remuneration and the cost of providing transport and hotel accommodation for the chairman and the 3 members who resided outside the Island was considerable. I would hope that the Council of Ministers will give serious consideration as to who will chair the panel and the number of members and where they live. The review can and should be conducted in an efficient, cost effective and sensitive manner without it being a license to print money. The Clothier Panel heard from 132 witnesses and received 161 written submissions. It met for approximately 200 hours although many more hours were spent at home reading and considering evidence. It is difficult to gauge the number of witnesses who may come forward but I believe the proposed review will be much narrower. On the issue of hearings I would hope that unlike the Clothier hearings, my proposed review will be conducted in public with safeguards for those witnesses who can justify giving their evidence in camera. It is not for me to prejudge the panel's work but I believe the review should neither be protracted nor expensive. It most certainly will require a human rights audit and some work has already been undertaken. We have the Clothier Panel's report or comments and the McConnell and Sark judgments which are of the view that unelected members in a unicameral legislature is at principle fundamentally inconsistent with political democracy. One would have assumed that the Council of Ministers would have discussed the terms and reference or possible costs of the review with the proposed chairman and panel members before it came back to the House with an estimated cost of the review. It is common

practice for Scrutiny Panels to consider the scope, terms of reference and the budget requirements before reviews so the same principle should apply to the panel for this proposed review. I believe that the Treasury is jumping the gun and putting the cart before the horse and has picked a figure just out of the air. I do not know how it has come to £400,000 and no doubt we will find out in due course. It has been said that judges should be left to be judges. Therefore, I think it is pertinent to point out that the Bailiff is also the Island's Chief Judge of the Royal Court but because of the increasing number of States sittings he is not able to sit for lengthy trials. Therefore, Commissioners have to be flown over. Not only must their time be paid for but so too must their hotel and travelling costs. If as a result of the review it is recommended the Bailiff should be replaced by an elected speaker, the speaker will not be paid anywhere near the Bailiff's salary. Therefore, within a year or 2 the cost of the review will be recovered from the savings in the salary. I had anticipated the review being completed within 12 months and was going to make that suggestion to the Council of Ministers. However, we now have a proposal from Deputy Trevor Pitman which is very much in line with my views. I trust Members will agree that a review is necessary and will agree to support my proposition in its entirety. It would be completely wrong to omit the Dean or the Lieutenant Governor on the pretence that Members can arrive at a political decision without taking the opportunity of their roles being reviewed by an independent panel at the same time as the other 3 officers. It would be false economy, devalue the role of the Dean and the Lieutenant Governor and will lead to a piecemeal and incomplete review. Members should be mindful that my proposition is to review the role of the 3 unelected officers. If supported, Members will have the opportunity of agreeing to a chairman and panel members and the terms of reference. Members should also have some idea of the cost of the review. It will be then that Members can if they so wish omit any officers from the review. To do so today would be irresponsible and premature. I make the proposition.

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

Is the proposition seconded? [**Seconded**] Before we continue, if anybody is sitting close to the Deputy of St. Martin with their mobile phone on could they look at it, please, to sort that out?

**13.2 Rôle of Unelected Members of the States: review (P.5/2009) - second amendment (P.5/2009 amd.)**

There is an amendment to paragraph (a) and this is in the name of the Privileges and Procedures Committee. I invite the Greffier to read the second amendment.

**The Assistant Greffier of the States:**

In paragraph (a), after the words "current roles of the" insert the words "following" and (1) delete the words "the Lieutenant Governor"; and (2) delete the words "and the Dean".

**13.2.1 The Connétable of St. Mary (Chairman, Privileges and Procedures Committee):**

When this proposition was considered by the Privileges and Procedures Committee, the broad consensus was that a review should be undertaken but that it should be limited to examining the roles of the Bailiff, the Attorney General and the Solicitor General. From time to time there have been various assertions and comments made over the roles of these States Members and it surely cannot be helpful to have these left unresolved. It would surely be better to have matters addressed by such a review and either have the comments dismissed and laid to rest or substantiated and remedied as appropriate according to the findings of the review. P.P.C. considered that the stated estimated cost of the review was significant and that it was essential especially in the current economic climate to ensure value for money. P.P.C. considered that in order for this review to be meaningful and to achieve results it was necessary for it to be tightly focused and directed at the key issues. The committee is not aware of any significant concern about the role of His Excellency the Lieutenant Governor that would justify extending the review to cover his role. Members are always pleased to welcome His Excellency when he attends the Assembly but he takes no direct

part in the work of the States. The place of the Lieutenant Governor in the Assembly was succinctly and accurately described by Senator Syvret in his speech welcoming the present incumbent to the Assembly. He outlined various facets of the Lieutenant Governor's role which is complex, diverse and covers an extremely wide remit and he explained why the personal representative of the monarch has a place in this Assembly. He concluded with the remarks: "It is for these reasons that I can welcome His Excellency as a member of the Assembly this morning. I know that he has already expressed an interest in attending debates on a regular basis and I hope I have made clear the symbolism of his presence. However, in case he is eagerly looking forward to his contribution in the first such debate, I should say that by another unwritten constitutional convention the next opportunity he will have to speak after this morning will be in 5 years' time when he is about to leave." Therefore, clearly not only does the Lieutenant Governor not have a vote in this Assembly but he also does not participate in and, thereby, cannot be said to influence any debate. The role of the Dean is already well understood by Members and the choice on whether or not it is appropriate for the head of the Anglican Church in Jersey to remain as a member of the States appears to the Privileges and Procedures Committee to be a purely political decision. It is difficult to see what an external review could add to any future debate on the Dean's role as an unelected, non-voting member of the States. Members have the option by voting on this amendment to remove one or both or neither of the Lieutenant Governor or the Dean from this review and, thereby, concentrate the focus of the review. Even if this amendment is accepted in full, the scope of the review will remain considerable and it is quite possible that different people with different areas of expertise will be required to deal with separate parts of the review. With the Dean and to a much greater extent the Lieutenant Governor to be included in the review the complexity of the review would be multiplied. The danger might be that the effectiveness would be diluted. As I have said previously, if the review is undertaken it is absolutely essential that it achieves meaningful results. The P.P.C. considers that by selectively targeting the roles that have raised the most areas of concern and interest it is more likely that this will be accomplished. I move the amendment.

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

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

#### **13.2.2 The Deputy of St. Martin:**

I was going to say I was disappointed that the P.P.C. and the Council of Ministers chose to consider my proposition without inviting me to discuss it with them. I think it would have been helpful. It has been rightly said that the States Members cherry-picked the Clothier recommendations so much so that the review has been devalued. We now have States Members cherry-picking what unelected officers should be reviewed. P.P.C. claims that omitting the Dean and Lieutenant Governor from the review will reduce the likely costs. However, it does not know how much the review will cost or how much extra it would cost if the 2 roles were reviewed or, indeed, how much would be saved if they were omitted. The amendment must be one of the least thought out and blinkered amendments that States Members have had to consider. I submit the P.P.C. have not given due consideration to my proposition because it just does not make sense to go ahead with half a review. I do not know how it can claim that the Dean's role is already well understood by Members. It is apparent that P.P.C. members do not understand the Dean's role because if they did they too would be questioning how in a unicameral legislature, unelected members like the Dean and the Lieutenant Governor can speak. The States of Jersey has approved its Human Rights Law and we have a duty to adhere to it. How will Members know whether the Dean's or the Lieutenant Governor's roles are convention compliant without reviewing their roles? If omitted from my proposed review, how will it then be able to check whether their roles are or who will review their roles and how much will that review cost? Again I remind Members that in 2005 the States of Jersey Law was approved. The preamble to the Law records and I quote: "The States wishes to enhance and promote democratic, accountable and responsive governance in the Island and

implement a fair, effective and efficiency policies.” I think it is worth reminding P.P.C. that it was a former P.P.C. which lodged that Law and I assume that the P.P.C. are not going to do a u-turn but it appears they are. P.P.C. also claim it is a purely political decision as to whether or not it is appropriate for the head of the Anglican Church in Jersey to remain as a Member of the States and it would be difficult to see what an external review could add to any future debate on the Dean’s role. Again P.P.C. is being inconsistent. If a Member lodged a proposition seeking to remove either the Dean or the Lieutenant Governor from the States, P.P.C. would oppose the proposition on the grounds that the matter should be reviewed. Only last summer Deputy Shona Pitman lodged a proposition to end the Bailiff’s dual role and request P.P.C. to advance proposals to establish a new post of elected speaker of the Assembly. Both P.P.C. and the Council of Ministers rejected Deputy Shona Pitman’s proposition on the grounds that it was not appropriate to make a change of this nature without a full and detailed consideration of all the consequences. We now have P.P.C. claiming that it knows best and again without any former consultation. Again I ask if we omit the Dean or the Lieutenant Governor from the review, who will review it? In 2004 the former Senator Ted Vibert lodged an amendment to the States of Jersey Law seeking to remove the 5 unelected officers. In rejecting Senator Vibert’s amendment, in its comment P.P.C. stated: “The Privileges and Procedures Committee believes that the issues raised by the amendment of Deputy E.P. Vibert on unelected Members of the States are of considerable importance to the Island and need to be reviewed and discussed. The Committee also believes that the position of the unelected Members of the States should be addressed in the near future. The Committee is, for example, conscious that the recommendations of the Clothier Panel in relation to the position of the Bailiff have never been formally discussed by the States and is of the view that this issue should be considered as part of an overall reform of the composition of the Assembly. The Privileges and Procedures Committee has written to all unelected Members notifying them of the impending review and the Committee intends to move forward with this issue as soon as the debate on the draft States of Jersey Law 2004, as it was, has been concluded. The Committee will take note of any views expressed in that debate.” Five years on and P.P.C. has not only not carried out the review but is now trying to prevent a review. My proposition now seeks a review. P.P.C. and States Members cannot hide and run for ever. The States is committed to reform and the least Members should do is to support my proposition so as you can be better informed before making any decision. As such, I urge Members to reject P.P.C.’s misguided amendment.

### **13.2.3 Deputy R.G. Le Hérissier:**

Oh, what a web we do weave. I will not carry on there; it could lead us into dangerous territory. I do think we are making literally - to switch metaphors - a mountain out of a molehill. I think one of the issues which unfortunately the highly esteemed Deputy of St. Martin - certainly for a while - has opened up is the cost issue. I cannot believe some of the cost estimates that are being played around, and what this has done, of course, has been to play into the hands of P.P.C., who have said: “It is horrifying, the sort of costs that are being bandied around.” Hopefully, the proposer will be giving a full accounting and I am sure will be able to put our minds at rest, but I have to say the notion of mounting such a study at such a projected cost of nearly half a million at this time in the Island’s economic situation will just send the public, quite frankly, insane. That has to be scotched immediately. Immediately. Because I think this is, quite frankly, something that could be carried out on-Island. Clothier, of course, operated on the principle of a mixed group of people who took no fees. There have been a lot of misapprehensions about that. They took no fees. They worked with a bunch of Island-based people. They worked together and certainly I think worked very successfully, other than the closed meetings which was a major political error. The only costs were the costs of accommodation and expenses for the panel. There were no other costs. That has to be the kind of initiative. I find it incredible that we are talking about some kind of life-changing study. The issues are very clear. The fault lines are very clear. Do we want an Assembly based upon so-called modern, progressive principles of government, like the total application of the separation of powers principle, which will lead us in one direction? Do we want an Assembly which avers

towards tradition and retains tradition where it does not cause political harm, which will be the issues discussed, I presume, in the role of the Lieutenant Governor and, to an extent, the Dean, although there are interesting issues there which I think have to be addressed particularly in the light of the earlier debate about whether there is a special role. Should there be a special role, for example, for the Church of England in this particular set-up? That is something we really have to face. The notion that we are entering into studies that will involve constitutional experts from all over the Commonwealth and that will cost half a million I find incredible. There is an awful lot of evidence on file. A lot of this evidence was adduced in 1948. If you want to go away and read all the statements, you will feel an incredible sense of *déjà vu* in reading the 1948 set of evidence. So this notion that we are going to run this massive study is, in my view, totally misleading. It is one that the proposer must put to bed and it is one that P.P.C. must not dwell on, even though it does provide a very nice opening for them. My view is that there is absolutely nothing wrong in looking at all holders. The arguments are, as I said, incredibly well rehearsed and I do not want to be spending hundreds of thousands of pounds on arguments that can be laid out very clearly and have been laid out over years and years and years and which we should be able to pose in a very clear manner in order that we can make at long last, if it ever were possible, clear decisions.

#### **13.2.4 Deputy T.M. Pitman:**

Firstly, I would like to thank Deputy Le Hérisier for making the case for my own amendment. It is most welcome. In writing my own brief report, I did consider whether it would be better to look at the Bailiff and the Law Officers separately, not because there is not a case to be made for looking at the other roles, but because I think those were the 2 most urgent. I am being really nice to people today, so I have to say the Deputy of St. Martin has totally convinced me we should look at them all and we should definitely reject this amendment from P.P.C. I was going to quote this rather wonderful quote from V. Gordon Childe about procrastination and delay rather than thinking, but sometimes you have your own fount of wisdom at hand. So I am going to quote Deputy Judy Martin. I might even master the accent if I can say “ealth”. In the dual role debate of last year, Deputy Martin very incisively pointed out that for the States it is never the right time to talk about reform, never, ever. It does not matter how much information you have. Deputy Le Hérisier has made the point: how long has this been going on? I said at the election some things have gone on since I had a curly perm. Well, this has gone on since curly perms were in fashion the first time around, I think. It would be ridiculous, I have to concede, to split this up. I think this is just more smoke-screening; it seems to be the sort of flavour of the day. I do not want to say “the Executive”. This issue of funding I think is one of the biggest red herrings I have seen. We have just recently had an election and, unless I am mistaken, it seemed to me the Executive of the time managed to manipulate about 10 million quid’s worth of pre-election lollipops out of their political underpants when they really needed to, so can we not afford a couple of hundred thousand pounds?

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

Do be careful to keep to appropriate language, please, Deputy.

#### **Deputy T.M. Pitman:**

I take your advice. It is just very frustrating, these delays. I think the Deputy of St. Martin has made a very valid case. I will save my other comments for my own amendment and the main debate, but I would definitely vote against this amendment.

#### **13.2.5 The Connétable of St. Helier:**

It has not been a good day for P.P.C. This morning, without warning, they announced an investigation into a Member without giving any advance notice to Members of the House. They refused to commit to an open procedure. This afternoon they are bringing an amendment which seeks, for some spurious reasons, to take 2 Members out of the review - an independent review - of the unelected Members of the States. Not a good day for P.P.C., but presumably they will explain

more fully their reasoning. It does seem to me that here is a golden opportunity for the States to have a good look at the way we run our democracy. I would have gone further. I would have asked to have a look at the ushers - I am pleased to see the usher has left the Assembly [Laughter] - not least because on an early Commonwealth Parliamentary Association visit I went to the parliament of Prince Edward Island and I noticed that they have members of the local sixth forms who perform the function of the ushers and wear rather interesting costumes to boot. I would also look at the role of media. Why not consider whether it is not time that we had these proceedings televised? There is so much to be done to bring the conduct of all Assemblies forward that to say, as I say for spurious reasons, let us leave 2 fairly important Members out of the reckoning, really, I am afraid, does not make any sense. Certainly, the financial reasons that have been alluded to do not hold water. Talk about spoiling the ship for a ha'p'orth of tar. The terms of the proposition from the Deputy of St. Martin are, of course, not just about the role of these Members in this Assembly. It talks about the roles of the unelected Members of the States full stop. Clearly, the Lieutenant Governor has a role outside this Assembly. I believe that both of the persons referred to in this amendment would be rather sorry to be left out of the review. What better opportunity to explain to the Island what important roles these 2 officials have than to carry out a review into their functions, not only in the House but their functions outside it? So, I urge Members, let us not tie the hands of this review; let us not neuter it by leaving out 2 important Members. Let us accept that, certainly in the case of the Dean, there is an opportunity for a Dean to influence political matters. I am not saying that this Dean does that, but clearly there is an opportunity because the Dean is able to speak. I think it would be a serious shortcoming if this review were to proceed without reviewing that role. As I say, why not throw in the Lieutenant Governor, the ushers, the media, the clerks and so on? Let us have a complete review of how we run this Assembly. Let us make it a thorough, comprehensive one so nobody can turn around afterwards and say: "You left something out."

**Deputy M. Tadier:**

Can I just have a point of clarification? Should I call you "Ma'am" or "Sir" seeing as you are technically the Chairman?

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

I do not mind, but Ma'am would be better.

**13.2.6 Deputy M. Tadier:**

I may have conscientious objections to calling you "Sir" anyway. [Laughter] I reserve my rights. I just want to say, first of all, that as a member of P.P.C. I believe that the Committee did act in good faith in this. This is no sort of conspiracy from P.P.C. to stall things, certainly not from my point of view, nor the other Members, I believe. Having said that, I do believe that my personal opinion has perhaps shifted as new information has come to light. The 2 basic principles on which I supported the P.P.C. amendment were, first of all, to do with cost. We did have misgivings that extra costs and unnecessary costs may have been added by the inclusion of the Lieutenant Governor and the Dean, which we did not know if it was completely justified. I do not fully know what the costs will be, so it is very difficult to make any kind of value judgment on that basis. I suspect, in fact, that it would not cost that much extra, but that remains to be seen. The second one was whether the actual 2 additional Members which we chose to leave out did need to be scrutinised in the review. I suspect the arguments today have convinced me that we may as well include them. If the body is going to do a review, then it is better that it be thorough and any amendments would probably make it piecemeal. The point was made, and it was one that I believed at the time, that the arguments for the Dean are very clear cut. They are well-rehearsed, as Deputy Le Hérissier made before. For example, the case for is that it is traditional, he does a good job, he gives us moral advice, *et cetera*, and the counter argument is, of course, the separation of church and state that has been around for a long time and is enshrined, the best example being in the United States

Constitution, of course. So, those are well-rehearsed arguments, but then if you think about it, there are very well-rehearsed arguments as to why the Bailiff and other Members should also not be in the States. These were brought up most notably in the Clothier Review in 1999 and, of course, the moral arguments for that have been around a long time, separation of powers again being enshrined in the American Constitution and in other European constitutions. In France, they have been recognised since the 1700s. It is really a case of if you do not include the Dean because it is clear cut - the political arguments are very well known - then we might as well take out the Bailiff as well. So, I think I am not necessarily going to conclude in any particular favour, although as an individual I would be inclined to support a review. I would throw it out there: do we need a review at all? I think a lot of these things could be decided on the floor of the House or could even be referred to P.P.C. or Scrutiny. I guess it would fall to P.P.C. to review these at a much lower cost. I could probably get some friends at university to do you a very good report for £10,000. I would probably take a cut of that. **[Laughter]** I suggest that the results that would come out of that for a much lower figure would be exactly the same because the arguments are so well rehearsed that basically an A level political student could come out with the arguments. So, I am really going to leave it there. Perhaps more information is needed; that is a question for the House to decide. That is all I have to say.

### **13.2.7 Senator T.A. Le Sueur:**

I think in an ideal world we would all like to see a far-reaching review of the roles of all of the unelected Members of the States, but unfortunately we do not live in an ideal world. We live in a world and in an Island with severe financial constraints and, although maybe this amendment should not focus on costs, I think quite a few of the arguments against the amendment have been to belittle the magnitude of the potential costs involved. Now, I share the concern of Members that there is not a lot of detail about costs, and that is simply because at this stage one does not have a clue what this might cost. Certainly, preliminary estimates give such a wide range that any one figure may be too high or too low. What I do know is that once a review like this is started, it has to continue and, having committed yourself to whatever the figure may be, if that is not enough there is no way of stopping the review halfway through. So, I take the proposition of the Deputy of St. Martin and I read the words of the proposition quite clearly and quite carefully. The words, as the Constable of St. Helier pointed out a few moments ago, ask that an independent review be conducted into the current roles of the unelected Members. Not just the current roles within the States Chamber, but the current roles full stop, whatever those roles may be. Frankly, I do not know all the roles of the Lieutenant Governor. I do not know all the roles of the Dean. I think I have a fair idea of what they are; I expect Members have a rough idea of what some of them are. But I think we would be surprised at some of the roles that we had not appreciated as being part of the functions of those unelected Members of the States. Okay, it may be that the terms of reference could be limited to exclude the activities outside the States Chamber, but that is not what the proposition says. That is why there is clearly a significant degree of uncertainty about the costs involved. I will maybe let the Minister for Treasury and Resources talk about costs - I have to get out of the habit of thinking as the Minister for Treasury and Resources - but I think we should not belittle that fact and we should not underestimate the size of even a review of the role of the unelected Members within this Chamber. It has been postulated that really we all know about the need for a separation of the legislature and the judiciary, and we take that as a given. I wonder whether there is any justification for that. Over the last 20 or 30 years, there has been considerable review of the constitutional position of the Island *vis-à-vis* the U.K. Government. One eminent Q.C. reviewing the position from the point of view of safeguarding Jersey's interests said: "A pure doctrine of separation of powers posits that the branches should be independent of each other with no overlap between any 2 of them in terms of either function or personnel." So far so good. He goes on: "However, in practice, most countries, particularly those which employ the Westminster model of government, exhibit some degree of overlap between the executive and legislative branches. On the other hand, safeguarding judicial independence has been recognised as an

imperative of a constitutional democracy.” I say that to emphasise the fact that it is not unusual to have unelected members within the legislatures of many states. Those members are elected for their particular expertise. Very often, what is different is that those members sit in a second chamber. As the Deputy of St. Martin said in his opening speech, we are a unicameral chamber. We have a single chamber here, and in that situation it is inevitable that there is going to be an overlap in those duties. So, I say this, I suppose, not to exhibit any knowledge of constitutional law because I have virtually none at all, but to point out that the issues are not as simple and as clear cut as might first be imagined by a simple view of this. This is not simply a matter of human rights legislation. There are far wider constitutional ramifications and, as the Constable of St. Helier again said, if we are going to do it at all, we have to make sure we do it right and we do it properly. Expertise in constitutional law, I have to say, does not come cheap. That is why I think the Minister for Treasury and Resources is right to be cautious and to warn about the potential breadth of spend this could incur, and if there are ways of limiting that expenditure they ought to be seriously pursued. I say that in order to come back to the amendment from which I have strayed rather widely in the last few minutes. What P.P.C. has suggested is that we ought to, in fact, do that, to be realistic and to focus our expenditure on what really matters. What really matters here, I think, is the key issues of government within this Chamber. For that reason, while in an ideal world I would like a full review, in our circumscribed world I would settle for a review of the key functions within this Chamber.

### **13.1.7 The Deputy of St. John:**

I am pleased to be following the Chief Minister given that he has mentioned the cost of reviews, *et cetera*, given that just this afternoon the House has passed a law to do with gender recognition in which the financial and manpower implications were mentioned in there. It says: “All departments which will be affected have confirmed that financial implications are minimal. There are no additional manpower implications.” Well, I would dispute that. Yet he is now telling us that the amendments and this review are going to be very costly. We appreciate all of that. We were told in 1999 by the Clothier Panel of the day - and I was only going through it a few days ago ready for the debate coming up at the next sitting hopefully, if P.P.C. allow me to get through Friday - that we should look at our entire government system. Honestly, as far as I am concerned, we are still cherry-picking. We do it all now, otherwise in another 5 or 10 years’ time it comes back and it is going to cost twice as much, 3 times as much. Do the job properly. We have started; let us finish it. It is important that we get this Island totally democratic. If we are going to look at part of it, look at the whole picture, then come back to this Chamber with all the boxes ticked. We are very good at cherry-picking. We now have a Ministerial system without all the checks and balances. If we had done as Clothier gave us the original blueprint and taken that blueprint, then today, yes, we would be discussing probably something to do with government reform, but just minor tweaks. Let us go ahead and do the whole job on this occasion, not over the next 10 years at great cost. P.P.C. I know have just finished one report from the first year of Ministerial government and I am asking them shortly to do one of the first 3 years. I have to meet them later in the week on that particular issue. Let us get it done once and for all, but give us the facts, not as happened on the very first occasion when the President of P. and R. (Policy and Resources) of the day told us: “Accept this in principle and we will put the meat on the bones later.” The meat still has not been put on the bones. Get the job done once and for all. This is taxpayers money we are talking about. The longer we leave it, the more it is costing. Please will you support this but, in fact, think of the big picture, go down the road and support my proposition when it comes forward.

### **13.1.8 Senator P.F.C. Ozouf:**

There have been a number of observations made about the financial implications and I will speak in the substantive proposition about my concern that the Assembly has before it: 3 requests under Article 11(8) of the Public Finances Law for the Minister for Treasury and Resources to bring forward a proposition to find funding. I am going to be emailing Members with an explanation of

the reason why I am concerned about that. I do not have a money tree. The Minister for Treasury and Resources does not have a money tree at the bottom of the garden that we can just simply find unlimited funds for initiatives that Members may have. We have a budget process. We have a business planning process which is supposed to prioritise expenditure. The reality is that financial concerns, financial considerations, and the limit of resources are real issues. I am sure that I do not need to remind Members that we are facing quite uncertain times within the next 2 to 3 years and we are going to have difficulties in prioritising our resources. It is difficult to say that because I know all Members want to pursue and agree initiatives. On the issue of the overall review, the £400,000 figure is a realistic one. It will, of course, depend on the terms of reference, but if the review is to be carried out properly - it is dealing with legal advice, it is dealing with constitutional issues - we are going to have to appoint somebody of experience, probably an eminent Q.C., a silk, which is going to come at a cost. They are going to have to hear evidence over a number of weeks. It is very easy and I am sure Members will understand that it is not unrealistic at all to imagine that a review dealing with such important constitutional and legal matters will take tens of hours and it will not be difficult to run up costs associated at £300,000, £400,000. On the issue of the amendment itself, there obviously will be an additional cost. I do not know, I am pulling figures out of the air. It may add maybe 30 per cent, 40 per cent on to the cost of the review, dealing with and expanding the scope of the review to not only dealing with the legal and Law Officers, but dealing with the constitutional arrangements of the Crown and the Lieutenant Governor and the Dean is obviously going to have a substantial amount of additional requirements and evidence is going to have to be heard. So there is a serious financial implication, and I am sure that all Members would wish such reviews to be done properly. In fact, that is not the reason why I would urge Members to vote against not simply on this amendment. I think Members will decide on the substantive proposition whether they want to go ahead with this, and I will give my best endeavours, as I have made clear in my comment, to reprioritise from carry forwards. I think that is the only realistic way of dealing with this at the end of the year. There will be, of course, a limit for carry forwards, but I will use my best endeavours if the States agree to go forward with the proposition in order to find the resources. I have to say that - taking off my Minister for Treasury and Resources' hat - I support the proposition of the Deputy of St. Martin but amending it to reduce the scope. I think there is an issue of dealing with the issue of the Law Officers, of dealing with the Bailiff and Deputy Bailiff. I think that there are issues of legal advice which we do need to deal with once and for all and we do need to have a review to deal with that. I do not understand the case being made to extend that review, to extend it quite substantially into the area of the Lieutenant Governor and Dean, so I will be voting in favour of the Privileges and Procedures Committee's amendment, not on financial grounds - we will have that debate later - but simply I think that there is a case to limit the review to simply the Crown Officers and legal advice at this time. I hope Members will agree. It will be far easier to deal with the financial resources of that.

**Deputy R.G. Le Hérissier:**

Can I move the adjournment, please?

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

Yes, we are at that point. I was just about to raise that, that the States do have to decide whether they wish to continue this evening, perhaps to finish this particular amendment, or whether they wish to come back tomorrow morning.

**Senator P.F.C. Ozouf:**

I do not think anybody else was indicating that they would speak, so perhaps we can deal with the amendment.

**Deputy G.P. Southern:**

I believe I would like to speak and the time was more than 3 minutes' worth.

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

We have a proposition, then, to adjourn and then return tomorrow morning. Members in favour please kindly show? Those against? The States will adjourn and resume at 9.30 a.m.

**The Deputy of St. Mary:**

Can I just say something? I have learnt that it would help if I said it now. Can I ask that we take P.8/2009 in 2 weeks' time? Is that useful information? Yes.

**ADJOURNMENT**