

# STATES OF JERSEY

## OFFICIAL REPORT

WEDNESDAY, 21st JULY 2021

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[9:36]

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

**PUBLIC BUSINESS - resumption**

**1. Draft Elections (Miscellaneous Amendments) (Jersey) Law (P.56/2021) - resumption**

**The Deputy Bailiff:**

We return to the debate on the Draft Elections (Miscellaneous Amendments) (Jersey) Law. Chair, I believe we had reached Article 28.

**1.1 Deputy C.S. Alves of St. Helier (Chair, Privileges and Procedures Committee):**

That is correct. I would like to next propose Articles 28 to 36, please. Article 28 amends Article 30 of the 2002 law to reflect the new terminology of public and Parish elections. Article 29 amends Article 31 of the 2002 law to provide that it is the responsibility of the electoral administrator to arrange delivery of the ballot papers to the *Autorisé* in each electoral district. Articles 30 to 32 make minor amendments to Articles 32 to 34 of the 2002 law. These are to reflect the new terminology of public and Parish elections and the fact that the principal *Autorisé* is responsible for the return under Article 53. Article 33 amends Article 35 of the 2002 law, which relates to the power of an *Autorisé* or *Adjoint* to take measures for taking the vote of a person who is ill, disabled, illiterate or in custody, or the carer of a person who is ill or disabled. An *Autorisé* or *Adjoint* has the power under paragraph (1) to take such measures as he or she considers appropriate in the circumstances, but is not obliged to do so. The amendment removes the requirement under paragraph (2) for a request for assistance to be made at least 3 hours before the poll closes, so as to increase flexibility to deal with requests - for example, allowing the provision of minor assistance at a polling station shortly before polling closes. Article 33 makes a further minor amendment to reflect the new terminology of public and Parish elections; Article 35 of the 2002 law is relevant to both categories of election. Article 34 amends Article 36 of the 2002 law to make clear that references in the 2002 law to a “spoilt ballot paper” are references to a ballot paper that has been spoilt and subsequently exchanged by the voter for a fresh one; the original spoilt ballot paper being cancelled. Article 35 amends Article 37 of the 2002 law to remove a definition that is redundant as a result of other changes to part 7 of that law. Article 36 substitutes the provisions about entitlement to pre-poll and postal vote with a new Article 38. Under the current provisions, postal voting is only available in a limited range of circumstances, but new Article 38 provides that any person who is entitled to vote in a public election, and whose name is on the electoral register in force for that election, is entitled to a postal vote. The substance of the law about entitlement to pre-poll vote remains the same. I propose the Articles.

**The Deputy Bailiff:**

Are these Articles seconded? **[Seconded]** Does any Member wish to speak on Articles 28 to 36 inclusive? Does any Member object to considering these Articles on a standing vote? Accordingly these Articles are adopted on a standing vote.

[9:45]

**1.2 Deputy C.S. Alves:**

I would like to propose Articles 37 to 45 next. Article 37 substitutes new Articles 40A to 40C, making provision about arrangements for and in connection with pre-poll voting. It provides that the J.E.A. (Jersey Electoral Authority) must determine the locations, days and times for pre-poll voting, and the Judicial Greffier - a member of the J.E.A. - is responsible for providing the facilities accordingly. It also required the J.E.A. to publicise arrangements for pre-poll voting. The draft provides that certain provisions of the 2002 law apply to locations at which facilities for pre-poll voting are provided as if they were polling stations and relates to voting booths, supervision and the offence of influencing a voter. Article 38 makes minor and consequential amendments to Article 42

of the 2002 law. Articles 39 and 40 provide for applications for postal voting, including that the J.E.A. must specify the closing date for postal voting applications, and must publicise arrangements for postal voting. Article 41 makes minor amendments to Article 46A of the 2002 law, reflecting the fact that the principal *Autorisé* is responsible for the return under Article 53. Article 42 amends Article 46D of the 2002 law to make clear that a candidate, or a candidate’s representative, is not prohibited from providing a person with general information about postal voting, though it is an offence to complete or assist a person with completing an application to postal vote. Articles 43 and 44 amend Articles 47 and 48 of the 2002 law to reflect the new terminology of public and Parish elections. Article 45 amends Article 49 of the 2002 law to provide that an *Autorisé* may for the purposes of facilitating the count and maintaining secrecy in voting, give reasonable directions to candidates and their representatives who are present at the count, or take reasonable measures during the count. These may include directions or measures related to the distance from which candidates and their representatives may observe the count, and preventing them from attempting to communicate with the *Autorisé* or *Adjoint* during the count. Failure to comply with a direction given under this provision will be a criminal offence under the amended Article 66(1)(g). I propose the Articles.

**The Deputy Bailiff:**

Thank you. Are the Articles seconded? [**Seconded**] Does any Member wish to speak on Articles 37 to 45?

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

While it is disappointing that we cannot have online voting for 2022, in my view postal voting is the next best thing. The old anomalies will be and should be put into retirement. We need to do everything we can to make it easy for the public to vote. There are many examples of this being successful and the Guernsey recent election was good example of how this can work. There are, I believe, sufficient safeguards in place and I have absolutely confidence in the team at Jersey Post to deliver this for us in a safe and secure manner.

**The Deputy Bailiff:**

Thank you, Connétable. Does any other Member wish to speak on these Articles? I call upon the chair to reply.

**1.2.2 Deputy C.S. Alves:**

I would like to thank the Connétable of St. John for his contributions there which were very positive and I completely agree with. Thank you and I propose those Articles.

**The Deputy Bailiff:**

Does any Member object to considering these Articles on a standing vote? The appel has been called for. In a moment the Greffier will add a vote into the chat channel of this meeting. The vote is now open and I ask Members to cast their votes. If all Members have had the opportunity of casting their votes, I ask the Greffier to close the voting. The Articles have been adopted unanimously.

<b>POUR: 41</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				

Connétable of St. Lawrence				
Connétable of St. Saviour				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of St. Peter				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

### 1.3 Deputy C.S. Alves:

I thank Members for their support on that and everything so far. The next tranche deals with the “none of the above” proposals, on which there was much discussion about yesterday. It is also relating to the recount. I would like to propose Articles 46 to 56 together, please. Article 46 amends Article 50 of the 2002 law to reflect the new terminology of public and Parish elections, and includes an amendment that is consequential on the inclusion of the “none of the above candidates” option in the ballot paper in certain circumstances in a public election. Article 47 amends Article 51 of the 2002 law to provide that a ballot paper for a public election which includes a “none of the candidates” option is invalid if it records a vote for that option and for another candidate. We will of course be

providing members of the public with lots of information about the new system and the use of the “none of the above” will be explained in detail. There are further minor amendments to Article 51 to reflect the fact that the principal *Autorisé* is responsible for the return. Articles 48 to 51 make minor and consequential amendments to the 2002 law, including changes to reflect the new terminology of public and Parish elections ... I think somebody’s phone is going. Articles 53 to 55 make further consequential amendments to the 2002 law, to reflect the new terminology of public and Parish elections. Article 56 amends the 2002 law in consequence of the new provisions about the validation of nomination forms and the procedure for the J.E.A. to confirm that the form complies with the relevant requirements. This Article also inserts new paragraphs, which make provision in connection with cases where the “none of the above candidates” option is included in the ballot paper. In the event that none of the candidates standing for election obtains more valid votes than the “none of the above” option, the court must declare a casual vacancy or vacancies in the office in respect of which the election is held. This will in turn trigger the application of the relevant provisions for by-elections for Deputies or Connétables. It also includes a further consequential amendment to reflect the new terminology of public and Parish elections. I propose Articles 46 to 56.

### **The Deputy Bailiff:**

Are these Articles seconded in Second Reading? [**Seconded**] Does any Member wish to speak on those Articles 46 to 56?

#### **1.3.1 Connétable A.S. Crowcroft of St. Helier:**

I speak as a member of the committee and I have expressed in the committee meetings my concern about this particular provision. I am hoping that it is going to be explained by the proposer of it at the original debate and that my questions will be responded to then. The objective, as I understand it, is to prevent what are often called unelected posts, where people, of course, often mean uncontested. A person who stands for election who is not contested is still elected by that process, as I think most Members know, although that is not always appreciated out there in the public. The main target for this provision that is being introduced in the law are the uncontested elections for Constables, although it has to be said there have been in recent times uncontested elections for Deputy, and in the Victorian period I understand that it was almost more common - the late Victorian period - for Deputies to be uncontested than Constables because the Constables position was extremely sought after and was often a stepping stone for the even more prestigious post in the States of the Jurat. Anyway back to the 21st century and we are in a situation now where we are proposing to include a provision which, although I supported it when it came as part of the principles that were debated earlier, when I have discussed it with friends they are quite confused as to its purpose. Surely they argue if you do not want the person who is standing you can spoil your paper, nothing is forcing you to vote for them. People have asked me, what happens if there is a person who is standing for election and on the day the voters look at the slip and they think, well I do not think much of this person and they decide to vote against that candidate? There is only one candidate. What happens if the “none of the above” option gets more votes than the candidate who has put themselves forward for election? Presumably there will be another election, a by-election for that position but the same thing could happen again. The same person can put themselves forward, no one else might want to take on that job and so you could have a repeat of the situation, which could, presumably, continue for some time. I find the logic of this provision difficult to understand. If it is indeed the purpose of this measure to make sure that all of the Connétables’ positions are contested, then surely it would be much better if we reverted to the system of electing the Constables on a different day from the rest of the Assembly. That would mean that anyone who wanted to have a pop at their Constable, I am thinking particularly here of Deputies, could do so without the risk of losing their seat. Indeed, that is what I did on 2 occasions when I ran against my predecessor, first in 1998 and then successfully in 2001. I had the luxury in 1998 of running for Constable of St. Helier as a Deputy, knowing that I did not risk losing my seat if I was unsuccessful. I think the reason this would be preferable is that

it would still give sufficient promotion to the election of Constables; it could be a day quite close to the general election. But we have to be honest about this, the main contenders for the seat of Constable are surely the Deputies. Most Constables can see their Deputies coming up behind them, as it were, in the mirrors. They know which Deputies are particularly keen to take on the larger responsibility, if you like, of being Constable, of being father or mother of the Parish. It does seem to me a pity that when we adopted a general election day we took away from Deputies the ability to challenge their Constable. I think this would be a much better route to explore than, frankly, the nonsensical provision of the “none of the above” and, accordingly, I will be voting against this provision.

### **1.3.2 Deputy J.M. Maçon of St. Saviour:**

It is the same thing, when we come to votes just to ask again these provisions, because I think the chair, when she said it, the provisions of these Articles cover 2 different areas and I would just like a separate vote on the “none of the above” tranches stuff. But if I have misunderstood I am sure the chair will clarify that in her closing speech and I have outlined my reasons yesterday.

### **1.3.3 Connétable K. Shenton-Stone of St. Martin:**

I thought, as I brought forward this proposition, I should speak on it, so I also had quite a resounding win in the first place. I would like to just say that it would have to be a deeply cynical electorate to vote for “none of the above”, rather than a candidate and I feel that the candidate would have to be so poor in the first place for that to happen. I kind of think ye of little faith; if you do not think you can win against N.O.T.A. (none of the above) really you should rethink whether you should stand or not. The other thing is that one could say that a healthy democracy is one that is willing to experiment and try new things and that the results play out, and this is used in multiple jurisdictions. It is not nonsensical; it does work. The other thing, I am speaking off the cuff, but the fundamental is that it places a demand on candidates running unopposed to campaign and actively engage with their district or Parish and work to win their support, rather than resting on simply being confirmed without any genuine challenge.

[10:00]

That was my point, that I was willing to actively engage, and I did, but I would not have had to get in because I was elected unopposed. But if there is somebody who feels that they really do not want it, I feel I have done my job to get it this far. I do feel you must have no faith in yourself whatsoever if you think that the public are going to go and vote for N.O.T.A. rather than you. The public, on the whole, are a really intelligent bunch of people who will weigh it up. It just gives a choice and it also makes it that, for example, on my nomination night I then was sort of crowned Constable of St. Martin; I did not have to face an election at all. This means that people have to go and campaign and be elected on the same day as everyone else. But it is completely up to the Assembly, it is a democracy; if people want to reject it so be it. But I do feel that if you feel you are a good candidate, go for it and if you really think N.O.T.A. is going to beat you, you should not be in the States.

### **1.3.4 Deputy J.H. Young of St. Brelade:**

I would urge Members, although the arguments voiced by the Connétable of St. Helier are very persuasive, I think we should not backtrack. I think the issue that we are seeking to deal with is to try and address the problem which nobody is happy with of uncontested elections, wherever they occur. I think, therefore, the measure, we have had that debate, the vote has been made, the law has been drafted, we should go with it. I think myself what will happen is that it is inevitable and that it is under the new system. We have dealt with the issue of Senators, thankfully; that has always been a real distortion in the system but that is gone. I think the issue about Connétables’ elections will evolve in the future because I think the requirements of the job are different and I think with that that means in the future Members will probably need to be open to the idea of separate elections on



different days. I think the arguments, the general election issue, probably was valid. The idea of having everybody elected on the same day was valid, when we had the awful business of Senators and Deputies that, effectively, gave people a second bite at the cherry, even though the general election meant that some candidates got dropped off the pile, as it were, did not make the cut. I had that experience but that is democracy. I see we have a candidate now in the elections for St. Clement who the same thing happened to. I think the issue of having a common election day was necessary when we had the Senators; they have gone now. I think there are arguments for the future of not having the elections for the Connétables on the same day to deal with; the fair point that the Connétable of St. Helier makes. But the solution is absolutely not to backtrack on the issue of “none of the above”. That is a really important safeguard and we should carry on and go with it and not be deflected.

### **1.3.5 Deputy S.M. Wickenden of St. Helier:**

I kind of agree with Deputy Young that we made this decision and it was hard for ... do I agree with the “none of the above”? I think it is a gimmick. I think that if we say that any candidate who thinks they might be beaten by “none of the above” should not run means it is pointless. It means that if there was an uncontested seat and they had to run against none of the above, why fear it? Why bother campaigning? It does not make anyone want to go out there and knock on doors for fear that “none of the above” will beat them because it is gimmickal and it weakens the perception of our democracy in this Island by saying you can vote for nobody. Who wants nobody to represent them? People go in to vote to elect somebody that they believe in, that they do not play gimmicks when it comes to election time; this is a gimmick. But saying that, it was won in the Assembly, P.P.C. (Privileges and Procedures Committee) have gone away and considered the option and what the consequences would be, which was not clear when we first looked into this situation when it was first brought by the Constable of St. Martin. They have gone away, they have looked at how it could feasibly work and they have brought forward these propositions. I think it is a gimmick. I think it weakens our perception of our democracy but it was won in the Assembly and maybe we should move forward.

### **1.3.6 Deputy M. Tadier of St. Brelade:**

Very quickly, as Senator Mézec, I think, said yesterday, the fundamental issue here is that we have adopted a new system of multi-seat constituencies on the basis that multi-seat constituencies will give greater choice to the electorate and stop uncontested elections, yet we have not done it for all Members. Until that happens we are going to be left with an unsatisfactory situation where we try and contrive different solutions to uncontested elections, which are, let us face it, only ever going to affect the Constables from now on and that is the reason for this change. However, in favour of N.O.T.A., as it is being called, I think the one thing that can be said in its favour is that the Parish secretary cannot try and dissuade N.O.T.A. from standing for election. At least it means that where there are uncontested elections because where the usual Parish mafia, where it exists, has been successful in bullying other candidates wanting to stand for election by comments such as: “Are you sure you want to stand for election because we have got a very well-established candidate here and you have not got a public profile at all?” That does happen incidentally, I am not saying it happens in all Parishes. At least that will not happen to the “none of the above” candidate. The “none of the above candidate” will be on the ballot paper and will have an opportunity to oust the established candidate, whether that will happen in reality I think we all know the answer to that.

### **1.3.7 Deputy L.B.E. Ash of St. Clement:**

In theory it is a decent idea because it does allow an opposition of sorts. What I would like to address is the thought that none of the above could never win because I think a well-organised campaign for “none of the above”, which can happen, it can happen and you look at other places where well-organised campaigns, I think back to Hartlepool where the local football mascot, Angus the Monkey, was elected because it was a well-organised campaign and it was pretty much “none of the above”.

They would rather elect a football mascot monkey than someone else to the council and that happened. You also look back to the Labour Party when they thought it was a good idea to put the Right Honourable Jeremy Corbyn forward as a bit of a joke by someone at the time and he went on to win, and that did not end up well for the Labour Party. Unlikely candidates can win at times if things are well-enough organised. It is a danger that I do not really think we run because I do not think it would make us look very good as a democracy should that occur; it would make us a sort of worldwide laughing stock but it is up to the Members.

### **1.3.8 Senator L.J. Farnham:**

It is always a pleasure to follow Deputy Ash, although I am not sure I am brave enough to enter into his sphere of political commentary. It is ironic that we are talking about avoiding uncontested elections when we have just eliminated the office that probably, to my brief desktop research, never saw an uncontested election, certainly not in modern times, and I do not think even for by-elections, and that is the Island-wide mandate. For whatever spurious reasons the States have decided to remove that office I think we have probably scored an own goal in terms of democracy and accountability. But I would just urge Members to support this part of the Bill because, as other Members have said, the ramifications are, as described by, for example, the Constable of St. Helier, I think are highly unlikely to occur. The Constable of St. Martin outlined it eloquently and I just think we are probably going to be chasing shadows if we try and account for all eventualities, even the very, very rare or unlikely ones. Also, when Islanders are elected to the States, and I remember my second term as Deputy of St. Saviour No. 2, former Deputy Alan Breckon and myself were returned unopposed, which was welcome at the time because clearly it meant that we were let off the necessity of managing and financing a campaign. But we were still elected, although we were not contested we were still elected and I liked to say at the time that that was a vote of confidence in the electorate, the fact that we were not contested but I am not sure that many would subscribe to those views these days of course. But I return to my original point, we have just removed the most democratically-elected Member and those were always contested, which I think is a mistake still.

### **1.3.9 Senator S.Y. Mézec:**

Just to be very brief. I said yesterday that I did not have any particular enthusiasm for this proposal and that is because I tend to go by the philosophy of do not make a straight line crooked, which is something I think all too often we do in Jersey, in particular when it comes to electoral reform where rather than doing the obvious and democratic thing, which is to have one type of Member in equal-sized constituencies and proportional representation, we have to put these allowances in to satisfy those who just do not want a simple and fair system. That is why we end up where we are and have to keep the Constables in the Assembly, even though there is no rational reason to do that for a national Parliament like the States Assembly. In that situation, where we are having to pander to those who are determined to keep that as part of our system for some reason, and the unintended consequence of that is that we consistently have large numbers of people elected to this Assembly uncontested. But I think we have to do something about it to try to improve the democratic legitimacy of those Members. I would prefer we did not have to but in the absence of having a decent, fair electoral system across the board, this has surely got to be the next best thing that will require a candidate, even if they are the only candidate who comes forward, to be subject to at least some form of test at the ballot box. Because it simply is not the case that an uncontested election is an election or a vote of confidence in that candidate because nobody else came forward. The people who say they are living in some sort of dream world where a candidate somehow gets legitimacy because they had 10 people sign a nomination form and they went through the appropriate bureaucracy in a constituency where there are thousands of potential voters, many of whom will have had no idea who this candidate was, what their credentials were or what their policies were. It is totally unsatisfactory to have uncontested elections. Even if it is only to reaffirm the election of that candidate anyway, it would provide greater legitimacy for them. As I said, I would prefer it was not necessary but, as one

step to try to improve the democratic legitimacy of the Constables because, let us face it, those are the only Members that this will apply to in the next Assembly, then let us make them get out there and do their work to get elected like the rest of us have to every election time and work very hard for it and be challenged on the doorstep by those who will not agree with them. Help bring those candidates back to earth by encountering those people who may robustly agree with them. If you are beaten by “none of the above”, then good riddance because you did not deserve to get into this Assembly in the first place then if that was the case. I will be supporting this.

**The Deputy Bailiff:**

Thank you, Senator. Does any Member wish to speak on these Articles? I call upon the chair to reply.

**1.3.10 Deputy C.S. Alves:**

I thank all Members for their contributions. I think some interesting suggestions came up in there, specifically about election day and how we could separate those 2. I am just going to deal with what we have got here today. I think, essentially, this is about giving people a choice, so N.O.T.A. is designed to make the process more appealing to the public.

[10:15]

If the number of candidates is equal to or less than the number of vacancies, then there is a provision for the “none of the above” to be included on the ballot papers. This is to allow people to use their voice without spoiling their vote. It is also to ensure no one is elected unopposed. Whatever your views on that it will give everyone the chance to fight an election and remove any stigma, which some Members have expressed they feel from not having faced an election. I think I stated it in my opening speech on the principles, there are provisions which addresses what happens if “none of the above” receives more votes than candidates. For example, if N.O.T.A. tops the poll, then a further by-election will be required and this can happen as many times as it takes. However, if N.O.T.A. is third, for example, and the remaining candidates are elected, then the votes cast for N.O.T.A. are considered as an abstention or a statement of position. I think it is essential that we allow voters the chance to express their opinion without spoiling their vote and these Articles will provide for the process to allow for N.O.T.A. to take place. I feel that this is about democracy. If people do not like the candidates and consider them not worthy of the voters, or a couple of speakers have raised they should be able to still have their voice heard. I think we do anticipate that it is very unlikely to happen. Having listened to what Deputy Maçon said about taking the Articles separately, on this occasion they all tie in together. You would have to kind of vote against all of them, even if they were separate, because they are consequential amendments. They will have to be proposed together. I think that if anyone is not supportive of this, then they should just vote against this whole section. I maintain the Articles.

**The Deputy Bailiff:**

In a moment the Greffier will put a vote into the chat channel of this meeting. He has done so and I invite Members to cast their votes. If all Members have had the opportunity of casting their votes, then I ask the Greffier to close the voting. The Articles have been adopted.

<b>POUR: 34</b>		<b>CONTRE: 9</b>		<b>ABSTAIN: 1</b>
Senator L.J. Farnham		Senator I.J. Gorst		Connétable of St. Helier
Senator J.A.N. Le Fondré		Deputy J.A. Martin (H)		
Senator T.A. Vallois		Deputy of Grouville		
Senator K.L. Moore		Deputy K.C. Lewis (S)		
Senator S.W. Pallett		Deputy J.M. Maçon (S)		
Senator S.Y. Mézec		Deputy of St. Martin		

Connétable of St. Lawrence		Deputy R. Labey (H)		
Connétable of St. Saviour		Deputy L.B.E. Ash (C)		
Connétable of St. Brelade		Deputy of St. Peter		
Connétable of Grouville				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy S.J. Pinel (C)				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy G.C.U. Guida (L)				
Deputy of Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

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

Members who voted contre were: Senator Gorst, Deputy Labey, the Deputy of St. Martin, Deputy Ash, Deputy Martin, Deputy Maçon, the Deputy of Grouville, the Deputy of St. Peter and Deputy Lewis and the abstention was the Constable of St. Helier.

### **The Deputy Bailiff:**

Chair, how do you wish to proceed with the next batch of Articles?

#### **1.4 Deputy C.S. Alves:**

I would like to propose together Articles 57 to 65. Articles 57 to 60 make further consequential amendments to Articles 62 to 65 of the 2002 law to reflect the new terminology of public and Parish elections. Article 61 amends the 2002 law to introduce a reference to directions given by an *Autorisé* for the purpose of facilitating the count. It also creates a new offence of failure to comply with a direction of the chair or and an ordinary member of the J.E.A. corrects a cross-reference and makes further consequential amendments to reflect the new terminology of public and Parish elections, as does Article 62. Article 63 inserts a new paragraph to the 2002 law extending the provision and protecting certain officers from civil liability in connection with their functions to cover the J.E.A., its members and persons exercising functions on its behalf. Article 64 amends the 2002 law to include a power for the States to make provisions by regulations for automatic registration on a

central electoral register and the creation of electoral registers for each electoral district from information held on the central register. Regulations made in exercise of this power must include provision enabling a person to apply to opt out from inclusion in the electoral register for an electoral district. But the regulations may prevent an opt-out application being made in the run-up to an election. There is a further amendment to expressly provide that the power to make consequential, transitional, incidental or supplemental provision includes power to make provision amending, repealing or otherwise modifying the application of any other enactment. Article 65 amends the 2002 law to reflect the amended short title of the 2002 law, which in turn reflects the new distinction between public elections and Parish elections. I propose the Articles.

### **The Deputy Bailiff:**

Thank you. Are those Articles seconded? **[Seconded]** Does any Member wish to speak on Articles 57 to 65? Is there any objection to those Articles being adopted on a standing vote? Those Articles are adopted.

### **1.5 Deputy C.S. Alves:**

Parts 2 and 3, the second and third parts of the draft law, makes changes to the States of Jersey Law 2005 and the Connétables (Jersey) Law 2008 to align the disqualification criteria for Deputies and Connétables. This addresses the E.O.M. (Election Observers Mission) recommendation 7, so I would like to propose Articles 66 to 77 together. Article 66 provides that part 2 amends the States of Jersey Law 2005, the 2005 law. Article 67 amends Article 5 of the 2005 law to signpost the provisions about disqualification from the office of Deputy, which are relevant to the term of office provisions in Article 5. This provision also makes a consequential amendment to Article 5A of the 2005 law to update a cross-reference to Article 5. Article 68 substitutes Article 8 of the 2005 law, which makes provision about disqualification from election for or holding office as Deputy. The revised version of this provision is consistent with the revised provision about disqualification for Connétable. Article 69 amends Article 9 of the 2005 law, which makes provision about the declaration to be made when nominated for office as a Deputy. The declaration will be included in the nomination form and the requirement for it to be read out at the nomination meeting will now be redundant, as is the requirement for the form and content to be prescribed. Article 1A of Article 9 is also substituted to provide that there is no requirement to declare a conviction for an act which would not, by reference to Article 12 of the new repealed Sexual Offences (Jersey) Law 2007, result in a conviction if it had been committed in Jersey on or after 12th January 2007, the date on which Article 12 of that law came into force. Article 70 makes consequential amendments to Article 13 of the 2005 law. Article 71 amends Article 33 of the 2005 law, so that an officer of the States Greffe is entitled to enter or remain in the precincts of the States and cannot be ordered to be withdrawn where the officer is passing through the parts of the States building giving access to the Chamber. Article 72 provides that part 3 amends the Connétables (Jersey) Law 2008, which I will reference as the 2008 law. Article 73 amends Article 1 of the 2008 law to signpost the provisions in Article 4C of that law about disqualification from the office of Connétable. Article 74 makes a consequential amendment to Article 3 of the 2008 law. Article 75 amends Article 4A of the 2008 law, which makes provision about the declaration to be made when nominated for office as a Connétable. The declaration will be included in the nomination form and the requirement under paragraph (2) for it to be read out at the nomination meeting is now redundant. This Article also substitutes paragraph (1A) of Article 4A of the 2008 law to provide that there is no requirement to declare a conviction for an act which would not, by reference to Article 12 of the Sexual Offences (Jersey) Law, result in a conviction if it had been committed in Jersey on or after 12th January 2007, the date on which Article 12 of that law came into force. As with Article 69, these changes are to standardise the requirements related to the qualification and disqualification for election. Article 76 substitutes Article 4C of the 2008 law, making provision about disqualification from office as a Connétable. The circumstances in which disqualification will arise, disqualification conditions are unchanged, although some of the

terminology and legislative references have been updated. The revised version of Article 4C differs from its predecessor in providing not only for disqualification for election but also that a person elected as a Connétable will cease to hold office on meeting one of the disqualification conditions. The Royal Court retains supervisory jurisdiction for other purposes. The amended Article 4C also includes a signpost to Article 18(2) of the Public Elections (Expenditure and Donations) (Jersey) Law 2014, which makes provision for disqualification from office in the event of conviction for an offence under that law in connection with the person's election expenses. Article 77 deletes the schedule containing the form of declaration for a person proposed as a candidate for the office of Connétable. I propose the Articles.

**The Deputy Bailiff:**

Thank you. Are Parts 2 and 3 of the law Articles 66, 67 inclusive seconded? [**Seconded**]

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

I think this is a bit late, my question was really regarding Article 64, so we have moved on and I am quite happy to drop that.

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

Can I just confirm, we are talking about Article 68 as well?

**The Deputy Bailiff:**

Yes.

**Deputy M.R. Higgins:**

Okay, thank you, Sir. I want to say a number of things about this. Unless I am mistaken, and I stand to be corrected by Deputy Alves, in her opening speech yesterday she mentioned the topic of bankruptcy and stated: "The election observers had stated that our existing law with regard to bankrupts standing for election did not conform with the U.N. (United Nations) Committee on Human Rights comment 25 provisions." Comment 25 is concerned with: "The right to participate in public affairs, voting rights and the right of equal access to public service." She also said: "Although P.P.C. were aware of this fact, they have decided, as evidenced in the legislation before us, not to amend the law." For a jurisdiction which prides itself on complying with the very best of international standards, I find it amazing and the justification for not doing so exceptionally weak and not compelling. I believe that P.P.C. must reconsider this matter quickly and if they do not do so I will bring a proposition to amend this law in September, as I believe they are making a serious mistake and cannot justify not taking any action. The U.N.'s comment 25 states: "Any conditions which apply to the exercise of the rights protected by Article 25 should be based on objective and reasonable criteria." They further state: "The exercise of these rights of citizens may not be suspended or excluded, except on grounds which are established by law which are objective and reasonable."

[10:30]

Although we may meet the first test, i.e. contained in law, it fails, in my view, the second test; it is not objective or reasonable. In fact our law is not based on objective assessment or standard, it is based on prejudice, animosity and revenge. Prejudice against people who have been declared bankrupt. I say this from knowledge, as I have researched this topic, and brought propositions to the States in the past to change the law in this area. From the research I conducted, the only jurisdiction that I found to, effectively, prevent bankrupts from standing for election to the legislative for 9 years, because that is how long the bankruptcy in the Island could last ... in fact we stand out as an exception, as most jurisdictions do not have laws preventing ex-bankrupts from standing at all; they leave it to the electorate to decide. The argument that Deputy Alves mentioned, that was put forward by the majority of P.P.C. members, was that bankrupts should not be entrusted with public money when

they cannot manage their own money. This, to my mind, is a stupid and fallacious argument, especially in the modern-day world. Firstly, as States Members, we do not handle public money. Yes, we may vote on it but we do not handle money and, therefore, there is no question of such a person dipping their hands in the till. Even Ministers do not handle money. We have a whole slew of financial regulations and accounting officers overseeing the process and a Comptroller and Auditor General to ensure that the States finance laws are followed. If Ministers go ahead without following advice, they would expect to have to answer for it to the States and, ultimately, to Islanders at the next election. Secondly, many successful businessmen and individuals have come a cropper and been declared bankrupt through no fault of their own. The vast majority of individuals and families living in Britain, the United States and this Island are living from one pay day or cheque to another, with little or no reserves, especially here in the Island with the exceptionally high cost of living that we have to endure. Illness, reduced hours or job loss, divorce or separation, legal fees and housing problems can tip any of us over the edge, as can external shocks to the economy. Take 2008, for example, the subprime mortgage crisis in America led to the collapse of Lehman Brothers and to liquidity problems in world markets, which caused interbank lending to dry up, which in turn led to bank lending to individuals and businesses drying up and to many individuals and businesses being forced into bankruptcy. I also wonder how many Islanders or businesses would have declared bankruptcy during the current pandemic, were it not for the various measures and packages brought in by the Island Government, the fixed cost support scheme or the payroll co-funding scheme, to name but 2. A very good friend of mine, who, unfortunately, is no longer with us, he died some 2 or 3 years ago, went bankrupt 3 times in his business career. His name was Robert Gaines-Cooper, a successful entrepreneur, businessman and philanthropist. He said: "Bankruptcy is one of the hazards of being an entrepreneur" and that after each failure he picked himself up, looked around for another opportunity and started again from scratch and built up a new business and he paid off all his creditors in full as soon as he was able. After his last bankruptcy he set up L.M.A. (laryngeal mask airway), the laryngeal mask company, whose head office was in St. Helier. The company may have installed worldwide the revolutionary laryngeal mask, which anaesthetists use to keep patients' airways open during operations and turned it into a successful international company, which he floated on the Singapore Stock Exchange. The share offering was oversubscribed by 7 or 8 times, making him a very wealthy multi-multi-millionaire. He was also a gentleman who I admired. Many of you may recognise his name, he was a major sponsor of the Jersey Air Display, putting almost £1 million into the event over the decade or so that we worked together. We never had a written contract for his air display sponsorship, as we both believed our word was our bond. He promised to fund the air display and I promised and kept the promises I gave him. His sponsorship only came to an end because a former Chief Officer and a former Minister at E.D.D. (Economic Development Department) doubted Robert's word and insisted he put in writing his commitment to the air display and to the Island and had also tried to take over control of the air display, which E.D.D. did not own, and give it to someone else. Bankruptcy should not be used as a ground for disqualifying someone who has been bankrupt, once the bankruptcy period has come to an end. To do so denies the Island some very capable people whose bankruptcy was no fault of their own and who could offer so much to the Island and its future prosperity. It should be the electorate who should decide who gets elected to the States or not, not us limiting their choices. I personally believe the bankruptcy laws in Jersey are onerous and outdated; *dégrévement*, for example, where your property can be sold off to pay your creditors and you receive nothing from the sale, even if the property is sold for £1,000 or even £1 million more than the debt, needs to be abolished, as the Law Commission has recommended. We need to amend the provisions of Article 8 of the existing law that are listed on page 67 of this amendment. Currently people who cannot pay off their debt in full on or before the day on which the bankruptcy proceedings are concluded have a further 5 years added on to the bankruptcy period, which extends the bankruptcy period up to some 9 or 10 years. In England and Wales, since the coming into force of the Enterprise Act in 2004, bankruptcy will now normally last no more than 12 months, except in extreme cases where the bankrupt is considered to be particularly culpable for his or her insolvency and a

bankruptcy restriction order may be made to extend some of the restrictions of bankruptcy for up to 15 years. I have also heard that some members of P.P.C. felt that the bankruptcy provisions should not be amended as they would let the Pitmans ... that is former Deputy Trevor and Shona Pitman, who were made bankrupt some years ago, as it would enable them to stand again for the States. I have no idea where Trevor or Shona Pitman currently live or whether they would want to stand again for election to the States. But I happen to think that to decide whether or not to adopt new or amended laws should not be based on personalities, as this is what happens in banana republics and should certainly not be happening in Jersey, so shame on those members of P.P.C. To conclude, I believe P.P.C. should urgently amend the bankruptcy provisions and if they do not do so I will lodge an amendment in September to do so. I will, however, support this Article at present, only because it aligns the disqualification rules for both Constables and Deputies, something I brought a proposition to try to achieve in 2017.

**The Deputy Bailiff:**

Deputy, in the course of your speech you referred to 2 individuals by name, a former States Member and a former officer and in my judgment under Standing Order 104(2)(i) it was not unavoidable or necessary for you to do so. For the purposes of Hansard they will be identified as a former Minister and a former Chief Officer.

**Deputy M.R. Higgins:**

Okay, thank you, Sir.

**Deputy M. Tadier:**

Can I raise a point of order about the ruling on naming of former States Members? It seems to me that I understand the rationale for not naming members of the public but surely we can name former States Members because they have been instrumental in policy making.

**The Deputy Bailiff:**

Deputy, it depends on the context and in my judgment in the particular context of this provision and the points that were being made, use of the name was not unavoidable. But I accept your general point that there may be circumstances in which it is appropriate to identify former States Members by name. Indeed, it was appropriate in one particular context, as has occurred in this debate. Does any Member wish to speak on these particular Articles in Second Reading?

**1.5.2 Deputy M. Tadier:**

I do see things very much in line with what has been outlined by the previous speaker, Deputy Higgins, so I will not repeat everything that he said. But I think it is important that I do put it on record, first of all, the fact that I think that there should be as few obstacles and encumbrances as possible to anybody in Jersey taking part in the democratic process, whether that is by voting in elections or by putting themselves forward. It really follows on from what we were debating just a moment ago about people putting themselves forward if they do not like what is on offer and about having maximum choice. I think that is probably something that we should all agree with, is that we want the electorate to have the maximum choice to allow free-flowing debate, both before elections, during the hustings and election process and then after elections when the Assembly has been constituted, so that there are, hopefully, divergent and vibrant views that will lead to discussion and perhaps more creative but also effective policy-making in the long term. I think when we put in or fail to remove obstacles that do not seem to serve any purpose, then I think we should question them. What I would like to ask the chair of P.P.C. is that I was of the understanding that the bankruptcy provisions were to be removed, yet what we are seeing here is what I would refer to as a levelling down rather than a levelling up. I know in a sense the provisions for Deputy are simply not being changed and so it might be difficult to vote against that because you cannot necessarily vote for something which is not in the provisions. But my concern is that we are extending these 40 provisions



to the office of Constable, and I am not comfortable to do that because I think we should be moving it the other way. If there is a problem in the law for the Deputies which needs to be removed, there is no point in putting that same problem into law so that it then applies to a different category of Member, only for it to need to be removed again later at a later date. I think the Article that I will need to vote against is the one to do with extending this to Constables, which I think is contained in Article 75 or 76 - I think it is 76 - and perhaps the chair can refer to that and also allow Article 76 to be taken separately. I know the argument has been made that we should vote for all of these so that there is consistency. But I do not want something that should not be there to be applied consistently. I think we should protect the fact that it is a good thing that this disqualification for bankruptcy does not apply to Constables and that in fact we should be then extending that to the office of Deputy. Perhaps slightly whimsically, I could say that if the word “bankruptcy” had been preceded by “moral”, then I would see the purpose of it. We do not want people being elected to the States or standing for the States who might be morally bankrupt. But the point with bankruptcy is that presumably you have to have money in the first place to be made bankrupt and, secondly, you can be made bankrupt through absolutely no fault of your own. You might have invested money or even just put money away to be saved, as many people have done in the past, in something that they thought was a safe investment, only to find that that market has crashed and no fault of their own. Then you would say to them: “Because of that completely arbitrary act you are not allowed to stand for election for 9 years.” I cannot see what the link is between an arbitrary event and then an arbitrary punishment, saying to people you cannot stand for election for 9 years because you are now bankrupt, whereas somebody who never had any money in the first place and who never had any money to lose can stand for election. I think it goes back to this point that at some point in the past, presumably, that there was a presumption that you needed to be a good businessman because it would have been then in order to be an effective States Member, and I do not think that holds true. But even if that were true, surely somebody who has been made bankrupt and perhaps been made bankrupt several times and rebuilt themselves is probably going to be much more effective than somebody who never had any money in the first place and never ran a business and never had any money to lose. I do think it raises lots of philosophical questions and there seems to be absolutely no logical basis for this provision being there in the first place, apart from the fact that maybe it was done to avoid somebody standing for election a long time ago, and I think that would be an interesting historical route of academic pursuit to find out why that was the case. But it certainly does not seem to have any bearing on amendments that we should be putting forward today in 2021.

[10:45]

### **1.5.3 Deputy J.H. Young:**

I am grateful for Deputy Higgins focusing on this Article because the issues he has raised have been in my concern for a good number of years and of course I am not going to mention a name but I worked with individuals who have suffered under this and saw the punishment that our Jersey system dishes out to people who make mistakes, and mistakes in the way they run their personal affairs. I think that is harsh, and I certainly am concerned about whether it needs to be as harsh as what is being proposed. I can recall that we have had reports from the Citizens Advice Bureau that debts in Jersey, people’s debts for ordinary people, the processes in Jersey under our law are well out of line or Dickensian almost and there needs to be more modern approaches to this. People are encouraged in all walks of life in Jersey to use, to borrow, to take credit and so on and things do go wrong. I do not know where we are with that but I think Deputy Higgins is right, that there needs to be reform. Of course if one can add to that as well is that there are also the deficiencies that I think do exist in people’s access to justice, that when they are affected by these situations my expectation is there would be no legal aid probably and then where do you go then? Because civil matters are not covered under the legal aid rules, so, effectively, one is in practice and almost certainly required to leave the Island and go and try and make a new life somewhere else if you can. I think Jersey is a very, very harsh place and to have this enshrined in this law I think Deputy Higgins is right to raise it. I can see

Deputy Tadier's point, that if that arrangement ... what we are doing in the Deputy's position is already just carrying forward what already is does not make it right, if we are then extending that to another role where it does not apply but of course that raises its own question. If it does not apply to Constables and it applies to Deputies, why have we had that for so long? I pose that question. I think that is one issue, so I do not think it is enough to vote against this because there are lots of other absolutely valid disqualifications in this part of the Article that is being proposed, what one needs to have in a decent society. But this particular part, I think, really does raise major questions that this needs to be looked at post-haste, as soon as possible after this law, and I am sure it will be overseen. The other point I would like to raise is there is a reasonable exclusion for disqualification from office if somebody ceases to be resident in Jersey for 6 months. Of course that raises the question - and maybe I might ask the Attorney General to tell us - where is the definition of "residence"? My understanding is that residence is an issue that arises in our tax law. We have been told what our income tax law is; the position is currently totally unsatisfactory. My understanding is that if a person is treated under the tax law at the moment, one is ordinarily resident if you own a property in Jersey, so I would like some clarification on that. When we pass this it is inevitable, I think, that when we pass this sort of huge new law, and well done for P.P.C. for producing it, that some of the snags that are inherent in our current law, which we are carrying on, are going to come to light. My purpose of me speaking is to flag them up. But I would like to know - a comment, please, what does "residence" mean for the purpose of this law, please? Could I ask that, Sir, of the Attorney General?

**The Deputy Bailiff:**

Yes, of course. Attorney General.

**Deputy J.H. Young:**

Sorry for not giving notice, I do apologise. It is just that I have missed this one and apologies. If the A.G. (Attorney General) wants to defer them to later, I am happy with that.

**Mr. M.H. Temple Q.C., H.M. Attorney General:**

I do not think I need to defer answering this question. I think it is a question that I have answered before in previous debates. Yes, residence is a concept that is linked to our tax law and it is a clearly understood concept. There are not cases that I have been able to find in the law reports which demonstrate there is any argument about what it means. Basically it means where a person's home is. I hope that is sufficient for the Deputy's purposes. If he wants to have further information I would need to go back over and do further research but I hope that is sufficient for the purposes of this particular debate.

**1.5.4 Deputy R. Labey of St. Helier:**

Deputy Higgins makes some very valid points on the bankruptcy issue and I was very interested to hear what he had to say. Maybe his proposition in September is a good idea and I am sure that on the P.P.C. subcommittee we would be happy to relook at that and his proposition would prompt that. We will listen to Members in this debate and see if we should do that anyway. The one thing I can say quite categorically, for the last 3 years from June 2018 to the present day I have never, ever had a conversation on the P.P.C. subcommittee or the P.P.C. main committee where the names of the 2 former Deputies that he mentioned ever came up. The scenario he paints is wrong. I do not know where he got that from. It is a really unfortunate accusation to make and he is quite categorically wrong on that.

**1.5.5 Deputy R.J. Ward of St. Helier:**

It has been very interesting, this part of the debate, and there is a difficulty with bankruptcy. I will raise the point, I do not know if this is one of the points that was trying to be made. We live in changing times and so many people will face difficulty following COVID that we may have a lot more people entering into positions where their only option is to declare bankruptcy in order to

survive; to be quite frank and that could mean we risk people not standing. There is another point, and I am not sure how directly relevant this is but I think it needs to be looked at, and it may be in another part of the Articles; there are a lot of Articles here. But when it says about disqualification for somebody who is a member of the States of Jersey Police Force, for example, or holds any paid office under the Crown, that is clear and I can understand why that is. But there is, if you like, disqualification and there is disqualification because for some people who want to stand it will mean, for example, stepping away from their job and taking 6 weeks of unpaid leave, which for many who do not have private individual wealth, *et cetera*, that is a hugely significant amount of money that they will be missing out on to stand. It may act as a disqualification from standing simply because they, to put it bluntly, cannot afford to stand. I think that needs to be thought about as well, particularly if you are employed by the States in other capacities because it does happen and it puts people in a very difficult position. It means that we do not get good candidates from some areas, perhaps those who have worked in public service, for example, who really know the ins and outs of governance and the way that things work or have committed their life to public service previously but will not commit to this part of public service, which is what this role is because of those issues with income. I think there is something fundamentally wrong with the bankruptcy area of this but because it is interwoven with so many other areas which make sense in here, voting against all of Article 76 would be very difficult to do. To some extent I hold my nose and vote for it, if that is what I decide to do, but I would like to see some addressing of the issues that have been raised here today. That is not to take away from the work that P.P.C. have done here because what has happened here ... and I want to congratulate Deputy Alves and the work that she is doing here and these hundreds of Articles that are being presented today in such an organised and appropriate way. It does not take away from that because this is a huge change and a huge amount of work that has had to be done. It is not going to be perfect. It does not mean that we cannot, if you like, tweak it later and improve on these things later on. I do not think this is a final version in some ways. We do need to address that issue of bankruptcy and I think if anyone brought a proposition forward I would certainly be supporting of that. I do agree with Deputy Higgins, if we can do that as quickly as possible that would be great. The final thing was in terms ... sorry, I have lost it now because, as I said, there were many, many pages of these things here about capacity laws. We need to be very careful about the use of capacity and self-determination laws. They need to be absolutely ... again this is cross-referenced into other laws, which come into this debate. We will see later on when we talk about other draft legislation that when laws are cross-referenced in this way it can be very difficult to understand the full implications of that. At the moment I am likely to vote for this but I would like to put those provisos on the record and voice my concern regards the bankruptcy issue as well.

#### **1.5.6 Senator J.A.N. Le Fondré:**

Very briefly, I just want to remind Members of paragraph 2.4 in the R.M.P. (Risk Management Plan) and in it it says: "Seems reasonable to expect that someone who will be responsible for public funds should demonstrate prudence in their own financial activities." I think that is the fundamental point behind this. Ultimately we do make decisions involving generally millions of pounds and that demonstration of prudence in one's own financial activity is relevant when one is talking about the level of bankruptcy. It may not be through the fault of the circumstances but that is the nature of what we deal with. If one took it to the extreme that if everyone - and this is an extreme view, of course - in the Assembly had been declared bankrupt that would not exactly bode terribly well for the Island. I just make those observations and I think it is relevant to keep it in. I accept all the points that have been made about it being difficult but I think the overriding interest and the public interest to the Island is that it is probably not appropriate, in my view, for someone who has been declared bankrupt to be a member. That is unfortunately the way of the world. I will obviously be supporting the work of P.P.C. on this matter.

#### **1.5.7 Senator S.Y. Mézec:**

I am pleased to follow that previous contribution because it was very revealing, was it not? In the debate up until this point there have been some interesting contributions and some very good points made. I am one of those who think that this disqualification should not exist for all States Members. I was going to make the point that your ability to run for election and serve in this Assembly should be as open as possible so that the choice is for the public to make and that they have the widest choice available to them. If they do not want somebody to serve them in the Assembly because of their record before serving in the Assembly, whether that is in business or in financial affairs or what have you, that is a matter for them to decide and it may be the case that there is a prospective candidate out there who has had a range of successes in their life but perhaps in among those successes a failure that has included bankruptcy, which then disqualifies them from serving in the Assembly, which I think is inappropriate. I think it deprives them of the choice. I found it quite interesting that the Chief Minister takes a position basically of second guessing what is good for the public or not and supporting restrictions on who can stand for election based on what he thinks is appropriate rather than the public being given a choice, which I think shows an anti-democratic tendency, which is completely at odds with what I believe.

[11:00]

Your ruling before about being able to name former politicians is one I found very strange as well and I will make my next point without names then, which will be bizarre because everybody will know what I will be saying. The most recent event in history that we know where Members of this Assembly were disqualified for being made bankrupt, incidentally on the very same day that they were made bankrupt and expelled from this Assembly another notorious politician was made bankrupt, that was the then leader of the British National Party, a fascist party, who was a member of the European Parliament at that time, by coincidence he was made bankrupt on the same day as the 2 former Deputies of this Assembly and he was not expelled from the Parliament which he was serving in because it is a more modern Parliament with more modern rules in line with all the relevant international conventions, *et cetera*. He then was thrown out at the next election because the public were quite rightly sick of being represented by someone as reprehensible as him. But the choice was theirs to do that. The bankruptcy rules are clearly out of line with best practice, they are anti-democratic and they should be gotten rid of. The question about whether we equalise the situation now as proposed in this Article or look to scrap it entirely at the appropriate time is an annoying choice to make in the context. It would be better if we could decide these things in a more straightforward debate. That makes it difficult to decide how to vote on this particular Article but I would want to be on record as saying I reject the position that was outlined by the Chief Minister before and believe the public ought to have the choice over who represents them and not have rules restricting that in what is, I think, quite an overbearing way, given the nature of bankruptcy and how people can become bankrupt and it reflecting on their character or their suitability to serve in the Assembly. I would have preferred we could have dealt with this in a different way.

### **The Deputy Bailiff:**

Thank you, Senator. In view of what you said in your speech about the ruling I gave, I think I should explain it further. Standing Order 104(2)(i) says a Member of the States must not refer to any individual who is not a Member of the States by name unless use of the individual's name is unavoidable and of direct relevance to the business being discussed. This, of course, is debate on Articles in relation to circumstances in which persons may be disqualified from standing or from the States generally. The 2 individuals that were named by Deputy Higgins was in the context of his suggestion that those individuals, a former Member and an officer, were responsible for particular funding difficulties in relation to the air show. This is not a debate about the air show and, accordingly, to name those individuals was not unavoidable and of direct relevance to the business being discussed. Of course the identity and the names of previous States Members who have been made bankrupt is of direct relevance to the business being discussed and there is no difficulty in them

being named. That was not meant to be an admonishment at all, Deputy Higgins, it was a question of Standing Orders which sometimes create difficulties for us all. Now, does any other Member wish to speak on these Articles? If not, then I call upon the chair to reply.

**1.5.8 Deputy C.S. Alves:**

Thank you. I would like to thank all Members for their contributions. It has been a very insightful debate on these Articles. I would just like to start off by echoing what Deputy Labey said in that the former States Members that Deputy Higgins mentioned in his speech were not discussed as part of the deliberations on this issue of bankruptcy. Personally I sympathise and agree a lot with what Deputy Higgins has said, especially now that we find ourselves in very different times with COVID, and I can imagine that a lot of people will find themselves in this position of possible bankruptcy, who in normal times never would have. As Deputy Ward kindly pointed out, this is a mammoth piece of work and it is a shame that this was not brought up during the consultation process. As Members are aware, we have changed some things from the original law that we lodged. For example, on the back of those consultations the number of nominees that were due to be on the nomination form. I would just like to also remind Members that disqualification on bankruptcy grounds does expire after 5 years and that these particular Articles would be addressing the inconsistencies that currently exist between the Connétables and the Deputies. However, I would welcome Deputy Higgins to bring forward a proposition. I am also happy to take this back to P.P.C. to review and to undertake to look into this further. Deputy Tadier mentioned taking Article 76 separately. I am also happy to do that, however I would just like to make the point that this would mean that we might end up with inconsistent disqualification provisions. So although I am sympathetic and I do personally agree that the current bankruptcy rules - this is my personal view - are not ideal, these Articles simply just make it consistent across the board. I will take that Article separately as Deputy Tadier has asked for it. If we could take ...

**The Deputy Bailiff:**

Articles 66 to 75 first?

**Deputy C.S. Alves:**

Yes, please.

**The Deputy Bailiff:**

In a moment the Greffier will put a vote into the chat channel of this meeting. The vote is now open and I ask Members to cast their votes. If all Members have had the opportunity of casting their votes, then I ask the Greffier to close the voting. The Articles have been adopted.

<b>POUR: 43</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst		Connétable of St. Mary		
Senator L.J. Farnham				
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Saviour				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of St. Peter				

Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

Chair, you now wish to propose Article 76, is that right?

**Deputy C.S. Alves:**

Yes, please, Sir.

**The Deputy Bailiff:**

The Greffier will need to prepare the vote. He has done so and the vote is now open and I ask Members to cast their votes. If all Members have had the opportunity of casting their votes, I ask the Greffier to close the voting. Article 76 has been adopted.

<b>POUR: 39</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 1</b>
Senator I.J. Gorst		Deputy G.P. Southern (H)		Deputy M. Tadier (B)
Senator L.J. Farnham				
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator S.W. Pallett				
Senator S.Y. Mézec				

Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of St. Peter				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

**The Greffier of the States:**

Members who voted contre were Deputy Southern and in the chat the Constable of St. Mary. The abstention was Deputy Tadier.

**The Deputy Bailiff:**

Chair, that brings us on to Article 77.

**Deputy C.S. Alves:**

Yes, please.

**The Deputy Bailiff:**

Does any Member object to Article 77 being adopted on a standing vote? Thank you. Chair, do you want to proceed to part 4 of the law?

## **1.6 Deputy C.S. Alves:**

Part 4 of the law, I would like to propose Articles 78 and 81 together. Part 4 is about political parties registration. Article 78 provides that part 4 amends the Political Parties (Registration) (Jersey) Law 2008; the Registration Law. Article 79 makes consequential amendment to Article 1 of the Registration Law. Article 80 makes a change to the terminology used in the Registration Law replacing the label “leader” with that of “Chair”. Part 5, the Public Elections (Expenditure and Donations) (Jersey) Law 2014 as amended by the Comité. Article 81 provides that part 5 amends the Public Elections (Expenditure and Donations) (Jersey) Law 2014, the 2014 law. I propose Articles 78 to 81.

### **The Deputy Bailiff:**

Thank you. Are those Articles seconded in Second Reading? **[Seconded]** Does any Member wish to speak on those Articles, that is 78 to 18 inclusive?

#### **1.6.1 Deputy J.H. Young:**

Can I just ask the chair to highlight ... and I apologise again, lack of preparation of my part, I did bring a proposition about publication of expenses openly on the website. If I could ask the chair to just highlight where this is within the new law because I think it is very important. I feel confident the committee would have picked it up but I could not find it.

#### **1.6.2 Senator S.Y. Mézec:**

Just very briefly, the issue of replacing in the Political Parties (Registration) (Jersey) Law the word “leader” for “Chair” was something that I had recommended. I think it is a sensible way of making sure that parties are required to have good democratic structures within themselves. There is, I think, by nature a difference between being a chair of a party and being the political leader and figurehead of a party. To become a candidate officially for a party your nomination form has to be signed by the registered officeholders of the party, and those are officer holders that are registered with the Royal Courts. If those are all parliamentary party members then you are depriving your party of the accountability that comes with having a non-parliamentary membership.

[11:15]

In ours, we have formally split the roles of leader and chair and require it so that the chair of the party is a non-States Member so that brings extra accountability in there and cannot be used by a potential rogue leader in future to be the one who solely determines who gets to stand for election under their banner. It would have to be spread out and more democratically decided, which has to be a good thing. It is also a good thing to encourage people to join political parties so they could be part of that decision-making process. I am pleased that this is being proposed and it will, for me at least, mean my name coming off the record in the Royal Court and replaced by somebody who is not a States Member, which I think is a good thing so I would support that.

### **The Deputy Bailiff:**

Thank you, Senator. Does any other Member wish to speak on these Articles? I call upon the chair to reply.

#### **1.6.3 Deputy C.S. Alves:**

In response to Deputy Young’s point, it is going to come up in Article 98 and they will be published on the vote.je website. With that, I propose those Articles, thank you.

### **The Deputy Bailiff:**



In a moment the Greffier will add a vote into the chat channel of this meeting. He has done so and I invite Members to cast their votes. If all Members have had an opportunity of casting their votes, then I ask the Greffier to close the voting. The Articles have been adopted in Second Reading.

<b>POUR: 41</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 0</b>
Senator L.J. Farnham		Connétable of St. Mary		
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Saviour				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

### **1.7 Deputy C.S. Alves:**

Next I would like to propose Articles 82 to 85, which deal with expenses relating to political parties. Article 82 makes minor and consequential amendments to the list of definitions in Article 1 of the 2014 law. Article 83 inserts a new Article 1A in the 2014 law defining “regulated period” for the purposes of the election expenses rules by reference to the 4-month period leading up to an election. Presently only money spent from nomination night is counted. We feel this is unfair and that candidates could stockpile or purchase items well in advance which would not be counted towards their total. Article 84 amends Article 3 of the 2014 law, including substituting the definition of election expenses in paragraph 1 of that Article. Election expenses are defined as expenses incurred at any time before the poll for an election by the candidate or with the candidates express or implied consent for goods or services which are used during the regulated period to promote or procure the candidates election or to prejudice the electoral prospects of another candidate at that election. The substituted Article 3(1) catches expenses for goods and services used in the 4-month regulated period and not only those used after the person has legally become a candidate. This Article makes related consequential amendments to Article 3 of the 2014 law and also amends the provision about apportionment of expenses between candidates. Where election expenses are incurred in respect of 2 or more candidates, the presumption is that the expenses are of equal benefit and are therefore to be apportioned equally between them. However, this presumption can be displaced if one of the candidates proves to the satisfaction of the J.E.A. that the expenses should be apportioned on a different basis. Article 85 inserts a new Article 3A in the 2014 law to make provisions for expenses incurred by a political party during the regulated period for an election. The expenses are to be treated as election expenses in relation to each candidate standing at the election who is endorsed by the party and are to be apportioned between the candidates in accordance with Article 3(7) of the 2014 law. I propose the Articles 82 to 85, thank you.

### **The Deputy Bailiff:**

Are those Articles seconded? **[Seconded]** Does any Member wish to speak on those Articles, Articles 82 to 85 inclusive? If no Member wishes to speak on those Articles, is there any objection to those Articles being adopted on a standing vote? Chair, they are adopted.

### **1.8 Deputy C.S. Alves:**

Next I would like to propose Articles 86 to 89. Article 86 amends Article 4 of the 2014 law to alter the limits on candidate’s election expenses. The aggregate limit is £2,050 plus 13 pence for each person entitled to vote at the election. Article 87 amends Article 5 of the 2014 law to extend the period within which a candidate must send an anonymous donation to the Treasurer of the States from 10 working days to 4 weeks. It also alters the offence of failure to comply with that requirement so that no offence is committed if there is a reasonable excuse for the failure, building the element of reasonable excuse into the provision itself with a related amendment being made to the current defence provision in Article 15. Article 88 amends Article 6 of the 2014 law which makes provision requiring a candidate to make a declaration of election expenses and donations. The period within which the declaration must be made after an election is extended from 15 working days to 4 weeks. The amendments have the effect that the J.E.A. instead of the Judicial Greffier will be responsible for overseeing the process for expenses and donations declarations. A declaration must be delivered to the J.E.A. and be made using the forms supplied by it, and the J.E.A. will also remind candidates of their obligation to deliver a return at least 5 working days before it is due. The minimum amount of value of a donation that is required to be declared is increased from £120 to £145 and amendment is made to the offence of failure to comply with the requirement to deliver a return under the Article so that no offence is committed if there is a reasonable excuse for the failure. Article 89 amends Article 7 of the 2014 law so that it is the J.E.A. instead of the Judicial Greffier that will be responsible for the verification of expenses. A new paragraph is inserted so that the J.E.A. will also be able to require the treasurer of a political party to produce invoices, receipts or other proof of the parties’

campaign expenses in relation to one or more candidates. The period within which such a request must be complied with, in the case of a candidate or the treasurer of a political party is extended from 15 working days to 4 weeks. There is a further amendment to the offence under Article 7(3) of failure to comply with a request so that no offence is committed if there is a reasonable excuse for the failure. I propose Articles 86 to 89, thank you.

### **The Deputy Bailiff:**

Are those Articles seconded? **[Seconded]** Does any Member wish to speak on Articles 86 to 89? Does any Member object to Articles 86 to 89 being adopted in a standing vote? Those Articles are adopted.

### **1.9 Deputy C.S. Alves:**

Finally, I would like to propose Articles 90 to 106 and thank Members for their patience. Article 90 amends Article 8(2) under which it is an offence for a person who incurs or pays a candidate's election expenses to fail to provide a candidate with information and documents for the purposes of the candidate's reporting obligations under the law so that no offence is committed if there is reasonable excuse for the failure. Articles 91 to 93 amend the provisions about third party election expenses in Articles 9 to 13 of the 2014 law, bringing them into line with the amendments made to the provisions about candidate's election expenses, although there is no requirement for the J.E.A. to remind third parties of the obligation to deliver a return. Article 94 replaces the Judicial Greffier with the J.E.A. and extends the time period for submissions. Article 95 inserts a new part 3A in the 2014 law establishing a regime for political parties to report donations. The new provision requires the treasurer of a political party to deliver a written declaration to the J.E.A. of a reportable donation within 4 weeks of receiving it. A donation is reportable if its amount of value exceeds a certain threshold amount or if the total amount or value of that donation and any others made by the same donor with the preceding 3 months exceeds the threshold amount. The threshold amount will be specified in regulations made by the States. There is provision that it is an offence for a person to fail, without reasonable excuse, to deliver a declaration or to deliver a declaration knowing or believing it to be false in a material particular. A person who commits either offence is liable to a fine. A political party must not keep an anonymous donation, which is parallel to the provisions in the 2014 law prohibiting candidates and third parties from keeping anonymous donations. There also includes a requirement for the treasurer to declare the donation to the J.E.A. within 4 weeks of receiving it. For candidates and third parties, the sum of anonymous donations is declared in the post-election declaration to the J.E.A. A person who fails, without reasonable excuse, to comply with the requirements commits an offence and is liable to a fine. An officeholder of a political party, other than the treasurer, is required to notify the treasurer of any donations to the party, which the officeholder knows or believes to have been received and to provide any information held by the officeholder that is relevant for the purposes of compliance. A person who fails, without reasonable excuse, to comply commits an offence and is liable to a fine. Articles 96 and 97 make consequential amendments to Articles 14 and 15 of the 2014 law. Article 98 substitutes Article 16 of the 2014 law requiring the J.E.A. to acknowledge receipt of declarations of expenses and donations and to publish those declarations. Article 99 inserts a new Article 16A in the 2014 law providing that the J.E.A. may make such arrangements for the audit of any declarations made under the law. The J.E.A. may select declarations for an audit at random or by reference to a particular criteria. Or may arrange for the audit of all declarations. Article 100 amends Article 18 of the 2014 law. It alters paragraph (1) to reflect the fact that the listed offences relate to both expenses and donations. The Article also inserts a new paragraph (1A) extending the application of Article 18 to a candidate who has been convicted an offence, in the person's capacity as an officeholder in relation to a political party, in respect of a failure to comply with any of those provisions during the regulated period. Article 101 inserts a new Article 18A in the 2014 law providing that the States may make further consequential, incidental, supplementary or transitional provision by regulations, including provision amending,

repealing or modifying any enactment. Article 102 as amended by the Comité amends paragraph 1 of the schedule to the 2014 law to include a broader definition of “donation”, in the context of financial gifts, for political parties in keeping with the ongoing requirement for the treasurer of a political party to report donations of a certain amount or value received by the party. Any gift of money to a political party is a donation but only those above the threshold amount will be reportable. Article 103, as amended by the Comité, amends paragraph (2) of the schedule to the 2014 law to include a broader definition of “donation”, in the context of the supply of free or discounted goods or services, in keeping with the ongoing requirement for the treasurer of a political party to report donations of a certain amount or value received by the party. Article 104 amends paragraph 4 of the schedule to the 2014 law, which makes provision about what constitutes an anonymous donation. The inserted paragraph (2) provides that the States may by regulations provide that the requirements of the law do not apply in relation to anonymous donations of an amount of value below that specified in the regulations.

[11:30]

The power could be exercised to set different limits for different cases, for example, a different limit for candidates and third parties to that set for political parties. Article 105 introduced schedule 2, which makes consequential amendments to other legislation. Finally, Article 106 provides that the law may be cited as the Elections (Miscellaneous Amendments) (Jersey) Law 202- and makes provision for it to come into force on a day or days specified by the States by Act. I propose Articles 90 to 106.

**The Deputy Bailiff:**

Are you proposing schedule 2 as well at this time?

**Deputy C.S. Alves:**

Yes please.

**The Deputy Bailiff:**

You are proposing Articles 90 to 106 and schedule 2. Is that seconded? **[Seconded]** Does any Member wish to speak on the balance of the Articles and schedule 2?

**1.9.1 Deputy J.M. Maçon:**

Yes, just briefly to say congratulations to the chair and to her committee. I have been here and had to bring tranches of the Public Elections Law to the States Assembly. I know how much work goes in behind the scenes in preparation for these debates. Also to thank all the officers behind the scenes who have also assisted the committee in their work. Well done to the chair for bringing this omnibus of legislation forward. She has done incredibly well and that is all I wanted to say.

**The Deputy Bailiff:**

Does any Member wish to speak on the remaining Articles and schedule 2 of the law? The Deputy of St. Martin. We cannot hear you, Deputy of St. Martin. Do you want to start again; we did not hear what you said?

**Deputy S.G. Luce of St. Martin:**

I have turned my camera off. Can you hear me now?

**The Deputy Bailiff:**

I can hear you now, yes.

**The Deputy of St. Martin:**

I apologise to Members and yourself for that. I have a point I would like to clarify about an Article that was raised yesterday that we discussed yesterday. Before we get to the Third Reading I just wanted to seek guidance as to when I might be best to do that.

**The Deputy Bailiff:**

The debate in Third Reading is confined to the contents of the draft adopted. If you have something else to say about an earlier part of the Law then you best raise that in Third Reading.

**The Deputy of St. Martin:**

I will do that in the Third Reading. Thank you.

**1.9.2 Deputy M. Tadier:**

I would like to echo first of all Deputy Maçon's comment that we know that P.P.C., and the chair, would have put a lot of work into this. I will not repeat these in Third Reading, but we know that a lot of work goes into this and it is probably an area where all States Members feel passionate about the subject matter. Because everyone has an experience of going through an electoral process and has aspirations about how we could engage more people. So first of all, well done. The comments are just to note that it is going to be important to be vigilant in the future, especially with the changes that are occurring, not just in the larger districts, but perhaps with the advent of a mature party political system, that we look for the unintended consequences and unfair advantages that may exist. Something that springs to mind is that there is clearly a difference between electoral expenditure that occurs during an election period and expenditure that can occur before that, but which nonetheless may have the consequence of building up the profile of individual candidates or indeed individual parties. Something that needs to be flagged up now, and this would apply to whoever ends up in Government, but it is perhaps more relevant for us because it has never happened in recent times, is that what happens if you have a governing party? We have that at the moment; we have a Council of Ministers who have just formed a party effectively, although they say they are not party members until 2022. First of all that does not stack up. A party has been formed. It has been registered with the Royal Court. We know that several Ministers are party officeholders. That is the case now. It is not the case just in 2 years' time, even though they may have a slate of candidates. What safeguards will there be put in place to make sure and to differentiate between Government spending and the promotion of the governing party's policy platform? It is the case in point because we have had, in the last few days, the launch of the Alliance Party's manifesto. They are the governing party at the moment, which has decided to form a party halfway or three-quarters during an election term, which is their right. They are saying that: "Our manifesto is the Government Plan." But the Government Plan of course has been written by independent civil servants and the first question is how does that expenditure get accounted for when they are saying: "This document is now our policy platform that we have created"? But it has been drafted by independent civil servants who are paid for from across the Island by taxpayers who may or may not have any interest in politics or may not share the views of any given political party or indeed the governing party. That kind of question needs to be looked at and I would be interested to hear the chair's views on what discussions have happened at the political table in that kind of scenario. There is also the issue I guess of advertising. It is commonplace to see banners and posters put up during an election period but of course now we are seeing posters and banners being put up outside of an election period. I am not saying that is wrong. That is part of the natural process. But clearly it is easier for a political party to be able to put banners up at any time during the 4-year cycle to promote either the party generally or to promote a particular campaign they are focusing on. It is not clear how some individual or independent Members might be able to do that. But similarly we also know that Parishes are able to send out Parish magazines with their photos and columns given to certain Members. For example, it is not uncommon, and I am not suggesting it is wrong, but it does nevertheless give an advantage to incumbents that the Constable will often write a column. I like to play a game with the different Parish magazines to see

how many photos of the Constable you can see and how many photos of the Deputy you can see. It is often the case in some country Parishes where there is a single Deputy they are given quite a lot of magazine space. Whereas in some other Parish magazines they have a rule that Deputies are not allowed to write in the magazine and it is not allowed to be political. Even though some other magazines give completely free rein to the Deputies to be as political and self-promotional as they want to be. These are the kind of issues, which are not easily captured in any kind of electoral law, which need to be flagged. Perhaps one last thought is that I get the idea of notional expenses, for example, if your leaflets should cost you £1,500 and you know the person who is printing it for you, either does it for free or at a heavy discount, that should be counted. But what about the things that are not easily quantifiable? Political activists, for example, are what all parties and perhaps independents rely on to get out and do the work for them. There is not and should never be any question of that being quantified. But what if you have a campaign manager as an independent? I have seen campaign managers being used very effectively for independent senatorial candidates, for example, who effectively have somebody running their campaign. Does that need to be quantified in terms of an election expense? The last question that I would have, if it is not possible to answer it can be treated as a rhetorical question, but it is an important one. There is this concept in electoral expenditure law that it is not just your direct expenditure. If somebody campaigns for you, or indeed if somebody campaigns against you that expenditure has to be quantified and accounted for. But it is very difficult to do that of course if you do not know who the person is that might be campaigning against you. If somebody produces a leaflet and sends it to every household in the Island saying: "Do not vote for whatever party," how do you find out who that is or how much they spent on it? But the most critical point is that if somebody decides they want to spend £10,000 on your campaign and you have not given them any authority to do so that could easily take you over your expenditure limit and who would be liable for that breach of expenditure? Some of these issues may already have a solution or not be an issue. But those are just some thoughts about the fact that it is going to be really important to be vigilant about the current problems that we may have and also how it is going to pan out into the future.

**The Deputy Bailiff:**

Does any other Member wish to speak on these Articles? I call upon the Chair to reply.

**1.9.3 Deputy C.S. Alves:**

I would like to start off by thanking Deputy Maçon for his kind words. I appreciate it and also the approbation that has been shown by other Members. To address some of the points that Deputy Tadier has brought up, which are very valid points and interesting and things that need looking into. This draft does not go as far as to require a separate declaration of political party expenses. Maybe this is one for the future. There is already a provision for free or discounted supplies of services, which might be professional services connected to a campaign, which would be treated as a candidate's expenses. A lot of the things that Deputy Tadier has brought up there would be something for the J.E.A. to look into in consultation with P.P.C. The point about third parties, the money spent without consent is a third-party expenditure and subject to limits as well, so it is separate. I hope that addresses all of the points. That part is now in law. The J.E.A. will have a lot of things to consider and this will extend the breadth of things that they are going to be working on. I would like to propose Articles 90 to 106 and thank Members for their contributions.

**The Deputy Bailiff:**

Thank you, Chair. In a moment the Greffier will add a vote into the chat channel of this meeting in respect of Articles 90 to 106 inclusive and schedule 2 to the law. The vote is now open. I ask Members to cast their votes. If all Members have had the opportunity of casting their votes, I ask the Greffier to close the voting.

[11:45]

I can announce that the balance of the Articles and schedule 2 have been adopted unanimously in Second Reading.

<b>POUR: 44</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator L.J. Farnham				
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Saviour				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

Chair, do you wish to propose the draft law in Third Reading?

**1.10 Deputy C.S. Alves:**

Yes please. I want to thank the Assembly for their support and their patience. I know it has been a long piece of legislation. This P.P.C. has worked tirelessly since 2018 to bring about these changes to the electoral process. Our aim was to address the E.O.M. recommendations as we were tasked. But fundamentally our focus has always been on making the system better for Islanders. It is not right that so few members of the public turn out to vote. Higher electoral turnouts reflect strong and robust democracy. My committee will continue its work to support greater political engagement within our communities through outreach initiatives planned by the States Greffe. But it is not just P.P.C.'s job. We all have a part to play in encouraging and supporting good people to stand as candidates and reminding people to register and, most importantly, urging people to vote in June 2022. I would like to take this opportunity to thank all the hard work that has been put in, in the background, especially to Jenny Cartwright, the legislative drafter, who has put in many, many hours and supported us amazingly. I would also like to thank our Deputy Greffier and our officer Kellie as well for all of their support and work as well behind the scenes. I am very hopeful that the changes brought about today will invigorate the elections and be positive for our Island. It has taken over 20 years to achieve these bold changes to our electoral system and I know that over time many have been opposed to some of the changes proposed and everyone has had to compromise to reach this point today. It is fitting, given his passing earlier this year, that I end with this quote from Prince Philip: "Change does not change tradition; it strengthens it. Change is a challenge and an opportunity; not a threat." So I propose the law in Third Reading. Thank you.

**The Deputy Bailiff:**

Does any Member wish to second the law? **[Seconded]** Does any Member wish to speak in Third Reading?

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

Notwithstanding that I agree we had to modernise our electoral processes and be more democratic, rather than this is a sad day for Jersey in that our traditional system has been dulled down. I have supported some of the Articles but not all because I feel the loss of the parochial nomination meeting, a popular community event, is very sad. The control of the gatherings outside by legal instrument is totally unnecessary and in my experience has been akin to another community event where political conversations are had. P.P.C. has been somewhat led by the nose by the C.P.A. (Commonwealth Parliamentary Association) and the Electoral Observers, who it was clear did not like Jersey and our ways. I detected a degree of jealousy of our methodology. I feel that proposals before us today have been skewed rather too much for the benefit of central administration rather than the electorate and have a gut feeling that, prior to an acceptable and secure online voting system, when numbers of votes will really rise, that we need to focus more on pre-poll voting. Having said that, I do give credit to P.P.C. for trying to get numbers up by making these proposals. But I am not confident that they will be effective. But I look forward to being proven wrong.

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

I wanted to take this opportunity to also thank the Deputy and all her team for this hard work. It is obvious that there is an enormous amount of work that has been done here. I do share some of the concerns raised by the Constable of St. Brelade and in particular I would like, if she could when she sums up, the Deputy to be absolutely clear about the number of people outside the polling station. Because yesterday she started off by saying it would be one person or one supporter per candidate, but my belief is that she ended up saying it would be one supporter per party, which is very unfair if a party runs 4 candidates in a constituency, they will only get one person outside the polling station. But I would ask her to clarify that as she sums up.



### **1.10.3 The Connétable of St. Helier:**

I am prompted to speak partly in response to my friend the Constable of St. Brelade who said this is a sad day. I happen to think the reverse. This is a very happy day for the States Assembly and it is day for which the chair of P.P.C. should be enormously proud because she has succeeded where others, including myself, have failed, which is to get a very difficult matter through the States. It means that, subject to further revisions in the numbers of Members representing different districts. Subject of course to the even more intractable problem of what happens to voter equity when you have the Constables having their ex-officio role in the Assembly completely skewing the system of voter equity and leaving the urban districts, including St. Brelade, but also of course St. Helier, underrepresented, these intractable issues still have to be dealt with. But at least we have made some real progress towards voter equity and I am happy that St. Helier, in the new Assembly, will be represented by 13 Members; it is higher than that now - the chair will correct me if I have the number wrong - but we still be short of Members and I am hopeful that that will be corrected in future years. Particularly with the concentration of new housing units in St. Helier, the lack of voter equity, which will still exist following the June election, will only get worse in subsequent years unless the Jersey Electoral Authority suggests to the States that action needs to be taken. I did also want to refer to the Electoral Authority, because this is a major step forward to have this body being set up. It will be a really important way of getting non-partisan views about our electoral system conveyed to the public without needing all the time to bring in the C.P.A. election observers. Personally, and again I disagree with the Constable of St. Brelade, I do not have a problem with our way of doing business, as far as democracy goes, being scrutinised by the C.P.A. We should aim to pass muster. Thanks to today's vote, which I hope will go through with a large majority, if not unanimously, that future election observers from the C.P.A. will give Jersey a very good bill of health.

### **1.10.4 Senator S.Y. Mézec:**

I agree wholeheartedly with every word my Constable just spoke and I am going to try not to repeat everything he said, although of course I completely agree that this is a really important moment for our democracy and P.P.C. certainly ought to be commended for the fact that they have been able to bring forward more positive change in a relatively short period of time than has been achieved over decades leading up to this. That is something to be celebrated. The chair of P.P.C. deserves to be commended for that, as does her predecessor. But also more widely those Members of the Assembly who showed at times the bravery that was necessary to put aside our own self-interest as politicians and to put the public first by giving them a democratic system that they deserve. It is worth noting that on record. But I just wanted to say that I met on more than one occasion with representatives from the C.P.A.'s Election Observer Mission when they came to Jersey and I simply do not recognise the characterisation of them that was put forward by the Constable of St. Brelade. I would want it on record that a majority of us were grateful for their participation in that way, were grateful for the fact that they came up with a very good report. A report that, if I were going to make one criticism of, I would simply say that it was too polite if anything. It could well, in certain instances, have been much stronger on the deficiencies that there are in our democratic system. As Jersey is a member of the Commonwealth, these jurisdictions are our friends, those observers came here and acted like friends by being honest with us, praising the good things about our Island, and wanting to help us make it just that little bit better by improving our democracy. So I thank P.P.C., the chair of P.P.C. and those other members, who have worked so hard to make these steps forward for our democracy possible. I hope that this piece of legislation will get a resounding majority in favour of it and onwards to June 2022.

### **1.10.5 Deputy R. Labey:**

I would like to endorse everything the Senator has just said and thank him for his kind words. It is important to remember at this time that we are where we are here because of an initiative by the late Constable Len Norman of St. Clement who asked the Assembly to approve inviting the Electoral

Observers Mission to Jersey to look at our elections in 2018. For once, this Assembly has invited somebody to take a look at us and give us their opinions and acted on them. We should be very proud of that. The C.P.A., I would also distance myself from the disparaging remarks made about the C.P.A. in this debate and others. We work very closely with them, Deputy Alves and myself and Deputy Wickenden in the beginning and the Deputy Greffier, and they have been incredibly helpful. Incredibly helpful. Many of them listen to these debates so it especially embarrasses me when they have had to hear disparaging remarks. But I hope they do know that the vast majority of Members are grateful to them for the work they undertook. Their report is polite by design, I say to Senator Mézec, they intentionally are polite and careful. But it was a strong - very strong - report in terms of we had to put our house in order. That is what we have done. I just remind the Constable of St. Helier that in December last year the Assembly also voted in favour of the establishment of a Boundaries Commission, which was another recommendation of the C.P.A. E.O.M. This we will continue to work on and work up and consult with Members to bring forward by the end of this term. That is going to be a good thing too because, with all of these, what we have passed today and the creation of the J.E.A. and eventually the Boundaries Commission, it is taking sitting politicians slightly further back from the running of elections and making these decisions in terms of divvying up the constituencies. That now will come to the Assembly as a recommendation from an independent body. That is a major step forward too. I would also like to echo the words of the chair of P.P.C. and thank her and thank Members. I know this has been painful at times and we care very deeply about our electoral processes. Not, as the public sometimes think, from our own perspective and self-preservation, but because we are parliamentarians and we care about this Parliament and our democracy. I know I have ruffled some feathers in the past and I know I should have probably done more consultation than we did. But this is a huge body of work. The hours it has taken are enormous. I hope you will forgive any of those failings.

[12:00]

As I say, thank you to Members for your support. Finally, as Constable Norman did in one of his last votes in December, finally getting behind this, and I say to the Constable of St. Brelade and others, let us have no more negativity and talking this down, let us be positive from now on. As you will have seen, P.P.C. have engaged in delivering a series of videos, we are putting those out over the course of the next few months, encouraging people to stand. Trying to tell the electorate of Jersey what it is States Members do when they are not sitting in this Chamber. Those films will be coming out in the course of the next few months. So thanks again.

#### **1.10.6 The Connétable of St. John:**

Firstly I would like to congratulate Deputy Alves and her committee on their work. Change is never easy. I would encourage everyone to embrace this change now and encourage others to do the same. While acknowledging that I am the new boy, I am certainly not new to the electoral process. I have mentioned the Guernsey election a couple of times since being here. They were bold and we can learn from their experience. Despite the proposed changes, I am confident that the Parishes will continue to be an important part of things. The changes should make it easier for people to stand, whatever their political leanings, and we should celebrate that. Nomination meetings enjoyed by many of us, but endured by others, have put people off standing in the past. It will take some getting used to but in reality, while Parish Halls may have been packed, what percentage of the electorate could attend? How many of the attendees were supporters? Therefore, if we look as a neutral, how representative were those nights? Let us be creative, whether we are independent or part of a party. Let us encourage people to get involved either as candidates or first-time voters. Finally, we should welcome scrutiny. We might not always agree with their findings but we should have nothing to be afraid of from any independent review.

#### **1.10.7 Deputy M. Tadier:**

Firstly I have not really congratulated the Constable publicly for the way he has hit the ground running in the Assembly, the new Constable of St. John. I know that his newsletter that went out shortly following his swearing-in was welcomed generally by parishioners. It reminds me that I also need to make my donation to the outgoing Constable of St. John. I know many parishioners will probably take him up on that offer. He hits on a very good point, is there was a quote, I do not know who is it ascribed to, if you want things to stay the same around here then something is going to have to change. I have come to realise that there is always this tension in Jersey because it is such a beautiful place that so many enjoy living in. Despite the very real difficulties that there are for many people in economic terms, there is generally a universal desire for some kind of stability, certainly in one's personal life. Indeed that is why the struggle for economic fairness is also a struggle for those who do not currently share that stability to be able to also partake in that. So when it comes to change, change is of course never easy. The difficulty that any States Assembly or any reforming Assembly or committee will always have is balancing those 2 desires. It is also because, if we were dealing with a very specialist area like the motor industry or if we were dealing with the workings of a computer, very few people would feel that they wanted to contribute or had the expertise to talk about the benefits or advantages and disadvantages of different systems that might be used. But because of the very nature of politics itself there is this feeling that everybody has an idea about what the perfect system should look like. I am reminded of the expert advice that P.P.C. took back a while ago when Dr. Alan Renwick was giving advice about voting systems and about outcomes. There were 2 overriding points of an election, the first is to make sure that the most popular candidates get elected. That is interesting incidentally because it is the most popular candidates who need to get elected and popularity is subjective. It is not always going to chime with what we would necessarily want or if there was some kind of overarching deity kind figure who was appointing the best people for the job in the platonic sense. We have democracy with all of its foibles and potential flaws, but that is the system we have. But it should also allow for a diversity of views to be expressed within the Parliament. This is the problem we have had up until now, which Dr. Renwick, if I am not misquoting him, advised on is the fact that any system that works on first past the post, and especially when that is in multi-seat constituencies, can have a severely distorting effect on the results. This might become increasingly the case under a political party system. I say this as a democrat, not as a partisan, incidentally. It is important that we are very vigilant in the future about how the system pans out. I would give strong advice to whoever the next Assembly is and whoever is directing P.P.C. and how that committee is constituted that they do seriously look at the voting system that is used. Because it will be possible for a dominant party to effectively be overrepresented in terms of the seats they get in the Assembly vis-à-vis how many votes they received in the population. We see that often in the U.K., for example, when they have multi-seat wards. Where a party does not need to get a majority. Any strong party can get all of the seats in a ward just by securing something like 40 per cent of the votes. That can have a really off-putting effect on the political process. Ironically, that is probably what we have seen under the Senatorial system. A lot of people are fond of the Senatorial system and the reason they are fond of it is, not because of the outputs that it has, although it has and does produce some very notable and capable individuals. It is that it tends to produce individuals with a very narrow political outlook. It tends to weed out people whose political ideas do not follow the mainstream. We know in politics and generally in life that we need people who are visionaries. A good example is, if we had States Members or politicians right across the world who had taken seriously the global climate crisis that we are now experiencing, even though people knew about it 50 or 60 years ago. If we had put those people in charge then, and if their voices had been heard politically, as they should be now, a lot of the problems that we are facing as a world and as an Island would not necessarily exist in the same way. Because they would already be being dealt with. Any system needs to allow those voices to be heard. The challenge for all of us, and the point why I am saying this in the Third Reading, is that, yes, we have an evolutionary system and, yes, change is happening bit by bit, incrementally. We will look back on this year historically as very significant as one of the great periods where significant reforms came to the Island's Government

system. We also need to make sure that there are appropriate forums for political discussions to take place. This is the exciting opportunity that we have, which needs to be led by political parties. Because of course personalities are always going to be important. People want to ultimately vote for somebody that they like. But they will want to know what policies are being put forward. Up until now, there has not been any meaningful public forums, apart from the hustings, which have not been meaningful anyway, for those kind of political debates to take place. You could argue that with the advent of the internet that has allowed these kind of discussions to take place. But in fact what we have seen is that there is an increasing drive towards brevity and it has been very difficult to engage people's attention for any longer than a few seconds due to the nature of social media and what it is designed to do. It is not designed to enlighten or to inform, it is designed to make people click on different links and to sell them products. Because it is there for advertising. The challenge is going to be for this Assembly and for the political movers and shakers in Jersey to make sure that they allow those forums. That is where the challenge is for the Parish hubs, whether they are Parish Halls or just other community centres, is to get properly involved. I know that, for example, in St. John the Constable is very much a political animal. He may have his own political ideology, like I am sure many of us do, and he may end up espousing himself to one of the political parties in time. But he is also a democrat and he favours political debate. I do long to see an Island in which politics is no longer taboo but it is something that people will discuss over a coffee, or even a tea if we are going to be more British about it, and respectfully put their views forward, sometimes forcefully, but know that even in a small Island it is okay to have strong views and to fight for the things that we want to see happening in the Island. That is going to be the challenge we see between perhaps some of the old guard who have not accepted the changes and those who are perhaps more visionary in their view of the Island system that we could have in the future. Lastly, can I say that I welcome the electoral observers. I did not think that they were jealous in any way of our system. I thought that they seemed to be very objective, diligent, and their point of view was really important and that it was heard and taken into account. I would disassociate myself from any suggestion that they were in some way not up to the job or were jealous of our system. I do not take that to be the case. They praised the system indeed when it needed it and when it was valid and they made other constructive recommendations, which have been taken up to some extent by this current P.P.C.

#### **1.10.8 Deputy K.F. Morel of St. Lawrence:**

I have never liked the phrase "I am really pleased to follow the previous speaker" but I have used it in the past and regretted it. But in this case I am really pleased to follow the previous speaker. Deputy Tadier, I may not share his affection for socialism, but I know that he and I are very much aligned in our affection for democracy. I believe he is right when he characterised the Constable of St. John in the way that he did. We have passed a number of changes, which I believe do, at least mathematically, make our elections fairer. There has been a cost and that cost is in elements of tradition. It has cost us also in the sense of comfort that people have with traditions. I am worried about those changes too. But I am hoping that we will have competitive elections as a result and that we will be able to engage more people in the democratic process in Jersey. I particularly agree with Deputy Tadier when he says he hopes political debate becomes a more normalised thing. Because I find it quite astounding that even in the States of Jersey there is very little political debate. There is very little informal political debate. Sadly, debate often centres around personalities and not around policies and that is a real shame. But while I congratulate P.P.C. on the amount of work they have done, I have to say that the job is only half done.

[12:15]

The reason for that, which has been alluded to in some of the previous speeches, is that, while we perhaps have made the electoral system fairer, what we have not done yet is safeguarded, put in place any safeguards that our democracy now very much needs, particularly as perhaps we transition to a more party-focused form of representative democracy. I have written to the chair of P.P.C. who has

responded reminding me of a piece of work by the States Greffe, reminding me that following Senator Mézec's proposition recently that they are doing some work to look at the safeguards that may be needed with party politics. But I just wanted to speak to the Assembly and explain very carefully or very clearly why this job is only half done. It is quite simple. Our Assembly is set up in a very simple manner and that is great, it makes it very understandable. It means any Member can bring a proposition. That is wonderful. It means that a simple majority works. The trouble is now, if we have a single party gain 25 or more seats in our Assembly, that party can do whatever it likes. Not just the laws of our Island, not just in the way Government is run, it can do whatever it likes to the Assembly itself. That party would be able to remove, abolish, the Scrutiny function. That party would be able to undo every single change that has just been made and could reform the elections in a way that suits them, completely with no ability for any other non-party Member to push back. That is not a good place for our democracy to be in. We cannot have a situation where a party could just abolish the Scrutiny function. It is that simple. No Government should ever be in a position to be able to do that. I am pleased that P.P.C. apparently are working on this. But this needs to be in place, these safeguards need to be in place before the next election. I am hopeful, because it is only the very first election with perhaps a number of parties standing, I am hopeful that no one party will gain such a large number of seats in the Assembly. In fact it is highly unlikely that any party will gain 25 seats in the Assembly. But that is only hope; it is not based on any fact, and we shall find out. But this Assembly needs to understand very clearly that there is a genuine threat to democracy in Jersey if we do not put appropriate safeguards in place. There are some elements of our electoral process and some elements of particularly Scrutiny, rights to Members, things like this, which need to be safeguarded and we must stop the possibility that 25 people could destroy democracy in this Island. People may think no party would do that. We cannot say that. What we have learned when we look at the U.S.A. (United States of America) particularly is that convention and reliance on common sense and goodwill is not enough. You have to have laws, you have to have statutes, which stop certain things happening. Until we do that, unfortunately we now find ourselves in a situation where there is a genuine real possibility that people with a wrong idea could harm democracy massively. I would also like to reiterate, because one of the easiest ways to safeguard against that would be a proportional representation system, as Deputy Tadier was just talking about, and there are huge reasons to bring in a proportional representative system. It is far more democratic. The downside is that it is less media friendly and it is less easy for the average elector to understand. There is a black box. It is not just my vote equals this. There is a black box in the middle, which means that your vote becomes a proportion of what is eventually counted and the way the people are elected at the end of it. But it is far more democratic. Please, I ask the Assembly to bear all that in mind and to do the work that is necessary to put the relevant safeguards in place to make sure no party can take over this Assembly in a dangerous manner. The other thing I would like to say, and I ask the leave of the President of the States or the Greffier at the moment to just bear with me, because I do want to speak about postal voting very quickly, which I know was something I should have spoken about when the regulations were being brought forward. But it was just I was unable to speak then. It was to say that I do have real concerns about postal voting and opening it up to the wider idea of not just having to not be on the Island. The reasons are simple. Number one, Jersey is a very small place, no one is ever very far from a voting booth. Our pre-poll system works very well. Places like the U.S.A. you can be 30 miles from the poll, so it makes sense that they have this. It is impossible, regardless of any laws we put in place, to ensure that people are not being coerced to vote a certain way. That could be party members coercing people to vote a certain way, standing over them when they are voting, or it could be family members. It could be a controlling husband, a controlling child, and by that I mean an adult child with a senior member of the family who perhaps does not have the strength of will to push back and say: "No, I want to vote in a particular way." There is no way to guard against that. There is no way to police that. It is completely impossible. So, by bringing in that element of wide-ranging postal voting, we are denying people who are in controlling relationships the ability to just be in a separate place, as the polling booth is, and to vote the way they want. I am

particularly concerned about that. The other element I would like to say is that, while known instances of postal voting fraud are little, what we have seen in the U.S.A. is where the perception of corruption or perception of fraud, the fabricated perception of fraud, undermines democracy entirely. We are seeing in the U.S.A. that just by saying there is a problem with postal voting, the former President of the U.S.A. has managed to create an entire movement, which is focused on undermining democracy as a result. We are now putting ourselves in a position where that could happen here. That is a silly move. People say that postal voting is more democratic. For the reasons I have just said, postal voting has the ability to undermine democracy because it can be used in a fabricated manner, allegations of fraud can be used in a fabricated manner to undermine democracy and because of the coercion. So I just wanted to get that on record because I did want to say that earlier and I am concerned about that. But, be under no illusions, this job is just half done. So, P.P.C., thank you for the work you have done as a committee, but I am sorry, tomorrow morning you have to get back to work and you have to bring in the safeguards to stop this Assembly being taken over and destroyed by party politics that could get out of hand.

#### **1.10.9 Connétable J. Le Bailly of St. Mary:**

First may I congratulate Deputy Alves for putting forward this massive piece of work with the intention of bringing a well-needed change to the way we run our Government? You will note that I voted against most of this proposition. That is because the electors of St. Mary tell me that they see no need for this. Unfortunately, we need to change. It is part of our progress and hopefully an improvement to our system will ensue. However, my message when elected was: "It is not what I want, it is what you want." I hope that I have done that, even though it is obvious that we need to make a drastic change to our constitution to help our future. This is not a finished piece of work. It is ongoing in order to constantly improve it.

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

Yes, just to say a few things. First of all, I have already congratulated Deputy Alves and the P.P.C. and we should not underestimate the work that has gone on to bring forward these changes, which were so needed. Change can be worrying for people, of course it can. But we need to move forward now and look at what we are doing. I was very interested in what Deputy Morel said and his fear of parties to some extent and he is right that, if there was one controlling party, we would need to be very careful. But what we need to do is have our structures a bit more sophisticated. I have said before that the 3 prongs of good governance, and that word "governance" is really important, are a Council of Ministers or a Government, Scrutiny and formal opposition. So that people know where opposition is coming from. Then Scrutiny plays that independent role; that detached role to some extent that gives information to the Assembly. Personally, I am more concerned about what has happened over the many, many years of undeclared alliances between independents that have existed for so long. Ones that cannot be scrutinised, ones that cannot be questions, ones that cannot be looked at in terms of a party, because it is declared as not being a party. But at the same time there are behind the scenes deals being cut, which lead to voting in particular ways consistently. I have to say that we saw it yesterday with the voting over landlord licensing, which was again rejected due to behind-the-scenes lobbying and direct political influence within the Council of Ministers and within the party that has been formed there, which is apparently not a party, although it is a party. It will remain to be seen on that. Perhaps P.P.C. can bring some clarity to what exists at the moment and this sudden change in our Council of Ministers, which is increasingly worrying for people. So, yes, to some extent I agree with Deputy Morel that we have to have some checks and balances over the power of parties to protect democracy. But it is not only parties we have to worry about there. It is the undeclared alliances that have been going on for so long behind the scenes, which I hope will be much more transparent when people get to scrutinise what parties stand for, what they speak for, and their manifestos and the policies that will bring forward. That will be really important. We stand on those policies and we are elected or not on those policies. That is what a democratic mandate should

be about. I agree with him in regard to proportional representation. It is a much more democratic process. But we have taken 20 years to get where we are now. So whether we will ever get there I do not know. But we can only hope. I would like to talk a little about postal voting. I do not share the concerns as much regards postal votes. They do open up the ability to vote and the expectation of people to vote. Until we have a polling booth on every housing estate, then postal voting is the way forward. Because people have real lives that they have to follow on election day. They look after children, feed their children, go to work, they may not get the opportunity. I would like to see pre-poll opened up much more. I note on Remembrance Day there was a shop open selling poppies and this year it was right in the centre of St. Helier and there was one of the unoccupied shops and it seems to be that there are more of those, and it was so easy to get in there and it was doing a roaring trade, which was nice to see. But we should be perhaps centralising our pre-polling in a facility like that into one of the unused facilities or 2 of them and make it much more welcoming for people, a maximal expectation for voting, i.e. this is what you do, this is the place to vote, come in and exercise your democratic right, because it is so important for you to do that. If we could do that, that would be a massive step forward as well. I welcome these changes. I look forward to the next election to see how it pans out. I look forward to the transparency that should come from political parties and hopefully the increased transparency of independents and where their political influences are, so there is clarity there for the voter as well. Again, I say thank you to Deputy Alves and to the P.P.C. for bringing this work forward.

#### **1.10.11 Deputy J.H. Young:**

I will not speak for long but we have to recognise the great importance of today. For many years it has been said that Jersey's rate of change is a snail's pace, progressive change just goes on for ever. Yet we have seen in this term a real groundswell of action.

[12:30]

I can put my name certainly 100 per cent to the support of the P.P.C. committee, both the current chair and the previous chair, who have delivered, not just on electoral reform, but also now the mechanics of a new election system, which responds to the election observers, and within a very short space of time for Jersey. This is really exciting stuff. I also want to recognise, having praised the politicians, we also have to praise our officers. Because this law is an enormous piece of work and, yes, we have been treated to an object lesson on how to go through a law systematically, logically and clearly, well done to the chair. But also the officers who have done the work behind the scenes, whether in the law offices or in the Greffe or wherever they are, in delivering this to us. That has to be on the record and sometimes as politicians we do not recognise that. Particularly when I know how hard it is to get social legislation on the books compared with the ease which is to get financial services stuff through. Obviously because that is where our politics takes us at the moment, so well done. I want to touch on this issue of parties. I absolutely agree with what previous speakers have said but I want to add we have a subcommittee of P.P.C. looking at the ministerial system. We have now gone from the days of independent politics and behind-the-scenes alliances and all these sort of things, we now appear to be coming into the open framework of party politics. I welcome this because there are major implications for our ministerial system. We have 3 political parties. We have one political movement that is not yet a party, it may well be. There is talk of getting a majority of Members in the States Assembly. Three of those parties or groups are on the right and one is on the left. The ministerial system is designed for party politics but it needs structures. It needs structures where we have a proper fairness of rules about what is in opposition, what is the Government, and proper ways in which there is full and open disclosure of information and proposals to both sides. I hope very much that the P.P.C. subcommittee can start work on this now. Because even listening to comments this morning, where is the challenge about the Troy Rule? The Troy Rule requires that the Government is in the minority. That is supposed to be the safeguard. But that could be well out of the window with the advent of party politics. It is good. We are going to get

lots more candidates into these roles coming forward for them. It is great. But we also need to think about that, of the mechanics and the process of the ministerial system. We need to make sure that system is fully adjusted to the new situation. Having said that, it is a mountain of work for P.P.C., fantastically well done so far. But sadly there is more to do along the lines I have said.

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

Does any other Member wish to speak in Third Reading? If no other Member wishes to speak, I will call Deputy Alves to respond to the debate.

**1.10.12 Deputy C.S. Alves:**

Again I would like to thank all Members for their contributions, quite a number of things have cropped up. So I am just going to try to address everything that I have made notes on. The Connétable of St. Helier mentioned that the number of St. Helier representatives, it will be 13 Deputies plus a Constable, which is 14. I would like to echo the sentiments of a number of speakers, specifically Senator Mézec and Deputy Labey, about the E.O.M. They were nothing but professional and they have also provided continued support. As Deputy Labey stated, they have been listening in on a number of our debates and I have to say that we are extremely grateful for that. The Deputy of St. Martin mentioned the number of representatives. He is right, I did start off by saying it was one per candidate but it is one per party or one per independent candidate. However, this is applicable per polling station. So, in the constituencies where you have 3 Parishes together, you can have a representative at each Parish polling station plus the candidates as well. So that is a rep per party. I hope that has assisted to clarify that. There has been quite a lot of talk about voting systems. This is definitely something we could look at in our next body of work around the alternative voting or single transferable voting and I will take that back to our subcommittee. I just wanted to address some of Deputy Morel's concerns and I would like to thank him for his email last night. Just to make Members clear on exactly what is going on at the moment. P.P.C. have commissioned a group of academic experts, and this is on the back of the proposition that Senator Mézec brought forward. This group of academic experts is assisted by a former senior Commons clerk to study the transitions of party politics in other jurisdictions and how other legislatures deal with party politics to propose changes to our Standing Orders and conventions. We are expecting a report hopefully this month and that will appear on P.P.C.'s agenda in September. Also just to address Deputy Morel's concerns, he mentioned about how parties could take over and do away with Scrutiny, for example, and there need to be safeguards in place. I completely agree with that. However, we have to remember that there was in the past collective responsibility and although we have the Troy Rule all it would take was one or 2 Members on the other side, the Back-Benchers, non-Executive Members, which we know has happened in this term, to be supportive of Government and things could have been changed. But we also need to remember that, if that is the case with party politics emerging, that is the will of the public and it is the public that are voting in the parties. Fortunately or unfortunately, whichever way you want to look at it, it is democracy. So if something like that did occur, where a party did come into power and they did do all of those things, it would ultimately be down to the public to ensure that next time that party was not in power and to vote for other parties or what have you. But obviously there is a body of work going on about this, as I stated before, so I thank the Deputy for his comments and the issues that he has raised. On the comments of postal voting, the comparisons with the U.S.A. are unfortunate. The U.K. have used postal voting since 2001 without any major problems. Obviously there are safeguards in place as part of the process. Also, let us not forget that postal voting does currently exist in the Island, we are just extending access to it, which, given the current situation with COVID, makes it so much more important. We have the forthcoming election for the new Connétable of St. Clement for example and that is currently under threat due to fears about holding in-person gatherings. So I understand the Deputy's views on this and everything that we can do is being done and the appropriate anti-fraud protections are in place. Our main reason for doing this is to give people more of a choice as to how they cast their votes. I have covered pretty



much everything that was brought up. I will just check my notes again. Yes, so to clarify the point again about the reps, just to make that perfectly clear, because I do apologise that yesterday I did get mixed up with that. It is a rep at the polling station per independent candidate or, if there is a party, it is per party per polling station in the scenario of the districts that have more than one polling station. I would like to finish by thanking the Assembly and all Members for their support and for their patience. It has been a long slog. Also to thank the Greffier staff and the law officers and everybody else behind the scenes. With that, I would like to propose them in Third Reading.

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

I ask the Greffier to put a link to the vote in application in the chat. There it is, so the vote is now open on Third Reading of P.56. Members have had an opportunity to cast their votes. I will ask the Greffier to close the voting. The proposition has been adopted in Third Reading. Definitely adopted in Third Reading.

<b>POUR: 44</b>		<b>CONTRE: 2</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst		Senator S.C Ferguson		
Senator L.J. Farnham		Connétable of Trinity		
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Saviour				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				

Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

## **LUNCHEON ADJOURNMENT PROPOSED**

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

The adjournment has been proposed. I do not hear or detect any opposition to that. Therefore I will declare the Assembly stands adjourned until 2.15 p.m. this afternoon.

[12:43]

## **LUNCHEON ADJOURNMENT**

[14:15]

### **2. Draft Discrimination (Amendment of Law) (Jersey) Regulations 202- (P.58/2021)**

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

The next item is the Draft Discrimination (Amendment of Law) (Jersey) Regulations lodged by the Minister for Social Security. For the purpose of this debate the main respondent is the chair of the Health and Social Security Scrutiny Panel and I ask the Greffier to read the citation.

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

Draft Discrimination (Amendment of Law) (Jersey) Regulations 202-. The States make these Regulations under Articles 5 and 47 of the Discrimination (Jersey) Law 2013.

#### **2.1 Deputy J.A. Martin of St. Helier (The Minister for Social Security):**

I will keep my camera off because it seems to be working better for everybody else and it certainly will in my case. I am pleased to be bringing forward to the Assembly these draft regulations which, if agreed, will prohibit discrimination against residential occupiers who have children living with them. This is an issue the Assembly has already agreed and that it needed to be addressed. As I explain in my report, it is not right that children should be denied access to a safe and secure roof over their heads. As part of the process to develop these regulations, the draft wording was made available for public consultation earlier this year. Those organisations and individuals who responded to the consultation exercise raised important points and I am grateful to them. Members will see the organisations' response in the report. I would also like to thank the Scrutiny Panel for their interest in the subject and their support in the written comments. Earlier this week I circulated a draft copy of the guidance that will be provided to the public if these regulations are approved. I think it would be helpful if I explain the key points covered by the guidance, as they help to put the regulations in context. In general, the Discrimination Law does not override other existing legislation and this will also be the case in these regulations. Where the use of a building is subject to legal conditions, the owner of the building must follow those conditions. The prime example is that of a lodging house, which includes restrictions on the number of children who can be accommodated in each unit. A lodging house owner must still abide by those regulations and the Discrimination Law

does not apply in that situation. There are also types of accommodation that are not suitable for children, for example, this would apply to accommodation that is registered under the Regulation of Care Law to provide accommodation to adults who need long-term care. The law does not apply to an owner who is renting out a part of his own accommodation and where they will be sharing facilities with the tenant or lodger. The new regulations also allow the owner to refuse to provide accommodation to a family if that ...

**The Deputy Bailiff:**

There is an echo just crept into your speech.

**Deputy J.A. Martin:**

No, I have done nothing, Sir, this end. Can you hear me now?

**The Deputy Bailiff:**

Yes, it is better now, yes.

**Deputy J.A. Martin:**

I am sorry. These new regulations would allow the owner to refuse to provide accommodation to a family if that would create a hazard under the Public Health (Rented Dwellings) Law. This law protects tenants from serious risk to harm and safety. As I am sure Members are aware, discrimination legislation works by giving the right to the individual to take a claim to the Employment and Discrimination Tribunal if they believe they have themselves been discriminated against. If a case is taken to the tribunal then the tribunal will decide whether the owner has discriminated against the individual under the law. If discrimination has taken place then compensation may be payable by the owner to the individual. These regulations do not require the owner of the building to make any adjustments or improvements to the building to make it suitable for children. The States Assembly have previously agreed these actions should be taken in this area and these regulations will ensure that parents looking for accommodation are not subject to unfair discrimination. I would also like to say a very big thank you to Deputy Tadier for starting this ball rolling and I look forward to the debate and I maintain the proposition.

**The Deputy Bailiff:**

Thank you, Minister. Are the principles seconded? [**Seconded**] Does any Member wish to speak on the principles?

**2.1.1 Deputy R.E. Huelin of St. Peter:**

I have to admit I was initially concerned by it, by this legislation and I really want to thank the Minister for, firstly, affording me a private briefing some 2 weeks ago and also the subsequent issue of the guidance, both of which I found incredibly helpful, especially while it might sound obvious but it can cause concern unless it is explained properly, that this legislation does not override existing legislation that affects any dwellings. Therefore, I am delighted to support this. However, I make an assumption that the law will be used obviously in the spirit that it is intended.

**2.1.2 Deputy R.J. Ward:**

I just wanted to check, this speech that was made by the Minister, I cannot get my head around this. This is to stop discrimination against people with children and accommodation, unless the accommodation is dangerous for children. I think this is probably more on the question but we will have it as a speech, which is a shame because I might want to follow it up. But is there not a duty to make all accommodation safe for anyone to live in in the rented dwellings accommodation law 2018? I know there is no register now or, sorry, licence for landlords and this is one of the issues of not licensing landlords, they can now avoid such things as this. What is there to stop landlords just simply saying: "It is not safe for children, so we are not having children in it and I am not going to

spend any money to make it safe, so, therefore, I am simply not going to let to families with children.”? Why is there a difference between it not safe for children and not safe for adults? What particular issues are in mind? I cannot see because I am a parent and my house, I made it as safe as I could for myself and my children. I am a little uncertain about what this achieves, apart from the suggestion that it is wrong, which I thought we had already agreed some time ago, to bar children from renting accommodation. Maybe I am barking up the wrong tree here, and I may have got this wrong, but I just want some clarity to see what it is that we are voting for and whether we are voting for something that is not as useful, as powerful and is putting children first, as we all have committed to.

### **2.1.3 Deputy J.H. Young:**

I think on a similar theme I was very, very grateful of the Minister, my colleague, supporting me in the licensing proposals, which have not gone through. Of course we all want, as we agreed, to end the discrimination preventing people from letting properties to people with children purely because they do not want to. Obviously this deals with it but, of course, just reading the law, the Jersey Landlords’ Association and I am ever so grateful for the Minister copying their comments, and I think it is reflecting in others, that the regulations rely on this provision for the tie-in with the Public Health and Safety (Rented Dwellings) Law, so that it is a defence to an act of discrimination if not doing so would create a hazard, as Deputy Ward said, within the meaning of the Health and Safety (Rented Dwellings) (Jersey) Law. That kind of suggests to me that there is an independence, a very strong link between these new regulations and the regulations which have now been defeated by the States or put down. Obviously Deputy Ward asks, what are the sort of hazards that could be? I think from talking to the housing officers there are all sorts of situations, you might have properties, for example, with no window ledges, whereas an adult would not be likely to be in a danger but a child would and, therefore, obviously landlords would need to convert works, they would need to put physical structures in place to prevent children falling out of windows, basically that is one sort of risk. Then you have got staircases, staircases which have bannister rails, which are lower than the minimum height. If you build a property under the building regs now, all of these things are absolutely covered. You cannot build and create unsafe staircases, either through the height of the bannisters or those kind of 1960s style stairs, if you remember. I do not know what you would call them, I am not a professional expert but they were just like a freestanding stair with gaps in between the treads, so a small child could easily come to grief using those sort of staircases. Those are a couple of examples. There are quite a number of potential dangers in properties which the licensing system, had it been introduced, would have allowed property to be inspected individually. Where those hazards were identified they would be recorded in the licensing and it would be quite clear that there was a safety hazard which made it unsuitable for children. But of course it is not only children, there might be elderly persons or other persons who would similarly have physical disability. Because the reality of it is a very large number of dwellings, if not the vast majority, do not comply with modern building standards and there is nothing in the laws that require them to be brought up until they do works to bring that into line. I do not know and obviously one is not going to challenge this but I would like to hear the Minister’s view about whether the Minister is satisfied that now we are relying only on the law that talks about hazards and we have not put in place the methodology to verify and be satisfied that we have got the information on a case-by-case basis in the licence on hazards ...

### **The Deputy Bailiff:**

Deputy Young, Deputy Morel has raised a point of order. Deputy Morel, do you want it dealt with now or the end of this speech?

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

No, it was just to ask because I could not see the relevance to the proposition before us but the Minister is slowly getting there.

**Deputy J.H. Young:**

I thought we were discussing the regulations and I am now looking at Regulation 3, it says here: “For paragraph 41 of schedule 2 subparagraph (4)” and subparagraph (4), I will read it, it says: “It is a defence to a complaint in respect of an act prohibited by Article 24 and falling within subparagraph (2) of this paragraph, for the person alleged to have done the act to show that not doing so would create a hazard within the meaning of the Public Health and Safety (Rented Dwellings) (Jersey) Law 2018.”

[14:30]

What I was trying to ask the Minister in her reply, could she say that she is satisfied that that situation is sufficient? Because the regulations do make it, it relies clearly and the report says that, that defence relies on that Public Health and Safety (Rented Dwellings) Law and now we have only got half a loaf, as it were, in terms of the system meant to identify what are those hazards. Is the Minister satisfied that there is not now a loophole that we need to find some way of putting it right, either in this regulation or in some other way?

**2.1.4 Senator S.Y. Mézec:**

The previous speaker asked about loopholes and he ought to know that there are plenty of loopholes spread across our discrimination laws. There are clauses in the laws which say that where another law contradicts the Discrimination Law, the other law will take precedence. In other words, that there will be legalised discrimination in other areas. I believe that in one of the discrimination laws there is even a clause about allowing you to discriminate if you are hiring people to work in your own household, which seems to me to be a quite bizarre loophole, although I am not sure if it is still present in the law. That is partly because even though our discrimination laws are better than nothing, they did take far too long to reach this Island and they were based, I think, on models of discrimination law elsewhere that were not the best that we could have looked at. That is why I think the way forward is to consolidate our discrimination laws in a proper, modern, fit-for-purpose equality act, which imposes a proactive duty on bodies to counter discrimination, rather than what currently exists, which is a system that enables people to complain and take it to a tribunal if and only when they have faced discrimination, which means it is a reactive protection rather than a proactive one. That is the broad point there, our discrimination law model is not the best and we ought to adopt a different model at some point. It is just a typical Jersey thing that it took us so long to get this basic piece of social legislation in place and then we end up having these debates because of all the loopholes and problems there are because it has not moved with the times. But the main point I wanted to make in this debate because, of course, I am wholeheartedly supportive of this piece of legislation, I will be voting for it, I urge everybody to vote in favour of it; it is an absolutely basic thing that we need to send that message out loud and clear that there should not be discrimination against tenants with children. The only reasonable exceptions to that would be, in my view, where there is a proven circumstance where a property is not suitable for children and I believe that the body to adjudicate on that should not be an estate agent or the landlord themselves but it ought to be Environmental Health Department. But, unfortunately, because of this Government’s complete lack of commitment to doing anything on housing, our chance to have that infrastructure in place was shamefully thrown out yesterday. There is no chance anytime soon, particularly not under this Alliance Party Government, of making any decent progress on housing, apart from this piece of law, which will at least send out that message to those in the industry; do not bother, stop putting up these ridiculous adverts that say no children for homes that are quite obviously suitable for families to live in there. Do not do what I have encountered as a constituency representative in the past, where people have been living in a home, the woman has become pregnant and the landlord has, therefore, said: “That

is going to be a breach of contract, so I am afraid you are going to find somewhere else to live.” A completely awful way to treat someone, completely unjustifiable and largely comes about out of prejudice, this idea that somehow children are going to be a risk to your investment if they are allowed to stay in that property, which is of course nonsense because adults are more than capable of causing damage or disruption or anything, rather than a child, where in most instances families behave themselves perfectly well. It is absolutely vital that this law is passed. The last point I wanted to make was that I think it is a disgrace that it has taken us this long to get to this point, when it is now around about 3 years. No, I think it is more than 3 years since Deputy Tadier brought the original proposition to the Assembly to get discrimination against tenants with children banned. It has taken over 3 years to come up with one sheet of paper. I think that is ridiculous, I think it shows a lack of setting priorities in order behind the scenes. I should say I do not blame the Minister for Social Security for that. When I was Minister for Children and Housing I was consulted on this by officers and I was consistently saying that this was something that the States Assembly had unequivocally given their verdict on and that it must be respected. To leave it so long I thought was a mark of disrespect on the Assembly. I was straightforwardly told by those officers that with law-drafting time and other pieces of work, *et cetera*, that it simply was not possible to bring this work further forward because it was complicated. Lo and behold we get one sheet of A4 that demonstrates that it was never complicated all along. I think something behind the scenes has gone wrong here and in future I hope with a better government system that we clear a direction to officers to set these things out properly so we do not end up waiting years and allowing families to suffer in the meantime because they are not able to find the accommodation they need to suit their families’ needs, all because of people wrongly discriminating against those families and saying a home is not suitable for children, when it quite blatantly is suitable for children and they are just not being fair or decent to these people. Some of the instances I have encountered as a constituency representative have been disgraceful. Though this is not perfect and though there are wider questions to be asked about the format of our Discrimination Law and the fact it has taken us so long to get here to pass just one side of A4 of legislation, it is still vital that this is passed because it will send out that message and tell those people now, stop with this nonsense and rent out your properties fairly. Stop discriminating against tenants with children because it is just not on, it is not putting children first and I hope Members will support this legislation.

**The Deputy Bailiff:**

Deputy Tadier, you have a question for the Attorney General, I think.

**Deputy M. Tadier:**

Yes, Sir. If this is passed today, will it still be possible for an agency or a landlord to advertise a property as not suitable for children?

**Deputy J.A. Martin:**

I could answer that, Sir.

**The Deputy Bailiff:**

In the first instance the Deputy has asked the question of the Attorney General. Attorney General.

**The Attorney General:**

Sir, could I have a moment to consider that, please?

**The Deputy Bailiff:**

Yes. How do you wish to proceed, Deputy Tadier? Do you wish to make your speech while the Attorney is considering the point?

**Deputy M. Tadier:**

It depends if there are any other speakers in the queue, Sir, who wish to speak. If I am the only one ...

### **The Deputy Bailiff:**

Are there any other Members who wish to speak on the principles? It appears that there are not. Do you wish to address the Assembly now, Deputy Tadier?

### **2.1.5 Deputy M. Tadier:**

Yes, I will, Sir. If the Attorney General feels that he wants to interrupt me at any point, I am not intending to speak for long and we can only speak for 15 minutes anyway. I do have a few observations but I think it is quite critical to find that out because, as I see it, the fact that there is a defence there means that the defence is not just about discriminating, if you like, so discrimination will still be allowed because there is a defence. It would seem to me that the very basic problem that we have had up until this point or one of problems is that it is possible to put an advert out and we see them all the time and we see them put out for properties which clearly are not unsuitable for children and young families, where they are just routinely advertised as not suitable for children. Of course, this has the effect of meaning that those with children who are looking for housing, housing which is already in short supply, just do not apply for those properties, even though they may indeed be suitable for children. The other point is, and I want this to really sink in, it is the defence to allowing somebody to discriminate against children. Of course, let us put that in context because in reality you are not ever just discriminating against children; 9 year-olds, 15 year-olds do not go out and rent properties in their own name and in their own right. We are discriminating against families here, families with young children. They are the wider victims, if you like, as well of any discriminatory practices. The defence that has been put in there to make it justifiable is that you can say: "It is okay because my property is hazardous. My property is so dangerous that it would not be right for me to let it out to a child or a family with a child", which is remarkable when you think about it. That we would say, that is okay then, so as long as you have got a dangerous property you do not have to rent it out to children and we will not prosecute you for discrimination. What kind of state of affairs are we in here? The irony, of course, is that there are lots of properties at the moment that are not suitable to be inhabited by humans that are routinely being let out to humans. That is because, as an Assembly, we have not got to grips with some very basic legislation which says that we need to know who is renting out property and we need to have a system which is proactive, rather than reactive, i.e. you will not be allowed to let out any property, whether it is to an adult, a senior or a minor if you have not met basic health and safety standards. We cannot even get our heads round that, as an Assembly, which supposedly has signed up to putting children first and to putting family-friendly legislation at the forefront. Why can we not do that? It is because there is still too much vested interest in this Assembly by people who are of the *rentier* class, perhaps coupled with the fact that there is still a preponderance of States Members who do not want any interference from Government. The practice has been from this, I think it is a minority of Jersey society but it is, unfortunately, not a minority view that is reflected in the Assembly, is that people want to be able to make easy money from often inherited property that they have done nothing to earn in order to make an easy buck off very poor people, not necessarily income poor but these poor individuals who have nowhere else to go and who cannot apply for social housing because there is already a shortage of that. These people are at the mercy of the markets and the landlords and a deliberate shortage of housing. Properties are being kept empty and, again, the Government does nothing about that issue of empty properties. It just means that people are going out working really hard, often in 2 jobs, just to pay very high rents, sometimes without any security of tenure, depending on their circumstances but also knowing that what they live in might not be fit for standard. Then we say but it is okay if you have a property which is so poor that you cannot even let it out to a child, then you can also get away with discriminating against families. I find it complete madness. I have not heard of an example given of a property that would be unsuitable for children. If it is a balcony which is unsafe

and somebody could fall through that, if a 5 year-old or a 10 year-old could fall off a balcony, then an older person could fall off that same balcony, a small person might be able to fall off the balcony. If you have a baby, like a 6 month-old baby and you need somewhere to live, it is unlikely that a property with a balcony would be a problem for a very small child because that child is not mobile. All these issues, I think, are quite fanciful. I hope the Deputy of St. Peter will not mind me calling him the de facto Minister for Landlords but I am also worried about the fact that he is supporting this. It tends to suggest the fact that maybe this legislation is going to be completely ineffective. Again, it is not a charge that I lay at the door of the Minister for Social Security; while we do often have some political sparring and some political differences in this Assembly, we have worked closely together in the past and I know she shares the same heart for families in this Island and anti-discrimination at the very basic level.

[14:45]

But it seems to me that we were told this is such a complex law and it is going to take ages to draft and then what we have got in front of us is in fact a very simple amendment, perhaps it is overly simplistic, I do not know, being brought to us. The argument that this was so complex and needed so much consultation I do not think stacks up. I am pleased that it is being brought back but the devil is, ultimately, going to be not so much in the detail but in the practice here and we need to know whether in practice is going to stop discrimination against young families or whether that is just going to be allowed to continue. Of course if we turn to the Public Health Law that is cited as providing the get out, if you like the defence, it is quite remarkable because, of course, that law allows for notices to be served on landlords anyway to remove hazards. I think it is Article 9 from a cursory glance, it talks about the improvement notices being served to remove the hazard or reduce the risk posed by the hazard. In fact if, for example, I were to put an advert out saying: "I am renting out my property but I do not want any families with children applying" and then a complaint is made to me and I say: "No, it is okay, my property is hazardous, it would be too hazardous to rent out to a family with a child because it has got a shaky staircase and the child could slip on the staircase and bang his or her head", whereas presumably an adult would not do that because an adult has maybe got better balance; that is spurious anyway or I say: "There is a balcony here and my concern is that the child left unattended would fall off the balcony or slip through the slats in the balcony and so I do not want to rent it out." Then what should happen in that case is that the Environment Department, so a different department, it is not the Minister for Housing and Communities, it is not the Minister for Social Security, it will be the Environment Department will say: "We have received this complaint, it seems to me that your balcony is not fit for purpose anyway. We want you to make sure that you remove this hazard and we are going to come back to you in X amount of time and if you have not fixed it then we are going to fine you as well." Of course, when that balcony has been fixed, the hazard has been removed and, therefore, the defence has also been removed and so that property should then be able to be rented out to the family with a small child. I do not know if that would happen in practice or my understanding of the law or in fact the practice if that would happen because there are a lot of assumptions that go into that. But it is very onerous and it is very arduous for a tenant who perhaps has not even got an agreement because they have not been allowed through the door of that property in the first place to have to make a complaint to the landlord or to the Minister or whoever it is would pick up the discrimination complaint. How do you complain about a property that you have never seen? This is the issue here. How can you say I think that the defence is invalid? Do you have to get legal advice to do that? I just think all of these questions are pertinent and that it will all conspire to the fact that the law, as it is currently drafted, may be meaningless. I do not want to be cynical. I think what I am trying to find out is that I do not just want us all to pass a proposition today, which we can all pat ourselves on the back for, have unanimity and then find out that in practice it has not changed anything one bit. If the Minister or indeed the Attorney General wishes to respond to what I have said, I will be quite happy.

**The Attorney General:**



Yes, thank you for the time you allowed me to consider Deputy Tadier's question. It seems to me that the prime effect of the substituted Article 41 into schedule 2 of the Discrimination Law will be in relation to agents who let out properties. Because if they were to let out a property with an advertisement to say no children, then they are exposing themselves to a discrimination claim. In relation to such a claim the burden would be on them to establish the defence that is set out in the proposed subparagraph (4) of Article 41 of the schedule. The burden would be on them to show that if they have not included an exclusion saying no children to an advertisement for a property, that that was justified because there was a hazard in the property which meant that the exclusion in relation to children was a reasonable act for them to do. Agents in those circumstances, I think, would be very cautious about including this sort of exclusion in relation to children in relation to an advertisement. It is probable that the practical effect of this would mean agents would probably take advice perhaps from the Minister's enforcement team who are authorised under the 2018 law to inspect premises, to establish whether they are hazardous, to justify any sort of exclusion in relation to children from an advertisement for property, so that would be in relation to agents. Obviously that would not apply to any private advertisements for property from a private landowner, rather than an agent. A private landowner may choose to advertise a property to say no children but the same burden would be on that private property owner to establish on the balance of probabilities that including an exclusion as regard the children was justifiable on the basis that there was a hazard in the property within the meaning of the 2018 public health law. I cannot say in response to Deputy Tadier's question that there is for a result in a blanket from here forwards. This will mean that there will be no advertisements going forward which do not contain the sort of exclusion for children that featured in Deputy Tadier's original proposition. But it seems to me that the practical effect will be to reduce those sorts of advertisements very, very considerably for the reasons I have explained. I hope that assists the Deputy's question.

**Deputy D. Johnson of St. Mary:**

I thank the Attorney General for that explanation. I am not advocating this approach in any way because I will be supporting the proposition but if a landlord or agent wished to get out a message in veiled form that they do not want children, how would a message such as suitable for retired people or a retired couple be regarded? Would that be deemed to be equivalent to a no-children advert or would it just be an expression of preference?

**The Attorney General:**

I suppose it could amount to indirect discrimination. Under the law there are 2 forms of discrimination, there is direct and then there is indirect discrimination. Including that sort of language of suitable for a retired couple, I suppose there is a risk that it may, potentially, amount to indirect discrimination. But I think, again, considering the agents' position, they are going to be very cautious about that sort of language in the future as a result of this amendment.

**The Deputy Bailiff:**

Thank you. Does any other Member wish to speak on the principles? I call upon the Minister to reply.

**2.1.6 Deputy J.A. Martin:**

I will start with the easy one and I thank the Deputy of St. Peter for his support and we did meet with him and met with Scrutiny and go through all the notes that were in the letter to assure them that this is an act under the Discrimination Law. If the family feel they have been discriminated against they have the right now, they have never had the right before, to go to the Employment and Discrimination Tribunal and put their case. Deputy Tadier raised some points and my advice is that it cannot be advertised from the time that the regs are coming in. It will be unlawful in the absence of a defence. That defence might be that it is an elderly home or it is for a certain age group but, as I said in my

speech, it is definitely for places that are for residential care. Again, that law overrides this law. The hazards; yes, the hazards were brought up by Deputy Ward, Tadier and Young and Deputy Young went on to answer some of the hazards that may be hazardous in a home for children but not necessarily for a spritely 25 to 45 year-old; a spiral staircase with no sides, *et cetera*. But, again, these will all have to be tested in the tribunal. If you think your family has been discriminated against as of when these regs come in in the next few days, you have a course of action. Like Senator Mézec thinks that our whole Discrimination Law is not fit for purpose, that is something he needs to look at in the coming months or the next Assembly and do something about. We pondered long and hard to find a reasonable step that would go through the Assembly that makes it a right for people to have a home with children and that they are not discriminated against unfairly and that is what this law does. I hear many landlords love having children because people who have got children, they love to stay where they are, exactly for what we were talking about yesterday. They know where they are going to school and they know where the next school is going to be, so they can keep them tenants there in those school years and they are good tenants, and so are the landlords normally good landlords. This was brought by Deputy Tadier, I offered to show him and go through this draft law about 6 to 8 weeks ago. If he really had any problems with it maybe I could have tried amending it. I do not know how because, as I say, this has been worked on. Senator Mézec thinks it has taken too long but in the real world you get a certain amount of law drafting, you have to prioritise, there are other things that will come and I have done and we are here now. I have been chasing it but we are here now. I hope I have answered all the questions. The law will be tested in the Employment and Discrimination Tribunal and that if it does not work we may need to think of something else but I am told it will. I make the proposition.

**The Deputy Bailiff:**

Thank you. In a moment the Greffier will add a vote into the chat channel of this meeting. The vote is now open and I ask Members to cast their votes on the principles.

**Deputy R.J. Ward:**

Sir, the vote that I am clicking on is saying that I have already submitted and I have not, unless there is something wrong.

**Deputy J.A. Martin:**

Mine too, Sir. Mine said it as well.

**The Deputy Bailiff:**

Sorry, one at a time, who wants to speak?

**Deputy K.F. Morel:**

Sir, if I may, Deputy Morel. The test which was used for that vote, which is why people who submitted the test votes are not able to use it.

**The Deputy Bailiff:**

Yes. I think the Greffier is putting a new link in the Chat.

**Deputy M. Tadier:**

Our vote is in the chat now, Sir, if that helps. It may just complicate it, apologies.

**The Deputy Bailiff:**

It might be better if we start this vote again. I think we will start this vote again, otherwise we will be double counting or there is a risk of double counting. None of the votes currently cast in the chat will count. I ask the Greffier to place a new vote into the chat channel for this meeting and I ask Members to cast their votes.

[15:00]

If all Members have had the opportunity to cast their votes, then I ask the Greffier to close the voting. The principles have been adopted.

<b>POUR: 41</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst		Connétable of St. Mary		
Senator L.J. Farnham				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Saviour				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

**The Deputy Greffier of the States:**

The Connétable of St. Mary voted contre.

**The Deputy Bailiff:**

Deputy Le Hegarat, does the Health and Social Security Scrutiny Panel wish to scrutinise this matter?

**Deputy M.R. Le Hegarat of St. Helier (Chair, Health and Social Security Scrutiny Panel):**

No, we do not. The panel were spoken to and written to by the J.L.A. (Jersey Landlords Association) in relation to some concerns they had and we set up a further meeting with the department. We are satisfied that all of those concerns were addressed by the Minister and the department and the panel welcomes the draft regulations and are fully supportive.

**The Deputy Bailiff:**

Thank you, Deputy. Minister, how do you wish to deal with the regulations in Second Reading?

**2.2 Deputy J.A. Martin:**

*En bloc*, Sir.

**The Deputy Bailiff:**

Thank you. Do you wish to say anything in support of the regulations in Second Reading?

**Deputy J.A. Martin:**

No, Sir.

**The Deputy Bailiff:**

No. Thank you. Are the regulations seconded in Second Reading? **[Seconded]** Thank you. Does any Member wish to speak on the regulations?

**2.2.1 Deputy M. Tadier:**

It is really just to ask the Minister if she would take the Article relating to the defence separately. Effectively, I think we are looking at Article 3. I think I would like to vote against that Article but I am not sure if I need maybe to take advice from you, Sir, or the Minister as to whether I can, effectively, vote against the defence or if that is tied to another part. I think it is contained entirely in ... I am not sure if it is possible to do that, Sir.

**The Deputy Bailiff:**

You can certainly require there to be a separate vote in relation to one of the regulations and the matter that you are concerned with does fall within Regulation 3. But, of course, there is quite a lot in Regulation 3 but that is a matter for you. If you want to have a separate vote on Regulation 3, then I am sure the Minister will propose it taken separately.

**Deputy M. Tadier:**

Yes, I think looking at it I think it is difficult for that to be isolated because I think that is just one part of Article 3, which is more far-reaching. I guess in the Second Reading I just want to again record my displeasure and disquiet at the way that the defence could currently be used. I will have to support, I think, all of that, so I do not need it to be taken separately. I apologise for thinking on my feet.

**The Deputy Bailiff:**

Thank you, Deputy. Does any other Member wish to speak on the regulations in Second Reading? I call upon the Minister to reply.

### 2.2.2 Deputy J.A. Martin:

No, and, I think, Deputy Tadier, hopefully, I know he thinks it does not go far enough or even having a defence in there is permissible. But, as I say, these will all be tested. It is a new tool for families with children to go to the Employment and Discrimination Tribunal and make their case and, hopefully, this will work. I just make the regulations and ask for the appel.

### The Deputy Bailiff:

The appel has been called for. In a moment the Greffier will put a link to vote in the chat channel of this meeting. She has done so. The vote is now open and I ask Members to cast their votes. If all Members have had the opportunity of voting, I ask the Greffier to close the voting. The regulations have been adopted in Second Reading.

<b>POUR: 41</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 0</b>
Senator L.J. Farnham		Connétable of St. Mary		
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Saviour				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of Trinity				

Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

Minister, do you wish to propose the regulations in Third Reading?

**2.3 Deputy J.A. Martin:**

Yes, Sir, I just propose the regulations in the Third Reading.

**The Deputy Bailiff:**

Thank you, Minister. Are the regulations seconded in Third Reading? **[Seconded]** Does any Member wish to speak on the regulations in Third Reading?

**2.3.1 Deputy R.J. Ward:**

I am having some I.T. (information technology) issues this afternoon, perhaps it is the heat. I just wanted to know when this will come into force, from what date, just for clarity really. If I have missed it I apologise to the Minister; I think it is the heat.

**2.3.2 Deputy M. Tadier:**

Can I, first of all, thank the Minister and her officers, who I know have been working on this? I know, again, she has probably been working on it in somewhat unsatisfactory conditions in the midst of a pandemic and although I do not accept the pandemic being used as an excuse to cover all ills and, of course, this was lodged 3 years ago, I do appreciate the fact that this has been really a cross-cutting social policy which in another Assembly or another system it might have fallen under the Minister for Housing and Communities, it might have fallen under the Environment Department. No doubt it will be the case that all 3 of those departments will be engaged and have been engaged during the drafting of this. It will really make a difference I know for so many young families. Housing is one of those key issues that we often think that we have political apathy in Jersey but when it comes to the issue of homes, whether it is affordable homes to buy or finding somewhere affordable and decent to be able to rent with your family, often with your young family, it has been a serious problem for people. Unless you have lived in a cave and do not have access to the internet, I think it has been really obvious to most of us that there are people seriously struggling in Jersey. With this added level of discrimination that has existed up until this point, people have often been wondering why this was the case. I always say that, hopefully, now it addresses the balance. There is still an asymmetrical relationship between, let us keep it simple, the landlord and the tenant but this goes some way to readdressing that. I would hope, for example, that in future now when a tenant goes to look at a place they do not need to tell the landlord that they have children and that should become the norm. If the landlord finds out that they have got children and they do not like it, then that is tough luck because it is the landlord can no longer discriminate against children. Just to add perhaps to Deputy Johnson's point, that it does not mean that age discrimination cannot occur. We know that there are, rightly or wrongly, and it is still possible to have categories of housing which are earmarked and can only be rented out to over-55s. I personally think the whole system probably needs a bit of an overhaul and a bit of a review because I have even seen properties which say over-45s only; 45 is not really old nowadays and at 45 years-old you can have young children. Grandparents over 65 can obviously have sole custody of grandchildren. This idea that we try to isolate and separate different age groups in terms of our planning and who can rent what, who can buy what, I think is probably a bit old-

fashioned and that we should be really looking to get rid of all forms of discrimination, accepting that there may well be some valid reasons as to how we want to try and structure our housing supply. But I do thank obviously my party colleagues who have given me support; this was a Reform Jersey proposition. It is something that we will fight for. We are both socially liberal but socially responsible. We know that when people are looked after they are also more productive, economically more productive. But, again, I thank the officers who have worked on this and the Minister for, ultimately, bringing this forward.

**2.3.3 The Connétable of St. Mary:**

There are situations where it is quite right to exclude children during the letting of a property. It could well be that the property is perfectly safe and adequate and compliant for children but the property surround may not be suitable for a number of reasons. As an example, a landlord may live in part of the property and may have dogs, which may be very well behaved and would protect those children but friends of those children may not have the same relationship. Also, the property may have working farm machinery or water hazards, surely a landlord would have the option not to rent out in such a case. What would prevent the landlord from withdrawing the property from the market? The answer is really to provide more social housing.

**The Deputy Bailiff:**

Does any other Member wish to speak in Third Reading? I call upon the Minister to reply. Minister.

**2.3.4 Deputy J.A. Martin:**

To the Constable of St. Mary: why social housing? People are being, I am told, discriminated against in perfectly good 3 or 4-bedroom homes that they can pay a couple of thousand pound a month for but the landlord prefers ... just because they think something that they do not want children, so that would not be a defence. The one where people are sharing a property, I have already covered that to the Constable. Nobody has expected you to take children and if they are sharing facilities in that same building, that is your home and you might be renting out a few rooms. We do not expect you to take children if you do not want to because that is your home. The farm machinery, children grow up with their parents on farms and I probably take the point that if they are not used to what farm machinery looks like they will probably avoid it. Children are very adaptable, Constable, and it is just they are, so I would leave that one there. I think, Deputy Tadier, in the Second Reading he was not so supportive and I do understand. I do understand where he is coming from. I want to know this law will literally do what I want it to do on the tin. It gives people opportunity to use the tribunal and it does stop people advertising, especially agents, not suitable for children. If we find out that they are, the person then has to declare it under the Discrimination Law. To Deputy Ward, it is exactly 7 days after it has passed and that is Monday, 28th July that these regulations come into force. I maintain the proposition and ask for the appel.

**The Deputy Bailiff:**

Thank you, Minister. The appel has been called for and I ask the Greffier to place a vote into the Chat channel of this meeting. She has done so, the vote is open and I ask Members to cast their votes.

[15:15]

If all Members have had the opportunity of casting their votes, then I ask the Greffier to close the vote. The regulation has been adopted in Third Reading.

<b>POUR: 41</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 0</b>
Senator L.J. Farnham		Connétable of St. Mary		
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				

Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Saviour				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

### **3. Draft Single-Use Plastics etc. (Restrictions) (Jersey) Law 202-. (P.61/2021)**

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

The next item is the Draft Single-Use Plastics, etc. (Restrictions) (Jersey) Law, lodged by the Minister for Infrastructure and for the purpose of this debate the main respondent is the chair of the Environment, Housing and Infrastructure Panel. I ask the Greffier to read the citation.

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



Draft Single-Use Plastics etc. (Restrictions) (Jersey) Law 202-. A law to prohibit the supply and importation of certain single-use plastic items and to set a price for the supply of reusable carrier bags, and for connected purposes. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following law.

### **3.1 Deputy K.C. Lewis of St. Saviour (The Minister for Infrastructure):**

Today we have the opportunity to demonstrate our commitment to the carbon neutral strategy by supporting a new piece of primary legislation that embodies the principle that to be successful in addressing the climate emergency, everyone will have a part to play. The Single-Use Plastics (Restrictions) (Jersey) Law of 2021 will enable us to prohibit the use of single-use plastics, that support a linear behaviour of take more, dispose, and introduce a minimum charge for bags for life to support the more sustainable choices of reuse, reduce consumption. This law will also be the start of a journey as it allows for a future extension to reduce the use of other avoidable single-use items such as takeaway food and drink containers. Last June the States Assembly supported Deputy Gardiner's proposition P.64/2020 and since that time officers across several government departments have been engaged in developing the policy we see today. I thank Deputy Gardiner for bringing this to the Assembly as although a consolidated approach to reducing Jersey's public waste will be delivered as part of the Island's net waste strategy, this proposition has allowed us to take another step forward in supporting Jersey on its path to being a more sustainable place to live and work, a path that this legislation now shares with the work on sustainable transport, reduced energy consumption and recycling to name but a few. I would also like to thank the officers who have worked extremely hard to deliver a detailed piece of primary legislation during a time when resources have been stretched. The work that they have delivered outlines the bags that will be prohibited from importation and supply, the bags that will have a minimum price and the bags and industries that are exempt. This detail has been developed following industry consultation. Details of the law's enforcement, which could result in a level 2 fine to the equivalent of £1,000 being charged, as recommended by law officers, and the implementation period, which is currently defined as 6 months, are also included. The implementation and management of the law will have an impact on the workload of the Environmental and Consumer Protection team and this is outlined in the resource and financial implications, which also includes details of the communications plan that will support traders and shoppers ahead of the changes coming into force. I recommend that the Assembly supports this primary legislation but I also recommend that the Assembly supports my amendment that extends the implementation period from 6 months to 12 and also to support the Constable of St. Helier's amendment and Deputy Gardiner's amendment. Since lodging the proposed legislation, officers have been engaged with traders who have raised numerous and significant concerns that call for a longer implementation period due to the existing high level of stock left over from a poor trading year. I believe that an extended implementation period would enable retailers to exhaust their existing stocks. The alternative is that some traders will have to manage a significant financial loss and potentially throw away thousands of bags to comply with a law that sets out to reduce waste. Upon acceptance of the law and the amendments, the law will be passed to the Privy Council for Royal Assent and will then be registered with the Royal Court. Communications can be implemented without delay to support traders to procure the acceptable bags and this message will be reinforced during the extended implementation period. I will end by thanking the States Assembly for supporting the original proposition last summer that enabled this primary legislation to be drafted. I would also like to ask all States Members to reflect on their reasons for supporting this last June, to remember the promises that we have made to the Island through our carbon neutral strategy to support this proposition. I make the amendment.

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

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

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

The Scrutiny Panel has looked at this item and we received a briefing from officers regarding P.61 on 15th June. Additionally, we asked questions of the Minister regarding this during the quarterly public hearing on 6th July. We requested comments and views from Jersey Business, the Chamber of Commerce and the Jersey Hospitality Association to inform our comments, which Members will have before them. We also received a submission from Jersey Business Retail on 30th June and it was our understanding that retailers had in the main been content with the consultation process undertaken by the Minister and welcomed the changes that had resulted from the consultation, including the specification for a paper bag for life. The 4 industry exclusions that were subsequently provided for in the draft law are outlined on page 9 of the proposition. However, as a result of the pandemic and the forced closure of non-essential retail, as has been mentioned, it was the view of several retailers that the 6 months' lead-in time proposed originally would no longer be workable and would result in wastage. We have seen the amendments from the Minister and the Constable of St. Helier and Deputy Gardiner, so we are supportive of that. On balance, I would just say that the panel is supportive of the draft law and believes it will make a positive contribution to Jersey's carbon neutral strategy.

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

Sir, this is a point of order. It is not a speech. I think it is anyway. Are we debating this as amended? Have the amendments all been accepted? So is this being debated as amended by the amendment and the amendment of the amendment and the amendment of the amendment of the amendment? I am just losing track a little. I do apologise.

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

No, do not worry.

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

I sense I may not be the only one, if I am honest. Thank you, Sir.

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

No, it is a proper question to ask. When the Members have voted on the principles and Scrutiny have confirmed that they do not wish to scrutinise it, we will then move on to the Articles. At that stage I will ask the Connétable of St. Helier if he accepts the amendment to his amendment by Deputy Gardiner, to which I believe the answer will be yes. I will then ask the Minister to confirm that he accepts formally the amendment to the Articles from the Connétable of St. Helier and then I will ask Members if they are content to debate the Articles as amended.

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

Thank you, Sir, that is clear. Yes, of course. Thank you, Sir.

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

At that stage I will be asking those questions when we come to the Articles themselves.

### **3.1.2 Deputy J.H. Young:**

I think in the past very often I have been critical of Government reorganisation and our ability to be able to do things across Government, but I think since I have taken that view, I need to make it absolutely plain that this is an exception. This is, I believe, an exceptionally good proposal, which has required integration across Government in order to tackle the problem of plastic waste.

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

Deputy, you have suddenly gone all echoey.

**Deputy J.H. Young:**

I am not sure it is me. Sorry, Sir, do you want me to come back in and I will check my equipment?

**The Deputy Bailiff:**

I think you have got a bit better now. Do you want to carry on speaking and see what happens?

**Deputy J.H. Young:**

Okay, Sir. This has been a very exceptional piece of work that has cut right across Government, the Infrastructure team and indeed the team that deals with importation of goods and the Environment, and it is a bringing together. I congratulate the fact that I think everybody needs to be given a really good pat on the back, but it is more than that, certainly the Minister in taking forward this and doing it in time. Obviously we have been slowed by COVID but nonetheless clearly to bring this to a conclusion in the lifetime of this Parliament is, I think, really something. Yes, we have some amendments but I think we have got a very practical way forward and also it is a very, very good reminder of the journey that we are embarking on in carbon neutrality. Later on this week, if we can deal with the other items expediently, we are hopeful we can have time to have that debate, because it is really important. Single-use plastics have always been a matter that has really upset people right across the world. The pollution ends up everywhere, it lasts for ever and the legacy of the past is dreadful, which I am afraid in other societies, other than Jersey, where they have put their single-use plastics to landfill, they are going to have to deal with. Thankfully we have not had that. We have had the, I suppose, positives about energy from waste, other than recovery of energy, in that we have not had that waste accumulation since the 1970s and the Energy from Waste plant now meets all the accreditation. So it does give us an issue. This is the first example, or at least a major example, of removing waste from the waste stream, actually tackling it at source. I think that is about waste minimisation and that is huge step forward. I also have to thank as well as the Minister, the Scrutiny Panel, because I remember shortly after my election I was put under very strong pressure as the Minister for the Environment: "What are you doing about single-use plastics?" There was a report, I cannot remember the date of it, but we agreed to work together across Government and this is where I also want to thank the officers under the new S.P.3 (Strategic Policy, Planning and Performance) who have made the link between policy parts of Government and this is really good fruits of that work. Then, of course, Deputy Gardiner who has personally taken the lead from the beginning here. I think there is absolutely nothing wrong, in fact there is everything right, about a non-Executive Member taking a strong position driving something through Government. I wanted to make those comments on the record and I certainly go with the Minister's amendment to give more time to industry. That obviously makes sense because we make progress step by step and we do things genuinely trying to support the community and this is one such place we have that. Thank you. I wanted to put my support on the record.

[15:30]

**3.1.3 Deputy R.J Ward:**

I will speak on the principles because I think there is an important principle here and I would like to ask the Minister what the principle is. I will vote for this, I fully support it even as it is amended. I would have preferred it to happen sooner rather than later. But we keep talking about carbon neutrality and plastic bags and, you are absolutely right, if we are to incinerate these plastic bags the end product is carbon dioxide because the beginning product was fossil fuels and that cycle is completing with the releasing of that carbon dioxide into the atmosphere. It is basic carbon science. If we were to burn our plastic bags, that is where they will end up. But what we have decided to do here is to keep thousands and thousands and thousands of plastic bags in circulation for another year because it is not economic for companies to get rid of them now in whatever way. That could be recycling. St. Helier has a good recycling system, for example. So what we are doing is we are

saying with this proposition we will ban plastic bags but it will take 12 months and the ones we have already got will go into the environment. They will either do so by being burnt in the end and the carbon dioxide that is trapped in them will be released via the incinerator. So let us not beat around the bush about this, that is what is going to happen, or, which is more likely, they will be thrown away and they end up in our oceans, in our seas and pollute the wildlife environment that we see all over the world and those terrible examples of animals eating plastic bags. Cows are particularly bad, apparently. They eat plastic bags and they get into their intestinal system, which is very bad for them. We have seen turtles and confused them for jellyfish, for example. There is lots of examples from around the world. So my point is if we are going to ban plastic bags, that is great, but we have to accept for the next 12 months we will be continuing to tacitly approve of pollution of our environment and pollution of our atmosphere with the plastic bags that already exist. The simple reason for that is the economic priority given to this over an environmental priority. I just want to point that out to the Assembly because that is the reality of what we are doing. That is not virtue signalling any of us that we are doing such a wonderful thing. In the long term it is great but for the next 12 months we will continue to do that and probably for longer while stocks get worn down. I would like to check with the Minister how he is ensuring that stocks are not being added to, so that companies are not increasing them and then saying ... in 6 months' or 12 months' time they will come to a Scrutiny Panel, which does seem to have put economy above environment yet again, and say: "I am really sorry, we have got this stock of plastic bags that we need to get rid of and it is uneconomic for us to not to do that." You cannot have your cake and eat it when it comes to protecting the environment at times. You have to make a stand. This is a stand in 12 months' time and in that 12 months we will continue along the merry line that we have now. I would like to see the Government produce a campaign to encourage people to stop the use of plastic bags now and if there are many left over at a set time then let us take them for recycling and let us do something else with them. There is a risk they will end up in our environment, not only as an eyesore but a damage to animals, a damage to our environment, and as they break down releasing the chemicals into our soil that they do. I do not want to put a dampener on this, I just want to put a reality check on what we are doing. The 12-month delay is a long delay. It is 6 months longer than we said we were going to do and I think it is a shame that we are doing that. However, I will support this because there is nothing else in the offing and I look forward to the debate on climate change where I am sure economy will take precedence yet again.

#### **3.1.4 Deputy R. Labey:**

First off, let me make the declaration that I have family in retail, my mum and my brother, but I receive no financial interest from either. Of course I fully support this initiative to ban single-use plastics but it is not just plastics we are banning, is it? It is now paper as well, because I guess if you ban all the plastic bags people could just as easily move to paper alternatives and that is not good for the environment either. I am pleased to hear there has been consultation with the industry. I hope that has been widespread. I do not know if there has been consultation with the little guys and I am specifically talking now about the roadside stalls that are a massive part of our Island identity and part of our character, farmers selling potatoes at the gate and other growers selling produce on the farm or near or on the roadside. A lot of them use bags like this, especially for potatoes, and they are a little bit sturdier and they are a good size for a pound or 2 of potatoes. Now paper bags between 50 msg and 170 msg will be outlawed, I guess. It is very difficult to tell. The msg of these bags is not on their packaging. I rang the supplier and he could not tell me immediately what was the msg of this one. Thinking back to when I remember buying some photocopier paper, I think it said 70 msg on that, so this is probably a bit thicker than that. So I guess this very probably fits within the banned paper now but it is extensively used, especially for potatoes. The Minister will know what I am talking about because he has been copied in with the email thread. I have been asking officers about this and they have been extremely helpful. But the alternative suggested for that is to use the lightweight counter bags. I do not want to advertise; there are other department stores available in

the Island. The lightweight counter bags like this, which if they are under 50 msg, are still going to be useable except that you would not be able to use this for a pound or 2 of potatoes, especially on a wet day. The answer to that is that you should double or treble bag. That then leads me to question if we cannot use this bag but we can use multiple ones of this bag because it is allowed, to get it up to the weight of the banned one, where is the environmental gain? Secondly, there are other alternatives suggested for this, like the compostable plastic. A lot of growers do not want to put produce in plastic because it sweats. There is the notion of a tray, but that would not work with potatoes because you would still have to put it in a bag or cover of some kind. There is the suggestion of a carton of some kind. Again, that would have to be a closed one because people tend to pick and choose, especially on the roadside. You could seal bags I suppose but they like to look in the bag and many farmers leave the bags open because they like to see whether they are big potatoes or small potatoes. Anyway, if we are going to have to move to a carton, which is also suggested, what are the financial implications of that for a small trader just selling a few spuds for a few months on the roadside? Is that cost effective and, anyway, is a carton any more environmental friendly than this bag? There are lots of questions and I think the msg of bags, as I was saying earlier, is not immediately determinable and that is going to have to be a culture change so that people do not realise they are breaking the law. My suspicion is a lot of traders do not know what is about to hit them. This has been advertised as single-use plastics but there is the ramification for paper. I just would not like to see the roadside sale of produce, which is so much a part of the character of our Island, come to an end because of these regulations. I guess I am looking to the Minister for some comfort here in terms of how this can be accommodated and with the examples that I have cited is there a way ... because let us face it, the roadside stall or the farmyard stall or farmgate stall does not involve air miles or refrigeration. The produce is very often sold on the day that it is harvested or dug or lifted or cut. It also brings the consumer in direct contact with the producer so that it generates a greater understanding of food production among those eating it and that is a good thing too. I hope I have made the case and I am looking to the Minister to give some reassurance.

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

I will be brief. I was not going to speak but it was comments that Deputy Ward made about where the plastic ends up and it is not just plastic there, is it? It is cigarette butts, we are seeing more and more masks just discarded on the street. It probably falls to Constables or the Minister for the Environment. We have really got to do something about on-the-spot fines. A friend of mine dropped a cigarette, she had no defence because the warden had a camera on their shoulder, and got a £70 fine. That was 3 years ago and she has always walked around with her own little lidded ashtray ever since and will never drop ... a very expensive lesson. We have really got to sort this out. People litter, litter, litter and that is why all this rubbish, plastic and everything, ends up where it should not be. I will leave it there but we have really got to tackle this.

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

I am happy to speak on these principles. As the Minister who introduced plastic free, I think it is important that we keep this momentum going. It is disappointing we have not had more momentum in the last couple of years. I just want to follow up from Deputy Labey. I think he raises some interesting points. I hate subjectivity when it comes to making decisions but we must see if we can turn this into a win/win for local agriculture and horticulture and maybe there is a way that the Minister can find to allow local producers to take advantage of a change in the law here that the Minister could come forward with, so I would be pleased to do that. In the early days of recycling, I always told people that we were fortunate in Jersey because we have an Energy from Waste plant and we should take a slightly different view to the rest of the world because we were turning our waste into energy, which could then be used. But of course I was wrong and I am happy to admit that now, that what we need to do is not use that energy in the first place to make plastics, to make things to put into the incinerator and turned back into energy. What we need to do is to recycle, to

buy less plastic in the first place so that we do not have to use more electricity to turn it back into energy. So I am very happy to support this. Like others, I am disappointed that local industry have not taken this a little bit more seriously. Finding yourself with a year's supply of plastic bags seems to me, as an ex-commercial person who used to have to buy in commodities to service its own industry a year's supply, I suppose, is acceptable if you like, but it is disappointing that industry have not seen this coming further down the line and taken steps to hold less stock, but I accept that last year was difficult for COVID. It gets my full support and I am happy to support it.

**3.1.7 Deputy M. Tadier:**

I do not know if I have got the wrong end of the stick or the bag, I do not know if that is an expression. It is not an expression. I want a clarification - I do not know who I can seek it from - about whether or not what the Minister is proposing also would ban single-use paper bags. What I see is something that started off as very much focusing on plastic. It seems to have evolved and I think we have got very much a different beast in front of us. Could I seek that as clarification, Sir, from either yourself or the Minister, if that is in order?

**The Deputy Bailiff:**

I think that is a question for the Minister rather than me, Deputy.

**Deputy M. Tadier:**

Can I ask for clarification after? Is that in order, Sir?

**The Deputy Bailiff:**

Well, he has finished his speech so he will deal with that in his response on the principles as one of the matters that he will need to deal with.

**Deputy M. Tadier:**

I do see. I will continue my speech then, Sir. Thank you. The concern I have got and looking at the report it obviously talks about the difference between bags for life, which could be plastic or paper. Also it talks about the fact that Government would not want to see paper being used as an alternative and I recall in the previous debate that we had that a concern was raised that paper bags can be more environmentally harmful or certainly costly in terms of the carbon or the energy that they use to create a paper bag versus a plastic bag. I always thought that was a bit strange because one of the prime concerns for me, and it is not the only concern, is what has been mentioned about plastic ending up in the oceans and also plastic ending up being consumed by animals, whether it be in the oceans or on the land.

[15:45]

So, while we know that of course we do have an Energy from Waste plant - I call it an incinerator and that is what it is - I have always been slightly sceptical about how much energy it produces but also the fact that calling it an Energy from Waste plant is effectively green washing. So I am glad that the former Minister for the Environment recognises the fact that it is not a good thing that we burn our plastics. It might be something that gets rid of the issue but of course it is putting it into the air and that cannot be good one way or the other in terms of emissions or potential pollution. Black bin bags, for example, are something which is an issue. There are probably far more black bin bags that get used on a daily basis than plastic carry bags, even before the ban came into force or it effectively came in with the changing behaviour from the supermarkets. They just get routinely sent to the incinerator. Of course some of that might break down before it gets there, who knows. But that does not happen with a paper bag, so a paper bag that gets blown into the sea is not going to have the same consequence on a dolphin or on a turtle as a plastic bag, which breaks down and either gets stuck in their stomach or becomes micro plastics and then ends up in the food chain. Of course this proposition does not deal with the other issue of micro plastics which are a major issue, so if we are

going to tackle plastics we need to look at micro plastics in the cosmetic industry, which is still allowed. I accept that this proposition does not deal with all of those things. I would be very sceptical about any proposal that would seek to extend a period in which plastic bags could be used. I think we need to get away from this mentality where it is normal for shops, even where they are allowed to, to offer plastic bags when clearly you have only got a few items to take. One last observation is that in tackling single use paper bags, if that is what we are doing, it does not obviate the behaviour that some display when they use a cardboard box. I talked about a cardboard box being really practical but presumably if you just use a cardboard box once to put your shopping in it is really practical and it is probably better than it going straight to the recycling because at least you have got an extra use out of it, but how can it be okay to use cardboard boxes but not to use single use paper bags? By the way, who is the judge of whether it is a single use paper bag? A paper bag which has been used to sell the product of Labey Farms in St. Ouen - and I noticed that very good product advertising there, I am sure other farms are available - it is probably unlikely you would necessarily use that paper bag again because it might have soil in it. But if you are getting a clean brown paper bag you could probably use that several times to go to a shop if it is strong enough, and when it is done you could put it in your compost or you could use it to light your fire in your granite fireplace. These things can be reused and recycled. Just some observations; and I would be interested to hear the Minister's response to any points which he thinks are relevant.

**The Deputy Bailiff:**

Does any Member wish to speak on the principles? I call on the Minister to reply.

**3.1.8 Deputy K.C. Lewis:**

Can I begin by apologising; in my opening speech my dog decided to chase a fly around the room and he is looking very sheepish lying at my feet at the moment. He is from Barcelona. May I begin by thanking Scrutiny - and I think the Minister for the Environment has done all the thanking for me - I thank the Constable of St. Brelade and his Scrutiny team who did an excellent job of scrutinising this, and I thank them for their hard work and their input. The Minister for the Environment - and I thank him for his kind comments - this was very much a cross-departmental effort, if you like, some of my officers and some of his working together on this one. Deputy Ward, that was quite depressing from Deputy Ward but I always like to be positive, but basically it is a maximum of one year. Traders are given an extension but it would be a maximum of one year. After that one-year cut-off point that is it. So hopefully most people will take just a few months to get sorted out and get the new bags on line. Some may be up to 6 months. It will be a few exceptions that will be a year. As has already been stated, there has been a very, very difficult trading year and many of the bigger stores, shall we say, have their bags printed up with local logos and they buy in bulk, so they cannot send them off say to the U.K. to be used because they are labelled up locally. We do not do landfill in Jersey so there is no excuse whatsoever for any bags to end up in the sea but, as I say, everything goes to the Energy from Waste plant once it is disposed of. It is called an Energy from Waste plant as opposed to an incinerator because it is so efficient it does have European Union authentication, even though we are not members of the E.U. (European Union), even less so now. Deputy Labey regarding the potatoes, absolutely fully support that. The Infrastructure and Environment officers have been in touch with Deputy Labey and I think arrangements will be made. There are exemptions, if Members care to look at the amendment we will maybe speak to later by the Constable of St. Helier, and that does take care of that problem so I am grateful for that. Deputy Martin, I am obliged for her intervention mentioning cigarette butts, because the storm drains in the road go straight to sea. So if anything is dropped in the road like cigarette butts and we get the heavy rains which we have had in recent times, they are flushed out straight to sea. We do not treat storm water. Obviously sewage water goes to Bellozanne but storm water goes straight to sea, so if anybody drops a cigarette butt in the road it gets washed down the drain, that goes out to sea and it is there for years and years, the plastic elements in the filter.

**Deputy M. Tadier:**

Would the Minister give way for a question of clarification?

**The Deputy Bailiff:**

Minister, are you prepared to give way to clarify something from Deputy Ward?

**Deputy K.C. Lewis:**

Indeed.

**Deputy R.J. Ward:**

It is just about the timescale, you said up to 12 months, but the amendment from the Connétable of St. Helier that you have accepted - and this is why I mentioned this - says that stocks of such bags existing in Jersey are produced outside Jersey but are awaiting shipment to Jersey before the commencement of this provision. So is this the commencement in 12 months or the commencement after we vote for it today, and how long before they can be delivered because that could be a container load full, could it not? It could be thousands and thousands. I will try and say it in an upbeat way, Minister, I do not want to depress you.

**Deputy K.C. Lewis:**

A fair point. As soon as this comes into being then the clock is running but, as I say, the 12 months are the exception. A lot of traders knew this was coming so I cannot imagine many people having huge stocks coming in now because, as I say, the Infrastructure and Environment officers have been talking to traders for some time now so they were aware that this was in the offing, so I cannot see anybody ordering vast amounts to try and beat any particular timing or quota because after the one year is up that is it. There is no further extension to that. I hope the Deputy is content with that.

**The Deputy Bailiff:**

Minister, there is a point of clarification from Deputy Tadier as well, are you prepared to give way to deal with that as well?

**Deputy K.C. Lewis:**

Yes, indeed.

**Deputy M. Tadier:**

Sorry for the crossed wires; the 2 points of clarification came through on the chat together. The question is prompted by the Minister's comments on cigarette butts and the sewage and overflow system. Is there not a grill system at the end of where the water comes out on to the beach to protect from the likes of plastic bags and cigarette butts from being discharged into the sea?

**Deputy K.C. Lewis:**

No, it would not be practical because there is literally tonnes and tonnes and tonnes of organic material washed down the drain as well, all the tree leaves, twigs, the general debris that comes off the road, it goes all down the drain and is flushed out to sea. There have been trials in other countries to filter what goes out to sea, they put sort of a giant sock on the end of the pipe, if you like, but that has to be emptied sort of every hour because it literally gets completely choked and the system just backs up and water ends up coming up the roads. As I say, with the leaves and twigs alone which are blocking a lot of drains now and my team are out trying to clear before the next storm, it is a major problem. Is the Deputy content with that?

**The Deputy Bailiff:**

Yes, I think so.



**Deputy K.C. Lewis:**

I think I was on Deputy Martin with my thanks. Deputy Martin also mentioned facemasks which obviously have a plastic content, and obviously with the current news that facemasks are being used again may I take this opportunity to remind people, please do not discard them in the street, they will get washed down the drains. Please discard of them carefully in the refuse bins, they go to the incinerator because obviously they could be contaminated, and they are incinerated and cause no further harm. So I am grateful to Deputy Martin for that. The Deputy of St. Martin spoke about recycling. Absolutely, we are doing very well. We need to do more, I think we have now 8 Parishes coming online with recycling and hopefully in the not-too-distant future we will have 12. The micro plastics mentioned by Deputy Tadier, a very good point, we need to get a grip on micro plastics too. There is quite a few soaps or beauty preparations that do have micro plastics in them, some are sort of barely visible to the naked eye like grains of sand, but they are plastic and they do go through the sewerage system because they are that small and they will be flushed out to sea. But as I say, we have a very efficient sewerage system - we have a new one coming on board in early 2023 - but they cannot filter out something that small. But we do need to tackle it from the other end and possibly get rid of the micro plastics in various other products. I think that is it and, yes, I make the proposition.

**The Deputy Bailiff:**

Did you respond to Deputy Tadier’s question that he asked me about confirmation that the law applied to certain paper bags as well as plastic bags? Did you deal with that point?

**Deputy K.C. Lewis:**

I believe so. There are exemptions available, which is actually covered in the amendments. That was something that was brought in, the officers needed to bring that in to cover that particular item. I am not sure I can add to that, but if people believe they should be exempted then officers will look at that.

**The Deputy Bailiff:**

In a moment the Greffier will put a vote into the chat channel of this meeting. The vote on the principles is open and I ask Members to cast their votes.

[16:00]

If all Members have had the opportunity of casting their votes then I ask the Greffier to close the voting. The principles have been adopted.

<b>POUR: 39</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 1</b>
Senator I.J. Gorst		Senator S.Y. Mézec		Deputy of Grouville
Senator L.J. Farnham				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Saviour				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of Trinity				
Connétable of St. Mary				
Connétable of St. Ouen				

Connétable of St. Martin				
Connétable of St. John				
Deputy J.A. Martin (H)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy J.M. Maçon (S)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

**The Deputy Greffier of the States:**

Senator Mézec voted contre and the Deputy of Grouville abstained.

**The Deputy Bailiff:**

Connétable of St. Brelade, can I please ask you to confirm that the Environment, Housing and Infrastructure Panel does not wish to scrutinise this matter?

**The Connétable of St. Brelade (Chair, Environment, Housing and Infrastructure Scrutiny Panel):**

Indeed, we no longer wish to do that, we have done as much as necessary already. Thank you.

**The Deputy Bailiff:**

We will now move to Second Reading. There are 3 amendments, one from the Connétable of St. Helier, one from the Minister, and an amendment to the Connétable of St. Helier's amendment from Deputy Gardiner. Connétable of St. Helier, do you accept the amendment to your amendment from Deputy Gardiner?

**The Connétable of St. Helier:**

Yes, Sir.

**The Deputy Bailiff:**

Minister, do you accept the amendment as amended to the Articles?

**Deputy K.C. Lewis:**

I do indeed.

**The Deputy Bailiff:**

Does anyone object to the Articles being debated as amended?

**Deputy R.J. Ward:**

I am sorry, Sir, I cannot find the amendment to the amendment on the Order Paper.

**The Deputy Bailiff:**

Well it is not on the Order Paper because that was a matter where you may recall we approved the suspension of Standing Orders for the purpose of permitting it to be debated. Can I assist you in relation to the terms of the amendment to the amendment, Deputy Ward, in case you cannot lay your hands on it immediately?

**Deputy R.J. Ward:**

Yes, if possible.

**The Deputy Bailiff:**

If you have in front of you the second amendment of the Connétable of St. Helier, the effect of the amendment to the amendment, if you look at 2(b) it is to delete the words “or produced outside Jersey but awaiting shipment to Jersey”. That is the effect of the amendment to the amendment.

**Deputy R.J. Ward:**

Thank you, very helpful.

**The Deputy Bailiff:**

Minister, how do you wish to propose the Articles?

**3.2 Deputy K.C. Lewis:**

It is extremely wordy and I think everything was very clearly explained in the proposition so may I present them *en bloc*?

**The Deputy Bailiff:**

Yes, if you wish to do so. Do you wish to say anything further in relation to the Articles?

**Deputy K.C. Lewis:**

I think we have more or less covered it, just to say that officers are working with people who have concerns. Both Infrastructure and Environment officers are available to deal with the farming community should they have concerns regarding the size of bags, and the constituents there also. I make the amendment.

**The Deputy Bailiff:**

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

**3.2.1 Deputy J.H. Young:**

I just wanted to say that I am pleased that the amendment of amendment has been accepted because I personally did not want to see a loophole that maintains the power to allow materials which are outside the Island once the law has been enacted, which the Minister’s amendment puts at 12 months’ time. We have ended up I think with a sensible arrangement because obviously technology is going to change and I think it is right that the Minister has the power under Article 2 and Article 14 to be

able to make decisions on particular types of bags as things change and the situations in which they might be used. I think without that there would be a risk of inflexibility, and I think that is very good. Although it is probably not on the Articles I think I would make the point that - as I said earlier - waste management is now the preferred strategy. I was not advocating continuation of energy from waste in the longer term, but that was certainly the right move at the time it was introduced because it has avoided the legacy of this material, so I absolutely agree with Deputy Martin the disgusting thing about micro plastics, which I am hoping we will carry on and deal with. Sorry I strayed a little bit; I will leave it there.

### **3.2.2 Deputy I. Gardiner:**

I will speak once because we had a long debate a year ago. It is difficult to believe but today it is 18 months after lodging my original proposition. I hope we will adopt the proposition and, as the Minister for the Environment said, it will be the beginning of our journey into other places. As Members can imagine, I personally was disappointed the introduction day was postponed for another 6 months, so in total it will come to 30 months from the beginning of the idea to introduction. Saying this, you can imagine when I have been informed that this is the intention immediately I asked personally to speak with retailers because before bringing the proposition back in February 2020 I had raised a 6-month introduction period with the Chamber of Commerce. The Retail Association that was around the table said that it is sensible. We did have extended consultation in September and one of the responses was: "If you are asking us questions we need to start to prepare." I had retailers who contacted me through this 18 months asking when it will come into force - and it should come into force in September this year, it was postponed to February and now it is postponed to July - but nevertheless I decided to speak with retailers who raised a concern. What was very interesting - and I think this will happen more and more - most of the retailers that I spoke to, they somehow missed, and it can happen through the COVID, that is coming now and when they realised that it comes they started to check their bags. Most of the retailers had paper bags and when they checked their bags their bags are compliant, which is great news. There are a very small amount of retailers who did order big amounts from China and another year will give them time. It is the beginning of the journey so from the start it was never my intention for this legislation to be a financial burden upon the retailer and there is no environmental gain from sending large quantities of plastic bags to an incinerator. I would like to use this opportunity to congratulate the majority of retailers who have already made the change, and at the same time give a bit more time for the retailers to finish their single use plastic bags or single use paper bags in stock. Also personally I have seen more and more people using wicker baskets, cotton bags, and cardboard boxes and other long-term bags. I hope the awareness campaign that the Minister and his team are planning will start now and will lead for more people to carry a reusable long life shopping bag from now. There is no need to wait for a year. The law will come into force in a year but the change started a year ago, it will continue, and we can enforce it even earlier. The legislation has been a success because the change is made, and of course COVID had an impact and I did accept it. It was very, very hard but I understand that we all know that the trade was not as it used to be. In conclusion I would like to thank the Jersey retailers for coming on board and being able to change, adapt and be compliant with the law in advance and maybe through the year. I believe this shows that our Government will continue to lead ecological measures and they will be welcomed by businesses in Jersey. In particular I would like to thank the Minister for Infrastructure, and I know that I was frustrated and I know I asked a lot of questions but at the end of the day we are debating this legislation today and it is going forward. I would like also to thank the officers who worked with me from the Government side, and the officers from the Greffe side, because they were very, very helpful. There are lots of small changes we can all make that cost not much money and have a benefit to our local environment and the planet as a whole, so I am welcoming this legislation.

### **3.2.3 Connétable R.A. Buchanan of St. Ouen:**

Firstly I would just like to voice my support for the 12-month delay, and just to make the point that I have been contacted by a season retailer who, unfortunately for this person, printed up a load of logoed paper bags for use in the business and then since they ordered those paper bags unfortunately because of COVID they have hardly opened so they have not really had the opportunity of using the paper bags that they had in stock. They were very concerned that they might have to restock with new paper bags at a time when their trading receipts were well down, almost non-existent to be honest, and essentially their comment to me was: “It could well be the straw that breaks the camel’s back.” They fully understand the environmental impact of paper bags and plastic bags and they intend to move as quickly as they can to using environmentally friendly products or encouraging people to bring their own bags frankly, but they were essentially really struggling and I think they will be very grateful if we do pass this. The only other point I just wanted to make is the amendment to the amendment says “or produced outside Jersey awaiting shipment” which has been removed from the Constable’s amendment. I just wonder if the Minister could just clarify whether that means that stock of paper or plastic bags that have been produced but have not been shipped to Jersey will in fact have to be destroyed. From my point of view, if we have used the energy to produce them and they are simply being held in stock in the U.K. then it seems a bit of a futile exercise to destroy them simply just to conform with our regulations when they could be used in place of something that would have to be produced afresh using more carbon and adding to the carbon load in our atmosphere. I would just be grateful for the clarification on that point, but generally I am very supportive. I think this is an excellent move by the States. I might also add - and everyone else seems to be digressing today so I will digress a little bit - we have our Assembly this evening where we will be voting to hopefully implement kerbside recycling in St. Ouen, leaving just a handful of Parishes left to do this, so St. Ouen is doing its bit. I would just close by saying on behalf of the retailer that contacted me, if this goes through I would just like to pass his relief and thanks on.

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

I see where we are going and I see the delays and will support this. I just sometimes wonder how we get ourselves into this, and I think it is significant that Deputy Gardiner said it was 18 months’ ago that we started talking about this. It is not rocket science; this was about banning plastic bags, and 18 months’ later we have come to a point where 12 months’ later we can ban most of them. I am not sure what happens regards plastic bags for life, and I do not know about anyone else but I seem to have in my kitchen a plastic bag for life full of plastic bags for life. In fact I believe I may have a jute bag full of plastic bags for life. I have got myself in a real environmental problem there, have I not? I am not sure if that gives me more lives, whether having that many plastic bags for life means I will live a lot longer, I am not sure, perhaps it needs some data and some research on it and a Scrutiny Panel to look at that one. The notion that what we will do is we will charge more for a plastic bag for life and the prohibitive charge is 50 pence or 70 pence.

[16:15]

I would be quite wealthy if anyone wants some second-hand plastic bags. I am sure there will not be a black bag market in plastic bags, one might call it. While we are doing a few gags, it is very difficult to get a grip on the micro plastics because they are very small. I think the Minister needs to understand that a little more. The real issue here is what we have got is a triumph again of convenience, and that was the problem in the first place. We have created a society over the last ... there is a figure over the last 15 years that a huge percentage of all the plastics on the planet have been created. We have created a convenient society and that convenient society needed convenient packaging and the most convenient packaging was plastics because they are cheap to make and they can be made in small amounts. When a small jurisdiction like this comes to banning them what we have said is: “We will but we will wait another 12 months” and thousands and thousands of plastic bags in that time will go into our environment or into our incinerator and we will continue to pollute for another 12 months. Eighteen months ago this should have been acted upon; it should have been

acted upon quickly so that by this time now perhaps we would be debating something other than this and we could genuinely move forward. Again, I will vote for this because we need to have something happening but we really are at risk of greenwashing if we are not careful. I am very pleased that Deputy Gardiner brought this forward; I am just disappointed she had to wait so long yet again to get anything done. I am pleased at the amendment from the Constable of St. Helier to allow all those that are currently off-Island to just flood into the Island and be used in our shops; but there you go. Let us hope that we get somewhere with this and do something to prevent environmental pollution, one of the many that we have to address urgently if we are going to be serious about the future for our planet and for our children.

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

I would just like to congratulate Deputy Gardiner on this legislation and also for the hard work that she has put in, both in designing her original proposition but also in working with the Government to come up with legislation which works. I think in regard to the previous speech, which to be honest showed an incredible sense of naivety, having spoken to Deputy Gardiner I think Deputy Gardiner's eyes are open to the complexity that was involved in creating a ban on plastic bags, a complexity that made sure that the resultant legislation was actually environmentally friendly. For instance the 12-month grace period, for want of a better phrase, is in order to make sure that this Island does not compound its problems by requiring the immediate destruction of thousands and thousands of currently already made, in this Island, plastic bags. So there are all sorts of technical specifications that needs to be understood and dealt with, and there was also an understanding of the key stakeholders, the buyers of the plastic bags which in this case is primarily the retail sector, and not just your large chains, not just your supermarkets, but very small independent shops, farm stalls, honesty boxes where they provide paper bags, *et cetera*. It was an incredibly complex task, as I understand it, and I think this is something that people in this Assembly need to understand is that something which looks very simple on the face of it - let us ban plastic bags - has an immense amount of complexity below it and it takes time to work through that. To be fair - and also to congratulate and thank the officers in the Department for Infrastructure and the Department for the Environment, as well as the relevant Ministers, but most of all Deputy Gardiner - there was an understanding of that complexity and a willingness and a desire to work within the confines of that complexity to come up with something which succeeds. That is what we have before us today and I will be very pleased to back that. There are no simple answers to seemingly simple questions. That is something that I think people in this Assembly need to have a better understanding of.

### **3.2.6 The Connétable of St. Helier:**

It is a pleasure to follow Deputy Morel because I was going to make a different point on a similar vein. I think Members who have protested that this is taking too long and that neither the Minister nor I should have tried to give more time to use up existing bags, they are forgetting that this is all about carbon footprint. If the result of our measures as an Assembly is to see large quantities of already produced plastic bags - particularly in retail - destroyed then we have failed because the carbon footprint of that is going to be far higher because they will have to buy new bags that comply with the law and the old ones will be wasted. So I think there is a very good environmental reason for allowing those bags to be used that have been ordered, and I think that if there is a large consignment awaiting shipment, perhaps delayed because of the pandemic as the Constable of St. Ouen mentioned might be the case, then they will be destroyed and that was the reason I put that provision in. I did not object to its removal by Deputy Gardiner because I do not think we are dealing with huge amounts here, but it was just put in there as a kind of stop gap. I feel the argument has been similarly lost when it comes to vehicles. A lot of people are racing - if I can excuse the pun - to replace their well-tuned petrol or diesel cars with electric ones. The carbon footprint of that exercise has been shown to be absolutely disastrous for the environment. You are far better off getting a full use out of your existing motor car before you change it for a less environmentally

polluting one, particularly if it has been well-looked after and well-maintained. I believe it is the same with these bags. The other point I would make is that there must be hundreds of thousands of reusable bags in circulation, or bags for life as I think they are called, and I do not know if we are the only household but we constantly seem to get to the supermarket or the shops and we find that we do not have our bags for life, they are in the other car or they have been left at home or they are being used for something else. We end up having to buy more of them and more of them. Of course those bags for life under this legislation will still be available, you will still pay good money for them, and I expect we will continue to leave them in the wrong vehicle. But the fact of the matter is people need bags to go shopping and I think it is going to take a while and it will probably take pressure from the younger generation for us to consign our bags for life to a proper end of life disposal in what I call the incinerator, like Deputy Tadier, where at least the emissions can be cleaned from their disposal and we all move over to jute bags or to other bags which are more environmentally friendly, or we take a good old fashioned wicker basket with us to the shops and we collect our produce in that.

**The Deputy Bailiff:**

Does any Member wish to speak on the Articles in Second Reading? I call upon the Minister to reply.

**3.2.7 Deputy K.C. Lewis:**

I thank Members for their comments. I thank again Deputy Young for his comments regarding recycling, and I would like to remind Members that this is an absolute success story for Infrastructure and Environment. If you go down to La Collette the whole place is humming with people recycling the goods, glass, paper, cardboard, metals, concrete aggregates. It is open 5 days a week, including Saturday and Sunday. I believe it is now closed Monday and Tuesday, but the weekends there, people sort out their sheds, everything is recycled and they are doing an absolutely fantastic job. I thank Deputy Gardiner for her comments. This is basically Deputy Gardiner's proposition; I am the messenger. Constable of St. Ouen, could not agree more that, as I say, we are just coming out of COVID, likewise to Deputy Ward, we are hopefully coming out of COVID, the people have suffered very, very badly; retailers have suffered badly. A large retailer could possibly afford to write off a few thousand pounds, not so much the smaller retailer or corner shop where it could be absolutely devastating and, as the Constable of St. Ouen said, this could be the straw that breaks the camel's back. Regarding Deputy Ward, all I can say is, yes, it has taken time, we have had COVID, we are still in COVID, we have not long had all the officers back together again because a lot of the officers from Infrastructure, and some from Environment I am sure, were scattered to the 4 winds on other projects, making sure that Islanders were well taken care of. It is a huge piece of work. I invite Deputy Ward just to look at the main proposition itself and the work that officers have put in to put all that together was phenomenal. I thank the officers again for their very hard work. Deputy Morel, yes, the voice of reason, what can I say. Thank you very much for those comments. Constable of St. Helier, regarding the Energy from Waste plant or incinerator, it is an incinerator but it gets the energy from waste. When things are running smoothly we get 7 per cent of our electricity from the Energy from Waste plant, hence the name, plus both the fly ash and the bottom ash are sent to the U.K. for recycling and onward containment. So I thank Members for their interest and their questions. I will finish by showing my bag which is a bag for life bought 7 years ago and it is still going strong. What I would remind Members to do is if they have got the barcode on the bottom and they go into a supermarket, plonk it down to load up their goods on the self-service till, put a bit of tape on the bottom or it will confuse the machine no end. But with that I thank Members for their questions and make the proposition in second reading.

**The Deputy Bailiff:**

Thank you. In a moment the Greffier will add a vote into the chat channel of this meeting. She has done so. The vote is open and I ask Members to cast their votes. If all Members have had the opportunity of casting their votes then I ask the Greffier to close the voting. I can announce that the Articles have been adopted unanimously in Second Reading.

<b>POUR: 44</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator S.C Ferguson				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				



Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

Minister, do you wish to propose the draft law in Third Reading?

### 3.3 Deputy K.C. Lewis:

Yes, indeed, and I thank Members for their support. It has been a long, hot day and I thank them for their support and attention and I make the proposition in Third Reading.

#### The Deputy Bailiff:

Is the draft law seconded in third reading? [**Seconded**] Does any Member wish to speak in Third Reading on the draft law?

#### 3.3.1 The Connétable of St. Brelade:

Just in conclusion, the Environment, Housing and Infrastructure Scrutiny Panel wish to thank the Minister and his department for their efforts to bring forward this important piece of legislation, and for their engagement with stakeholders and ourselves. We also wish to thank Jersey Business for its written submission which has made a valuable contribution to our review of the draft law. Just to remind Deputy Ward, we shall keep an eye out for the jute bags.

#### The Deputy Bailiff:

Does any other Member wish to speak in Third Reading? I call upon the Minister to reply.

#### 3.3.2 Deputy K.C. Lewis:

I thank the Constable of St. Brelade and the Scrutiny Panel, they have done an absolutely excellent job scrutinising this.

[16:30]

It has been a long, hard slog, dare I say, and I thank the officers again who put in thousands of hours on this. It has been a very complex project, an awful lot of consultation with all the traders, Chamber of Commerce, you name it they have consulted it. They have done an absolutely superb job and I thank them once again. I make the proposition in Third Reading.

#### The Deputy Bailiff:

In a moment the Greffier will add a vote into the chat channel of this meeting. She has done so. The vote is now open and I ask Members to cast their votes. If all Members have had the opportunity of casting their votes then I ask the Greffier to close the voting. I can announce the draft law has been adopted unanimously.

<b>POUR: 42</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator S.C Ferguson				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of St. Peter				

Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

#### **4. Draft Amendment (No. 52) of the Standing Orders of the States of Jersey (P.62/2021)**

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

The next item on the Order Paper is the Draft Amendment (No. 52) of the Standing Orders of the States of Jersey, P.62, lodged by the Privileges and Procedures Committee. For the purposes of the debate the main respondent is the chair of the Corporate Services Scrutiny Panel, and I invite the Greffier to read the citation.

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

Draft Amendment (No. 52) of the Standing Orders of the States of Jersey. The States make the following amendment to the Standing Orders of the States of Jersey under Article 48 of the States of Jersey Law 2005.

##### **4.1 Deputy C.S. Alves (Chair, Privileges and Procedures Committee):**

This amendment proposes to reduce the minimum lodging period for the Government Plan lodged in election years from the current 12 weeks to 10 weeks. The amendment arises from the Assembly's adoption of the Draft Constitution of the States and Public Elections Law 202-, as amended by the

third amendment. The third amendment altered the provisions of the States of Jersey Law to state that the Common Strategic Policy should be lodged by the Council of Ministers no later than the day on which the Council’s first Government Plan is lodged, and within 4 months of the Council’s appointment. In the report accompanying the amendment it was explained that a consequential amendment to Standing Orders would be needed as the time available in 2022 for the next Council of Ministers to develop the first Government Plan of the term was reduced from 15 weeks to 10 weeks by the date of the next election being set as 22nd June 2022. Therefore, this amendment would give the incoming Council of Ministers 12 weeks to develop, agree and lodge the Government Plan for 2023 to 2026, as well as the Common Strategic Policy. The minimum lodging periods for amendments and amendments to amendments to the Government Plan would remain the same as they are presently, 2 weeks and one week respectively. The committee notes the concerns raised by the Scrutiny Liaison Committee in terms of reducing the time afforded to Scrutiny. The committee appreciates the challenges this change would cause, however, it is important to note that the reduced period is only proposed in election years. The minimum lodging period for the Government Plan in non-election years would remain at 12 weeks. I propose the amendment.

**The Deputy Bailiff:**

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

**4.1.1 Senator K.L. Moore:**

Simply to say that, as the Deputy has just explained, the Scrutiny Liaison Committee and the Corporate Services Panel are concerned by this amendment. We have had to fight back against attempts to curtail the work of Scrutiny on numerous occasions, and although the chair of P.P.C. suggests that this will only be the case in this particular scenario for election years it still impedes the work of Scrutiny by placing unreasonable timeframes on what are some of the most important pieces of policy that will come before any Assembly. It would have been far better had Privileges and Procedures considered this in advance prior to their bringing forward the changes that took the date of the election to June as opposed to May. That change is deeply regretted.

**The Deputy Bailiff:**

Does any other Member wish to speak on the proposition? If no other Member wishes to speak I call upon the chair to reply.

**4.1.2 Deputy C.S. Alves:**

I thank the Senator for her contributions. Ultimately the change from May to June was one that was made by the Assembly as a whole, so it was the decision of the Assembly and this was brought to the Assembly’s attention when it was proposed initially. So I would like to make the amendment please.

**The Deputy Bailiff:**

In a moment the Greffier will add a vote to the chat channel of this meeting. The vote is now open and I ask Members to cast their votes. If all Members have had the opportunity of casting their vote then I ask the Greffier to close the voting. I can announce the proposition has been adopted.

<b>POUR: 34</b>		<b>CONTRE: 8</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst		Senator T.A. Vallois		
Senator L.J. Farnham		Senator K.L. Moore		
Senator S.W. Pallett		Connétable of Trinity		
Senator S.Y. Mézec		Connétable of St. Mary		
Connétable of St. Helier		Deputy G.J. Truscott (B)		
Connétable of St. Lawrence		Deputy K.F. Morel (L)		
Connétable of St. Brelade		Deputy S.M. Ahier (H)		

Connétable of Grouville		Deputy I. Gardiner (H)		
Connétable of St. Peter				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				

## 5. Access to Justice (Jersey) Law 2019 (Appointed Day) Act (P.63/2021)

### The Deputy Bailiff:

The next item is the Access to Justice (Jersey) Law 2019 (Appointed Day) Act, lodged by the Chief Minister. For the purposes of this debate the main respondent is the chair of the Corporate Services Scrutiny Panel, and I ask the Greffier to read the citation.

### The Deputy Greffier of the States:

Access to Justice (Jersey) Law 2019 (Appointed Day) Act 202-. The States make this Act under Article 23 of the Access to Justice (Jersey) Law 2019.

### 5.1 The Connétable of St. Ouen (Assistant Chief Minister - *rapporteur*):

I am acting as *rapporteur* for this. I am just trying to figure out who is in the chair. Is the Deputy Bailiff still chairing the meeting?

### The Deputy Greffier of the States (in the Chair):

The Deputy Bailiff has just stepped away because this is an item in which he is conflicted so I am chairing for this item.

### The Connétable of St. Ouen:

This Appointed Day Act takes us another step forward on the route to introducing a new and improved legal aid system for Jersey, underpinned for the first time by statute. It is a piece of work which has unfortunately been delayed by the pandemic and I am pleased now to propose that the Access to Justice Law is brought into effect and this important topic moved forward. The immediate effect of this Appointed Day Act is to bring Articles 1, 6, 7, and 9 of the Access to Justice Law into effect. These are the parts of the law that are necessary to allow a legal aid system for Jersey to be developed, published, consulted upon and laid before this Assembly. I am very grateful to the Legal Aid Guidelines Advisory Committee, working in shadow form, for undertaking all of the work to develop the proposed legal aid scheme, unofficially, as I said, in shadow form. This Appointed Day Act will formally establish the committee, which has an ongoing function under the law to assist the Chief Minister in revising and making the legal aid guidelines which underpin the scheme in Jersey. The committee is an informed body representing a broad range of interests, including the legal profession, the judiciary, the public and this Assembly. Should the Assembly approve this Appointed Day Act today the immediate next step is to take the work of the Guidelines Committee and follow the process set out in Article 7 of the law for publishing and consulting upon the scheme that has been recommended by the committee. This process should begin by the end of the July or, at the very latest, early August, and will run for a minimum of 8 weeks. The Legal Aid Review Scrutiny Panel have received and been briefed on a few occasions on the proposed scheme and I know that from their comments - for which I am grateful - that the panel supports our going out to consultation recommended by the Guidelines Committee. We will then need to consider any representations received from the public, in conjunction with the Guidelines Committee, before laying a recommended scheme before the States Assembly in accordance with Article 7. To be clear, any Member may, within 4 weeks of it being presented to the Assembly, make a proposition proposing that the legal aid scheme which is laid before the Assembly be annulled. However, prior to the scheme being laid before the Assembly we will of course continue to engage with Scrutiny and will arrange a briefing for all Members on the final recommended format of the scheme. We will also brief Members individually or in smaller groups should they wish. The remainder of the law will come into effect on the same day that the legal aid guidelines come into effect. There is no need or requirement for them to be enforced any earlier. I should also emphasise that any future amendments to the scheme will have to follow the Article 7 process, a recommendation from the Guidelines Committee, public consultation, consideration of representations received during that consultation, and then the laying of the amendment before the States Assembly. I also note that Article 7 of the law requires an order to be made setting out how the proposed scheme will be published, and public representations will be received. I have included in that order a requirement for Scrutiny, Citizens' Advice and the Consumer Council to be provided with a copy of the scheme as part of the publication process. If I could touch on Article 11, no win no fee. The only exception is in respect of Article 11 relating to the conditional fee on no win no fee arrangements, which is not brought into effect at all by this Appointed Day Act. This Article requires an order to be made setting out the form of no win no fee arrangements, the type of cases that would be subject to them and any conditions that might be applicable to such agreement. In short, sufficient thought or work has not been dedicated to this matter and before an order would be made the required work would need to be undertaken with all the relevant stakeholders to ensure appropriate arrangements were made. A separate but related strand of work is on how we will fund the new criminal law legal aid scheme given that this is now to be publicly funded.

[16:45]

These considerations are ongoing but with an estimated annual cost of between £750,000 to £1.5 million. This regulation has been lodged under Article 6 of the Costs in Criminal Cases (Jersey) Law 1961 to ensure that no additional costs may be claimed by lawyers of defendants who are in receipt of legal aid beyond those payments that are received under the scheme for their work. This will close the current practice of potential windfalls being available to lawyers of criminal legally-

aided clients who are acquitted and is balanced out by the new practice of regular payments to legal aid lawyers. The current lottery is replaced with consistent and guaranteed payments for any criminal legal aid work. The proposed regulations also seek to close off the existing liability of the taxpayer to cover the costs of very wealthy defendants, potentially running into hundreds of thousands, and sometimes millions of pounds, a vulnerability that has been highlighted by our law officers and which we will seek to appropriately address. In adopting this Appointed Day Act the Assembly will be moving a step closer to implementing a new and improved legal aid system for Jersey, one that has been developed by subject experts on the Guidelines Committee and is now ready for public consultation. The Government's firm objective remains that this new scheme will be in place by 1st January 2022 and, in my previous existence as a Centenier, I think this will be a tremendous improvement on the system that is in place and provide a great deal of certainty for those people who are being prosecuted through the courts. I hope Members will support the continued progress of this report and I make the proposition.

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

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

**5.1.1 Deputy S.M. Ahier of St. Helier:**

The Legal Aid Review Panel, of which I am the chair, was established in August 2018. It has been tasked with providing scrutiny of the changes to the way individuals are supported through the legal aid system in Jersey. The panel is pleased that P.63 has now been lodged, however, this has been somewhat delayed and there remains concern about whether a new legal aid scheme will be implemented in a timely manner. The panel is keen to seek the assurance of the Chief Minister that the necessary elements that progressed the legal aid guidelines, including a period of public consultation, do not delay the finalisation and implementation of the scheme. The panel has corresponded with the chief executive of the Jersey Law Society as a member of the shadow Legal Aid Guidelines Advisory Committee, who has reported that the shadow committee had met on a regular basis in late 2019 and early 2020, reaching agreement on the basis of the scheme to be placed before the Chief Minister prior to the Island Plan debate at the end of March 2020. Sorry, was there some interference.

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

Yes, it sounds as if somebody else might have their mic on, if I could remind Members if you are not called to speak please turn your mics off. Do you want to carry on, Deputy Ahier?

**Deputy S.M. Ahier:**

This has been confirmed within the report of P.63. It is understood by the panel that the expectation of both the shadow committee and Jersey's legal profession is that the public consultation will be completed in sufficient time to allow finalised guidelines to be implemented by the end of 2021 at the latest. Adoption of P.63 will allow the Legal Aid Guidelines Advisory Committee to be formally established and mark the start of a maximum 6-month period culminating in a report to the Chief Minister to assist in finalising the legal aid guidelines. It is anticipated that the time needed to produce this will be minimal and certainly shorter than the allowable 6 months due to the collaborative work already carried out by the shadow committee. The panel is of the opinion that the Chief Minister must finalise the legal aid guidelines with all due haste. Representations from the public should be sought without delay following the forwarding of the recommended guidelines by the Legal Aid Guidelines Advisory Committee to allow for their finalisation and implementation before the end of 2021. The panel would urge the Chief Minister to produce and publish a timeline for future progress, which outlines the steps to implementation to ensure that the deadline for the end of 2021 is met. There have been some changes to the proposed guidelines, which were outlined in the appendix at P.23. The panel will be carrying out scrutiny of the guidelines once finalised and would provide

comment to the Assembly in due course. As identified, the Legal Aid Guidelines Committee has been meeting in shadow form since 2019 and I would like to thank all of the committee members for their hard work in bringing forward their recommendations. It is most appreciated by us all. In conclusion, the panel recommends that the Access to Justice Law 2019 (Appointed Day) Act proposition should be adopted by the States Assembly and that an updated legal aid scheme should be implemented by the Chief Minister by 1st January 2022.

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

Before we move to the next speaker; Senator Moore, I understand you wish to declare an interest?

**Senator K.L. Moore:**

Yes, please. My husband is an advocate and I see that as a direct pecuniary interest.

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

We note your interest and that will be recorded in the minutes.

**5.1.2 Deputy J.H. Young:**

Obviously being a former member of the first gestation of the Access to Justice group during 2011 to 2014, and having spent a number of years working for a Jersey law firm, I was very pleased to see that we are making progress. This is very good news. But equally the issue of timing is very crucial, which Deputy Ahier has highlighted. In particular, I want to know what is the assumption about funding because there is no question this introduction of improved access to justice is going to require public money. I would like to have an early view - I cannot be sure because this is about the Appointed Day Act - about whether there is any anticipation of any funding delays in that, which I assume is to do with the Government Plan. Obviously I am grateful that the shadow committee has been doing its work. Obviously the timing, like everything else, these pieces of important social legislations have been delayed due to COVID but it is good to see that work has carried on and personally I am looking forward to seeing what the draft or the amended, because I see in the report that the draft regulations or the proposed scheme, as it were, which were discussed in 2019 and circulated at that time have been revised, and I am pleased to see that because there are some things in it that were likely to be contentious. My expectation is that those guidelines are, when they come forward, will relate to criminal cases. I do not think they will be extending to civil cases. That has been a disappointment because many people have serious problems to access to justice, particularly in family law issues where there are so many. Of course the past or previous guidelines, which were agreed by the Jersey Law Society under the old arrangements, which this arrangement replaces thankfully, did put a very restrictive ...

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

You have frozen, Deputy. Deputy Young, you appear to have frozen just at the point you said “very restrictive”. That is the last we heard, the word “restrictive”.

**Deputy J.H. Young:**

I am going to turn my camera off because I think that seems to prompt the system freezing. It is very restrictive in both where a litigant that seeks legal aid has an interest in a property, which is very often the case in family law matters and indeed has any savings, and the income limits were very low. I am looking forward to seeing what the new limits are because I think that access to justice for people in those litigation matters is important. I am also a bit disappointed, frankly, about the situation with conditional fee agreements because conditional fee agreements obviously take place ... certainly I believe in the U.K., and they are frequently used. They are used for people that effectively have no money but have a valid legal case where they can get their arrangements funded through a law firm and very often an insurance company who will take a view on the chances of success in the potential claim. Jersey has been resistant to this for legal reasons, which I do not

understand, but I think the effect of that means that until we can resolve this issue of conditional fee agreements in Jersey then those things cannot happen. I think that is a real shame because how long would people have to wait for that opportunity to come about. Frankly, litigation is a high-risk business and unless ordinary people with ordinary sums who have very valid cases have arrangements in place where they can be confident, or at least that they are not going to go into bankruptcy - we spoke about bankruptcy earlier today - and I think Members will quickly see the connection there. Bankruptcy could be an outcome of litigation if you lose. Bankruptcy would result with catastrophic effects, which means usually loss of home and your livelihood and so on. Conditional fee agreements, in my view, I hope the committee will give that real priority. I encourage very much the *rapporteur* and the Chief Minister to deliver on the undertakings made by the *rapporteur* today. I shall certainly be keeping a close eye on that. But obviously this is a good move forward but I do not think anybody should feel that this is the end solution to improved access to justice. It is a good piece of progress but I think more will need to be done beyond that time.

### **5.1.3 Senator S.C. Ferguson:**

Can we please include legal aid for the Information Commissioner and the data protection? I currently have a client having problems obtaining information but the current legal aid scheme exempts this from having legal aid. It needs medical support to support whatever the problem is. The certificate just says "tough luck" so can we please include that?

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

I must say this has been a long time coming. Unfortunately I do not share the optimism of some of the previous speakers. In the time I have been in the Assembly I have helped many people as a McKenzie Friend, going along to various legal actions they have taken part in. I must say, as a result of that, I have a very jaundiced view of our legal system and our legal aid system and many of the other things that have gone on. This may bring about change, we do not know.

[17:00]

Until we see the detail that is coming forward we will not be in a position to see whether it is going to remedy some of the wrongs that we have seen and some of the faults in the system. The "no win no fee" provision may be a good thing because some people who cannot get justice at the moment may be able to use it. But it also could be used in the wrong way because many people if they get ambulance-type chaser lawyers who are prepared to bring an action against someone, many people could find themselves being sued by a lawyer on a "no win no fee" basis who is going to get his costs covered by the person that is being sued. We could have situations where people ... I would not say vexatious-type claims but we could have a situation where people are sued, feel they are going to incur great expense and feel they have to concede very early and hand over certain sums of money. That would be totally wrong. We have many problems with our legal system at the present time and this is just one piece of the puzzle. For example, Senator Ferguson, we have the same client in effect and we are helping. What I would say there is one of the problems we have is the prescription periods for people bringing actions, especially when States departments are involved. Because what happens, if you start fighting a States department, and one of the things you want is to get information to help you with your case. States departments can be notoriously bad at providing information and, I would argue, very often in breach of the Data Protection Law and because no fines are given against them we have a situation where you can spend over a year trying to get information from them. Prescription in some cases, for example, one person I have been helping had a medical negligence case against the hospital and yet she could not get the information from the hospital and was coming up to the 3-year prescription period, after which she cannot sue. This is one piece of legislation but we need to look at the whole legal system in the round and bring forward changes. For those Members who are expecting this to be any better than we have at the moment, personally I am not sure it will be. I hope I am wrong. If I am wrong I will be the first to say it in the States and



compliment all the people concerned. But I have my doubts. I hate to be a glass half full person but it is certainly not something that I can see advancing very quickly and probably not in time for the next election.

#### **5.1.5 The Deputy of St. Mary:**

Perhaps I could respectfully suggest to Members that this is not the occasion to look too keenly into the new guidelines themselves. This is the Appointed Day Act and once the consultation period has taken place the regulations will be submitted to the States for further comment at that stage. The other aspect I do make is that the guidelines approved thus far have been so approved by a committee of members of the legal profession and stakeholders, including law officers and other worthy people. To a certain extent, they have been agreed by the lawyers, perhaps not as they would have wished initially, but they have been agreed and I am not sure to the extent to which they should be challenged by the Assembly. My main point there is to follow up the address given by the chair of the Legal Aid Review Panel, which I am also a member, as to timing. My recollection is that we saw the Law Society and others shortly after the election and they were expecting the new guidelines to be in operation by the following 1st January, that is 2-plus years ago. I think the Law Society would be aggrieved with some justification if these were delayed any further. I note the timetable set out by the Constable of St. Ouen that consultation will start almost immediately, and that is obviously to be welcomed. I very much hope that the proposition with the guidelines will come back to the Assembly in good time, and certainly in time for the new system to be in operation by 1st January next year.

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

I am amazed by our Assembly's ability and Members' ability to speak about a document they have not seen yet for quite as long as they have. I really wanted to speak to reassure. I have seen this document. I have worked on this document. I have worked alongside those members of the Law Society, the Judicial Greffe, the Bâtonniers, magistrates, as part of the Legal Aid Guidelines Committee and alongside, very importantly, Deputy Tadier. We have worked on these guidelines and I am looking forward to the public and other States Members being able to see them. I think they move us forward importantly in a way which will create access to justice, particularly on the criminal justice side. But, to address Deputy Young, they also include elements of civil cases that the legal aid system will pick up. I genuinely think this is an important step forward. As far as timelines are concerned, the Deputy of St. Mary is absolutely correct and Deputy Ahier, as chair of the Legal Aid Review Panel is correct, we cannot waste time. We need to get this through. Lots of people have done a lot of hard work to make sure that the guidelines are ready and that the new system is able to be in place for 22nd January. While Members will have their views I am sure, and the guidelines will be far from perfect, I do not think where they fail it will not be so much for being wrong, it will be more people who think something should be included, which perhaps is not included. That sort of thing. As far as this Appointed Day Act is concerned, I urge all Members of the States to support it and I look forward to everyone being able to have their say on those guidelines. From our perspective, as States Members, the best place is through that consultation period rather than bringing amendments to the Assembly and trying to design this by committee, which will be incredibly hard. The committee has already spent the best part of 2 years working on them.

#### **5.1.7 Senator T.A. Vallois:**

Considering the conversation that has been had so far around the guidelines, I want to focus in on the financial and manpower implications part of the report. It says: "It does however enable guidelines to be decided upon in due course which could have resource implications." Considering we have not had shared the possible guidelines that could be in place, and we just heard from the last speaker about what those guidelines might look like, what reassurances could the *rapporteur* for this proposition give us about the possible resource implications and what they might look like in the forthcoming Government Plan, and what impact that might have on other departments' resources?

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

Does any other Member wish to speak? If no other Member wishes to speak then I close the debates and I call upon the Connétable of St. Ouen to reply.

**5.1.8 The Connétable of St. Ouen:**

I thank all speakers for their contributions. Firstly, dealing with Deputy Ahier's speech, and I thank his committee for their assistance in preparing this. It is our intention to publish the guidelines next week and that will start the process and the timelines I have in front of me means that we will, assuming everything goes smoothly, arrive with the legislation on our books on 1st January. I think we all accept it has taken a long time to get to this stage and it is important that we basically get a move on. Moving to Deputy Young and also Senator Vallois, the funding and manpower considerations will form part of the Government Plan and are being considered at the moment but what we do know is cost is going to be between £750,000 and £1 million and that most of the manpower work will be done by the Judicial Greffe. They already handled legal aid cases, in conjunction with the Bâtonnier, I do not think that is going to mean an enormous increase of personnel. It just means they will be handled in a different way. Moving on to the "no win no fee" part of the proposition; yes, Deputy Young is entirely right, it is an important question, but to be frank there has not been the time to do that work and as soon as we have got ... and we believe that there is a priority to get this into legislation and working on 1st January. As soon as that happens then we will start the work on producing the guidelines for this particular part of the legislation and discussions will take place with the Legal Aid Committee. I do not have an answer for Senator Ferguson other than to say that her points about legal aid for actions against the data protection, we will take that on board and we will get back to her individually because I do not have an answer off the top of my head. I thank Deputy Higgins for his comments and note his concerns about the Jersey legal system, which he has expressed many times before. What I can say is that, as a Centenier who has had to deal with the previous legal aid system, this new system is streets ahead and provides a lot more reassurance to defendants that they will, if they do not have the means, receive legal aid. Also because we are using a panel of lawyers who are experienced in criminal cases, when the matter is a criminal case that they will receive ... I am not being disrespectful to advocates who are called to defend cases in the Magistrate's Court at the moment but some of them are relatively recently qualified and perhaps do not have the experience required to deal with this in the same way that the lawyer who has a lot of experience with criminal cases has. It does give some certainty that defendants will be defended properly by people with experience. I thank the Deputy of St. Mary for his comments and, in terms of timing, yes, I think we are all agreed the quicker we can get this into legislation the better and it is our intention to start this process as quickly as we possibly can. The same for Deputy Morel, who I thank for his comments, and would give him the same reassurance. Hopefully I have covered Senator Vallois' comments as well. With that, I just would like to commend this proposition to the Assembly. As I said a couple of times before, as somebody who has had the experience of using legal aid for people who I have been prosecuting and seen the problems that they have had at times, this will definitely be an improvement and I would like to thank all the officers and the Guidelines Committee for all the hard work that they have done to get it to this stage. I make the proposition.

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

Do you ask for the appel, Connétable?

**The Connétable of St. Ouen:**

I do, please, yes.

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

In a moment the Greffier will add a vote into the chat channel of this meeting. The vote is now open and I ask Members to cast their votes. If all Members have now cast their votes I ask the Greffier to close the voting. I can announce that the proposition has been carried.

<b>POUR: 39</b>	<b>CONTRE: 0</b>	<b>ABSTAIN: 1</b>
Senator I.J. Gorst		Senator K.L. Moore
Senator L.J. Farnham		
Senator S.C Ferguson		
Senator J.A.N. Le Fondré		
Senator T.A. Vallois		
Senator S.W. Pallett		
Senator S.Y. Mézec		
Connétable of St. Helier		
Connétable of St. Lawrence		
Connétable of St. Brelade		
Connétable of Grouville		
Connétable of St. Mary		
Connétable of St. Ouen		
Connétable of St. Martin		
Connétable of St. John		
Deputy J.A. Martin (H)		
Deputy K.C. Lewis (S)		
Deputy M. Tadier (B)		
Deputy M.R. Higgins (H)		
Deputy J.M. Maçon (S)		
Deputy of St. Martin		
Deputy L.M.C. Doublet (S)		
Deputy R. Labey (H)		
Deputy S.M. Wickenden (H)		
Deputy of St. Mary		
Deputy G.J. Truscott (B)		
Deputy J.H. Young (B)		
Deputy L.B.E. Ash (C)		
Deputy K.F. Morel (L)		
Deputy G.C.U. Guida (L)		
Deputy of St. Peter		
Deputy of Trinity		
Deputy of St. John		
Deputy M.R. Le Hegarat (H)		
Deputy S.M. Ahier (H)		
Deputy R.J. Ward (H)		
Deputy C.S. Alves (H)		
Deputy K.G. Pamplin (S)		
Deputy I. Gardiner (H)		

I am afraid, Deputy of Grouville, your vote came after the announcement of the vote so it will not be counted. The proposition has been carried.

## **The Connétable of St. Ouen:**

I would like to thank Members for their support.

## **6. Draft Amendment (No. 53) of the Standing Orders of the States of Jersey (P.66/2021)**

### **The Deputy Bailiff:**

The next item on the Order Paper is Draft Amendment (No. 53) of the Standing Orders of the States of Jersey, P.66, lodged by the Privileges and Procedures Committee. I ask the Greffier to read the citation.

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

Draft Amendment (No. 53) of the Standing Orders of the States of Jersey. The States make the following amendment to the Standing Orders of the States of Jersey under Article 48 of the States of Jersey Law 2005.

[17:15]

### **6.1 Deputy C.S. Alves (Chair, Privileges and Procedures Committee):**

The Electoral Observers Commission's second recommendation was that consideration should be given to the formal proroguing of the States Assembly in advance of the election. Following the Assembly's adoption of Deputy Maçon's P.88/2018 States of Jersey elections: pre-election procedures for States Meetings and the lodging of propositions as amended on 26th June 2018, it was agreed that the Assembly should not ordinarily meet in the week before the week in which election candidates were nominated. It was also agreed that the lodging of propositions other than amendments should be prohibited during the period from 2 months before the date on which the election candidates were first nominated until the date of election but that this prohibition would not extend to the lodging of propositions that concerned rescinding Ministerial Decisions or Orders, propositions relating to land transactions under Standing Order 168 and propositions lodged under alongside petitions. P.P.C. was also tasked with undertaking a more general review of the purdah rules applying to the Assembly, Scrutiny Panels and committees. The changes being proposed today to the Standing Orders will enable a new Council of Ministers to be appointed as soon as practicable after the election while stilling giving Members, especially those brand new to the Assembly, sufficient time to determine which candidates are best placed for the roles available. P.P.C. proposes removing the word "working" from the timing of the appointment of Ministers and Scrutiny Panels as well as the chairs of P.P.C., P.A.C. (Public Accounts Committee), Planning and Jersey Overseas Aid Commission. Following the Assembly's decision to move the election date to late June from 2022, this change will enable the Assembly to meet sooner after the appointment of the Chief Minister Designate to ensure that key appointments will have been made by the Assembly before the summer recess. The implementation of P.88/2018 will impact not just on Ministers but also on Scrutiny Panels, and the committee recommends that some changes are made to the codes of conduct for both Ministers and Scrutiny in relation to holding meetings and the publication of reports and press releases during the period when the Assembly is prorogued. The main changes are as follows. For Standing Order 3: Sessions of the States. This ensures the Assembly completes all of its appointments after the election before the summer recess and addresses paragraph (a) of P.88/2018. Standing Order 7: the times when the States shall not meet. This defines the proroguing period as commencing one week before in which nominations are announced until the election day. Standing Order 19A prohibits lodging 2 months during pre-election period and defines that period. This addresses paragraphs (b) and (c) of P.88/2018. Standing Order 34: withdrawing a proposition before debate. All propositions which remain lodged after the Assembly prorogues should be considered to have been withdrawn. This allows new Ministers the ability to consider policy matters afresh. Standing Order 112: order of and time for selection and appointment following ordinary election. This reduces the time between the appointment of the Chief Minister and the Council of Ministers to

5 days. It removes the word “working”. Standing Order 164: suspension of Members of the States. This is updated to remove reference to a 3-year term, which is in paragraphs (6) and (9). P.P.C. has consulted with the Council of Ministers and the Scrutiny Liaison Committee regarding these proposals and, as I have said, there will need to be a review and changes to made to their respective codes of conduct. Discussions need to be had as to what constitutes housekeeping/caretaker matters, which is all that should be dealt with during the pause between the old and the new regimes. This Assembly disagreed with P.P.C.’s previous suggestions that it was not appropriate for outgoing Members to maintain their positions until the swearing in of elected or re-elected Members and we withdrew that proposal during the debates in March. We have instead brought forward changes to the elections process so that newly-elected Members take that oath as soon as practicable after the election to ensure that Members leaving the Assembly do not retain powers once the electorate has chosen others to take their place. Of these 6 Standing Order changes proposed today we recognise that the proposal that all public business left undebated at the end of the last meeting before the Assembly prorogues for the election should be deemed withdrawn may be seen as the most controversial. Nothing prohibits those propositions from being relodged as soon as the elections are over by those who have been re-elected although in the spirit of P.88 it would be difficult to see how ministerial matters could be taken forward until the new Council of Ministers was appointed. Let us not forget how things were in 2018 after the last elections when Deputy Maçon proposed P.88. That was the start of the 4-year term for all Members. We had all gained an extra year and it can be argued that Ministers have had extra time to ensure effective work planning and key targets have been met. In 2018 the new Scrutiny Panels were faced with scrutinising legislation down for debate at the very first meeting after the elections and had to work at great pace to be ready for those debates just a month after the elections and only a few weeks after panels had been formed. That kind of pressure does not produce great outcomes and there is a huge danger that important aspects will be missed when you are working against the clock. P.P.C.’s proposals will make it much easier in future for Scrutiny Panels and new Members to get to grips with the job at hand and ensure that poor decisions are not made in haste. These proposals will bring clarity as to when Government business can be lodged and when Scrutiny reports can be presented in the run-up to the election. Ministers will need to agree specific guidelines for the signing of Ministerial Decisions to ensure any decisions made can be adequately challenged by the Assembly. I propose the amendment.

### **The Deputy Bailiff:**

Is the amendment seconded? [**Seconded**] Do Members wish to speak on the draft amendment to the Standing Orders?

#### **6.1.1 Deputy J.H. Young:**

Obviously we are dealing with a fast-moving situation with changing of the rules as we approach the election now, with the various things. I wonder if my understanding is right. We have now fixed the election date on 22nd June, which I think means the nomination date is 10th May, which I think the rules, the 2-month ban on any propositions being lodged would therefore be 10th March. My query concerns the Island Plan debate, which is scheduled for pretty well around that time. Obviously we have amendments - 60 of them - we are likely to get amendments to amendments following the inspector’s reports, which I am not sure what day that will be. Then under the Planning and Building Law Order the Minister is able to lodge corrective, what I would describe as, technical amendments as a result of clearing up issues which are resolved during that final run down of the Island Plan. I would like to know: does that 2 months in any way inhibit that process where we can effectively put the Island Plan to bed and not get caught out in any unintended way with the application of that rule. The exceptions that the chair listed spoke about petitions, rescindments, rescindments to Ministerial, but I did not hear any reference or see that. I would like the Minister please to clear that up. All the other changes seem very sensible. I certainly was very keen on having a clear purdah; before there were problems. Lots of decisions were made I think, which were really not business in train during

the last handover, as it were. I think that is really good that that is cleared up. I can also see the point that any proposition that is not debated and approved by the States, I am not quite sure what that date will be, presumably that is 10th May, I suppose. I am not sure when the last States sitting will be. I do not think we have a date for that yet anyway but that is quite important when that date is, because obviously that Standing Order would effectively bomb out anything that is outstanding at that key date. That sounds right in principle but I would like to hear from the chairman that we are not going to see any unintended effects of that rule. My reservations are just purely about practicalities and I wait to hear what the chair says. Obviously, following the recommendations, the changes do exactly what the changes being sought through the Commission and so on, and the States wanted to see, does that. I wait for the comments.

### **6.1.2 Senator T.A. Vallois:**

In the actual report to the proposition, which is page 4, which I am going to refer to, it specifically states that: "The implementation of P.88/2018 will impact not just on Ministers, but also on Scrutiny Panels and the committee recommends that some changes will be required to the codes of conduct for both Ministers and Scrutiny in relation to holding meetings and the publication of reports and press releases during the period when the Assembly is prorogued." I think what has been put forward here is immensely sensible but of course what comes after that, like the last speaker was talking about in terms of guidance and following those rules appropriately, I think it is appropriate for me now to ask Members to recognise a P.P.C. subcommittee are looking at the democratic accountability and governance of the States for both Scrutiny and Ministerial Government, that we are considering the role of the code of conduct and how that works, not just with regards to this particular area but across the whole scheme of how our democratic function works. I hope that Members will be forthcoming in their attendance next week at workshops to ensure that we can make sure that whatever comes about in terms of those codes of conduct and we can bring them in most swiftly, if needed, to ensure that a clear and level playing field is achieved.

### **The Deputy Bailiff:**

Does any other Member wish to speak on these amendments? I call upon the chair to reply.

### **6.1.3 Deputy C.S. Alves:**

Just to address the Island Plan query. Amendments, *et cetera*, to the Island Plan, they are lodged under a statutory process, so they are not affected by the Standing Order changes. In addition, amendments are not affected by the Standing Order change. Amendments can still be lodged. With regard to deadlines, so the 22nd March will be the deadline for lodging. The actual announcement for nominations is 18th May although the nomination week, if you like, opens from 10th May. But nomination day is the 18th, and that is the date we will be working from. We imagine that the last meeting of the States will be the week of 3rd May. Deputy Young was right in saying that obviously these dates have not been set in stone yet because we do still have to debate whether we are going for a 2-weekly or 3-weekly sitting in September for the following year. But we have obviously put the Island Plan debate already into the calendar and we can also put this week of 3rd May as the last sitting and work around those dates. We would have to be finished by 6th May at the latest. I would like to thank Senator Vallois there for her comments and the work that her and the members of her subcommittee are doing. Also just to urge Members to please attend those workshops that are going to be on next week. If you cannot attend them, and you would like to, please do get in touch with Senator Vallois or myself and I am sure we can look at doing something else or putting on something else to accommodate Members. I appreciate that it is obviously going to be summer recess and there may be Members who will be away. I hope I have clarified everything there. If not then please, Members, do come back to me if there is anything else you require clarification on. With that I make the amendment.

### **The Deputy Bailiff:**

In a moment the Greffier will add a vote into the chat channel of this meeting. She has done so and I invite Members to cast their votes.

[17:30]

If all Members have had the opportunity of casting their votes then I ask the Greffier to close the voting. I can announce that the amendments to Standing Orders have been adopted unanimously.

<b>POUR: 40</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator S.C Ferguson				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy of St. Martin				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

**Senator L.J. Farnham:**

Could I propose the adjournment please?

**The Deputy Bailiff:**

The adjournment is proposed. Is that seconded? [**Seconded**] Does anyone wish to speak against the adjournment? The States stand adjourned until 9.30 a.m. tomorrow morning.

**ADJOURNMENT**

[17:32]