

STATES OF JERSEY

OFFICIAL REPORT

WEDNESDAY, 18th JUNE 2008

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

PUBLIC BUSINESS – resumption

1. Draft Crime (Disorderly Conduct and Harassment) (Jersey) Law 200- (P.55/2008)

The Bailiff:

Now, we come back to Public Business and the debate continues on the principles of the Draft Crime (Disorderly Conduct and Harassment) (Jersey) Law 200-.

1.1 Deputy C.H. Egré of St. Peter:

I rise, wishing to support this proposition however I do have serious reservations. This increases the power to the States of Jersey Police and the Honorary Police in a very serious and considerable fashion. One of the concerns that I have is the accountability of the police to the public. We do not have a Police Authority as yet and I would have hoped that those foundations would have been put in place prior to further powers being given to our police. We do not have a proper functioning independent Police Complaints Authority in my view. I have got 3 cases of the parishioners at the moment that are, I would suggest, not being dealt with as I would have hoped as far as police complaints are concerned. I do not wish to go into any great detail other than to say I do feel that there needs to be a serious review in that direction. Historically, Sir, in the days of the committee structure, we did have a function as almost a pseudo police authority where the police were directly accountable to the Committee and therefore were directly accountable to at least 5, if not more, minds. We are not in that position at the moment. I do feel there could be possible abuse of the facility that we are putting in place and without that level of accountability I do feel it difficult to support the proposition.

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

I am not sure if now is the right moment or if not later can I ask the Minister when we get to the articles that we propose the articles separately.

The Bailiff:

You want the articles taken separately? Well, that would be the usual thing certainly.

Senator W. Kinnard:

In terms of presenting them I am happy to take the articles separately to present them, yes, but I think we vote on the whole proposition.

The Bailiff:

We are debating the principles at the moment.

Deputy J.A.N. Le Fondré:

I appreciate that. I was going to presume that any specific comments on particular articles would be dealt with at the point when we vote on the articles and on that basis I will stick to very general comments. Obviously the early version of this law was considered by the Assembly over a year ago, after which the proposition was withdrawn by the Minister. I have to say, speaking personally, I think it is fair to say in the last few days Members have sharply focused their minds on the importance of the exact drafting of legislation, particularly in dealing with these sorts of areas. I do support the general thrust of the law, but have quite specific concerns at Article 2, and I am not too sure whether I would support that particular article yet. But I think I will deal with those when we get to Article 2, Sir. I do welcome the changes the Minister has made. I am concerned that the rewrite has not necessarily gone far enough, and is not clear enough, and I will look forward to her explanations when we get to that point. I do continue to support the law in respect of harassment and I will be supporting the principles on that basis. I would like to ask, while I am standing, Sir, what I hope is an extreme point of clarification from the Attorney General. It is something I emphasise it is not something that crossed my mind, but it was put to me. I do not think it is a valid

interpretation of the law, but I would like also the Attorney General to confirm that fact. Also if I can, I would appreciate it is a detailed question, but it is to give him some notice of the query which I have put to many Members as well; under Article 2 I am assuming that in no way can Article 2 be interpreted that the use of words within the sight of someone cannot refer in any shape or form to written representation and I would appreciate if he could consider that and come back to us in due course. I would say that my understanding, having looked up in the, obviously, English dictionary of the word “use” under Older English, it can refer to “to write” and obviously “use” is not defined anywhere else in the law. I would welcome his comments. Hopefully he is going to it as an extreme interpretation and that it is not a valid interpretation and I would like him to confirm that for me.

1.3 Deputy G.C.L. Baudains of St. Clement:

I will be very brief. Generally speaking, I believe this is to be welcomed. I do however have one or 2 concerns as I think Deputy Martin outlined yesterday afternoon, and I am not absolutely sure at the moment whether I will be supporting this. My concern, as usual, is not what good a law can do, but the potential for it being misused and there are areas in here where I think I am particularly concerned about the interpretation of dwelling and such things. I always believed that a man’s home was his castle. It appears that it is not any more, but on the other hand of course that is balanced by we do not want not to be able to address the issue of domestic violence and things like that. I am just slightly concerned that somebody who gets overly enthusiastic about this we could end up finding victims being charged under this law as opposed to those who really should be, Sir.

1.4 Deputy G.W.J. de Faye of St. Helier:

I was most interested when the Minister put forward this proposition to hear a number of hypothetical examples that referred to the various changes that the proposed legislation aims to tackle. It rather took me back to my university law tutorials where similar hypothetical cases would be put up for discussion and of the 2 persons concerned, which one was breaking the law and so on and so forth. What is interesting though about hypothetical cases is that one can only just slightly change the margins and a very different thrust is put on the actual proceedings taking place. The Minister, for example, I think when she was looking at a possible harassment incident of someone following a lady down the road, put in the qualification: “and the lady burst into tears.” These are all the little changes that can take place to, in a qualitative sense, adjust a particular hypothetical case and consequently may adjust the minds subsequently of a jury or the magistrate if such an event becomes a course of criminal prosecution. I for one, and I hope most Members, have clearly understood the difficulties of the abilities of the police to prosecute certain cases under the existing law. The drunk and disorderly incidence is one in point where, as I understand it from the Minister, disorderly behaviour may be taking place, but if it is not linked with drunkenness the authorities are effectively powerless. I do though want to draw from that one single, I think, and salient feature and that is that we are now moving the goalposts and I would ask the Minister before she departs from us, for what I hope is a very long well-deserved and graceful retirement, that she does pen in the Department of Home Affairs diary somewhere that a review of this law will take place possibly in 2 years’ time because I think it is very important that we do keep tabs on how new legislation is operating. Clearly, one of the concerns I would have is the interpretation of what now will be, for example, disorderly conduct. In the same way as one person’s terrorist is somebody else’s freedom fighter, there is bound to be a grey area in just what constitutes disorderly conduct and given that we are in the middle of European football championships what may be seen as, for example, very innocent and exuberant celebration of football victory in the streets of St. Helier may obviously be regarded by others as a gross intrusion of their rights to peaceful enjoyment of their residence. So, I think that clearly outcomes will follow from the adoption of new legislation, but I would ask that the Minister does ensure that it is looked at over a sensible period of time to make absolutely certain that there are no unintended consequences of what this law is trying to achieve.

1.5 Deputy J.G. Reed of St. Ouen:

I would just like the Minister, when she sums up, to deal with the issue of proportionality and when and how the offence is dealt with, if and when and how it is determined. Because my concern is that as we are well aware we have a number of youngsters, 16, 17 years of age, that from time to time do get into trouble and I would like to know whether or not if these youngsters commit an offence under this law, how they will be dealt with and can they indeed be dealt with at the Parish Hall level even if they have committed, and it is shown that they have committed, an offence under this law.

1.6 Deputy D.W. Mezbourian of St. Lawrence:

Very briefly, I concur with what the Deputy of St. Peter said earlier about the Police Authority and the Police Complaints Authority and the fact that we must be sure, we must be absolutely certain that if this law is passed it will be dealt with correctly by the States of Jersey Police. In fact the Attorney General, during the last debate, pointed it out to us quite clearly that it is for the Assembly to balance the potential downside if the police do not perform their convention rights against the upside in creating a structure for what will allow the police to deal with public disorder of the kind that the Minister has set out today. Similarly, I agree with Deputy de Faye said and I too read the report in the *J.E.P. (Jersey Evening Post)* last night concerning some of the Portuguese community who feel that they will be restricted perhaps by using their horns during the European Cup, and I see Senator Cohen is looking at me questioningly. The report in the paper, Senator, referred to some of the Portuguese community. It is their tradition to hoot their car horns by way of celebration. Similarly, as we probably all know, the French culture during wedding celebrations, their tradition too is to sound their car horns. I do have some concerns whereby at times we try to absorb the cultures of other communities into our Island way of life and yet here we are possibly about to approve legislation that I think would in fact restrict the expression in some way of their culture. So, I have some difficulties with the disorderly conduct. Finally, Sir, again with reference to what Deputy de Faye has said regarding a review of this legislation if it is indeed approved, I wonder if the Minister will explain firstly why in bringing forward this legislation she has not listed, as indeed other jurisdictions do, what constitutes disorderly behaviour and having given that explanation or that reason perhaps she will also confirm that in her notes to the future Home Affairs Minister she will direct that perhaps consideration be given to listing what constitutes disorderly behaviour.

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

As the Minister pointed out in her introduction, the members of the Honorary Police were consulted on this and certainly the feeling among its members is that this will in a way add another quiver to their bow in their ability to deal with young people, which is now one of the main tasks which they face across the Island. We heard yesterday that there are problems in St. Helier and St. Saviour and St. Clement, but certainly all the other Parishes experience similar problems from time to time. I think that the danger is that Members are looking for problems with this law which may or may not exist, but certainly I think that we need to go forward and use this law sensitively, sensibility as the Minister proposed yesterday, and let us see how good a tool it is for our police authorities to be able to use. The Deputy of St. Ouen asked the question about how the Honorary Police will use this at Parish Hall Inquiries and it is and has been for quite a long time a policy of the Honorary Police to try and keep youngsters out of the criminal justice system. I am sure that this will enable youngsters to be pulled up and the error of their ways pointed out to them without them getting involved in the criminal justice system. So, I will support this and I hope that other Members will as well.

1.8 Connétable D.J. Murphy of Grouville:

I took the trouble of meeting with some of my Honorary Police last night to discuss this and to read through it quietly and whereas we have had disservices in Grouville over the last weekend, as you have probably heard, they are basically very much in favour of it. However, as I pointed out to them, that we do need the balances with this and I am personally not 100 per cent convinced that

we have the right balances to go with it because, as the Constable of St. Ouen has already said, our policy in the Honorary Police is to try to keep children out of the court system and not get more excuses to bring them into it. So, I would reluctantly say that, acting on the advice of the Honorary Police, that I will support this, but however I would like to take up Deputy de Faye's idea that in 2 years' time we have a review to see how this is working and make sure it is not being abused or misused. On the other question of the ethnic points brought up by Deputy Mezbourian, I spent quite a lot of my business life in the U.K. and I always remember sitting in a café in Queens Way where 2 Greek gentlemen were, I thought, starting the Third World War with the way they were dealing with it, but it turned out when I inquired that they were just discussing the weather. So, a lot of this thing can be mistaken and I would like to know that we perhaps have some leniency in dealing with these situations. So, all in all, Sir, I will back this motion, but I would like to see it reviewed in 2 years' time.

1.9 Deputy A.D. Lewis of St. John:

It should be no surprise to Members that obviously I want to support this bill. It is an important tool for the police, both the States Police and the Honorary Police. However, I could not just sit here and listen to what amounts to some considerable criticism of the police from certain Members, without saying something. I spent Saturday evening out with the police, as I frequently do, with Senator Ozouf. We were looking at the licensing issue and Senator Ozouf the next day sent a very long email to the Chief of Police congratulating him on the professionalism of his force and this is what I see all the time. I was quite disappointed to hear Deputy Le Claire suggesting that the police simply were not interested in certain incidents that occurred. If Members ever observe that sort of thing, please complain. There is a procedure to do so. That is certainly not the case in most cases. The surveys we conduct suggest that the police, both Honorary and States Police, are very well trusted and do, by and large, an extremely good job under sometimes quite difficult conditions. One of the other things I would like to remind Members is that unlike forces in the U.K. when an officer has finished work in Jersey they do not go away 100 miles away or perhaps a bit less to the leafy suburbs and disappear. They live in our community, so they are transparent. They are seen every day, whether they are working or they are not. They cannot go and hide away, so they do a very good and professional job. Contrary to Deputy Le Claire's suggestion, they do smile. Even when they are in difficult situations they smile and are nice to the public. That is what they do and that is what the honorary force does as well. So, I was quite disappointed to hear those comments. The Deputy of St. Peter criticising the Police Complaints Authority; well, I am assuming he was suggesting they were not independent enough. I can assure him that they are and maybe he is just not hearing the results from the Authority that he would like to hear because sometimes we are disappointed when that happens and I can understand that. But the fact is they are professional and they are independent. The Police Authority - we are working very hard on at the moment and I am sure the Minister will say a few words on that, but we will, we hope, be introducing a shadow authority before the end of this year. In fact, the police law which will enable us to do that will be lodged very, very shortly. One of the things that I noticed out of Saturday night, the custody suite was full by the end of the evening. So believe me there is a real need for this because when I went around the custody suites that evening, most of the notes on the doors where we would put what the offence of the prisoner is, was: "Failed to obey." That is what they were arrested on, not: "Drunk and disorderly" and so on because of all the issues that causes us when trying to get a prosecution. A number of people in the cells that night were arrested for failing to obey. Now, obviously when you get that to court that can cause some problems in trying to get a meaningful prosecution and this is just an illustration and is one of the problems we have with the current use of common law. That is why it is very important that we make these changes. Like I say, I just wanted to really stand up and defend the police. If they, at any time, are not up to standard there is a process and procedure to make sure that they are. The police are accountable, they should be accountable, and they will remain accountable and there will be various extra processes put in place soon that will make them even more accountable so I do not think Members should be fearful of them abusing

this law. They have to implement numerous laws every day of the week and take judgment calls, often split-second judgment calls, and they are trained to do that. They are not going to waste time and resources by frivolous accusations of disorderly conduct. They are only going to do it when it is absolutely necessary. It is another tool in the box to enable them to do their job better.

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

On a point of order, Sir. The Assistant Minister attributed comments to me that I did not make. I never mentioned anything about a smiling policeman or a non-smiling policeman. Those were the words of the Deputy of St. Martin. The other comment about me saying that the police were not responding to issues was not one that I made. He may have misinterpreted the concern relayed to me by a member of the public, who was complaining about the incidents at Havre des Pas. I went to great lengths, Sir, to thank the Assistant Minister and the Minister for their assistance in dealing with the issues.

The Deputy of St. John:

I apologise if I misinterpreted Deputy Le Claire but he did say yesterday that he was disappointed in the response from the police and I thank him for his clarification now and you are quite right, there is not ...

Deputy P.V.F. Le Claire:

Well, I dispute that, Sir.

1.10 The Very Reverend R.F. Key, B.A., The Dean of Jersey:

I was not sure whether to speak on Article 2 at this stage but I want to give the Minister a chance to set my mind at rest. In this Island, we have extremely good relations between the members of the various religious communities and, indeed, between the religious communities and the secular community, and that is a very good thing. Members will be aware, if they followed the news in the U.K. (United Kingdom), of the story a few weeks ago in the press in Birmingham where 2 Christian ministers were stopped by a Community Support Officer because they were engaging in dialogue with young Muslims on the street and having a good conversation about the 2 religions, but this particular Community Support Officer took exception to that and said this was a hate crime and if they did not stop, he would have them arrested. Now, his Chief Constable did show him the error of his ways and, of course, we are a million miles from that ever happening in Jersey, and I quite understand that, but I am just concerned - and as we are into hypothetical incidents - let me paint a small picture. We have a wonderful open air carol service supported by the Tourism Authority in Royal Square. Five hundred people were at the first one 2 years ago, and over 1,000 this last Christmas. I would hate for somebody to be walking past who did not share a Christian faith or who misunderstood what we were doing in celebrating a tradition that the vast majority of Islanders would share and say: "Well, now I have been caused distress by this." I am absolutely convinced nothing could be further from the intention of those who drafted this law, but I am aware that when you go fishing, sometimes you catch more than that for which you have angled. I would love to have my mind set at rest that there is no way in which our basic freedom of speech can be eroded by this law, either at this stage, or by taking up the suggestion that others have made of a review.

1.11 Deputy I.J. Gorst of St. Clement:

I want to speak very briefly. I do, on the whole, support this piece of legislation. The difficulty I have, and which I think that I heard others articulating both this morning and yesterday afternoon, is that it is not possible for this Assembly or any Assembly to legislate for common sense or for the sensitive application of legislation once it has been brought in on statute. I believe entirely that for younger members of society, the way forward to all breaches of law must be through, and continue to be through, the Parish Hall Inquiry which I believe that we have right and is, in fact, a sensitive and common sense application of legislation. The problem, therefore, Sir, I believe that we face is

there is no way that either the Minister can confirm or that we, as Members, can know in advance that the law will be applied in a common sense fashion which is why I wholeheartedly support the suggestion of Deputy de Faye that this piece of legislation, not should, but must be reviewed after probably 2 years of operation, which seems a reasonable length of time. However, I would ask the Minister that in these, what seem to be becoming extensive notes that she is leaving for her successor, that it is not only the department that undertakes this review but that it is undertaken hand in hand with the then Scrutiny Panel of the day so that they are able to take objective evidence from people who may feel that they have been, shall we say, at the rough end of the application of this particular piece of legislation. I hope the Minister will take these comments on board and be able to give me some satisfaction that that is the way that she will approach this particular piece of legislation.

1.12 Connétable T.J. du Feu of St. Peter:

The concerns expressed by a number of Members clearly have to be taken very seriously by the Minister and, for my part, I will lend my support on one condition, that the Minister gives a categorical undertaking that the Police Authority will be in place before the end of the year and that a review will take place within the next 2 years.

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

I welcome this new legislation. The people of Jersey should be able to have peaceful enjoyment of their homes and surroundings. There must be checks and balances in place but I am pleased that this also includes stalking harassment legislation which I believe will give comfort to many people.

The Bailiff:

I call upon the Minister to reply.

1.14 Senator W. Kinnard:

I am very grateful to Members for their generally supportive comments and I apologise in advance if there are any Members that I may fail to mention but I, indeed, thank them for their contribution in any case. Deputy Le Claire, I am grateful for his support and, indeed, his generous comments about the support he did receive from the States of Jersey Police in dealing with incidents that he and his constituents have suffered. I can assure the Deputy that I and my Assistant Minister do take a close interest in the level of anti-social behaviour and disorderly conduct taking place, particularly in the night-time economy and we have just heard from my Assistant Minister that he and Senator Ozouf, in fact, joined a night shift in St. Helier just recently and I am happy to extend an invitation to any Members who would like to join a night shift and become more familiar with how the States of Jersey Police operate when policing for the benefit of our community. I would certainly say, particularly to those who have made critical comments today, that I invite you to join us on one of those occasions. Deputy Le Claire also assumed that I have twice as many police officers than I have. Well, I wish, but rather than the 500 he assumes I have, I have about 240 and those are fewer officers per head in Jersey than either Guernsey or the Isle of Man. On the issue of manpower and financial costs raised by the Deputy, there will be no extra costs resulting from the legislation because it is envisaged that it will be policed with a light touch and used often as a form of prevention and deterrence rather than of enforcement. Deputy Martin and, I think, Deputy Baudains, raised some of these issues. Again, she had some concerns that the law might not be used with the light touch that she wants and I should point out to her that insulting behaviour has been removed from the draft, raising the level of offence. Also Deputy Martin and Members should be aware that I have never introduced A.S.B.O.s (Anti-Social Behaviour Orders) in this law. They are not in this law and they have not been in the recently agreed Criminal Justice Policy and this is because I believe that A.S.B.O.s are indeed a heavy-handed approach, often quickly leading to the criminalisation of young people, and I believe also would be alien to Jersey's culture so we do not have the sorts of tools there either that they have elsewhere. Also, Sir, one has to balance again on the one hand, I think this is a point made by Deputy Mezbourian, an assertion that the police might not use their discretion appropriately in some circumstances against the need to create

a clear legislative structure whereby the police can deal with one of the major, if not the major, public concern that people have about the threat to their quality of life. The alternative, Sir, is not to offer protection to those suffering from threatening, abusive and, indeed, disorderly behaviour. I know the deep concern that the Deputy has for victims of crime and vulnerable people and I hope that what I have said about the light touch approach will mean that she will, in the end, feel that she can support the measure. Deputy Martin was also concerned that the provisions of the law did not extend in Article 2 to conduct in a private dwelling where both parties are present in the dwelling. The reasons, Sir, are to do with enforcement being available through other means to deal with domestic abuse and also the complications that could arise where a private argument between partners or friends could give rise to an offence. It seems to me that the Deputy's suggestion that the law should cover these sorts of scenarios goes completely against her preference for a light touch approach so I hope she will vote in favour. Senator Vibert and Deputy Fox, I am grateful to both ...

Deputy J.A. Martin of St. Helier:

Would the Minister give way, please? No, my concerns were about domestic violence. It was the issues of in the same dwellings where we do have a lot of agricultural or tourism workers who are in the same dwellings and even sharing the same rooms. They are not related and they may not be of the same nationality.

Senator W. Kinnard:

Yes, we looked at that very closely when the first draft law originally came to the Home Affairs Committee and that aspect was in the draft law and we were advised that it would, on the one hand, be very difficult to enforce and, on the other hand, really tend to catch people who might be having an argument but which did not really fit the test of the focus of this law, which was really about disorderly conduct that was affecting others. I am also grateful to Senator Vibert and Deputy Fox for their support and I agree, certainly, with Senator Vibert that the law to prevent stalking is long overdue in this Island. I am very pleased to be the politician bringing it forward today and I think when you hear later on in my speech some of the things I relate to you, you will probably see why I am pleased to bring it forward. Senator Le Main, I was mightily impressed, I must say, with the passion of Senator Le Main. It is a great step forward, one of the best pieces of social legislation in the last few years. I can only agree with him, excellent. Deputy Ferguson raised the same points, in fact, that she did in the last debate on this issue. Her concerns were about subjectivity and she feared again a heavy-handed approach and the point was also raised by, among others, Deputy Martin. There are a number of protections for the citizen against unreasonable complainants and what might be construed as perhaps overzealous policing. Firstly, the 'reasonable person' is a concept which is commonly used in law. It inevitably involves some element of value judgment to be made but it is all tempered by human rights principles and there are several tests or protections at several stages in the process. From the initial police officer's decision to arrest, thereafter the reasonableness of the officer's act will be scrutinised by the charging Centenier. The prosecution also needs to be satisfied that there is a case to answer. The defence and the trying court also subject the initial action on the part of the officer to further scrutiny. Also, Sir, an individual could complain - and I dissociate myself from the comments made by the Deputy of St. Peter - because an individual can also complain to the Jersey Police Complaints Authority or, indeed, sue for wrongful arrest. Deputy Ferguson was concerned that the penalties also were perhaps too draconian. Firstly, the penalties have been set in consultation, obviously, with the Law Officers as to their appropriateness for the offences that are created by this draft law. I was surprised, Sir, that Deputy Ferguson, given that she had previously acted as an Honorary Police Officer, did not realise that these here are maximum penalties. Some very minor offences may, indeed, be dealt with by words of advice, a casual inquiry or a minor fine below the maximum that has been set. Only the ...

Deputy S.C. Ferguson of St. Brelade:

If I may get a point of clarification from the Minister, then: “A person who commits an offence under paragraph 1 shall be liable.” Am I reading that incorrectly?

Senator W. Kinnard:

Because someone is liable to it, it does not necessarily mean that that is the actual penalty that they will receive. It will depend on the absolute circumstances of the case as to whether or not it is provable to that extent that it would be dealt with in that way. Only the most serious of offences will obviously attract the harsher sentences of the court. Members must be aware, for example, as well that stalking and harassment cases can be potentially very serious indeed and if deemed so serious, the court could award the maximum sentence. I am surprised also that, as I said, the Deputy did not really take that on board. Deputy Duhamel also raised a point about the standard scale of fines, asking that these be reviewed and that more use be made of fines as a penalty. Of course, this is something I will discuss with the Attorney General and others, as appropriate. The Deputy of St. Martin asked about wider consultation. Deputy Celia Scott Warren ably dealt with this point, I think, in her capacity as the member of the Safer St. Helier Steering Group. This wide-ranging and highly successful community initiative has looked closely at the draft law and given it its support and, indeed, also has the domestic violence forum. I was surprised again by some of the negative comments made this time by the Deputy of St. Martin because, in the previous debate on this projet, he described it in these terms: “It gives clarity and has good balance.” Further, as Chairman of the previous Education and Home Affairs Scrutiny Panel, he wrote to me saying: “My panel view the draft law as a sensible and well-constructed piece of legislation.” The Deputy of St. Peter had some reservations as to the powers that have been given to both States and Honorary Police and yet both States and Honorary Police have said that they both want these and need these and, indeed, so has the Magistrate. His concerns about accountability were touched on by others and, indeed, I answered a written question only yesterday, Sir, in relation to the establishment of a Police Authority and when we will be bringing the law to the States. We hope to bring it in the autumn and, in the meantime, it may well be that we set up a shadow Authority while the law is on its way back from the Privy Council. More about that, I think, later. The Police Complaints Authority: again I think they do an excellent job. They are independent and for that reason, they are their own bosses in these matters of dealing with complaints and I do say, Sir, and I say this quite carefully and advisedly, that the Deputy himself needs to be a little bit careful when commenting on these issues in the way that he does because I am aware that he did seek in some way to influence - and I will say no more than that - a particular case, and I find it interesting that he also says that the principles ...

The Deputy of St. Peter:

I refute that wholeheartedly. I have never ever attempted to influence any case whatsoever.

Senator W. Kinnard:

Well, I will take back “influence”, “comment upon”. It is interesting that he finds it difficult to accept the principles of the original draft of this legislation as it was first agreed when he was a member of the Home Affairs Committee. Deputy Le Fondré supports ...

Deputy R.G. Le Hérissier of St. Saviour:

Can I interrupt? It strikes me that a very serious slur has been made upon a Member and I do not think it can be allowed to rest. That Member will now leave the Assembly with a mark upon his character and I think it has to be formally resolved.

Senator W. Kinnard:

I will withdraw it. It is far simpler. Generally speaking, Deputy Baudains welcomes the legislation. He also became, I think, quite confused about the issue of domestic violence. The Deputy, I think, had the idea that domestic violence would be covered by this legislation but the issue here is that domestic violence can be prosecuted in other ways and, indeed, we, as Home

Affairs, were very concerned to protect the domestic freedom of thought, as we call it. We did not want an ordinary argument between partners to be caught by the law and that is why the law does not extend where both persons are inside the same dwelling. Deputy de Faye looked at what he called hypothetical cases and, indeed, Sir, these hypothetical cases are based on reality and I will go on to refer to some real cases before I finish. I was asked if I would review the law after a couple of years and I am always happy, Sir, to agree to review the workings of any new legislation and how it is operating and, indeed, I am more than happy to accede and agree to do that. It is also open, of course, to any Member to bring a proposition at any time to the House to cause a debate or a rescindment. The Deputy of St. Ouen again mentioned proportionality and he was concerned that young people might be sent to court straight away rather than be dealt with at a Parish Hall Inquiry, and so this law is not designed to bypass the Parish Hall Inquiry. I see the Parish Hall Inquiry very much as being part of the lynchpin of dealing particularly with young people and their anti-social behaviour. Deputy Mezbourian, I take on board the comments that she has made about the World Cup celebrations and I will go on to say a bit more about that and I will certainly pass her comments on. She asked what constitutes disorderly behaviour and why is it not defined properly in the interpretation Article. I think it has its common meaning and obviously would depend on the circumstances of the particular situation. It is very difficult to specify in a list what would constitute disorderly behaviour and the problem in law with a list is that you quite often miss out something which should be covered and should be dealt with by the law. The way that one deals with it is not to have a strict definition of something which would normally have its ordinary definition to a reasonable person. The Constable of St. Ouen, I am grateful for his support and, indeed, of the support of the Connétables generally for this piece of legislation. They very much want this law and I do believe that they will use it sensibly and sensitively and I agree with the Connétable of Grouville that it is very important to try to keep young people out of the court system. The Dean mentioned issues to do with religious tolerance and community relations and issues to do with free speech and I can assure the Dean that our basic freedom of speech will not be eroded by this legislation. It has, of course, passed its human rights test and, indeed, there are the tests of reasonableness that I spoke to in relation to Deputy Ferguson. On the issue of human rights, there is, of course, a hierarchy of Convention Rights and Article 10 is the right to the freedom of expression which can only be interfered with if there is an interference on the basis of law where it is necessary in a democratic society or in relation to a permissible aim, such as the prevention of crime, the protection of public order or the protection of the rights and freedoms of others and this is, I think, the key. We have to be able to balance the rights and freedoms of those who might engage in this sort of anti-social behaviour with the needs of the victims and I do believe, Sir, that the way in which the law is framed and the way in which it is designed that the law will be enforced, that it will not, indeed, interfere with that particular freedom or right that the Dean referred to. Indeed, I think the Dean and I will take comfort from the fact that in the rather extreme case that he expressed, that, indeed, the Chief Constable stamped on that immediately and made it absolutely clear that it was a misuse of police powers in that context, so I think he can rest assured with what else I am going to say about relationships between the police and the communities in our Island, that that sort of situation will not arise here. Deputy Gorst covered similar areas to Deputy de Faye and I think I have covered quite a lot of that already but I do take on board his comments. The Constable of St. Peter asked again about shadow authority. I have covered that and, again, I thank very much Deputy Lewis for his support. I know that he takes very seriously the matters to do with Home Affairs and thinks very seriously about them and so I welcome his support there. So I do want to make a few remarks about some of the things that have been said in what has otherwise been a really positive debate. I think it is unfortunate that in an otherwise positive debate, some Members did choose to, what I consider unduly and unfairly, criticise the police because information from many sources suggests quite the opposite, rather than in fact, confidence in the police is growing. The Jersey Annual Social Survey, which is conducted by the Independent States Statistics Unit, found that relations between the Jersey Police and the public are good. Seventy per cent of the public either agreed or strongly agreed with this view.

Interestingly, relationships between the police and our local minority ethnic communities are particularly positive in contrast to most forces in the U.K. Further, nearly 60 per cent also said that they agreed or strongly agreed that the police are in touch with the needs of the community. To provide further reassurance to Members, Sir, when this law comes into force, the new D.C.O. (Deputy Chief Officer) to replace Lenny Harper, has just been awarded the Queen's Police Medal, largely for his approach to community policing in Northumbria and I suggest to Members that he will ensure that a light touch approach is adopted to this legislation. In conclusion I leave Members with some quotes from the public who have contacted me: "I support of this legislation." "We felt besieged. The youths became very abusive, likened to being verbally raped." "As my life gets even worse at the hands of my ex-partner, why in this day and age can Jersey allow stalking and harassment?" "What can I do to help get this law through?" "We have instances of vandalism and anti-social behaviour. It is immensely depressing." "Last year, I was stalked for 9 months. It was terrifying. The police were fantastic but there was not much they could do." Putting in place some sort of protection will help greatly and I am sure there are many other cases like this taking place in the Island. Finally, one I received yesterday: "Good luck, Wendy, with putting through the new law on public disorder and, in my case, stalking and harassment. I truly hope there are no hitches getting it through." These testimonials, Sir, speak eloquently of the need for this legislation and, Sir, I maintain the preamble to the bill. **[Approbation]**

Deputy K.C. Lewis:

A point of clarification. I am fully in support of this legislation, Sir, but I do believe that Deputy Ferguson had a very good point when she said a person would be liable. Is there not an implication that any resulting judgment would be mandatory?

Senator W. Kinnard:

Perhaps we could ask the Attorney General to answer that.

Deputy J.A.N. Le Fondré:

Can I ask the Attorney General if he has had a chance to consider my earlier questions also?

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

There are 2 meanings to the expression "liable to" but the second meaning is "being in a position to incur" and that is an expression which is often used in relation to a fine. Being liable to a fine means that you are in a position whereby you might incur a fine. Take care as you walk down the steps. You are liable to fall because they are slippery. It does not mean you are going to fall and so I am in no doubt at all that "liable to" does not mean that the court must impose a sentence of 3 months' imprisonment and a fine of level 3, and the court has a discretion to impose whatever sentence within those parameters that it thinks is appropriate. On Deputy Le Fondré's point, which was whether or not, I think, written words could be included within the offence created by Article 2, I am sorry to disappoint him but, in my view, they could. If somebody stands on a street corner and uses words that are abusive, for example, or threatening, and shouts them out at the top of his voice and the other ingredients of the offence are satisfied, he will have committed an offence. For my part, I see no difference between standing on a street corner and saying these things and standing on a corner and holding up a placard saying the same things and, in my view, therefore, I would, in an appropriate case, give authority for a prosecution. I say "in an appropriate case" because the facts ... one of the Members, I think it might have been Deputy Gorst, has said how difficult it is to frame language that requires the use of common sense and, of course, this does require the use of common sense but taking the Dean's example of what happens at a church service with 500 people present, if, in fact, there was somebody who attended that service with a view to disrupting it, perhaps, and held up placards which were abusive of Christians ... one does not need to go into examples of what they might be, but they might be seriously abusive and cause serious offence to the 500 people present ... I would certainly take the view that if this law is in place, that is a matter which is capable of being prosecuted and, in my view, rightly prosecuted. So

the language of this offence does require, of course, common sense by the police. It does require common sense by the prosecutors and, ultimately, if a charge is brought, it will require common sense by the court which is trying that charge and, of course, that is why our system of justice is as it is.

Deputy J.A.N. Le Fondré:

Can I seek a further point of clarification? I was not expecting that response. If we go back to last year, I think it was Senator Vibert who used the example of animal rights demonstrators who can get quite vocal in their demonstrations and will have various placards which are quite visually strong, robust, and could be offensive to certain people. Is the Attorney General saying that in those circumstances, those people could be arrested?

The Attorney General:

The question would be whether or not the language, the words that are used, are threatening or abusive and whether the activity takes place with the other ingredients of the offence as set out in this piece of legislation and if all those ingredients are passed, yes, the answer is that the police could arrest. Now, I think it is very difficult to take a particular example, and the Deputy chooses animal rights demonstrations as one example, because it may depend on the context. In all these criminal cases, much does depend on the context as to what is reasonable and what is not and one must expect that the police, as a public authority, will respect the right to freedom of expression because they are charged, they are required to do so, and there is no doubt that this draft law, just like the U.K. Public Order Act 1986 upon which it is based, is capable of interfering with the right to freedom of expression and it is a question of balance for Members as to whether it is thought that the balance comes down in favour of adopting the law because it is needed as a protection for the sorts of circumstances which the Minister for Home Affairs has set out. That is a matter for Members.

Senator W. Kinnard:

Can I just give a point of information that the concern that Members had recently previously was in relation to words and images and expressions of it that might be insulting. That level has been removed. It now would have to be threatening and abusive which is obviously a much higher level in terms of offence.

The Attorney General:

Threatening or abusive.

The Bailiff:

Threatening or abusive, yes. Very well, I invite the Greffier to open the voting which is for or against the Principles of the Bill.

POUR: 45		CONTRE: 3		ABSTAIN: 1
Senator S. Syvret		Connétable of St. Lawrence		Deputy G.C.L. Baudains (C)
Senator L. Norman		Deputy R.C. Duhamel (S)		
Senator F.H. Walker		Deputy D.W. Mezbourian (L)		
Senator W. Kinnard				
Senator T.A. Le Sueur				
Senator P.F. Routier				
Senator M.E. Vibert				
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator F.E. Cohen				
Senator J.L. Perchard				
Connétable of St. Ouen				

Connétable of St. Mary				
Connétable of St. Peter				
Connétable of St. Clement				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Deputy A. Breckon (S)				
Deputy J.J. Huet (H)				
Deputy of St. Martin				
Deputy P.N. Troy (B)				
Deputy C.J. Scott Warren (S)				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy S.C. Ferguson (B)				
Deputy of St. Ouen				
Deputy P.J.D. Ryan (H)				
Deputy of Grouville				
Deputy of St. Peter				
Deputy G.W.J. de Faye (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy A.J.D. Maclean (H)				
Deputy K.C. Lewis (S)				
Deputy of St. John				
Deputy I.J. Gorst (C)				
Deputy of St. Mary				

The Bailiff:

Now, Deputy Mezbourian, do you wish to scrutinise this legislation?

Deputy D.W. Mezbourian (Chairman, Education and Home Affairs Scrutiny Panel):

No, thank you, Sir, we have already conducted some scrutiny upon it.

The Bailiff:

Very well. I call upon the Minister to propose Article 1.

1.15 Senator W. Kinnard:

Article 1 just gives the interpretation provisions, so I propose Article 1.

The Bailiff:

Article 1 is proposed and seconded? **[Seconded]** Does any Member wish to speak on Article 1?

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

I would like say a couple of things on this. Yesterday when I did speak and I am rather disappointed that the Minister thought I was speaking in a negative way, I welcomed the proposals but I did say what we needed, and, indeed, it was echoed very many times after my speech, we needed a common sense approach. I have my notes here and I said we need a bit of tact and good

humour by police officers. Maybe going round with smiles on their faces may help to defuse the situation but I was talking as someone who does have some experience in knowing how to defuse situations. I also said that what we were doing really here, particularly with this article, was replacing a common law way of dealing with something as, indeed, with something in statute and that is what we are doing and, again, I give my support to it.

The Bailiff:

I put Article 1. Those Members in favour of adopting it, kindly show? Those against? Article 1 is adopted. Do you move Article 2?

1.16 Senator W. Kinnard:

Article 2 sets out the offence of threatening, abusive or disorderly conduct as being within the hearing or sight of another person or likely to cause alarm or distress and the relevant penalties. The offence can be committed in a public or private place except where a person is inside a dwelling and the other person is inside that dwelling. The offence is only committed if the defendant intended to threaten, be abusive or engage in disorderly behaviour. Intoxication, whether by drink, drugs or other means, will be no excuse or defence unless it can be shown that the intoxication was not self-induced. Article 2 also establishes the defences such as the defendant had no reason to believe that there was a person within hearing or sight or that the conduct was reasonable. A person who commits an offence of threatening, abusive or disorderly conduct under paragraph 1 shall be liable to a term of imprisonment of 3 months and a fine of level 3 on the standard scale, being £2,000. I move Article 2.

The Bailiff:

Article 2 is proposed and seconded? **[Seconded]** Does any Member wish to speak?

1.16.1 Deputy J.A.N. Le Fondré:

Firstly, I will ask Members to read the article quite carefully just to make sure they are very clear on what we are going to be considering. A person commits an offence if he or she uses words that are threatening or abusive, behaves in a threatening or abusive way, or engages in disorderly behaviour but is within the hearing or sight of another person likely to be caused alarm or distress by the words and there requires to be either an intention that his or her words or behaviour to be threatening or abusive or is aware that the words or the behaviour may be threatening or abusive. One of the main concerns in the debate last year, Sir, that many Members raised, including myself, was basically the impact upon freedom of expression and I also accept the comments of the Minister in her closing speech that it is obviously not the intention to attack freedom of expression. It comes down to that difficult balance between what we are all trying to get to, which is to deal with the yobbo in the street who is not drunk, but also about protecting the ability for individuals to express their views in their own way and for groups, unions and rallies to express their views in a free and generally robust manner. It is fair to say that many comments were made about written representation and obviously that caught up with the definition of “insulting”. Obviously, the Minister has moved on the definition of “insulting” and I welcome that movement, but the wider context was about freedom of expression and I have to say, Sir, and I certainly was not anticipating that response, I am very deeply concerned at the recent comments from the Attorney General because that is why the original concerns were expressed, albeit now we are at a higher level of threatening or abusive behaviour. That, again, comes down to interpretation and unfortunately, no matter how good assurances are that are given in this Chamber and this Assembly, it is what is written in the law that matters because if it is written, ultimately, it can be used. Again, it comes down to yes, we do want light touch regulation and I certainly welcome the proposals to review the legislation within 2 years but, again, it is what is written now that we are approving. Obviously, I do endorse the views of Deputy de Faye earlier on. It is not about the problem of Members looking for problems. I think that is also, to an extent, our job, but when we look for problems we also have in mind sometimes the application of similar legislation in the United Kingdom and that has not

always been the intention. The legislation that has been approved has sometimes had unforeseen application and consequences and I believe we have seen more examples since the last debate. One that I always remember, and is obviously different legislation, is where one local council used new legislation to allow them to use hidden surveillance measures to spy on parents to determine whether they lived in the house they said they lived in for the purposes of determining the catchment area of the school that their children could go to. Now, to me, that is not an appropriate way of using legislation which I believe was originally designed to catch terrorists. It is obviously different legislation but it can show the unforeseen consequences that can arise. Just to emphasise, I too have been out with the police. It was just before Christmas and I accept that they do operate in quite difficult circumstances and they deal with all sorts of problems so on no account am I criticising the officer on the street but, again, it is the problem of the application of similar legislation in the United Kingdom and if that can have unintended consequences, why should Jersey be any different, especially when the U.K. has similar human rights legislation in place. Just to go back to the article, I have a number of specific concerns. I have one fairly fundamental one which has arisen in the last 5 minutes but I think each one of these is probably enough for me not to support Article 2. Now, obviously the draft has been in abeyance for quite a long time, for over a year, I think, and I think Members are very clear, we understand the principles of what the department is trying to achieve, but we are extremely concerned again upon the impact of freedom of expression. Now, I agree, I am slightly confused here because the Scrutiny Report and the Minister herself, in her opening comments, stated that she consulted with the States Police, the Honorary Police, the Council of Ministers and the Attorney General although there may have been another group which was of the St. Helier side. Where I get concerned on that type of consultation is that, effectively, it is all internal. It is either government or, if you like, the policing world. As I understand, it has not consulted with, for example, the likes of the Citizens' Advice Bureau or perhaps, more appropriately, the Law Society, i.e. the people with a trained legal mind who can see the problems of applying this type of legislation on the coalface or in the courts so, i.e. the civilian side, not the governmental side. I have to say, especially given the concerns expressed over a year ago, that I do not find that particularly satisfactory. There also are issues, Sir, about the different types of existing practices. We have heard references to common law. We have heard the point that where there is not drunkenness there is a problem. It depends on the level of concern, I think, of the particular incident because, ultimately, as I understand it, you can still charge someone with assault because that includes putting someone in fear of immediate force being used against them but without hitting them. That obviously covers threatening behaviour. I am still not entirely clear about the issue of refusing to obey the lawful instruction of a police officer which the Deputy of St. John referred to in his speech in the principles because, obviously, the police were able to arrest someone at the police station level, and maybe it is just later on when it gets to prosecuting someone that it becomes more tricky. I accept we are getting into whole areas of subjectivity between what is presently lawful but not socially acceptable, but is that not the whole point? If something is lawful now, should we be trying to criminalise it effectively and is that balance between the yobbo in the street who is not drunk? As an example, Sir, if you take the disturbances between the English and Portuguese supporters in the last World Cup, my understanding is that the police were able to arrest and charge people using their existing powers. Their problem was their inability to identify people rather than not having an offence to charge those people that they could identify. Also, Sir, I would welcome some clarification because there does not appear, as I understand it, to be definition as to whether the standard of causing alarm or distress is one that is caused to the reasonable bystander and not just to any person who happens to be distressed, and I think that is slightly different as to whether the actions of someone are reasonable. But let us take a slightly hopefully light-hearted example. If we take the recent rallies and commentaries relating to G.S.T. (Goods and Services Tax). Now, hopefully, we all realise that G.S.T. does not stand for "Geoff Southern's Thumb" but neither does it stand for "Get Stuffed, Terry" which is one of the slogans, and I believe, rallying cries, at the anti-G.S.T. rally. Now, I obviously do not condone those comments but I do believe that people should be able to demonstrate without fear or favour.

Now, what would happen if the Minister for Treasury was of such a disposition - and I can obviously vouch the fact that he is not - but was of such a disposition that he was distressed by those slogans. Could those demonstrators be arrested? More appropriately, and again, it is a balance and it is up to Members to judge. The examples that were used last time around when I spoke were of things like "Death to Thatcher" during the miners' strikes in the 1980s. Now, I think it is quite justifiable that those could have caused distress. I would have said that would be described as threatening but is that justifiable demonstration under freedom of expression? I think it probably is. Where I am very deeply concerned is the comments from the Attorney General that again we appear to be back at the debate of last year, admittedly at a higher level, but it is still a question of interpretation. Now, if we go back to the actual word in the article, it refers to a person committing an offence if he or she uses words within hearing of another person likely to cause distress. That then comes down to the interpretation of "threatening" or "abusive". Now, we heard yesterday of the difficulty in interpretation in that infamous order, i.e. one policeman's interpretation of "abusive", so if you apply that to this, one policeman's interpretation of "abusive language" may be different to another and that difference in interpretation can lead to arrest. It is all very well to rely on the courts but huge levels of distress can be caused through this process and, therefore, I strongly believe, particularly after the comments we have just had from the Attorney General, that this still has the potential to endanger freedom of speech. I would have to say that the Minister stated in her opening speech in the principles that an offence is only caused if a person intends his or her words to be threatening. Now, I find that slightly disingenuous because the rest of Article 3(a), as I have said, does provide the following or is aware that the words or behaviour may be threatening or abusive and that, to me, is a lot more subjective. Again, that is back to the issue of interpretation and that is back to the issue. As I said, I do not support the expressions but it is the usual comment of supporting the ability of people to make those expressions of "Death to Thatcher" in the miners' strikes. Therefore, I submit the department has still not achieved the original wishes of the Assembly in achieving that right balance between freedom of expression, whether written or oral, and that this law, if applied incorrectly, could cause significant problems in the future. I am not entirely clear, Sir, where we are here, whether we are voting on this article, Sir, because the Minister has proposed this article. Therefore, I presume we are voting on it separately. If that is the case, Sir, then I am not going to be voting for this article. I support the rest of the law entirely, that is not a problem. If that changes, and we are somehow voting *en bloc*, I would have to vote against the whole lot but if I did have to vote against the whole lot, I am effectively voting against Article 2. I support the rest of it because harassment and stalking, no question, we need to have some legislation in place. I would ask Members to certainly consider this very seriously as they consider what their position should be on Article 2.

1.16.2 Deputy G.C.L. Baudains:

I go back to the comments I made earlier, Sir, about the possibility. Obviously a law is designed to do good but there is also the possibility of those unintended consequences and I think these do really occur under Article 2. I can imagine circumstances where I might be abusive and I intend to be **[Laughter]** or what I do might certainly be construed as intentional abusive behaviour. For example, if I am riding my bicycle and a driver nearly knocks me off it, I am quite sure I am going to yell at the driver of my displeasure. If I am walking along a pavement and a cyclist knocks me over, I am not going to say: "Good morning", I am going to say something which he might not appreciate. While we can all think this is never going to happen, this is all slightly amusing; unfortunately, I am noticing with regularity these sort of issues do occur in the U.K. where what eventually happens is the perpetrator or the instigator of the original problem gets away scot-free but what is essentially the victim is the one who ends up having some sort of charge brought against them. Now, I think that is unsatisfactory. As Deputy Gorst so eloquently said earlier, we cannot legislate for common sense and there is a danger here that common sense will get left behind. Where is the guarantee that common sense will prevail? Secondly, Sir, moving on to Part 5 of Article 2, I do get concerned with this reverse burden of proof. It is a defence for the accused

to prove that. I have to ask how on earth do you prove your innocence in these circumstances? How can you prove that you did not know that there was somebody within earshot or sight? I do get concerned about these and there is some doubt whether I will be supporting Article 2.

1.16.3 Deputy P.V.F. Le Claire:

I have a problem with Article 2(4) and I am at a loss to understand why the States of Jersey would go into consultation with all of the various bodies in relation to how to police effectively and not take on board the concerns and issues in relation to alcoholics and intoxication. Certainly, as this article reads in that section, one's actions are taken to be of not being intoxicated, even when one is clearly intoxicated unless that person has been intoxicated by some other person or through medication. Now, it just seems that while we are trying to remedy the ills of society, as political science has as its goal, we are not taking on board the view of the medical concerns in relation to alcohol and how it affects people. An alcoholic is somebody who will be, at times, abusive or disorderly and an alcoholic is somebody who is addicted to alcohol as a result of repeated administration of alcohol and has become so dependent upon it that they have an overpowering desire for the administration of it to be continued. Now, within the licensing law, I believe it says and - I can be corrected - that one should not be served alcohol if one is under the influence of alcohol, yet after having taken one drink, one is said to be under the influence. Probably there is an interpretative side of that when it gets to the court and I am just wondering as to what the diminished defence would be in respect of somebody appealing to the Magistrate or the courts by saying: "I was out of character, I had been drinking, I was depressed, I was happy, I was sad, my actions were not those of what I would normally undertake." To write in law that somebody who is under the influence of alcohol, that their actions are the same as if they were not under the influence of alcohol, I think, is dismissing the ... is that not what it says? I read it for the purpose of this article: "A person whose awareness is impaired by intoxication shall be taken to be aware of that of which he or she would be aware if not intoxicated." Now, I stand to be corrected, but how I am reading that ... I will give way to somebody who can explain if I am reading this wrongly.

Deputy R.G. Le Hérissier:

I wonder, Sir, if the Attorney General might be able to offer some clarification.

The Attorney General:

I referred earlier to the ingredients of the offence and it is important to look and to see what the prosecution must prove if a person is to be convicted of an offence. The prosecution must prove either the use of words that are threatening or abusive or threatening or abusive behaviour or disorderly behaviour within the hearing or sight of a person likely to be caused alarm or distress. Those, if you like, are the *actus reus*, the facts of the matter. The prosecution must also prove a mental element which is to be found in paragraph 3 of this article: "A person commits an offence under paragraph 1 only if in a case referred to in (a) or (b)" - that is the use of the words that are threatening or abusive or the behaviour in a threatening or abusive way: "he or she intends his or her words or behaviour to be threatening or abusive." That is something that the prosecution is proving, that the accused intended this or that the accused was aware that the words or behaviour might be threatening or abusive. And then (c), in relation to (c), engaging in disorderly behaviour, the mental element is did the accused intend his or her behaviour to be, or aware that it might be, disorderly. One of the features, therefore, that the prosecution must prove is a state of mind by the accused which either amounts to an intention or an awareness, as the case might be. If somebody is under the influence of alcohol, is intoxicated, drunk, they may not have that state of awareness of what is taking place and what paragraph 4 is designed to do is to ensure that the test you apply to somebody who is drunk in the context of their awareness is what they would have been aware of had they been sober.

Deputy J.A.N. Le Fondré:

Can I seek a further point of clarification, Sir, from the Attorney General? Going back to the use of the words, can that include - and having said that behaving in an abusive way - can that include other visual representations, so going back to the cartoons that were published in the press a few years ago which were considered offensive rather than abusive. I am not too sure where the definitions change but in relation to the Prophet Mohammed, I think it was. Are we straying into that area under this law, Sir, at all?

The Attorney General:

The Deputy is referring to the Danish cartoons, I believe.

Senator W. Kinnard:

Can I just, on a point of information, say that that case was, of course, prosecuted under the terrorism legislation and not under public order legislation.

The Attorney General:

I am grateful to the Minister. I gave the answer I did earlier because it appears to me that the putting of words on a placard is the use of words just as much as speech is a use of words. If it is a cartoon which contains no words on it, it is less easy it seems to me to bring that within the ambit of Article 2. Perhaps I might deal with 2 other points unless Deputy Le Claire wishes to finish his speech but there are 2 other legal matters have been raised by Members.

Deputy P.V.F. Le Claire:

It might be helpful, Sir, if I continue to address what I was saying because I apologise but I did not quite understand the Attorney General's explanation. I apologise, Sir, I am just not quite understanding it. Does it mean ...

The Bailiff:

It is a fairly standard matter in the criminal law that self-induced intoxication does not excuse your conduct.

Deputy P.V.F. Le Claire:

Right, Sir, but I just wondered what if anything new was being introduced by stating in law that one's impairment shall be taken as a state of mind that one would normally ... as if not intoxicated. Basically we are saying that disregard the fact that they were under the influence because we are going to take it as if they were not. That strikes me, Sir, as something that perhaps in time we will have to redress because how can one take a mental impairment ... we recognise that one is impaired when one drives and their actions and their reactions are such that they are incapable of driving under the influence because their responses are affected. Mentally speaking there must be an impact upon one's mental state. I am not suggesting for a moment that it should not be prosecuted if somebody is being offensive, threatening or abusive because I believe that is correct, but to be disorderly and the level of disorderliness; a few lads larking around, jumping up and down, the sort of antics that you would see in perhaps a stag night or on a rugby do or something, one wonders as to how this might be interpreted. I see that the vast majority of it is sensible but I just would like to say that I am uncomfortable with us putting into law that we are taking somebody who we know to be under the influence and disregarding that and treating them as if they were not. I think that really will in time have to be reconsidered. I think that if that is throughout law then I think there is a mental health issue that the medical people in the hospital and the people that deal with the effects of alcohol will have to feed in. It may not be for today because I get the sense that most Members just do not see this. I think that it may be something that we progress to.

The Bailiff:

Can I ask the Attorney General to complete the legal points he wanted to deal with?

The Connétable of St. Ouen:

Before he does could I add something else to the Attorney General's answer maybe? It is my understanding, Sir, that in a case where someone was clearly drunk or clearly under the influence then the charging officer could revert to a charge of being drunk and disorderly.

The Attorney General:

In answer to the question from the Connétable of St. Ouen certainly a charge of drunk and disorderly is a possibility. The same conduct may give rise to consideration of more than one charge as far as the prosecutors are concerned. Deputy Baudains raised the question of the reverse burden in Article 2(5). I just wish to say to Members that reverse burdens are usually introduced where it is unreasonable to expect the prosecution to prove something which must be within the knowledge of the accused but is peculiarly within the knowledge of the accused - that is why it is framed in the way it is - the defence for the accused to prove that he or she had no reason to believe there was anyone within hearing or sight likely to be caused alarm or distress. It is very difficult for the prosecution to prove the state of the belief of the accused in that sense. If there was some special reason why the accused did not think that there was somebody who was likely to be caused alarm or distress it is really for the accused at that point to come out with it. The nature of these reverse burdens is that they are introduced only where it is proportionate to do so and where if you did not do it the prosecution would be faced with proving something which it might be very difficult for the prosecution to prove.

Deputy G.C.L. Baudains:

Could I just press that point, Sir, because the possibility I was raising was a difficulty faced by the accused in being able to prove the situation as laid down in that article. It does seem to me that even though the prosecution may have a difficulty proving something, likewise the person trying to defend themselves will have an equal difficulty. Is that not the case?

The Attorney General:

These things will be heavily fact based but I suppose one might take a factual circumstance and inside Gorey Castle the accused is in one room and there are some pretty thick walls between him and the person who is caused alarm or distress so it is for the accused to say: "I did not realise there was anybody behind that very thick wall over there and that is why I did what I did or said what I said." It would not be for the prosecution to have to prove that they had done a tour of Gorey Castle and identified who was in the building at that particular time. It is that sort of example I think. The other matter I was going to take up was in relation to the comments of Deputy Le Fondré because there is an important issue about the right to freedom of expression. The European Court of Human Rights does give much stronger protection to political and journalistic opinion and expression though it has disavowed any theoretical basis for this distinction but in practice that is something that one has seen by looking at European Court of Human Rights' judgments. The court does afford considerable protection - Members will be pleased to hear - to those who criticise politicians and those who criticise judges whether the criticisms are politely or eloquently expressed or not. Where they are gratuitous personal attacks then the court would take a different view. That is a matter of longstanding European Court of Human Rights legislation. It has been repeated from time to time since at least 1975. The E.U. case law does, therefore, require strong justification for interfering with the right to freedom of expression. One would expect the police to conduct themselves in the knowledge that that is the law because they are required to do so and also prosecutors to conduct themselves in deciding whether or not to prosecute in the knowledge that that is the law and, of course, the court would apply the law.

1.16.4 Connétable G.W. Fisher of St. Lawrence:

This is a rather light-hearted comment perhaps or it might be seen to be but there is a serious point within it. This follows on from the comments about whether publication of words and the use of words is a problem. I recall about 2 years ago we had a concert in the Parish Hall. There is a well

known phrase: "There is always a boat in the morning." Some rather amusing character wrote a ditty. The chorus went something like: "There is always a boat in the morning. Nobody is making you stay. If you do not like the way we do things in Jersey, da da da da go away." That was not in any way meant to be abusive to anybody. I see you smiling. It is a smiling issue but it is also a very serious issue, Sir. As it happened we had a rehearsal and the *Evening Post* came along and took a photograph. At the time we had the board up with the chorus on it for everybody to join in. This was just a light-hearted knock at, if you like, our community in Jersey. On the day of the first performance I received a telephone call from somebody who was very upset about the fact that we seemed to be using these words and using them with a meaning that was very detrimental to people who have recently come to the Island, people of different colours, creeds, whatever. I do not know. But they had interpreted it this way. There was absolutely no intention at all to abuse anybody. However, I guess under this law one would then have a problem because one would know by this singular phone call from one person that somebody was going to be upset by the use of these words. That gives me some concern about this law because if it is taken to extreme, if I have interpreted it correctly, then all sorts of nonsenses and misapplications could very, very easily follow. As it was, when this telephone call was reported to the people taking part they all thought it was highly amusing. But I did not think it was particularly amusing. I was concerned about it. I received a second telephone call for the second night's production in similar terms. I am sorry to ask the Attorney General to come on to his feet again because he has been very busy this morning jumping up and down to answer points but I wonder if he could just comment on that particular situation to see whether there would be a problem under this law because I have a nasty feeling that there might be.

Deputy I.J. Gorst:

I think this probably revolves around the interpretation of the word "abusive". I wonder maybe if the Attorney General could in his response to the Connétable of St. Lawrence just cover that for Members as well, please?

The Attorney General:

I think the question of whether or not language is abusive is a question of judgment ultimately for the court which is deciding the issue as a matter of fact. It is quite difficult to give a definition of 'abusive' and I think it would be wrong for me to try and do so. It will be a question that the court of trial would have to determine. I think I have said to Members before; the protection in relation to a piece of legislation like this is that, first of all, somebody is going to have to complain so somebody is going to have to feel abused. Secondly, the police are going to have to take the view that there is something that looks *prima facie* as though it was abusive. Thirdly, the prosecutors before they charge, whether it is a Centenier or one of the legal advisers, is going to have to take the view that this is pretty abusive stuff and, therefore, merits a prosecution. Finally, the judgment is that of the court which decides whether it is or is not. There are a whole series of protections about what is or is not abusive built into the structure of the legislation. On the point raised by the Connétable of St. Lawrence, the obvious defence seems to me from what he has said - and of course I reserve my right to look at it again if the Parish do a similar thing in future - the obvious defence from what he said is that there is no intention pursuant to paragraph 3 of Article 2 that the words used would be threatening or abusive and presumably certainly on the first occasion there would not be any awareness that they would be threatening or abusive. There must come a time where I think the defence that would be advanced also under paragraph 5 - which is a second point - is that it would not be reasonable to think that a person was likely to be caused alarm or distress by a song of that nature. Whether it is or is not reasonable, whether that is a good defence or not of course might at some stage be the subject of a court decision. It would be difficult to contemplate that frankly a prosecution would be brought to be honest but if it were brought - and one is looking of course at hypothetical circumstances maybe years ahead - I suppose it is possible that that argument might have to be tested. For my part as Attorney General responsible for prosecutions,

for as long as I am Attorney General I would be absolutely amazed if there were to be a prosecution in the circumstances which you describe.

1.16.5 Deputy I.J. Gorst:

Just briefly I wanted to respond to some of the comments made by Deputy Le Claire. In actual fact paragraph 4 I think is an eminently sensible paragraph and I do not believe that it should be a defence for someone who is intoxicated to say that they should not be prosecuted under this particular article because they were intoxicated. I think it gives necessary defences, i.e. if the alcohol can be proven not to be self-induced or if the intoxicating behaviour was caused by the application or intake of medical substances. I think this is a very necessary part of this particular Article.

Deputy P.V.F. Le Claire:

A point of clarification and order, Sir. I was not trying to infer that claiming or trying to claim that one is drunk should be a defence. What I am trying to suggest is that I have thought it to be strange that we are trying to say in law that somebody is something that they are not. We are saying that they shall be treated as if they are sober when they will clearly not be sober.

1.16.6 Deputy J.A. Martin:

I will be brief. There is always a difficulty when we have to keep asking the Attorney General for interpretations. I voted in on the principles but on the understanding of course that we are voting separately on the articles. I agree with a lot of what Deputy Le Fondré has said. I also agree with Deputy Le Claire. I do understand it is not a defence for abusive language but I have sat in on another panel in the Magistrate's Court where a mitigating ... once the person has been asked for a character reference they will say, yes, as Deputy Le Claire has said, normally this person is of upstanding character. It has never happened before. Something that happened in their social life caused them to go on a bender or whatever you call it and some abuse has taken place. It is not an excuse. I think that is quite simply where Deputy Le Claire was coming from. I now have more serious problems with some of the answers that we have had from the Attorney General, like Deputy Baudains. This defence is for the defender of the accused to prove that he or she did not believe this, that and the other. He gives some examples. I was not really convinced about that. But the one thing the Attorney General did say which really sent warning bells across; to me I am being sold 2 different laws here. We were put by the Minister for Home Affairs yesterday that his will solve a lot of antisocial behaviour. There are things that the police cannot now do if they cannot prove someone is drunk and it will stop this. It will stop spitting. Then the Attorney General has just said, or I think he said, someone will have to make a complaint for this to go. Now that is completely different. If the person who is committing the offence does not know that someone is in earshot and they are causing an offence, the person may to me not be ... it may be 2 crowds of people; as you say 2 different football supporters. We have had it in Jersey. Obviously the abuse was causing offence to both sides but nobody I think was complaining to the police: "Look, they are calling me this and he is calling me that." The police had to intervene under a public order, under the common law or something. But now I have heard the Attorney General say someone will have to complain. I think this is not the case. I am not disputing the Attorney General and maybe I am interpreting his words wrong but it is not an antisocial behaviour as we were sold it yesterday. I do think still, as I said, it is a sledgehammer to crack a nut. The causing of alarm and distress just by hearing and being in the vicinity, again what is abusive to some person and what causes distress to other people can go from zero to 100. We in here do obviously have, I would imagine, quite thick skins because if we read and believe everything that is probably ... I do not bother to read but people still pass on what is written about us on different websites and Google your name and everything. It does not distress me but somebody can be distressed under very less circumstances. Not politicians. I am not talking about politicians. I am talking about people in general. I do understand. Actually I do not quite understand what the Minister is trying to achieve with this part of the law. Hearing from 2 ex-policemen, and I do not hear from too many

policemen, that people who are committing these offences now under common law cannot be brought to court, cannot be prosecuted. I just think this part has gone too far. As I said at the beginning we are getting in a right mess. We are getting different interpretations, different reasons why we should support it, why we should not support it. To me it is clearly a piece of legislation that has not been worded in the best possible way. I am very sorry but I will not support this part of the proposition.

1.16.7 Deputy C.J. Scott Warren of St. Saviour:

I seek clarification, Sir, from the Minister. At what age that this will apply? I am particularly concerned with Article 2(1)(a): "Using words that are threatening or abusive." I am not proud to say that as a child of junior school age in a village, I and another girl who were many yards behind an older girl called out her name very loud several times with an adjective to describe her that was not complimentary. Obviously it was only years later that I really realised how nasty what we had said, how she would have felt. We saw it as a game but for her - she was probably about 11 or 12 years old - it could have been quite upsetting. We did this several times quite loud and probably she was the only person who heard us. But what I am saying is if this law had applied to young people of my age, I could have been basically taken to a situation of being at least reprimanded for this behaviour whereas frankly I am pleased to be able to use this example now in this way because it is something that I am not proud to have done even as a young girl. Can I just be certain that we are talking about, I presume, teenagers onwards within this law and also that common sense will be used because, Sir, I do have some concern. I did take account of the Attorney General saying that intent to upset and abuse and annoy must be there. As I say, Sir, while I think there is a balance here to be struck, I do have concern. Are we going to have the Parish Halls inundated with Parish Hall Inquiries and also at the police station? I want to see this law used with common sense effectively, as I said yesterday, but not overly reprimand people when a word in an ear might be sufficient to diffuse the situation.

1.16.8 Deputy R.C. Duhamel of St. Saviour:

I think, Sir, society has changed over the years and in the most part for the better. We are more tolerant of ethnic communities or differences between people. I think really, Sir, this is what lies at the heart of what is wrong with this particular proposition. I voted against the preamble, Sir, mainly on the basis of this particular part of it. I do support the remainder of the proposition in terms of harassment. I think that does make a lot of sense. In dealing with tolerance I am reminded of one of the common sense proverbs that we were probably all taught at school but now is a good time to remember it: "Sticks and stones will break my bones but names and words will never hurt us." It does appear, Sir, that we are going to, by supporting this particular clause, be laying to rest that element of common sense that is embodied in that proverb. We will be encouraging intolerance rather than encouraging tolerance of other people's differences in terms of behaviour. Other Members have mentioned that if we do start to pursue a society where we are encouraged to take up with the courts through the police service by making complaints of other people's actions then perhaps in approving this, Sir, we might really be considering ourselves as setting up a job creation scheme for the courts and the police. Now we have already heard that our prison is already overflowing. There are problems there in relation to other propositions we discussed recently. We are also told that the court is chock-a-block with court actions which are perhaps perceived to be more important in terms of their resolution. That is why I cannot support this particular article at all in the way it has been presented because I think there is a very real danger that people will be encouraged by it to be generating a higher workload for our courts and police service and, as I said earlier, encouraging intolerance. I think this is a step too far and I would urge all Members to strike out and not vote for this particular clause.

1.16.9 Deputy R.G. Le Hérisier:

I am just recovering from the shock that Deputy Scott Warren who I had thought was absolutely beyond reproach does indeed, Sir, have a dark background [**Laughter**] and had she not been

informally dealt with could well have ended up in a situation which simply, Sir, does not bear thinking about. But in terms of issues, if ever there was a case for legislative scrutiny it has been demonstrated in this debate. The one person scrutineer here I think really has to be thanked, Deputy Le Fondré, who has been very tenacious both at the earlier draft and in this draft. His analysis has really been excellent and he has been able to wheedle out points which some of us may not have grasped at the first flush, so to speak, or indeed at the second flush. I would really like to thank him and people who have supported that. I think also, Sir, while I do accept that the Home Affairs Minister has had to struggle in coming up with a narrower definition, I think Deputy Le Fondré again made it very clear that the definition had been brought to a higher level but the definitional issues had not been resolved. I shall wait to see, Sir, and in fact with the Attorney General's view of how this particular clause could be applied, quite clearly we are feeling more alarm than we did at an earlier stage. Another point I would like to make, Sir, we have fallen into this classic trap which we so often do in debates here that if you are seen to bring up points which look at the role of the police, you are seen to criticise the police. That is totally wrong. Then all the great loyalty arguments are brought up: "I have been with them and are they not wonderful chaps and chapesses", which is excellent. I do not deny that for a moment and we have examples perhaps here and we have examples elsewhere. I do not deny that for a moment but it is quite possible, Sir, to talk of the police as being a professional organisation and to say at the same time they need to be managed through proper checks and balances. It is quite possible to have those 2 thoughts in your head at the same time. Whereas we see this sort of attempt to conflate and to say if you dare to raise these issues you are being disloyal and you are being over-critical. Sir, I shall wait for the Home Affairs Minister to reassure us, although I do suspect that the genie is out of the bottle, but I shall wait to see whether she can reassure us that this is narrower than we think and I shall go and reassess my faith in human nature in the light of Deputy Scott Warren's very worrying revelations.

1.16.10 Senator M.E. Vibert:

Just briefly partly in response to Deputy Duhamel's: "Sticks and stones may break my bones but words will never hurt me." The only thing that can be said about that adage is it is patently untrue. We hear it in this House. People really get upset because of names. You see it outside the House. I do not think we should be influenced by old wives' adages that are mainly just shown to be totally untrue. Name calling is very hurtful. I was very much with Deputy Le Fondré as he knows the last time we discussed this. I was pleased that the Home Affairs Minister withdrew the parts that have been withdrawn. I think now we are getting too dragged in to trying to work out exactly what a word means. I think "insulting" was withdrawn. It was too open. I think "abusive" in its common parlance and usage which I believe the police and the courts will take into account is something that should not be tolerated and should be allowed for action to be taken. I will be supporting this and I urge other Members not to get tied up with trying to work out exactly how each word is going to be interpreted. "Insulting" has been removed. I am sure none of us like being abused. I think "abusive" is acceptable.

1.16.11 The Deputy of St. Martin:

Again I want to make it absolutely clear to the Minister that I am supporting this proposition and I am supporting this article. What I would just like again to make clear to Members here that it is difficult being out in the street without having the proper tools to do the job. At the moment the police officers are out there doing a job on common law; acting on customary law. What this piece of legislation is trying to do - and Senator Vibert has just alluded to it - is put down in paper where one stands, where the police officer stands and where Joe Public stands so when there is a case it can be argued in law. At the moment it can only be argued to the customary law. There is nothing down, nothing defined. Clearly this morning we know that here we have a piece of legislation which has tried to clarify the position but we know how difficult it is to clarify something when at the end of the day we are back to what I said yesterday, it is down to tolerance, down to common

sense policing. Just because someone does shout something abusive it does not mean to say they have got to be arrested. It may well be they just said something in the heat of the moment and a quiet word in the ear will do the trick. It is not the case of snatching off their collar and hauling them down to the police station. That is not what is intended. If indeed it is, in no way would I be supporting this. We have to have a certain amount of trust in what the officers have got to do out there. They have a difficult job. Please give them some tools to do the job. One thing I would just like to pick up on, the difficulty I can understand that Deputy Le Fondré has over placards. I do not like to go back to good old days but I can certainly remember walking up and down Oxford Street many, many years ago when they were trying to introduce something called P.A.C.E. (Police and Criminal Evidence Act). It was called the Bill. We had placards being carried by all sorts of people: "Kill the Bill." Now if anyone knows anything about police history, one will know that a police officer was called an old Bill. They were called the Bill. Of course what these people were trying to do was not necessarily kill the policeman. It was kill the bill which was coming through called P.A.C.E. The decision was made quite clear that in no way would there be arrests. I would hope that when we have demonstrations like we have had recently - I would not say demonstrations but meetings, et cetera, we have had in the Royal Square - where instructions will be given to police officers before they go out there that what level of tolerance will be adhered to on that day because quite clearly people have a right I think to demonstrate. They should have that and they should not feel that they are going to be arrested just because they may be saying: "Terry, get stuffed" or whatever it is under G.S.T., because again I think that is part and parcel of people's expression and again tolerance is so important. The one issue I want to finish on - and I think it has been pretty well hammered on the head by Deputy Gorst - just for the information of Deputy Le Claire really was that you cannot say: "I am innocent because I was drunk at the time." I know certainly again from experience that the number of times someone has tried to explain some situation away because at the time they were drunk. Being drunk should not be a defence and quite rightly. What it is doing here is making it clear in writing that that will be the case. I will be supporting this article.

1.16.12 The Dean of Jersey:

As I considered this at home I had all sorts of interesting academic debates with myself and indeed wanted to invite the Attorney General round for a glass of something so that we could talk about the niceties of reverse burdens which instinctively I do not like and he could set my mind at rest. I also want to thank the Minister for taking seriously the comments I made in the principles and addressing them directly. I feel greatly relieved by those. But I wanted very briefly to say that I have a second level of concern which goes against my rarefied academic thoughts which I make in the safety of my study. I am more than happy then to leave my study and walk into town without any fear of being bothered by folks. It is just the way I suppose I am and I act. But at a Safer St. Helier meeting in Rouge Bouillon School last year I sat on a table with a number of older ladies who said: "We used to go very regularly to the British Legion for our bingo but now we are too scared to walk the streets of St. Helier at night and the police tell us there is nothing they can do about it." I am prepared, Sir, to take the Minister's word and the Attorney General's assurances about the checks and balances in the prosecutions, particularly in the light of what now seems to be around the Chamber generally accepted this must be reviewed within 2 years because I think that on balance my academic concerns take second place to my old ladies' concerns and their right to walk the streets safely.

1.16.13 Deputy J.J. Huet of St. Helier:

What made me stand is that it is very easy to say common law is wrong and that we should have an article in law. Common law is not always wrong. What is the saying about throwing out the bathwater or with the baby or whatever it is? Common law sometimes is very good. I do remember a case where a very nasty person vandalised all the hospital flower beds and boxes. Under the article which his lawyer wanted me to charge him, the highest fine he could have

received was £25. Also the police station I have to say wanted me to charge him under the same. I refused. I charged him under common law because under common law there was no set fine. I knew our Magistrate - who I thought I knew pretty well and I was correct - was going to fine him a lot more than £25 for what he had done which was only correct. That is why I say be very careful before we always throw out common law because common law is there for good reason and it is a very sensible reason. It is sometimes a lot better than the other. Please do not take it that I am not supportive of the police. I am obviously supportive of the police. I am married to a retired officer. But again I have to say - maybe tongue in cheek - that I am more supportive of police from Sergeant downwards than Inspector upwards because whereas I find the average policeman on the beat is very sensible, I am not always sure about the top end. I think it gets very political when you get to the top end. I am not sure if that is what you want on the streets of Jersey. As I say, I am supportive but I am very worried about this idea of throwing all common law out because it has to be better if it is in article. That is not so. I think the Constable of St. Lawrence made me think very much about this because I have been to very similar places like that and what has been very enjoyable by the audience certainly could become - not under our Attorney General but we do not know what is going to happen in the future. We never know what is going to happen in the future. I think one has to be very careful and try and look forward a little bit.

1.16.14 Deputy D.W. Mezbourian:

The reverse burden in Article 5 has caused me some problems because I am not sure that I understand it clearly and I would, therefore, like to ask the Attorney General to address my concerns. My understanding is that the defence has to prove that conduct was reasonable rather than the Crown having to prove that the conduct was unreasonable. That is my understanding of it which may be wrong. I may have misinterpreted it but I ask the Attorney General to give a definitive explanation for the House please, Sir.

The Attorney General:

The position is that the reasonableness of the conduct or the unreasonableness of the conduct is not a matter for the Crown to prove because it is not an ingredient of the offence. The Crown does not have to prove that the accused acted unreasonably. What the Crown has to prove is that words have been used which are threatening or abusive or that behaviour has been threatening or abusive or that there has been disorderly behaviour. The defence is that despite doing those things, the accused has acted reasonably. That is why it is a defence for the accused and it is not part of the offence which the Crown has to prove.

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

I just wanted to pick up on what the Dean said because it is a very important aspect that he has brought up which is the fear of crime. The fear of crime especially as one gets older is an area that reduces the quality of people's lives and quite considerably. Older people will not go out because of the fact that we have 4 media that are constantly putting out unprovoked attacks and everything else like that. But of course what happens is that when you see the cases that start appearing at court, et cetera, in fact they are not unprovoked. People know each other in many cases, et cetera. They are usually in an age group that is completely different to the people with the fear of crime but, nevertheless, it is a real risk. To give you a short example of this, there was a lady who lived at the bottom end of St. Helier and had a friend at the top end of St. Helier but walked all the way around the edge because of fear of the young people that gathered around in Queen Street. She brought this to my attention at one of the gatherings that one attends and I said: "They are not going to do you any harm." I said: "It is your fear and people in this room's fear." But I said if you go up to them and say: "Make way for an old lady." I said you have got a walking stick there and just raise it gently to them [Laughter] to say that you cannot move out of the way when they are all mucking around, et cetera. She said: "I will do that on Saturday" and she did. She went up to them and she said: "Can you make way for an old lady? I cannot move round." They all lined up as though they were soldiers and one held up his arm to escort her through. After that they were the

best of friends. It was a wonderful example of prevention with a little bit of knowledge. The other side of the coin of course is that traditionally the older person has been used to seeing a policeman on the street or a policewoman on the street but of course with the difference in licensing hours, et cetera, what happens is that you get less policemen seen during the day and sometimes very thinly or rarely because they are all out at night when most other people are in bed. This also creates the fear of crime. The discussion also in this particular article is on checks and balances. I just thought it would be useful to say that the police force being a disciplined area which is now a police service as opposed to a force very much errs on the fact that when you are a young policeman you are obviously trained both here and in the U.K. as appropriate. But more to the point is that you have 2 constables that take you out to make sure that you learn the things that are not only in the law and interpretation of the law but how you conduct yourself with the public. It gives you the experience of all the various situations that are liable to come. Obviously there will be some outside that you only see once in your lifetime or very rarely but generally speaking it puts you in good stead. You have also got to bear in mind that the policeman also has the check and the balance; that not only has he got his Duty Constable, when he is passed his probation period he still has the old watchful eyes on his shift of the old-timers that are doing their job. Although there are probably less of them now but they still play a part. You also then obviously have the rank structure of the Sergeant, the Inspector, Chief Inspector, et cetera, all of which through either directly being in charge of a shift or through the paperwork feed have checks and balances. We have to be realistic. Sometimes things go wrong but the process is that there is a complaints procedure where anybody can go and make a complaint and have it duly investigated. I think I will leave it there at that point without going into any more detail but I just thought it might help to give an understanding of, if you like, the other side of the coin; the practical policing aspects. Policemen do need the tools but they do not necessarily need them to end up with a process of people ending up in court. I used to head community policing among other things and we had a series of officers who specialised in sorting out things not only for the direct jobs that they dealt with but for other police officers in going within a community to sort things out to improve the quality of life of not only the people that were having difficulties but the other people around them or where they went out to. The purpose of which was to try and solve the problems especially with young people or people at disadvantage for whatever reason before it gets to the stage of going to court. So there are a combination of things. I am certainly pleased to hear that our new Deputy Chief Police Officer has qualities in the community policing side and I look forward to seeing them result in additional community policing within the Island of Jersey.

The Bailiff:

I call upon the Minister to reply.

1.16.16 Senator W. Kinnard:

I am extremely grateful to the 2 ex-police officers in the Chamber; both Deputy Fox and the Deputy of St. Martin. I think they have given excellent support to the proposition and I am very grateful for their common sense explanations of the reality of policing in the policing environment we live in. Thank you both very much. I am sorry if I upset the Deputy of St. Martin earlier. I did not mean to. If I go back, Sir, I think the Attorney General has dealt very comprehensively with many of the legal questions that have been put in relation to specific terms that are used in the law and also in respect of quite commonplace legal concepts such as the reverse burden of proof. I do accept that Deputy Le Fondré has a right obviously to express the views that he has expressed and indeed I think that we are able to give him some reassurance that this law is not going to be dealing with the sort of low level kinds of insulting aspects that he seems to suggest. Insulting has been removed. The test for this law is much higher. It is threatening and abusive. I have to say, Sir, in terms of writing on a board I can give an actual example from my days of working with the women's refuge where an ex-partner stood outside of his ex-partner's property with a board with just the words written on: "I'll get you." That was all he needed to have on the board and that quite

clearly was threatening. Again we have to look at the circumstances of a particular case in a particular situation. I think the Attorney General has given us a lot of reassurance about the tests in terms of reasonableness that have to be put in place from the first instance of a police officer receiving a complaint and deciding to take it forward right the way through to the court process. I have been asked again by Deputy Le Fondré and by others about the agreement to review the law in a couple of years. Certainly I will not be able to do it myself personally but I will certainly ensure that the department is aware of the views of Members and ensure that that review does indeed take place and would be more than happy to report back to Members on the workings of the law in a period of a couple of years if Members would wish that to be done. In terms of other consultation, Deputy Le Fondré also raised what other consultation? Was it mostly internal consultation? No, it was not just internal consultation. There was a lot of consultation, as I say, in terms of the Safer St. Helier Group and also the Domestic Violence Forum and indeed, of course, this matter was originally debated in quite a high profile debate and then withdrawn. Of course it has been available in more recent times in its lodged version on the website for anyone to comment. Indeed I have had many comments in support of the law and I have received none from the public against the law. In terms of consultation I would just say one thing to Deputy Le Fondré ... I am a bit upset really in a sense because he had really so many detailed comments it is very difficult to respond to them all because he could have submitted those at any point because when the original projet was withdrawn, at that time I specifically asked Members who had problems with this piece of legislation to pass the comments either to myself or the department as a matter of urgency so we could take them on board. Indeed, Sir, also prior to lodging I contacted by personal letter to all Members again inviting further comments on the draft law and how I had made the proposed amendments. That letter was dated 13th March. Unfortunately, Sir, I received not a single comment from a single Member in the House. So although I respect his right to raise these quite detailed concerns, Sir, I do find it a little disappointing when I go to the effort of trying to consult with Members and they do not take up the opportunities that are afforded to them. In terms of G.S.T., someone was asking about the issue about G.S.T. and whether that would be caught by the law, the boards that were present at the time of the demonstration. Again I do not believe that that kind of level of language would be caught by the law. It may well be insulting but it is not abusive or threatening, I would submit. So this law; the tests are that it has to be at this higher level of being abusive or threatening and a person has to be alarmed or distressed. It is not just enough to be annoyed. I was also asked, Sir, about demonstrations and indeed there is much case law that shows that the police cannot prevent demonstrations going on. All they can do is things like set the time and the route and so on. That is to ensure, of course, that we have appropriate freedoms for our citizens in terms of their ability of freedom of speech. Deputy Baudains also raised issues about would he be caught by this legislation if he was knocked over when he was cycling along and was given to use expletives. I believe again, Sir, he would not be because the law allows a defence which is that the actions were reasonable in the circumstances. I think if somebody has nearly just run you over and taken your life, you may well perhaps be excused for not taking that too kindly. I do not believe that his example would be caught by the law. Likewise with Deputy Scott Warren. I, too, was shocked I have to say knowing her as I do. I do not know obviously the details. She has not given us the details. But, again, I do not believe that she would be caught by the law for a number of points, is that indeed intent has to be present in order for an offence to be prosecuted. Deputy Le Claire, I was quite confused as I think many of us were by the approach he was taking around alcohol and this legislation since he, himself, was the one who first stood up to speak about his concerns about those young people who were intoxicated and acting in an antisocial way in the park outside of the hospital where his child I know was unfortunately ill. So in a sense to me it seems obvious that he would be one of those who was most likely to support a piece of legislation that did not allow intoxication as an excuse.

Deputy P.V.F. Le Claire:

Can I just for the certain avoidance of doubt? I do not condone the sorts of behaviour that this law is attempting to address. What I am trying to make clear is that I am confused and somewhat puzzled by the fact that we are aware medically that people who are intoxicated are sometimes unaware as to their actions yet we are stating in this law that they shall be treated as if they were aware. I am not saying it is an excuse. I am not saying that they should not be prosecuted.

The Bailiff:

Deputy, I think this is becoming another speech.

Senator W. Kinnard:

I think the Attorney General dealt with the point anyway in relation to that. Again the Constable of St. Lawrence, I think the Attorney General dealt with that point very eloquently. Deputy Martin also had some concern about why is it that somebody has to complain? If the police do not happen to be on the spot there seeing an offence being committed then they have to receive a complaint and take a statement in order to prosecute an offence. That is why there is on the face of the law the need for a complaint. But there are obviously a number of other sorts of circumstances that may occur where other legislation may be used - whether that be common law or, in fact, statute - in order to deal with the range of situations. We are not confined to using only this piece of legislation in a particular circumstance. It is just that, in fact, what we have at the moment are too many disparate pieces of legislation which together do not capture all of the types of offences that both the police and the Magistrate and the public would like to see dealt with appropriately. Again it is the Magistrate who particularly drew attention to the need for these powers. I am just sorry that she feels she cannot support this particular article as this is the particular article that has been asked for by the Magistrate. Tolerance was mentioned by Deputy Duhamel. I do believe that this piece of legislation will enable us to improve tolerance in our community. I said in my opening speech all the time that this legislation is about balance and prevention and deterrence. It is much more about that than enforcement but, of course, there will be occasions when we need to enforce the law in certain circumstances with the appropriate powers. But, in many circumstances, the fact that the law is there on the statute books I believe will be a deterrent to those people who wish to behave in this way and will prevent them from doing so in the first place. Again I have said time and again that we do not expect any manpower and financial implications to be arising out of this legislation because of the way in which it will be policed in a light touch manner. Deputy Huet again was giving a peon of praise for the common law. This piece of legislation again does nothing to undo the common law with the range of offences that we have here. There is nothing here in this legislation to take away from existing common law powers. Sir, finally I think most of the legal points have been dealt with and those concerns, and indeed the concerns that the Dean raised. I am very grateful and I know that he does think about these things very much on the academic side and I was also very heartened because I know he does also take the very human perspective. I think we have seen this here this morning. I am very grateful for his support for this piece of legislation on the basis that there are people in our community who are suffering as a result of the lack of these police powers. Indeed, Sir, I hope that Members will join with him and also with Senator Vibert in saying that with this new draft we have the balance just about as right as we can possibly get it and I hope that, Sir, they will feel they can support this particular article. I maintain the article.

Deputy J.A.N. Le Fondré:

Can I seek a point of clarification from the Minister, Sir? She made reference under 3(a) that intention is required but surely, Sir, she is omitting the second part of that sentence where it is: "A person commits an offence if he or she is aware that the words or the behaviour may be threatening or abusive." Does the Minister accept that that is a far wider application in that instance?

Senator W. Kinnard:

Sir, I accept that it is wider than intention but I believe that the effect is largely the same.

The Bailiff:

I ask the Greffier to open the voting which is for or against Article 2 of the bill?

POUR: 35		CONTRE: 9		ABSTAIN: 1
Senator L. Norman		Connétable of St. Lawrence		Deputy G.C.L. Baudains (C)
Senator F.H. Walker		Deputy R.C. Duhamel (S)		
Senator W. Kinnard		Deputy J.J. Huet (H)		
Senator T.A. Le Sueur		Deputy R.G. Le Hérisssier (S)		
Senator P.F. Routier		Deputy J.A. Martin (H)		
Senator M.E. Vibert		Deputy S.C. Ferguson (B)		
Senator T.J. Le Main		Deputy J.A.N. Le Fondré (L)		
Senator B.E. Shenton		Deputy D.W. Mezbourian (L)		
Senator F.E. Cohen		Deputy S. Pitman (H)		
Senator J.L. Perchard				
Connétable of St. Ouen				
Connétable of St. Mary				
Connétable of St. Clement				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Deputy A. Breckon (S)				
Deputy of St. Martin				
Deputy P.N. Troy (B)				
Deputy C.J. Scott Warren (S)				
Deputy J.B. Fox (H)				
Deputy of St. Ouen				
Deputy P.J.D. Ryan (H)				
Deputy of Grouville				
Deputy G.W.J. de Faye (H)				
Deputy P.V.F. Le Claire (H)				
Deputy S.S.P.A. Power (B)				
Deputy A.J.D. Maclean (H)				
Deputy K.C. Lewis (S)				
Deputy of St. John				
Deputy I.J. Gorst (C)				
Deputy of St. Mary				

Senator W. Kinnard:

May I propose the rest *en bloc*, do you think, Sir?

The Bailiff:

Yes, indeed.

1.17 Senator W. Kinnard:

Sir, Article 3 deals with harassment which involves obviously stalking. The offence must amount to a course of conduct so conduct must occur more than once to constitute harassment. Conduct amounts to harassment if a reasonable person would think it so. A person who commits such an offence shall face a penalty of up to 6 months imprisonment or a fine of up to level 4 which is £5,000. Harassment does include alarming and distressing a person. Article 4 establishes a defence to the charge in that it was reasonable in the circumstances or necessary to comply with the law perhaps to prevent or detect an offence. Article 5 introduces restraining orders which can be

made against a person convicted of harassment to prevent similar conduct in future. Article 6 deals with a breach of a restraining order and Article 7 allows for such an order to be varied or revoked. Breach of such an order may result in imprisonment of up to 12 months or a fine of up to £5,000. Article 8 is the usual aiding/abetting provision and Article 9 gives the citation and commencement provision. Sir, I propose the remaining Articles.

The Bailiff:

Are Articles 3 to 9 proposed and seconded? **[Seconded]** Does any Member wish to speak?

1.17.1 Deputy G.C.L. Baudains:

Yes, I was delighted when I read Article 3, Sir. I thought at last a way had been found of dealing with the T.V. licensing terrorists. **[Laughter]** But then of course when I came to Article 4 my heart sank because while it is a more well defined version of reverse burden of proof, I see that in the course of conduct for the purpose of preventing or detecting an offence, they get away with it once more. No doubt Deputy de Faye and myself will continue to be harassed by these people. What I would like to raise, Sir, under Article 3(5)(b) and (c) does appear to be a sort of mutual exclusivity where it says it includes conduct of a kind that occurs on one occasion and conduct of a different kind that occurs on another occasion. The other one says it does not include conduct that occurs only on one occasion. I presume, Sir, and I hope that the Minister in her summing up can concur with my view, that it is possibly not as well worded as it might have been and what it really means is it includes conduct of a kind that occurs on one occasion together with conduct of a different kind that occurs. I presume that is the meaning of it otherwise it does seem to be somewhat curious.

1.17.2 The Connétable of St. Ouen:

I was going to raise a similar point because I am aware that the police have difficulty with the nuisance law because of a similar term in that law where an offence has to occur on more than one occasion to become an offence. I think that we may need to be asking the Law Draftsman if there is not an easier way of identifying what is wanted in the law.

1.17.3 The Deputy of St. Martin:

Again I think it is a shame that this had not come earlier because I think the Minister did say that people are really concerned about the harassment but there is a little area of concern I have. Again I am supporting this, Minister, so I make it quite clear. But it is the issue of kerb crawling because under harassment we will get kerb crawling. I would ask again - we have 12 Connétables here and we have the Minister for Home Affairs here - to make sure the officers are well aware of what the law entails because there is nothing worse than someone being accused or being arrested for kerb crawling when they may be waiting for someone who maybe genuinely they are waiting for rather than ... I do not know whether we have red lights in Jersey, but having worked in an area of London where we did have lots of red light areas it was customary for people to slowly go kerb crawling because they were looking out for prostitutes but quite clearly there was the odd mistake made even by professional police officers there who were arresting the wrong people for the wrong reasons. Again I am going to support this but I would ask that we make sure the officers are well aware of what the law entails before they arrest anybody because great difficulty and great harm may be caused to people who may be unfairly and unjustly arrested.

The Bailiff:

I call upon the Minister to reply.

1.17.4 Senator W. Kinnard:

I am very grateful to both Deputies for their support of the particular offence of a charge to harassment. I think the question that was put by Deputy Baudains is probably better if I may call upon the Attorney General in a moment. If I may say, what I do understand is that in relation to

Article 3(5)(b), is again in many instances you have to have a course of conduct in order to prosecute something of this nature so that it is not just an accident. As to the point as to whether it is together with, I think I will leave that to the Attorney General. The Deputy of St. Martin mentioned the issue of kerb crawling and indeed potentially this legislation could cover that because it obviously does cover harassment in a motor vehicle. However, in Jersey, Sir, I would like to say that I suspect that any kerb crawling that went on was probably less in relation to matters of vice than one perhaps of the harassment of an individual, perhaps ex-partner, which indeed I have had many people contact me about as having problems sometimes in the past when I was involved with the women's refuge. Sir, on that basis leaving the Attorney General perhaps to answer the more legal question, I will sit down.

The Attorney General:

Sir, I understand the question relates to what is the course of conduct essentially. Would the Deputy correct me if I have that wrong?

Deputy G.C.L. Baudains:

My query just to clarify on 3(5)(b) and (c) appeared to contradict each other. My presumption was that (b) meant that there had to be 2 instances rather than one but the wording to me, if I may read it again: "Includes conduct of a kind that occurs on one occasion and conduct of a different kind that occurs on another occasion." I think possibly the word "and" after "occasion" is unfortunate because it has a curious meaning. It seems to me that (b) and (c) contradict each other but I presume that is not the case.

The Attorney General:

The offence is pursuing a course of conduct that amounts to harassment. What paragraph 5(c) says is conduct that occurs on only one occasion is not a course of conduct, so you need to have more than one occasion for the conduct to amount to an offence. What 5(b) permits or anticipates is that the conduct might be different on 2 occasions but the fact that the conduct of a particular kind occurs only once would not prevent that amounting to a course of conduct which was harassment if it was aimed at the same purpose.

Senator W. Kinnard:

Thank you, Sir. That is a very eloquent description of my understanding which I could not put into words. So I maintain the articles.

The Bailiff:

I ask the Greffier to open the voting which is for or against Articles 3 to 9 of the bill.

POUR: 45		CONTRE: 0		ABSTAIN: 0
Senator L. Norman				
Senator F.H. Walker				
Senator W. Kinnard				
Senator T.A. Le Sueur				
Senator P.F. Routier				
Senator M.E. Vibert				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator F.E. Cohen				
Senator J.L. Perchard				
Connétable of St. Ouen				
Connétable of St. Mary				
Connétable of St. Clement				
Connétable of St. Helier				
Connétable of Trinity				

Connétable of St. Lawrence				
Connétable of Grouville				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy A. Breckon (S)				
Deputy J.J. Huet (H)				
Deputy of St. Martin				
Deputy G.C.L. Baudains (C)				
Deputy P.N. Troy (B)				
Deputy C.J. Scott Warren (S)				
Deputy R.G. Le Hérisssier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy S.C. Ferguson (B)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy G.W.J. de Faye (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy D.W. Mezbourian (L)				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy A.J.D. Maclean (H)				
Deputy K.C. Lewis (S)				
Deputy of St. John				
Deputy I.J. Gorst (C)				
Deputy of St. Mary				

The Bailiff:

Now you move the bill in third reading, Minister?

1.18 Senator W. Kinnard:

I do, Sir.

The Bailiff:

Seconded? [**Seconded**] Does any Member wish to speak on the Bill in third reading?

1.18.1 Deputy P.V.F. Le Claire:

I did support the bill all the way through and I will support the proposition all the way through. I reiterate my thanks to the Assistant Minister and to the Minister for their help in attacking what have been ongoing concerns in District No. 1. I would also rise at this point to make an appeal, as I have in the past, which would avoid me having to consider a proposition of my own that the police on an active policing side of things be spoken with by the Minister and the Assistant Minister in relation to the level of community policing. It is welcome news to hear that the replacement Deputy Chief Officer has received the Queen's Medal for community policing in the U.K. I would hope that the Minister would now take my words of thanks and encouragement to the police officers at the higher levels and take on board my request, as I am sure I am joined by other Members of the House, let alone just members of St. Helier, that there really needs to be more than one community police officer for the capital of Jersey. There needs to be, in my view, although we are starting to see it now - as I commented yesterday there were 3 police officers in town that I thought looked fantastic - it would be nice and I am sure a reassurance to the sorts of people that

have spoken to the Dean about their concerns if the fear of crime is addressed by the increase of community police officers. I wonder if the Minister would be able to give some undertaking because otherwise I am minded to start to look at a proposition to request that.

1.18.2 Deputy P.N. Troy of St. Brelade:

I would like to bring up the same concern. In St. Brelade we have a population of some 10,500 people I believe. Our community policing has significantly decreased. We used to have a full-time police officer in St. Brelade. That person is now shared between St. Brelade I think and - I am not certain - maybe St. Peter and St. Ouen. There is a great difficulty if those officers go on holiday, there are not even enough officers to cover the existing officers that are there. I think it is quite a worry and concern that, as Deputy Le Claire says, St. Helier is without proper community police and St. Brelade, which is another highly populated, is without full community policing. I think it is something that really the Minister should urgently look at and bring something forward.

The Bailiff:

Can I just remind Members that this is a debate on the third reading of the Crime (Disorderly Conduct and Harassment) Law. It is not a debate on community policing. That should have stopped the 2 Members before. If you wish to speak on the bill ...

1.18.3 The Deputy of St. Martin:

Yes, I do, Sir. I want to compliment the Minister on bringing this piece of legislation through. However, there was a piece that she did answer to and that was a reference the Deputy of St. Peter mentioned about the Police Authority. Could I seek an assurance from the Minister that the Police Authority will be going out to consultation prior to what the answer Deputy Le Hérisier received yesterday in a written answer when the question was when will the Police Authority come out for it to be lodged and the answer was 4th August with likely debate on 16th September. I feel that is quite unsatisfactory if indeed a Police Authority should have been put out to consultation, particularly to States Members, before it comes out to be lodged. Can I have an assurance that it will go out to consultation and it will indeed include both the Honorary and the States Police?

1.18.4 Deputy G.W.J. de Faye:

I think we have had a very detailed, interesting, albeit lengthy debate on the various aspects of this proposition. That is why I would like to thank very much the Minister for taking on board my suggestion that we have a review over a course of time because I think that type of approach would be not only helpful in this case but more helpful in the generality. Quite understandably many Members were concerned with some of the finer points of this legislation and what the impact may be when it is in operation. But the fact of the matter is that in all these things there is something of a grey area depending on precisely how the legislation is administered in practice. Will it be a light touch? What discretion will be used by the persons in authority at the time? So, in reality, this Assembly cannot possibly legislate for all the finer detail of the practicalities. But I am sure that Members in general would be much more - if I can use the word - relaxed about their concerns in this respect if we all knew that there would be a comprehensive review coming up so that if there were difficulties and there were unexpected outcomes, these will be dealt with in a reasonable space of time. So I thank the Minister for taking on board that particular approach.

The Bailiff:

I call upon the Minister to reply.

1.18.5 Senator W. Kinnard:

I will be very quick. No-one is more concerned than I by the lack of available police officers to engage in community policing. Members may have noticed that we have been a little bit busy with a major inquiry lately and indeed also that most of our officers are on the night shift and policing the night economy. However, Sir, I do have not sufficient officers to do all of the jobs I would like

but I have to say I think they do a very good job with the resources that they do have. But indeed I too would like to have more officers if I could possibly manage to get them out there in the community. Every meeting we have with our Police Chief this is an issue. Not every meeting, but very regularly this issue comes up and it is one that we are always trying to, if you like, square the circle with the impossibility of inadequate resources, particularly at the moment, to do all of the things we are required to do at all times. I really do not think I need to say any more. I am grateful I think to those Members who have again said supportive comments in this part of the debate. I maintain the bill, Sir.

The Deputy of St. Martin:

I did ask about the Police Authority.

Senator W. Kinnard:

Police Authority. Yes, about the consultation. Sorry, I put a note “consultation” and I forgot in relation to that. Of course we are trying to get out the draft law to give Members as long as possible in terms of consultation. We are trying to do that as soon as possible. There is no intention of lodging it before we have already circulated it to Members. I do expect indeed to receive copious comments from the Deputy of St. Martin himself. I will in fact not only expect them but welcome them. Sir, I maintain the bill.

The Bailiff:

I put the bill in third reading. Those Members in favour of adopting it, kindly show. Those against? The Bill is adopted in third reading.

2. Central European Time: referendum (P.62/2008)

The Bailiff:

We come next to the Central European Time: referendum in the name of Senator Perchard. I ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion: (a) to agree that a referendum in accordance with the Referendum (Jersey) Law 2002 on the introduction of Central European Time should be held on Wednesday, 15th October 2008, being the day of the senatorial elections; (b) to agree that the text of the question should be: “Do you think that Jersey should adopt Central European Time, Yes or No?”; (c) to request the Chief Minister to take the necessary steps to implement the referendum on Wednesday, 15th October 2008.

2.1 Senator J.L. Perchard:

I will be brief, Sir, because I am aware of the time and there is an opportunity I believe to complete this before lunch. As I make the proposition may I respectfully suggest to Members that this debate is not about 2 things? This debate is not about the pros and cons of the use of referenda as an instrument of government. The States have already agreed that referenda can be used as a tool of this Government but only if Members consider the subject and question appropriate. So the legislation exists. This debate is also not about the benefits or otherwise of Jersey adopting Central European Time. What I believe this debate to be about is the holding of a referendum on 15th October, the date that this autumn’s senatorial elections are due to be held. A referendum that asks a simple question of the electorate; namely, ‘do you think that Jersey should adopt Central European Time?’ Clearly, should Members support this proposition today, a public debate will commence and a referendum will be held; a referendum that will accurately determine the level of public support for the move to the European time zone. If indeed they show themselves to be enthusiastic about the idea - the majority of the electorate that is - I expect a proposition to adopt Central European Time may be brought to the States some time next year. I suggest to Members that is then the time to debate all the details and consequences of a move to Central European Time.

It may be at that time the States would agree to implement Central European Time but only on a trial basis. It may be that the States would agree to introduce Central European Time if our colleagues in the other Channel Islands were prepared to do likewise. As I say, Sir, the arguments and the details will surface at that time; at the time of the debate and probably before and certainly during the debate but only of course if the majority of the electorate support the idea of introducing Central European Time. If they do not, of course, the suggestion of moving our clocks will fall away. Since the introduction of the Referendum (Jersey) Law, Sir, the States have on 3 separate occasions debated propositions to hold a referendum. Unsurprisingly, Members did not choose to support any of the propositions as the subject matter for all 3 was the same; the thorny issue of electoral reform. I say not surprisingly, but on research, the 3 propositions presented to the States I believe were extremely complicated and they all had one thing in common; they asked the electorate more than one question. I suspect Members declined to support the proposition and proceed with the proposal to hold referenda because the questions I believe were too prescriptive and loaded and I think Members declined to proceed because they also had concerns about the suggestiveness of the question. The U.K. Electoral Commission in their guidelines, Sir - which I have copied to Members - for the intelligibility of a question to be asked at a referendum state that: "It is important that the question should prompt an immediate response and should be clear as to what decision the voter is being asked to make. It is important that the words and phrases used in the question should not have positive or negative connotations, should not be intentionally leading and should not be loaded and that the language used in the question should be consistent and not contain jargon, and that the question should not be longer than necessary or provide more information than necessary and of course the question should be well structured." Sir, I believe the question as drafted in my proposition satisfies the criteria laid down by the Electoral Commission, however, before lodging my report and proposition I did ask our people in the States Statistic Unit for their input. They kindly advised me on the final wording of the question for which I thank them. This question is simple. It is clear. It is unambiguous and will be easily identifiable to the voter and it will prompt an immediate response. I am proposing that the referendum be held on Wednesday, 15th October 2008. To achieve this objective I ask Members to support this proposition today and in doing so they will enable the details of the Act to return to the House before the summer recess. The Act required under the Referendum (Jersey) Law would set out formally the arrangements for the referendum and would come about naturally as a consequence of a positive decision today. I respectfully ask Members that if they have personal reservations about Jersey adopting Central European Time that they put their individual concerns aside and allow the electorate the opportunity to be heard on this matter. Finally I would like to thank the Comité des Connétables for their comments and the Council of Ministers for their comments, which I think certainly at the very least do not disable my proposition. I ask Members for their support and doing so politely remind them that, Sir, this is not a debate about the merits or otherwise of joining the European time zone. That debate is for another day. I make the proposition, Sir.

The Bailiff:

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

2.1.1 Senator L. Norman:

I am absolutely clear, absolutely certain that we should support this proposition. We like to think of ourselves in the States as consultative and indeed I think we are but we tend to consult very often in a haphazard and ad hoc manner and indeed very often with self-selected consultees. This proposition which is on an issue which could affect every man, woman and child in the Island gives us the opportunity to consult in a formal, measured way that will give a clear, incontrovertible guide to the mood of the Island, the mood of the voters, the mood of the people on this particular issue. Despite the comments of the Council of Ministers the issue is not complex. It may be controversial. Feelings may well run high on both sides of the arguments but the issue, as I say, is basically simple. There are several - indeed probably many - pros and cons and I am sure others

are grateful to the Council of Ministers for tabulating these in such a clear way in R62 which was distributed yesterday. That in itself - the tables in this report - will help the voters to think about the issues and make up their mind when reaching their decision. Indeed the schedule of pros and cons shows just how simple the issues are and why this is an ideal subject for a referendum. For example, the report points out that if we adopt Central European Time we will be out of synch time wise with the rest of the British Isles and Portugal which would be marginally inconvenient for some. Undoubtedly true. But we would become in synchronisation with France and Poland which would be marginally more convenient for others. It would be a minor conflict. T.V. and radio programmes would be an hour later than in the U.K. but as T.V. stations are mucked about so much with their schedules anyway we probably will not even notice, and it will become totally irrelevant as the T.V. on demand technology is rolled out. The finance industry is unlikely to be affected to any great degree. They operate - or much of it operates - in the global market and they need to be involved with those markets 24 hours a day. The markets are not just in the United Kingdom. We are told that aircraft would arrive an hour later than currently scheduled. Well, there is an improvement [Laughter] particularly for those of us who travel with Flybe. Yes, Sir, there are advantages and disadvantages but these tend to be of a personal nature; personal convenience and inconvenience, therefore it is right that people are able to express their personal preferences in a formal referendum. What is important of course, as Senator Perchard alluded to, is what we do after the referendum. As he said, if the majority say no then the matter would be laid to rest until the United Kingdom - and if the United Kingdom - decide themselves to make such a move. If the result is in favour then we really should move ahead as the Senator said. Clearly we would need to consult with Guernsey but even if they do not want to proceed it should not stop us going ahead as Guernsey has in my view always been in a totally different time zone [Laughter] from most of Western European. I think the Swinging Sixties start there next year. [Laughter] I say, Sir, let the people have their say and I formally second the proposition.

2.1.2 The Connétable of St. Ouen:

I will not be tempted to discuss the merits or otherwise of Central European Time but I think that I need to hopefully not call time on the Senator's proposition but point out the impracticabilities of going for 15th October. The 15th October will already be a very new experience for the electorate in that they will have the opportunity to vote for both a Connétable and a Senator on that one day. A couple of weeks ago P.P.C. (Privileges and Procedures Committee) brought a proposition to the States which would enable this to happen, which would move the time - the 12.00 p.m. before the day of election time - for the closing of the register so that the same register would be in use for both the Connétables and Senators elections. Under Article 2 of the Referendum (Jersey) Law, Sir, the referendum would have to be worked on an electoral register which closed 21 days before the referendum was held. Now unless there is time between now and the time that is proposed to change that, so that the same register would be used for all 3, it is totally impractical to expect the staff of Parish Hall offices to be using 2 registers on the same day. This was what was noticed at the time that the Connétables election was put on the same day as Senators and I believe, Sir, that it would lead to total chaos if we were required to use 2 registers on the same day. The Connétables made no comment whatsoever as to the merits or demerits of the referendum itself. I am sure that personally I would quite support the referendum but not as is proposed in this proposition on 15th October.

2.1.3 Senator F.H. Walker:

As the comments from the Council of Ministers show there is no firm view from Ministers on the merits of this proposal but our comments in R.62/2008 certainly do make it clear that there are major issues as of a consequence of the possible introduction of European time. It certainly is not as simple as it appears. There will be - inevitably there would have to be - a considerable amount of work undertaken and this would have to be prioritised against things like childcare, income support, the environment, challenges of the global economy, New Directions in health and so on.

But Senator Perchard is quite right, that would be an issue for next year and, therefore, an issue for the next Council of Ministers. We need to make it clear this is about holding a referendum not on the merits of moving to C.E.T. (Central European Time) or not. Personally I think it is an interesting topic and a worthy topic for the Island's first referendum. We have approved the principle of referenda previously. We have never yet held one. I think it is a worthy topic upon which the Island can speak. It has the qualities required of a referendum in that it is a very simple question. The question itself is simple - not the consequences - but the question is a simple yes or no. That is what a referendum should be about. Some of the previous suggestions for referenda have been far too complex and would not have qualified generally speaking for this method of consultation. I do hear what the Connétable of St. Ouen is saying about the technical difficulties of holding the referendum on 15th October. I will, nevertheless, maintain my support for this proposition in the belief or in the hope that either those can be resolved or there will be some agreement with Senator Perchard, which he I assume could bring back to the House on holding it on another date, another occasion. But in principle on balance I support the idea of the referendum and I will vote in favour.

2.1.4 Deputy P.V.F. Le Claire:

I think that was a very good contribution from the Chief Minister and that is one of the things that I will be following, is I will give my support to Senator Perchard who I congratulate for bringing forward a proposition that will give us the opportunity to test this mechanism as a part of our Government structure. We have got in law now an opportunity to ask the people on issues and given that this is yet to be distributed to the public - the pros and cons - I feel that we have enough time to not only encourage people to take part in the elections by also encouraging them to attend for a referendum but we also have a way of engaging them during the hustings process with the candidates. Moreover and more importantly it gives us an opportunity to have a dry run with the referendum in the event in the future that we have to have a referendum on something a little bit more serious than choosing to change our time zone: membership of the E.U., change of currency, et cetera, et cetera, independence perhaps. If those issues come as the first run, those will test us at a time when we do not need testing in the mechanism and the procedure of holding a referendum. I think this gives us the opportunity to have a dry run and prepare ourselves in the unlikely event that if we ever do face those issues that we will be ready and we will have tested the system. So hats off to Senator Perchard. I am going to be supporting him and I think it is a great way to say to the Island as well at the same time, let us have your say and let us have a meaningful say.

2.1.5 The Deputy of St. Mary:

On the face of it I too agree this is an absolutely ideal question to be put to a referendum. However, I do have a couple of questions and a couple of issues. The first thing I would like to say is my old hobby horse, we have a duty to make sure that everything we do is workable procedurally. I am concerned about the points that have been raised by the Comité. If we agree that the purpose of this proposition - as the previous speaker said - is not to test the referendum law per se but we are looking at this to achieve information - the answer yes or no to this specific question - then I would say that perhaps if it is not possible to hold the referendum under the current law with the same register in force on the senatorial day, if we simply want to gauge the public opinion - and bearing in mind of course that under the Referendum (Jersey) Law a referendum is only advisory; it gives no more power or obligation to the States than does any other form of opinion gathering - why could we not overcome that problem that arises in this case by having some sort of exit poll on leaving the senatorial election. That would achieve what Senator Perchard wants to achieve; the answer to a yes or no question. I believe that under the Public Election Law as it currently stands - I think it is Article 33(3) - it says that once you have cast your vote in that election you must leave the polling station, but the polling station is defined usually as a specific area within the building. I do not see there would be any - obviously I stand to be corrected and would have to look at this more closely - bar to leaving that polling station then depositing something you have been given, a

slip of paper, in another box as you left the actual building. I would just say that please do not dismiss the idea of this referendum or this question being asked simply because there might be a logistical difficulty in the holding of a referendum with one electoral register. But where I do part company a bit, I think, with something that both the proposer and seconder said in their speeches was that all the real work on this, all the promotion, et cetera, has to happen after the referendum. That this is simply to get a yes or no feeling of: "Do you think it is a good idea?" Because I think that if we are going to do it, it has to have a meaningful result. To have a meaningful result you have to have informed the public adequately as to what the benefits or the pros or the cons would be before they say: "Yes, this is a good idea." There is no point the public saying: "Yes, this a wonderful idea. I would love to have longer daylight evenings." All voting yes and then it becoming obvious later that there are significant difficulties because if we do that then we not only waste their time in participating in the referendum or whatever we are going to do but we waste a considerable amount of time afterwards preparing the next stage of work and we waste a lot of time because I have come to notice in my term in the States that we do spend an awful lot of time debating very small points. But the sum total of that time would be enormous. I believe that we need to circulate information now. I would like to ask the proposer what he envisages doing to inform the public adequately before October that would give them a better chance of responding in a way which is likely to be consistent with the end result that we are looking for. On that point I would like to also go back to R62. The report as published draws very heavily of course on consultation that is now 15 years out of date. It does acknowledge that there have been various changes in technology and various changes in working practices but perhaps some of the things that were discussed in that earlier consultation are no longer valid now or would be looked at differently. I think that Senator Perchard if he looks, as I have asked him to do, at informing the public needs to make the distinctions and to bring that on. Personally for myself I have said openly to Senator Perchard I do not need a referendum. From my personal idea I think it is a great idea to move to summer time and I would do it tomorrow if I could but we have to do this responsibly. We have to take the people with us. I think anything we can do because this just might be the thing that gets people interested enough to get their name on the electoral register and to vote. Then hopefully Privy Council allowing we will have the rolling register and that will be 95 per cent of the problems that Deputy Southern has identified with lack of registration dealt with in a meaningful way which will then perpetuate for future elections. I would be very interested to hear whether other Members think we could have an exit type poll or something if we cannot work this referendum out. But the principle I support wholeheartedly.

2.1.6 Deputy J.A.N. Le Fondré:

I was wondering whether it was worthwhile adjourning for lunch there, Sir. I have got about 3 minutes. Keep it quick. I do like Senator Perchard. It is always a good way to start a speech. Senator Perchard believes that I do not support the proposition which I do not as it is presently worded because I do not want to ask the views of the electorate and that is not the case. My views are very, very similar to the Deputy of St. Mary. I think this makes great politics but at present there is no analysis of the benefits or disadvantages of a move to Central European Time. By approving the proposition we are setting ourselves down the road. It is an advisory referendum - it is not binding - but do the public appreciate that difference? We have not yet considered our own stances on this as an Assembly. Personally I think that is the first step that we should take. We have only just received some of the information and it is out of date. In my view we need to have clarity as to the consequences before we start. Most particular, we do need to know the impact on the finance industry because particularly for those dealing with the west which, depending on our time, is either U.K. or the U.S. or the Caribbean there could be impacts there, let alone the fact that Eastenders will be an hour later. I think we need to have a lot more information on the consequences before we start going down this road. Once we have had a referendum, the public will expect that result to be followed. They will not appreciate it is advisory. Therefore, if you are going to put all the effort into a referendum make sure there is a clear signal that cannot be

misinterpreted and cannot be fiddled around after the event. If we end up in a mess where a minority of the total electorate vote in a referendum and are then disappointed because their view is not followed because we find something else fairly significant after the event then we will be in a mess. I am not saying do not ask the electorate. I am saying let us get our input first. Let us establish whether this could be a good idea and let us have the evidence. Then let us set the parameters of the referendum. Then let us ask the electorate. We cannot decide after a referendum whether we want to wait till Guernsey decides. As I said great politics, but to me it is lacking in substance as presently worded. To me it needs to be meaningful; not just on a whim because we have not had one yet. It is a worthwhile subject. Treat it seriously. I quite like the idea of an exit poll because that is then a steer. It is not a referendum. But I do think we need to know the consequences and I cannot support the proposition as presently worded.

LUNCHEON ADJOURNMENT PROPOSED

The Bailiff:

Do Members agree to adjourn until 2.15 p.m.? Before Members adjourn, I have been asked to remind Members that in the Old Library there is a presentation by representatives from the Tate Galleries in relation to the proposed establishment of our National Gallery. If Members have not indicated that they wish to attend but they do wish to attend nonetheless I think there probably are some spare seats. We adjourn until 2.15 p.m.

LUNCHEON ADJOURNMENT PUBLIC BUSINESS (continued)

Deputy R.G. Le Hérisier:

Sir, I wonder if, before we get into the business, it strikes me that there has been a technical which in fact amounts to a legal problem that has been outlined which could well abort this particular proposition. It would really be worth either if the proposer himself who has done an excellent job thus far but if he does know of any reason why we cannot proceed because of the issues raised by the Connétable whether he feels really we have to abort this until this matter is sorted out or whether, Sir, we need to wait upon the Attorney General to advise us.

The Bailiff:

It may be, Deputy, and I do not know - the Constable of St. Helier is not here - but I think I am right in saying that the nominating day for senator elections is fixed by the Connétable of St. Helier. Is that correct? It is not. It is by the Comité des Connétables as a whole. If the Comité des Connétables were prepared to fix a nomination day which coincided with the date set in the Referendum (Jersey) Law there might be a solution to the practical difficulty in that way but I do not know what the answer to that is.

The Connétable of St. Ouen:

Sir, all I can say is that the date was set some months ago but that does not stop the Comité des Connétables having another look at it if that was necessary.

The Bailiff:

I think that is probably what the Chief Minister had in mind in suggesting that if the Assembly is prepared to adopt this proposition that there should be discussions between the proposer and the Comité des Connétables then either the practical difficulties can be resolved or another date would have to be fixed.

Senator M.E. Vibert:

Sir, I can see it will have one which some people might think could be a practical advantage. It would leave the time for electioneering and hustings just down to 21 days.

The Connétable of St. Ouen:

Sir, if I may come back. Sorry, I just walked in and now put my mind to it. I think there is the practical problem of bringing the senatorial election to 3 weeks of being able to hold all the hustings within the 3 week period.

The Bailiff:

It is a matter which Members will obviously have to consider.

2.1.7 Deputy G.W.J. de Faye:

May I commend the Chairman of the Comité des Connétable for his candid approach to this issue. **[Laughter]** I would say it is very refreshing. I would say my understanding of hustings is they are not a compulsory feature of the law and can be largely rearranged as required. I think this proposition is about expectation of participation in a decision. We have just witnessed a referendum in Ireland which to all intents and purposes should have very dramatic impact throughout the whole of the European Union but almost within minutes of Ireland declaring its position in a referendum, the people who should have been substantially affected by it were beginning to already say: "Of course this will not derail the process." One has to consider the management of expectations. That is what referenda achieve. I certainly agree that in a situation where your country or, in our terms, one's jurisdiction is handing over certain sovereign powers to foreign powers, albeit friendly foreign powers in the shape of an accepted and existing European Union, it is quite right at that level of constitutional position that the public should well be engaged via a referendum. But I have to say to Members I think that if at the conclusion of today's proceedings the people of the Island of Jersey find themselves faced with a referendum on Central European Time, they will be a little surprised. I am not sure that in the current climate we wish to give the public of the Island another surprise. I was intrigued when the proposer of the motion talked about the majority of the electorate will make a decision, because what in fact does that mean? The last time I spoke in public on the subject of referenda was at a live broadcast St. Helier Senatorial Hustings where I was howled down by an antagonistic mob and not given anything like a fair chance to explain my position. For a start I only had one minute to do so and was eventually simply forced into a position where I simply was allowed to say: "No, I do not believe in referenda" whereas everyone else did. I understand the enthusiasm for voters and the public at large for referenda because they give the impression that the voter is taking part in a level of decision making. But I come back to this concept of the majority of the electorate. It does sound simple but if we do have this referendum what happens if the turnout is 40 per cent of the electorate because under those circumstances 60 per cent of the electorate clearly have not taken part in the referendum. Therefore, what is, as the Senator referred to, the majority of the electorate? The majority of the electorate have in fact said: "I do not wish to participate in the referendum"; 40 per cent have. We then have the issue and this applies even if 50 per cent or more of the electorate turn out and vote of what is the result of the referendum? That could be broken down in any number of ways but even if it is 50/50 we then get faced with the problem of what is the majority of the electorate? What is the view that we have gleaned from this? Worst of all, the public have gone out, taken the effort to pick up a piece of paper, a form, and fill it in, in the knowledge that in fact this is not binding on the States. If my understanding of what the Comité des Connétables was saying, if we are effectively expecting them to jump through the same hoops as they are going to have to jump through for registering their opportunity to take part in the election, which is that they are on an official register. So I think that referenda by their very nature ...

The Connétable of St. Ouen:

Sir, if the Deputy would just mind sitting down I can advise the Assembly that it is not the Comité des Connétables who are making this order. It is enshrined in a law of the States of Jersey which we all signed up to. The law is Article 2 of the Referendum (Jersey) Law 2002.

Deputy G.W.J. de Faye:

I do not think that is a matter that I was putting in dispute but I am grateful to the Connétable for clarifying that particular issue. I think though that quite clearly Members will begin to understand that any referendum that is put comes ultimately once held with a very significant amount of baggage in terms of how it is to be interpreted. It will be interpreted on the basis of the original turnout. It will then be interpreted on the basis of how the percentage of the vote turned out in the referendum. At the end of the day does it really tell us very much about the value or not of switching to Central European Time? I think Senator Norman brought up an interesting point in terms of C.E.T. and its impact itself, he in my view quite rightly said - and I suppose as an old T.V. hand I am biased in this issue - television is going to be a significant factor. He then indicated that, of course, we now have T.V. on demand which he felt might sort of allay the problems. I do have to say to the Senator that if News at 10 is, in fact, going to go out at 11.00 p.m. T.V. on demand is not going to help you with watching News at 10 any earlier. For you it will be either at 11.00 p.m. or after 11.00 p.m., and news as far as I understand, most people who do watch news programmes - I may be an old fogey in that department - we like to have it as soon as possible, not tomorrow because tomorrow's news from yesterday is not really news. I see Senator Routier is having ... is the Senator having difficulty following?

Senator P.F. Routier:

Sorry, I thought in last week's debate the Deputy said he did not have a T.V. so I am sorry, I am getting confused. [Laughter] [Approbation]

Deputy G.W.J. de Faye:

I am very grateful for that interjection, Senator.

Senator P.F. Routier:

Perhaps it was just a licence. [Laughter]

Deputy G.W. de Faye:

Fortunately, I can inform the Senator on very rare occasions I am allowed out of my hovel to watch other people's televisions. There does appear to be this problem about the issue of the register and mixing this up with the Connétable and Senator elections. I have to say that if there is a difficulty I cannot see it affecting very many voters. There may be, as the Comité pointed out, some people who happen to have moved house or switched Parish, in effect, in a conflicting way, but if we are expecting thousands of people to turn out and vote, I think that the fact that there is the odd dozen or so who may represent an element of confusion is by no means an insurmountable problem. What I do think it is important to understand, though, is what significance we will be giving to this referendum. Because in my view what we are doing here is, in fact, sounding out opinion and consequently it would be very wrong to try and portray this as the voters effectively deciding the issue on Central European Time. I think for me this is where the Senator's worthy proposal fails and where I would commend as an alternative what I thought was the exceptionally helpful idea from the Deputy of St. Mary, which is that we utilise the circumstances of the existing Senatorial and Constables elections to add an exit poll. This completely avoids the issue about having to have people to register. It is not compulsory but, nevertheless, it would form an opportunity to take a very significant sounding of the views of the public without, as it were, being quite such an institutional exercise. I have to say that I think the Senator would serve himself well if he just considered over the next few minutes or so whether he feels that, in fact, what he is looking for and what may be the most practical approach to this current issue is an exit poll on the issue of C.E.T. as opposed to a referendum. Because I do need to say to Senator Perchard, albeit that I have elicited the fundamental failings that referenda can produce, for my money a referendum is something that you utilise for very specialised constitutional issues. I am not convinced at this stage in proceedings that switching to Central European Time is a matter that is of fundamental importance to the public of the Island. If it is to be so, then I think it is more appropriate that the States as an Assembly adopts a view or a position in advance and we then have a very extensive

consultative position to adopt in terms of looking at all the issues. At this stage, frankly, simply because the proposition has been put on the table, we have - and I must commend the civil servants involved - I think in my view a very useful report on the pluses and negatives of C.E.T. presented to us as an Assembly in a report, but who has had an opportunity to read it in detail? Has it been put out into the public domain for the public to get even the earliest understanding of what the issues around Central European Time are? No, it has not. I think that we are unfortunately approaching this the wrong way round. I think that we need to first of all sound out in a very thorough consultation exercise the pros and cons of Central European Time and then the States Assembly should take a position on it so that the government of the Island has a view, and then if it is deemed that this is worthy after that to be put to the test of a very vast number of the public in a referendum, then the referendum should take place after that time. At this stage of the proceedings, I commend the Deputy of St. Mary for her idea. I think we are in the realms of very early consultation and the most we should be expecting at this point is to engage in an exit poll. It seems to me that Senator Perchard is on the right lines, that the forthcoming elections in October is a jolly good time to stage an exit poll on this matter, but I do not see this as forming something as, frankly, a vote of a rather higher nature, which I believe a referendum to be. To me, you take referenda on major constitutional issues. I do not see this as a major constitutional issue and I do not believe that we have sounded out enough of the pros and cons yet really to sensibly put this to the public in the way that is being proposed.

2.1.8 Deputy J.A. Martin:

Again, it is always nice to follow Deputy de Faye when I am going to totally disagree with most of what he said. I will be brief. Firstly, I really do wish that we would stick to what Senator Perchard said. It is a question do we want the people to ask and is it a simple question? I really do wish when Deputy de Faye stands up sometimes he thinks about the people who are listening. If they cannot work out that we are going to be in time with France and out of time with England, I am sorry, most people travel, they manage without all of us telling them to put their clocks forward an hour in April and in spring and they put them back again in October. I think it is a quite simple question and in theory I totally back the proposition to hold a referendum. On the practicalities I just have a couple of questions for the Senator. Obviously what has been brought out today, I wonder why he did not consult more, especially with the Comité des Connétables, because we heard only a few weeks ago on the draft Public Elections Law how much time the volunteers and the Parish staff put in and do a very good job at the Parish Halls over elections. This leads on to my second question, and this is the first time it will be done. On 15th October we are holding the election for Constables and Senators. He did not consider the Deputies' elections. It is a lot longer and it is only one election. It is a lot further away. It may even help the 21 days because the nominations are 4th November with elections on 26th November, which is 22 days, so the dual register that closes I think ... this is something obviously I am querying about. The Senator is shaking his head, but to me I think I probably will support the proposition if the practicalities can be overcome. I would just like to ask did he consult with the people who are going to carry out this count. It will now be 3 counts, 3 votes on one day, and to me it would have been a lot easier to do it on the Deputies' election. I cannot understand why.

The Connétable of St. Ouen:

Can I maybe just advise the Assembly that I have just had a note passed from the Law Officers which says that the suggestion of a later nomination meeting for Senators is unworkable as Article 19 of the Public Elections Law requires nomination meetings at least 21 days before the date of the poll. Therefore, the closing date for registration is midday on the day before; in other words, 22 days before the poll, but the Referendum (Jersey) Law requires the register to be that at midday on the day that is 21 days before. I am only pointing it out.

The Bailiff:

May I just say from the chair that the proposition is composed of 3 paragraphs; 2 paragraphs are concerned with the question to be put in the referendum and the form of the ballot paper; another question is concerned with the date, 15th October. The third paragraph of the proposition requests the Chief Minister to take the necessary steps to implement the referendum on Wednesday, 15th October. Now, what Members would be doing if they adopted the proposition would be placing the responsibility on the Chief Minister to take the next steps to have a referendum held. If it were impossible for practical reasons set out by the Chairman of the Comité des Connétables to hold it on 15th October, I am sure the Chief Minister would come back and say so. On the other hand, those practical problems may be capable of being overcome by one means or another. So, I think it is a matter for Members whether they wish to adopt the principles and then leave it to the Chief Minister to decide whether the practical difficulties can be overcome.

2.1.9 The Deputy of St. John:

Firstly, I would like to applaud Senator Perchard for bringing this forward because it is a subject that has been sitting in the long grass for some time and raising the profile of the issue once again I think is a good idea. The mechanism and how we get there is something which I guess is going to be debated a little bit more this afternoon and possibly going on to the future. One of the questions I had, though, for the Senator was that it is all very well having a referendum, but if it was like the case of Ireland recently, a lot of people did not know what they were voting for, did not understand. In fact, they knew what they were voting for; they did not understand the issue. There is an issue here which is very clear to understand, but it is very, very important that we get the information out to the public, as much information as possible, about the pros and cons. I think the Council of Ministers' paper is very, very useful, as Deputy de Faye referred to it, but we only got it yesterday. The public have access to that now but most will not know it is there. Very, very important when you are doing this sort of referendum, any kind of opinion poll, that the people you are sampling the opinion from have got the information and knowledge. So I would be quite interested to know what Senator Perchard has in mind for that because Jersey is very, very good at lobbying and it is usually the loudest voice that wins the day, not necessarily the majority view, and that is something which we need to be very mindful of if we have a referendum. You must have the information out there, otherwise lobby groups will shout very loudly either for or against. What we have to have is a balanced view and all the information out there so people can make a sound judgment based on unbiased information either way. On balance, if one does a quick spot of analysis, I know this debate is not about evaluating whether we should do it or not, but on balance the spot analysis says to me: "Yes, we should be looking at it." I guess that is why Senator Perchard has brought it to the House for consideration. I do take on board, though, Deputy de Faye's view: is this important enough to have a referendum on? Now, in most countries - with the exception I think of Switzerland because you can have a referendum on everything - it is usually about a major issue, usually a constitutional issue or whatever. The last time this House proposed - or rather P.P.C. in fact it was - a referendum, it was part of a proposition that P.P.C. brought for reform of this House. Now, that was overturned, nobody wanted to go ahead with it. It was an idea for the reform of the States of Jersey. Attached to it was the idea that the public should have their say. Now, I voted for that. It is the only item that we have brought forward to the House recently about reform of the Assembly that I voted for because I have always said that the people should have a say on issues like that. I did not vote for anything else regarding reform of this House because it was piecemeal, but that one, not only was it a good proposal but also it had this idea of referenda so that people had a say. The reason why I mention it is because is this an important enough issue to have a referendum on? I think Members need to question that one and I would like to hear Senator Perchard's thoughts on that. Is it important enough? Is an exit poll a better way of doing it, as the Deputy of St. Mary suggested? I think that is a view that needs to be talked about a bit more before we maybe make a decision on this. I am not so sure it is an item for a referendum. It is important the public have a say on it, but they can have a say through us in this Assembly. There is no reason why we cannot have a debate in this Assembly, a well-informed debate, a well-publicised debate,

proper consultation and have a debate in this House. Is this just a way of side-stepping that? I do not know. I know it will have to go through this House with some legislation anyway, but should it not start here after having done some market research in the form possibly of an exit poll and then bring it to this House? So, those were my concerns. Overall, though, I think referenda are a good idea. I think the public should have a say on items of interest to them whenever possible. I am not totally convinced that this is an important enough issue to have a referendum, but if I can be convinced otherwise I would be happy to vote for the proposition because I happen to believe that the idea of going to Central European Time is a good one.

2.1.10 Deputy K.C. Lewis:

While I like the idea of Jersey being a little more continental, I cannot support at this stage Central European Time, but I will support the proposition for a referendum. Not only would News at 10 be at 11.00 p.m. but also onscreen time checks from the U.K. on ITV, BBC and satellite would be completely wrong, with the exception of our local BBC and Channel Television. There is also the question what would Guernsey do, would they follow suit or stay with us? Also, television auto recording devices would not function properly as I believe they use the Teletext timing code signal to start and finish. There would also be the case of our post would be arriving an hour late; also the newspapers would be an hour late arriving in the shops. Well, they would not necessarily be an hour late, we would be an hour early. I cannot support Central European Time but I will support the proposition for a referendum.

2.1.11 Deputy C.J. Scott Warren:

I believe that the proposed timescale in this proposition to hold the referendum is too rushed. I do feel that people need to appreciate the issues, some of which have just been touched on by the former speaker. I agree with Deputy Martin to the extent that on the surface this seems a very simple issue: just put the clocks on an hour and keep them there and another hour on for the winter, as France does and the Continent, but we have seen in the Council of Ministers' comments the additional information. I think it may well be that the members of the public know all these and appreciate these as we do today, but I do think we cannot just assume that it is a simple question. I believe this is already showing that it is an extremely busy year and it is already obviously half over, almost half over. My feeling, Sir, is that in the main referenda should be reserved for major constitutional issues. However, we have not had a referendum yet and I could go with the idea and support a referendum on this subject after, as I have said, proper consultation has taken place in a slightly longer timeframe. Therefore, Sir, the idea recently mooted in the States today of a preliminary exit poll to give us a steer does seem an interim measure that we could sign up to quickly. As I say, to sum up, I am not sure this is really the correct subject for a referendum but we have never had one in Jersey and I could support it but, as we know, we are almost into the summer recess, time is short and we must do our first referendum and if we do it we must get it right.

The Bailiff:

Thank you for that candid admission, which has been noted by the Greffier. Deputy Fox?

2.1.12 Deputy J.B. Fox:

I do not think this particular proposition is appropriate at this moment in time. I can see the benefits of referenda; they have their place. But at this moment in time I am conscious of the fact that we have had petitions for the town park; 17,000 people, was it? We have had G.S.T. (Goods and Services Tax), what was it, 19,000 people? The danger is that when the States do not go along with whatever the petitioners are asking, then, of course, we are "out of touch", we are "out of sync" and we should be doing as we are told because that is the will of the people. In this case we are asking for a referendum before we have gone out to give the information to the people as to what the referendum will be considering. A simple answer, yes or no, that is fantastic, that is the positive side. The date at the moment, well, that can be resolved I am quite sure. From my calculations it would work better for the Deputies' election because there is 22 days between

nominations, but there may be other good reasons why that does not work. The suggestion of an exit poll I think at this moment in time, with everything else that is going on with the States, et cetera, I think is a worthwhile thing pursuing. So at this moment in time I am afraid I cannot vote for the proposition, although I can see that if it had been the other way round it would have had far more merit. The final thing is the fact that we are doing things again in isolation. It is a bit like our elections: we cherry pick the bits we like but we do not put the rest. We have the rest of the U.K. and the other islands on what would be a different time and we have not really discussed the consequences that that might have to the States of Jersey so that it can be out in the public domain so that that would be part of the consideration. Therefore, this is the wrong way around.

2.1.13 Senator M.E. Vibert:

This is one of the issues that when I came into the States I thought I would not be supporting Senator Perchard; now the balance has tipped slightly but it could still tip again. I think I was influenced, I say this, by Deputy Le Claire's speech because one of the concerns I had was that referenda really should be on important issues, but I do see the sense in having a referendum for the first time on an issue that is a very clear question that perhaps is not so important as a test run and a way to make sure we have procedures in place and it all works for when we may need a very important referendum on a much more important issue. I think, listening to Deputy de Faye, it is interesting about the procedure one should take in the run-up to the election. Deputy de Faye was arguing the States should discuss it first and take a position, then it should go to the public. I think there is a danger there the public might say: "Well, why should we bother? The States have already made up their minds." So I think I am not sure that that is the right way to go. My main concern is about the timing and tying it in with elections. One, I think it may confuse issues by tying it in with elections and also I think there is a very short timescale, because what is important with referenda is that a full explanation and opportunity to the public to understand all the issues are made available through information being made available, public debate and discussions possibly at all the Parish halls and centres so that it is a well-informed decision by the public when they go to cast their vote in a referendum. So I am still torn, Sir, and what I would much prefer to be able to vote for is that we should have a referendum on Central European Time, but I am not happy with the date and tying it in with the elections. If Senator Perchard would come back with a proposal that we should have a referendum, say, in the spring of next year on such a thing, a separate one so we could have a proper test run of a referendum apparatus and not tying it in with the elections, he would have my full support.

2.1.14 Deputy G.C.L. Baudains:

Much in the vein of the previous speaker, I find myself agreeing with a lot of what he said. It is unfortunate that some Members have splayed off and discussed the actual merits of changing the clocks. That is not what this proposition is about. As I said, in the same vein as Senator Vibert, we often talk about referenda. We have not had one yet, and I agree with him when he says that this is not a major issue and as such it may be, dare I say it, a good dry run for when we do have a major issue because we certainly do not want things to be going wrong on that occasion. It does seem to me also that this issue of changing it to Central European Time is rather like a planning issue: you just cannot please everyone and there will be those in favour, those against and, as such, if it was to come before this Assembly without a referendum, I feel that it will probably be kicking around for the next 20 years without a decision being made. There are essentially 2 questions I would like to ask the proposer to address in his summing up, and that is: does he believe it is possible, as others have said, for the pros and cons which obviously the public would need to be advised of before they could come to an informed decision to be ventilated in time and especially during the election time? I think one or 2 other Members addressed that, whether there would be confusion; while people are busy knocking on doors saying: "Please vote for me", somebody else will be saying: "Please put your clock forward." Also, the second query I have is does he have any suggestion as to what proportion of the electorate he might regard as being compelling? Is it 55/45 or 60/40? Because

clearly 51/49 would not be a mandate. I disagree with Deputy de Faye's analysis that a relatively low percentage of turnout for election would not give us any proper indication during a referendum because the way I look at it is we accept the turnout of less than 100 per cent to put Members in this Assembly. If that is good enough for this, then I think that is good enough for a referendum. What on earth is the difference? I am minded to support.

2.1.15 Deputy R.C. Duhamel:

I should not be surprised but I always am; that is probably because he sits behind me I am taken by surprise on occasion. That is the comments of Deputy de Faye. On the one hand, there he was telling us after dinner in one of his speeches as he normally does how wonderful it was to be approached by the Constable of St. Ouen as being an example of one of the "can do" politicians, then the bulk of the remainder of his speech was why we could not do it. It is absolutely mind boggling. Referenda, as referred to in the report, are there to accurately gauge a public viewpoint, and that is it. Under the Referendum (Jersey) Law 2002 the States are not bound to take any notice of a majority point of view expressed, a minority point of view expressed, or any point of view expressed, but we can do if we so wish. The key issue in asking for a public point of view to be expressed is that we would be informed of it before we went off and did something that perhaps was totally unpopular. The fact that some Members have referred to referenda not being used except on occasion for constitutional issues does not square very well with our sister island. Our sister island, Guernsey, have recently introduced the suggestion of an island-wide referendum on no less edifying a topic as to whether or not there should be an island-wide kerb-side collection of waste. If they can do it, that is probably a reason not to do it in a lot of Jersey politicians' minds, but I feel that our sister island is putting us to shame. There is absolutely nothing wrong in my view in asking the public to express their point of view on an issue. Now, a number of Members - and we have had Senator Vibert, Deputy Fox and Deputy Scott Warren - have all suggested that this is a rushed procedure and I would take strong issue with that. What they have not considered is we do have the very excellent report R.62 which sets out by the Council of Ministers the pros and the cons, the benefits and the disadvantages of both sides of the argument. Now, if we look at our calendars, today is 18th June so we have the remainder of June, the whole of July, the whole of August, the whole of September, and the first half of October, so in my estimation that is 4 months to put this particular document, R.62, in the newspaper or anywhere else, on the internet site, the public library, wherever we need to put it, send it out in a mail-out to the public, whatever, and it is up to the Chief Minister to decide how he is going to take the necessary steps to implement a referendum. He will decide what the best format is to educate the public as to what the issue is all about so they can make the simple decision as to whether or not they think that Jersey should adopt Central European Time or not. It is very, very clear-cut, there is ample time, but it surprises me that a number of Members always want to put off until tomorrow what they could be doing in the near future. That is probably because, as Senator Norman quite rightly said across the Chamber, they do not really want to do it. It is about democracy I think, in my book. There is nothing wrong with asking the public, who we represent, what their view is. There is adequate time and ample time to do it. It is something that the more revolutionary, if you like, of world governments are taking on board, that we should be communicating with our public and involving them in the act of governance. In fact, it is one of our strategic aims that we should be improving the links between government and the public. What a better way to do it. There is time. If there are any details that need to be sorted out, the Chief Minister as mentioned by a number of Members has time to come back and sort those out on a subsequent occasion. I shall be supporting this proposition and I would urge all other Members who do believe in bringing government down to the people as far as we are able to, to endorse this very, very simple proposition and for once to be putting their money where their mouth is.

2.1.16 Deputy S. Power of St. Brelade:

When I first read this proposition I thought it was a bad idea. I had problems with the practicalities of putting this on top of an election for Senators and Constables and I felt that we should have discussed it in greater detail first. That was my initial reaction. As I mulled it over and read it again and again, I changed my mind and I felt that it is a very clever proposition because it brings the possibility of a referendum on the same day as an election when people are going to the polling booth on the same day. I thought that was an excellent idea. I also take the point - I refer to what Deputy Duhamel said - we have time to do this. I have just worked it out. We have, as of today, 119 days to go to the senatorial elections and that gives us the best part of 4 months. So there is time to do it. There is an opportunity available. We are constantly criticised in the Assembly for not consulting the public, not asking the public their views, and here is a classic example of a subject matter which has not attracted one side of the Assembly or the other side of the Assembly and where we can clearly ask the public what their view is. I think it is a good idea and I will be supporting the proposition. I just want to make 2 other further points. To pick up on what Deputy de Faye said, he said earlier that a referendum should really restrict itself to something of profound or territorial or constitutional significance to our jurisdiction and I do not necessarily agree with that. I will explain why in a minute. Also, both the Deputy of St. John and Deputy de Faye referred to the recent Irish referendum on the Lisbon Treaty. In both cases I think I would disagree with what they said. The Deputy of St. John said that some people did not understand the referendum. Well, here is a classic example of a referendum that is easy to understand. There are no shades of grey or no shades of confusion in this. It is a referendum that is easy to understand: do you wish to change your time zone or do you not? I first voted in 1973 and I voted on the Irish ability, the Irish decision to join what was then the European Economic Community. I remember it very well and the issues were very clear. Some people have a worry that if we start using referenda that we will use referenda too often or that it will pop up as a voting exercise in Jersey and I do not agree with that. In my own experience in Ireland, there have been 5 referenda in 30 years, which is about one every 6 years: one on the E.E.C. (European Economic Community), 2 on divorce, one on Ireland changing its currency from sterling to the pound and then the Irish pound to the euro, and then one recently on the Lisbon Treaty. The interesting point about the Lisbon Treaty referendum was that while the 2 parties that dominate Irish politics recommended a yes vote, it was in actual fact a no vote that came out of that referendum. I think that is an important point. I think this proposition to have a referendum on the date concerned is a good one and I think it is a very clever and well-worded proposition. I have changed my view because when I first read it I did not think it was a good idea. Finally, may I say my one very short sentence on the substantive matter of the referendum is that it is really as much about latitude as it is about longitude. It is about daylight saving and maximising the use of daylight. It is not about time zones or anything else.

2.1.17 Connétable J.L.S. Gallichan of Trinity:

I will be brief. I have no problem with this at all, but I would like to just bring one point forward. There were some Deputies saying why not at the Deputies' election. I would ask what happens if the seat is uncontested? Do we have to open up the ballot or the Parish run an election purely for the sake of a referendum, whereas the senatorial I think is almost guaranteed there will be people standing more than the amount needed for the senatorial seats, so for me I would much prefer having it at the senatorial where we are guaranteed and the Parishes who have a non-contested election do not have to open and employ staff just for a referendum.

2.1.18 Senator S. Syvret:

I have always as a matter of principle voted strongly against closure motions, but it is debates of this nature that really test my will on that subject, I am afraid. This is a very simple question and it is a simple issue. It seems to me one either agrees with the proposition of putting this referendum to the public or one does not, and I simply cannot believe the amount of time we have expended on this matter. One either agrees or one does not. Some Members have said: "Well, it is too short a period of time and too complex a thing to put in the same kind of an arena as elections." Again,

this is completely untrue. If you look at countries like Switzerland, for example, they will often hold referenda 4 times a year with a variety of important fundamental questions put to the population which often coincide with election periods, too. It is the same in many of the individual states of the United States of America. I did research this in some detail when first bringing the referenda principle to the States. It does seem to me that if Members believe that the public cannot make an informed decision following 4 months of preparatory work, then I would suggest that is holding a very, very low opinion of the public's ability to understand issues. Certainly, I would have thought that electing Members to this Assembly is at least as important if not more so than this particular referendum. If 4 months is not long enough, well, perhaps it is not long enough, looking around the Assembly at some of the choices that get made. The point about the States not being obliged to carry out the verdict of the referendum, again this is old ground that has been covered in great detail previously. It is not within the British parliamentary tradition that referenda are what are termed 'mandatory'. They are advisory. The traditional constitutional position is that M.P.s (Members of Parliament) cannot ultimately be compelled to vote for one thing or another; that is why they can only be advisory within the British parliamentary tradition. We have adopted the same approach when approving our referendum law. It is feasible, of course, that the law could be changed at some point in the future to make the outcome of referenda mandatory, binding on the States, but there would be, I think, a significant number of constitutional issues and hurdles to be overcome before then. There is perfectly well enough time for this matter to be debated by the community. It is a comparatively minor matter and, as Deputy Le Claire remarked earlier, if we are going to use referenda it is as well that we begin gaining the experience of using them on something that is comparatively minor before we start, perhaps, getting into the territory of using referenda on more complex issues. I will certainly be supporting the proposition. I have heard no rational argument against it and, frankly, 98 per cent of the issues that have been raised against it have been disposed of in previous debates.

2.1.19 Deputy P.N. Troy:

I think it was Senator Syvret who first brought the proposals to have the States allow itself to have referenda, and then I think when we came to Clothier it was discovered that we did not have a legislative framework in place, so I brought a proposition then for us to have a legislative framework which my proposition requested the Legislation Committee to take that forward. Senator Kinnard headed that Committee then and that is how we ended up with being in the position that we can now hold referenda. It has been interesting that the framework is there but we have never got to the point of going out to hold a referendum. This one proposition today is the best proposition that we have had so far which gives us a chance to utilise this very important tool that is available to us. The thing about a referendum is it is absolute. It is much better than an exit poll, which can be unreliable and can even be manipulated. A referendum is via the ballot box and it cannot be tampered with due to the nature of the ballot box procedures. A referendum is the most reliable route to take. An exit poll is the most unreliable route to take. Regarding the comments of Deputy de Faye and how one would interpret ...

The Bailiff:

Deputy, I am sorry to have to ask you to pause for a moment, but we have become inquorate. I send out the request for Members to return. Thank you, Deputy.

Deputy P.N. Troy:

That is the second time it has happened to me in the last 2 weeks, I think, Sir. **[Laughter]** Perhaps Members could learn to count before they leave the Chamber, Sir, because that would become most useful. Certainly, going back to the comments of Deputy de Faye regarding how to interpret our outcome of a referendum if only 40 per cent of voters took part, well, of course, I would say that that in itself is a significant sample of the population. If you had a large sample such as that, it fully represents public opinion, I think. Whether it were 40 per cent or 50 per cent, you probably get very similar results at any number of referenda that you took. It is a well-known fact that the larger

the sample the more reliable and representative is the result, so I am fully behind a referendum. It captures the whole of the voters, those who go out to vote. Certainly, in an exit poll you might miss some of the people. If you did not have enough people manning the exit poll you might miss a number of people who are going out and so on and you would not get a true representation. The Constables also now have said that we would have 2 different voter registers running and that would be very complicated. Is it really very complicated? We have the “can do” Constables or the “cannot do” Constables, as was said before, and I think we need to put our “can do” hats on because if you did have a second register you could print it on a different coloured paper. So you could print it on green paper, you could have green ballot papers for the referendum and you could have a green box to put the green ballot paper in. I think everybody would understand that. You would know that your green piece of paper is for your referendum and you would know that your white piece of paper is to vote for Senators. So I do not see that it is a major problem. I think the Constables are making heavy weather of that. I think it can be achieved and we have to make it work as such. It is not unachievable, in my opinion. So I, of course, am supporting this proposition and I ask other Members to give the public the chance to vote on this issue, which is an important issue. The Deputy of St. John said: “Is this important enough to have a referendum on?” I would say yes, it is important enough to have a referendum on. It is a big issue and let us put it to the test through the ballot box.

2.2.20 Senator P.F.C. Ozouf:

We live in a divided world; among other things, those people who are morning people as opposed to those people who are evening people. I must confess that I am a morning person. When I read Senator Perchard’s proposal I probably did not want to allow people to steal an hour of my morning in the various different times of year. However, I read the Council of Ministers’ report and saw the other side. So we have had a difficult few months in Jersey. Politics becomes more polarised. I think that this is a good example of a question where perhaps there is no right or wrong. People can legitimately have a view on either side of the debate. That is what democracy is about. We have had referendum legislation since 2002. I think that we should perhaps have a dry run of a referendum perhaps for one issue which may be more important in future on an important constitutional issue. How much better will we be having had the experience of a referendum? Perhaps the Island will develop in time to a culture of more referenda like they do in Switzerland. It may also engage the public. It may get more people out at the polls on the senatorial election day. I am going to support it, Sir. The Chief Minister’s Department is, however, going to have to and I think it is incumbent upon the Chief Minister’s Department to put into the public domain the arguments for and against. There has been a brief report done. I think it is a very good, quick report done by the Chief Minister’s Department but we are going to have to amplify that report. We are going to have to properly set out the legitimate 2 sides of the discussion. The Chief Minister’s Department, lest there be some howls of protest from other Members, is going to have to have some resources to do that, an appropriately well-funded but frugal attempt to put in place a communications plan. That is important. On the issue of registers, I am afraid I do not agree that there is an insurmountable problem there. There surely can be a simple solution by clever Parish secretaries for one electoral register with some stars against names who are either in or out in order to have a simple system for an electoral registration. We are not going to be dealing with hundreds of differences. There is simply a variance report that could be produced on one register or another and the matter dealt with very simply. These are issues which good administrators can deal with simply. Sir, I am not always in agreement with Senator Perchard and I do not agree with some other Members that have spoken in favour, but I think it is a good example and it is an example where we do not have to polarise opinion and we can respect each other’s opinions.

2.1.21 The Deputy of St. Martin:

A very quick question for Senator Perchard to answer. I did not see anything in the report which made allocation or made allowances for people who would be out of the Island. Will there be

provision made for a postal vote as one can do for electing a Senator or Constable? So, if one is out of the Island, can one have a postal vote?

2.1.22 Senator J.L. Perchard:

It has been an interesting debate. It has been a bit of a see-saw. I thought I was chips for a while, but it seemed to have rallied around particularly of late and I thank Members for all their contributions. In the interests of time, I had made notes on everybody's contribution and I think probably, unless there were specific questions asked, if you will excuse me, Members, through the chair, Sir, I will try and answer the points raised specifically. But I am grateful to everybody who contributed. Constable Vibert raised on behalf of the Comité des Connétables and confirmed the comments that were made by the Comité, the concerns with regard to the conflicts between the Referendum (Jersey) Law and the Public Elections (Jersey) Law. Unfortunately, these 2 bits of recent legislation do conflict and I am not quite sure how that has come to pass, but it is obviously a bit embarrassing for us all that 2 bits of recent legislation conflict. We have established, albeit I thought it was a lifeline at lunchtime, that we could get around this confliction by holding the nomination meeting on the right day that it would not conflict, but we have since established that is not possible. So if we are to proceed with this, there will be a requirement to run a dual register, albeit I think there will be very, very few names that appear on one and not on the other. So, Members must bear in mind if they support my proposition today we will be asking the Parishes to be prepared if necessary to run a dual register. The Chief Minister and Deputy Le Claire spoke positively and the Deputy of St. Mary asked about an exit poll and that if she felt that she was not likely to support this proposition that she would support the principle of an exit poll. So that will be my backstop should I need it. She asked what I envisaged doing personally with regards to informing the electorate as to the issues. Well, we have started the process here. I have been nagging the Chief Minister, Members will recall, to produce a report which has now come in the form of R.62, which I think will be the spark for the debate. I do know that industry have been writing to me, the unions have an interest in this, clubs and associations are becoming alerted to the opportunities being provided by this, and people generally are talking about this. So I do believe the momentum to inform will come as a result of a positive decision being taken by the House today. I think there is a duty on behalf of the Chief Minister's Department, as Senator Ozouf has said, and the press and I think this will gain a momentum and could be very exciting in what is normally a very turgid time. Very disappointed with Deputy Le Fondré. He said that we need to know the impact for the finance industry. We need all the information. We will end up with the electorate wanting Central European Time and us, of course, not ...

Deputy J.A.N. Le Fondré:

Point of clarification, Sir, I do not think I said we need all the information. I think I said we need more information than there is now.

Senator J.L. Perchard:

The Deputy said we need all the information otherwise the electorate will be wanting this and, of course, us knowing better. This House knowing better? Well, what better way of establishing what the electorate wants than asking them? So I am very disappointed to hear Deputy Le Fondré, and perhaps I can tag on Deputy de Faye, Deputy Fox and the Deputy of St. John into his club of knowing better than the electorate as to what is good for them. Because on this issue, as has rightly been said just a moment ago by Senator Ozouf, there is not a right or wrong. It is a personal choice. It is a great opportunity for society, I believe, to evolve and it will be a choice made by people in their own interests. Deputy de Faye said if there was a 40 per cent or a 50 per cent, what a dilemma. Well, yes, it could be a dilemma but no more than the dilemma faced with a 25 per cent turnout in St. Helier No. 3. He said it was not a constitutional issue and, therefore, not important enough, Sir. I did do a little bit of research and one of the countries I researched was Ireland, and Deputy Power has made reference to Ireland, but, for example, the Swedish would have a referendum on whether to drive on the left-hand or right-hand side of the road, on prohibition. The

Irish have had elections, as Deputy Power said, on whether to legalise divorce. So, no, I think to say that it has to be a high powered constitutional issue is not a reasonable argument, particularly as this House has rejected on 3 occasions the opportunity for political reform ...

Deputy G.W.J. de Faye:

Would the Senator give way? I am most interested in the information he has provided. In the results of the Swedish election, does he know on which side the cars are driving? Is it 60 per cent on one side and 40 per cent on the other? **[Laughter]**

Senator J.L. Perchard:

Deputy Kevin Lewis spoke about his concerns of the introduction of Central European Time and, of course, that debate will come. He can inform that debate, and I hope he does. Deputy Scott Warren was a little bit undecided, but she said that she preferred the idea of an exit poll. Perhaps now that the pendulum is swinging she can jump over on to this side as well. Deputy Baudains asked a couple of particular questions. He was concerned that the public may not have enough time to understand this issue. I think it has been covered by other speakers. I disagree. I think this issue has been in the public domain now for some months. It will gain momentum and it is perfectly timed. He asked about what proportion of the electorate would one need to have a compelling directive. I do not know. That would be for Members if ever that situation arrived. I am just skipping a few others that seem to have been positive. The Constable of Trinity spoke but forgot to mention the party line that it may be difficult to organise this election, so I can assume it did not feature terribly high on his list of concerns. I do thank him for pointing out to Deputy Martin that the reason why I did not choose the date of the Deputies' elections is that very reason, that there may be some uncontested seats and, as a consequence, there would be no election there held unless it was for the referendum only, and it was on advice from the Greffier. Deputy Martin also asked why I had not consulted more widely with the Connétables on this matter. I think, quite frankly, the conflicts between the Public Elections (Jersey) Law and the Referendum (Jersey) Law came as a bit of a shock to all of us. This conflict was only established just before they produced their comments. Senator Ozouf said there is no right or wrong answer to this question, and he is absolutely right. He said why would we want to deny the electorate an opportunity to be heard on this? I think that is a very reasonable question. The debate will come. I assure Members that the details of the debate will come before the electorate get a chance to vote. I think given the current low esteem in which this House is held by many of the people out there in many of the electorates, to deny them the opportunity to give their opinion through a properly structured referendum at this stage may not be the wisest thing this House has done and I would urge Members to consider voting against this proposition very carefully. It is a very sensitive time and I think the public would be disappointed if they were denied this opportunity. Deputy Hill asked about the Referendum (Jersey) Law. Sir, I am sorry, perhaps he would remind me.

The Bailiff:

The question the Deputy asked was whether there was provision for postal voting in the referendum.

Senator J.L. Perchard:

I have not had time to research that. I have the copy of the Referendum (Jersey) Law in my file here. It has to comply with the details of the law.

The Bailiff:

Perhaps I can help. There is nothing in the Referendum (Jersey) Law which makes provision for postal voting, Senator, so I think the likelihood is that there is no possibility of a postal vote in the referendum. The postal voting provision is contained in the Public Elections (Jersey) Law and, of course, a referendum is not a public election.

Senator J.L. Perchard:

Thank you, Sir. So, with that, I will maintain the proposition and thank Members again, and you, Sir, for your help. Just in closing, I want to say that if we give the public a chance to vote on this and if the public were enthusiastic about the idea of moving to Central European Time, I see opportunities that could significantly change the way our society in Jersey functions. I suggest this could provide, if we go the whole way, the opportunity for us to become more socially aware, more continental in our lifestyles, and lead healthier and greener lifestyles. It is an opportunity that we should not deny the electorate a voice on, and I make the proposition.

The Bailiff:

I ask the Greffier to open the voting, which is for or against the proposition of Senator Perchard.

POUR: 32		CONTRE: 8		ABSTAIN: 0
Senator S. Syvret		Senator T.A. Le Sueur		
Senator L. Norman		Connétable of St. Ouen		
Senator F.H. Walker		Connétable of St. Clement		
Senator P.F. Routier		Connétable of St. Martin		
Senator M.E. Vibert		Deputy J.B. Fox (H)		
Senator P.F.C. Ozouf		Deputy of St. Ouen		
Senator B.E. Shenton		Deputy G.W.J. de Faye (H)		
Senator J.L. Perchard		Deputy J.A.N. Le Fondré (L)		
Connétable of St. Mary				
Connétable of St. Helier				
Connétable of Trinity				
Deputy R.C. Duhamel (S)				
Deputy A. Breckon (S)				
Deputy of St. Martin				
Deputy G.C.L. Baudains (C)				
Deputy P.N. Troy (B)				
Deputy C.J. Scott Warren (S)				
Deputy R.G. Le Hérisssier (S)				
Deputy J.A. Martin (H)				
Deputy S.C. Ferguson (B)				
Deputy P.J.D. Ryan (H)				
Deputy of Grouville				
Deputy of St. Peter				
Deputy P.V.F. Le Claire (H)				
Deputy D.W. Mezbourian (L)				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy A.J.D. Maclean (H)				
Deputy K.C. Lewis (S)				
Deputy of St. John				
Deputy I.J. Gorst (C)				
Deputy of St. Mary				

ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS**The Bailiff:**

That concludes matters of Public Business. We now move to Arrangement of Public Business for Future Meetings. Mr. Chairman?

3. Connétable D.F. Gray of St. Clement (Chairman, Privileges and Procedures Committee):

My Committee has been very conscious of the volume of business listed for 1st and 15th July, Sir. With your permission, I would like to propose a continuation day 3 for 1st July and one for 15th July. The dates that the committee are proposing are 8th, 9th and 10th July, and Friday, 18th July.

The Bailiff:

Do you wish to make that proposition?

The Connétable of St. Clement:

I do make that proposition, Sir.

The Bailiff:

Is that seconded? **[Seconded]** Are Members content to agree to set aside those dates in case it should be necessary?

Deputy J.B. Fox:

Yes, I have a problem which I sent an email that I have to chair the Bursaries Panel, which is organised at the beginning of the year.

The Bailiff:

Deputy, I am sure that almost every Member will have a problem at some stage.

Deputy J.B. Fox:

Yes, but this is for 4 days.

3.1 Deputy J.A.N. Le Fondré:

I will leave it to other Members to speak because I am sure they will as well, but I know one of the issues wandering around is on P.43, which is the bovine semen debate, hopefully if I have read that correctly, and there was discussion about trying to do an extra sitting on I think it was 22nd July. I do not know if now is the time to raise it, but I know the emails have been sent to the Chairman of P.P.C. to see what the Members are inclined to consider on that. I would like to raise it as a potential amendment, I guess, to the proposition, Sir.

The Bailiff:

You mean as an alternative to Friday, 18th July?

Deputy J.A.N. Le Fondré:

I look to the Assembly as to whether it is an additional or alternative. If it can be an alternative, that would be fine by me, Sir, as an alternative, then, to 18th July.

The Bailiff:

As an alternative to 18th July you want to propose it. Shall we deal with them one bit at a time? Is everyone content that the Assembly should meet if necessary on 8th, 9th and 10th July to complete the business for the preceding week?

3.2 Deputy C.F. Labey of Grouville:

Could I just ask for some clarification on that? With Deputy Fox highlighting the fact that he has meetings for 3 or 4 days, which clearly cannot be changed, how do P.P.C. or this Assembly intend to treat that? Will it be défaut excusé? Because if it is not, then I think there is a problem in the system in that some people have been allowed défaut excusé just because they are off Island in this session.

3.3 Deputy P.N. Troy:

But we have always known that at the end of the session that the week extends for more than one or 2 days, so for the Deputy to have organised a meeting that would conflict with that is quite plainly an error on his part. **[Interruption]**

The Bailiff:

Deputy, do not rise to that, please. **[Laughter]** May I put it to Members, are the majority content to meet on 8th, 9th and 10th July? Very well, may we then turn to the additional day for the meeting on 15th July and successive days? There is an amendment in the name of Deputy Le Fondré to the proposal that we should meet on 18th July, and the Deputy would substitute Tuesday, 22nd July. Is that amendment seconded? **[Seconded]** May we proceed straight to a vote on that?

3.4 Deputy S.C. Ferguson:

No, please, Sir. I specifically asked P.P.C. not to put anything on 21st or 22nd July because the Public Accounts Committee has for some considerable number of months had hearings organised for the whole of the Monday and Tuesday of that week.

3.5 Deputy P.J.D. Ryan of St. Helier:

I think the first thing I would like to do before we talk further about 22nd July is to ask the Assembly whether they would be prepared to move P.43 to the end of the agenda rather than the start of that agenda. That would be the first and minimum request that I would make to the Assembly. Can we talk then about whether we want 22nd July. At the moment my panel has and is continuing to do everything that it possibly can to the extent that we now have 2 officers working on this particular scrutiny review for bovine semen. We are, nevertheless, finding that it is a very difficult task to get this done in time. We are doing our utmost, Sir, but if we do look at bovine semen on 22nd July it will give our officers effectively a further week to complete the report. It will give us a further week to complete the work that we need to do. I must ask the Assembly whether they would rather that we rushed this review or whether they would prefer the review to be done in a timely manner. It is an extraordinarily important subject that we are looking at. The more that we look at it, the more important, the more wide-ranging we find the issues to be. We want to get this one right. We do not want to be accused of rushing it through. That is why we would prefer this to be debated. If at all possible, I would sincerely ask the Assembly to consider delaying bovine semen until 22nd July. We do accept that it is absolutely desirable as far as we can to get this report and to get this P.43 debated before the summer recess. We do understand the issues at stake, but at the same time we want to do a good job on this so that the Assembly can be happy that we have looked at all of the issues in detail and that we are content with the report that we finally submit to the Assembly.

The Bailiff:

Can I just say from the chair that we are talking about dates at the moment. Now, Deputy Ryan has given one reason why he would like the Assembly to meet on 22nd July and not on 18th July, but we are not debating bovine semen at the moment. We are debating a date. I saw Deputy Scott Warren.

3.6 Deputy C.J. Scott Warren:

I had always believed that we did not go beyond the date set here. When I booked a holiday, a summer holiday, I did not think there was any possibility that the States would run on in July. Normally we add additional weeks if need be during July in the main part, and obviously I may stand corrected on this but I obviously would not have booked a summer holiday had I believed an important topic such as bovine semen was going to be debated on 22nd July. In fact, during the 8 years I have been in the House and been privileged to be here that has never happened that it has run on later in the summer recess, which this is going into the summer recess. For that reason - and I do accept the importance of this debate being held when all the facts are there for bovine semen -

I would say that if it is not in time is there a possibility of it being taken as the first item in September?

3.7 The Deputy of St. Mary:

I would just like to say that precisely for the reasons highlighted by the previous speaker, among others, this matter was considered at the latest P.P.C. meeting and P.P.C. came to the decision that it would not be proposing a session on 22nd July for exactly that reason. I understand we are not debating the bovine semen now, but I do think the 2 issues are intrinsically linked. Deputy Ryan did say that the pressing reasons why the matter had to be debated were well understood, but I am afraid, Sir, I have asked several times for the pressing reasons and I do not understand. Would he kindly elaborate on what they are so we can give it due consideration?

Deputy P.J.D. Ryan:

The proposition is that of the Chief Minister. I think the Chief Minister might be better placed to answer that.

3.8 Senator F.H. Walker:

I would agree. I agreed to withdraw P.43 from its original planned date on the absolute understanding that it would be debated before the summer break. **[Approbation]** Now, I was given an assurance from Deputy Ryan on behalf of his panel that would be the case. I do absolutely appreciate the difficulty that the panel finds itself in and applaud their determination to do a full and thorough job on it, but it is vital for the future of the industry that we do debate this as promised, and we did promise the industry we would debate it before the summer break. So, Sir, I would hope Members will take that very much into consideration when they decide whether or not we should meet on 22nd July. I think the panel need the time to do the job thoroughly, I support them fully in that, but I could not support any suggestion that we fail to debate this before the summer break. That, in my view, would be a breach of promise to the industry.

3.9 Deputy G.W.J. de Faye:

I would certainly support 22nd July as opposed to the previous Friday. I do think that it is a matter of our own experience that we need to recognise our capabilities in terms of being able to devote our attentions to a variety of issues over a successive number of days. It cannot have escaped Members' attention that even now when we run to a Tuesday, Wednesday and Thursday the mental faculties are beginning to flag, modestly. I am not sure precisely how bad things might get on a Friday, but I think there is enormous benefit, particularly if we are studying a relatively complicated proposition with a lot of information attached to it, that Members can feel confident that they can put it to one side during a 3-day debate knowing that they will have the weekend to study it comprehensively and get off to a fresh start on the following Tuesday. I simply believe that the Assembly has to understand its own limitations and how much material we can get through and how we do it. I think we should not consider the Friday but we should give ourselves that break and come fresh to a debate on the Tuesday.

3.10 Deputy G.C.L. Baudains:

It does occur to me, Sir, that if we do agree to 22nd July then it may not be debated at all because this House may well be inquorate. I follow Deputy Scott Warren's speech that we have always traditionally and it is cast in stone that we do not go beyond that date which we had set aside for the simple reason we are unable to take holidays. Indeed, I was due to be going away before the end of this month to assist somebody and that has had to be cancelled. We do not book anything during the summer recess. That is the only certain period we have of being able to get away. We cannot even get away between the usual fortnightly sittings and I think it would be highly unfortunate if people are marked en défaut for something which has not happened in my 10 years in this House so far. It is something which we have always understood would never happen. Frankly, I do not care

if we sit on Saturdays and Sundays, but we should not go into a period beyond that which is normal.

The Bailiff:

I think Members also ought to be aware, if I may just interject from the chair, that if we start P.43 on Tuesday, 22nd July, there is every likelihood that we will continue on the Wednesday or even the Thursday.

Deputy G.C.L. Baudains:

I would agree with you, Sir. If we do decide to do that, then perhaps we might be carrying on until August for other matters, I do not know.

3.11 Senator S. Syvret:

On a point of order, I understand why the chair usually exhibits a degree of latitude in these matters, but is there not a Standing Order against repetitious speeches? It seems to me that the matter is plain. Can we not just make a decision and go to a vote on this?

The Bailiff:

I do not think there has been any repetition so far, Senator, but I take the point and certainly Members should not make a contribution unless they have something new to add.

3.12 The Deputy of St. John:

I think partly the reason why the dates are as they are with the States Assembly is it usually coincides with the school holidays, and the school holidays commence that week. I and maybe others as well have booked holidays that week with the full knowledge that you have never extended the sittings into the recess. So I really could not support 22nd July. Could I just add one other thing? There are a number of items on the Order Paper here that could be shuffled about. The bovine semen is the most important thing: move it up, move it further up into the month.

3.13 Deputy J.A. Martin:

I do think I have something further to add. Yes, it may never have happened in the last 8 years, but we have got ourselves into this mess again and everybody should have seen this coming. I would ask from the chair, Sir, under Standing Order 5 Members may requisition additional meetings. My understanding of that is all it needs is 7 signatures and you will only have to consult with P.P.C. and you shall convene a meeting which may be within or outside a session. So it is precedent in Standing Orders. We have been asked and we are doing lots of hours on this bovine semen. If people want to sit, which we could do, on the Friday, Saturday, Sunday, I think that is absolutely ridiculous, we need fresh eyes. I am hearing now people popping up, Sir, and saying they are on holiday. An email was sent round last week to indicate who would be away and we had one reply and that was from Deputy Scott Warren. Now, yes, the children do finish on 18th July; my children finish on 18th July. I would have thought States Members who look at the workload ahead would have thought: "Possibly we will be going into the next week" and would not be having the holidays. Again, I would like to also remind States Members, which I pointed out yesterday, and as for Deputy Baudains, we only have 8 weeks in the summer to take holidays, 4 weeks at Christmas, 3 to 4 weeks over the April period, and we are full-time politicians and on the remuneration that we got today we all take full-time politician money. So I really do not think, Sir - I am getting very passionate - that it is much to ask to sit again on 22nd July and get the business done.

3.14 Deputy D.W. Mezbourian:

It is something new, Sir. I believe it has not been addressed. I wonder whether the Chairman of the Corporate Services Panel would be able to remind the House when we will be presented with the definitive Scrutiny report on this so that Members may decide for themselves whether they will have enough time to read it, assimilate it and understand it before debate.

3.15 Deputy P.J.D. Ryan:

I find difficulty in answering the Deputy, I really do, because it is a little early for me to say. Although what can I say? To some degree the date of the debate will determine the cut-off point at which we will present the report. It is a question of whether the report will be as good as it might otherwise be. That is more to the point. We will do our utmost. There will come a point, clearly, where we will simply refuse to report because the quality of the report will not be good enough. But assuming that we can get some kind of report to the States, it will be determined by when the date of the debate is. As I say, that does come to the point where, if it is that bad, if it is that short, then we just do not report. We have to say we cannot do it in time. Let me say, Sir, we have 2 officers working on it; we can do no more than that. We are working as fast on it as we can; we can do no more than that. It simply is that if we leave it until 22nd July it means that we do get an extra week to work with, effectively, because then the report will probably be printed on 17th or 18th July, in that area, and then Members will have the full weekend to study our report before the debate on 22nd July. It does give that weekend as well for Members to study the report. I think that is important and I think Deputy de Faye made that point.

Senator M.E. Vibert:

If the report is as long-winded as that answer we will need a long time to consider it.

The Bailiff:

Deputy Le Fondré, it seems to me that there are a lot of imponderables in relation to this as to when the report of the Scrutiny Panel is going to be available, how quickly Members will have got through the work on the preceding basis, and I am just wondering whether it might not be more sensible to leave over until 15th July the question of whether one should cut out 18th July and meet on 22nd July. It is not convenient, I know, to some Members who may have booked holidays and so forth, but that might be the lesser of 2 evils.

Deputy J.A.N. Le Fondré:

Presumably, Sir, we have to agree or we have the option of revisiting this on 1st July anyway, do we not, as well as 15th July?

The Bailiff:

Are you content to withdraw your amendment, then?

Deputy J.A.N. Le Fondré:

On that basis I am happy to withdraw the amendment for the time being.

The Bailiff:

Very well.

3.16 Deputy G.W.J. de Faye:

Just on a point of information, it would be helpful I am sure to all of us in the Assembly as time goes by if those Members who have booked holidays for that relevant week might indicate by putting their lights on so we know how many are affected.

3.17 The Deputy of Grouville:

I have been trying to speak for a while. I was considering withdrawing the census of the Island's population not because I especially want to because we have the rezoning debate coming up and I think it is absolutely ludicrous going into rezoning our countryside before we have full and accurate figures. I will be bringing something back, just to warn Members, but obviously not in this session so that we do not go into an Island plan without accurate figures. But I would be happy to withdraw it if it would assist Members so that we can move some of the business from 15th July on to 1st July.

3.18 Deputy P.N. Troy:

Does the Deputy mean defer it, Sir, rather than withdraw it? Is she deferring it until later in the year or withdrawing the proposition?

The Deputy of Grouville:

I think I will withdraw it and then bring something very similar back.

Deputy S. Power:

Are you going to go to a vote now?

The Bailiff:

I just want to make sure that Deputy Le Fondré is happy to withdraw his amendment to inscribe now 22nd July instead of 18th July on the basis that he can reconsider that in due course?

Deputy J.A.N. Le Fondré:

Yes, Sir, I am happy to.

3.19 Senator P.F.C. Ozouf:

I would hate to prolong the debate, Sir, but if we vote on the fact of 22nd July, we cannot revisit it, then there is certainty. Members are in this position that we need certainty in order to make plans, so I appreciate your remarks about the imponderables, but one thing we should make clear, I think, is whether or not we are going to sit on 22nd July.

3.20 Deputy C.J. Scott Warren:

Could we firstly take the vote you asked for before the Deputy of Grouville spoke, which was how many people had already made arrangements for that week? Because if it had been habit other Julys that we ran on into the school holidays, I am certain Members would not have made holiday plans.

The Bailiff:

I think the mood of the Assembly is to make a decision now as to whether it is 22nd July or 18th July. May we have an electronic vote, perhaps? We are voting on the amendment of Deputy Le Fondré to substitute Tuesday, 22nd July for Friday, 18th July. I ask the Greffier to open the voting. The voting is for or against the amendment of Deputy Le Fondré.

POUR: 18		CONTRE: 20		ABSTAIN: 1
Senator F.H. Walker		Senator S. Syvret		Senator P.F. Routier
Connétable of St. Helier		Senator L. Norman		
Connétable of Trinity		Senator T.A. Le Sueur		
Connétable of St. Martin		Senator M.E. Vibert		
Deputy A. Breckon (S)		Senator P.F.C. Ozouf		
Deputy of St. Martin		Senator J.L. Perchard		
Deputy G.C.L. Baudains (C)		Connétable of St. Ouen		
Deputy J.B. Fox (H)		Connétable of St. Mary		
Deputy J.A. Martin (H)		Connétable of St. Clement		
Deputy P.J.D. Ryan (H)		Deputy R.C. Duhamel (S)		
Deputy of St. Peter		Deputy P.N. Troy (B)		
Deputy G.W.J. de Faye (H)		Deputy C.J. Scott Warren (S)		
Deputy P.V.F. Le Claire (H)		Deputy R.G. Le Hérisssier (S)		
Deputy J.A.N. Le Fondré (L)		Deputy S.C. Ferguson (B)		
Deputy S.S.P.A. Power (B)		Deputy of St. Ouen		
Deputy S. Pitman (H)		Deputy of Grouville		
Deputy K.C. Lewis (S)		Deputy D.W. Mezbourian (L)		
Deputy I.J. Gorst (C)		Deputy A.J.D. Maclean (H)		

		Deputy of St. John		
		Deputy of St. Mary		

The Bailiff:

We come back to 18th July. Members are content, I assume, therefore, to inscribe 18th July as an additional date on that week.

3.21 Senator F.H. Walker:

Can I make it clear, therefore, and I do have feeling here for the Scrutiny Panel, that I will have to honour the promise given and maintain P.43 for Public Business commencing on 15th July, but I would support the thoughts of the Chairman of the Scrutiny Panel to move it down the list to last item of business providing we are assured that we do address it in that session.

The Bailiff:

That is a matter not for me nor for you, Chief Minister, but for the States in due course, but you would like to move P.43 down to the bottom of the list on 15th July?

Senator F.H. Walker:

I am aware of the risk of doing that, so can I reserve that until 15th July but maintain the view that we will have to debate it in that sitting.

3.22 Deputy R.G. Le Hérisier:

Can I suggest the Chairman of P.P.C. reviews that week, perhaps runs with the idea of the Deputy of Grouville and sees what can be taken, if anything, out of that week to make room for bovine semen?

3.23 Deputy P.N. Troy:

Can I also add that on 9th September there is very little. I have looked through this list and I think that there are probably 2 or 3 things which could be moved out to September. I think it really needs some Members to say whether their proposition is really that important that it needs to be debated this side of the summer recess.

The Bailiff:

I do not know whether the Chairman would be able to identify even from a cursory glance at 1st July matters which are not essential to be dealt with on that date and could be left over. So perhaps the Chairman of the P.P.C. might be able to undertake the task of seeing whether some Members might be persuaded to defer some of these items.

3.24 Deputy S. Power:

I have a specific proposal on 1st July, if I may be allowed to speak for less than a minute. On the proposition P.72 which is down for 1st July, the Energy from Waste debate, the Council of Ministers have asked T.T.S. (Transport and Technical Services) to get Juniper, the Scrutiny Panel consultants, to do a further piece of work before that debate on 1st July or 2nd July. This is clear also from yesterday's statement of the Environment Chairman. My understanding is Juniper are not available until the middle of July. May I, therefore, Sir, formally propose that the debate on P.72 be moved to September? Thank you, Sir.

The Bailiff:

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

3.25 Deputy G.W.J. de Faye:

It goes without saying that that is not only not a very good idea, it is a positively bad idea. I wonder sometimes why I hold presentations for States Members because it does appear the

messages are not getting through. Not only is the incinerator currently failing so badly we have had to have major structural alterations, we now have a chimney facing very severe difficulties. Whether we meet with Juniper or not will in many respects have absolutely no bearing on the proposition that I will be bringing to the States. There is no requirement that has been instituted by the Council of Ministers for a meeting with Juniper whatsoever. It was, in fact, a matter that the department discussed with Council and we have said in the past that we would have wished a meeting with Juniper to take place before the debate, but as Members will know from recent events it was the Environment Scrutiny Panel that put the kibosh on that only a matter of weeks ago. Frankly, we have done our best to discuss matters with Juniper, but we do not really need to discuss matters any further with Juniper, so it is not a requirement and I intend to proceed with this debate as soon as we can.

3.26 Deputy R.C. Duhamel:

As I reported in my statement yesterday, the confidential minute from the Council of Ministers to the effect that the Council had recommended that prior to the debate on the forthcoming report and proposition the Minister should extend an invitation to Juniper to do 2 things: to review the findings of the latest housing needs survey, which they have not as yet done because it was not available; and to review on an open or confidential basis as necessary any other relevant material available at the department which had not been previously examined by that company and to consider whether, having completed those reviews - so that is an extra body of work - to decide whether it remained content with its original findings as published in April 2008. It is very, very clear, Sir. I have minutes that I attempted to read out that through the statement from Juniper, who have been contacted to do this body of work, they have stated categorically that they are not against doing the work but they said that any meeting would have to be scheduled for the second half of July or later.

The Bailiff:

I ask the Greffier to open the voting, which is for or against the proposition of Deputy Power to defer the debate on P.72.

POUR: 12		CONTRE: 25		ABSTAIN: 0
Connétable of St. Mary		Senator S. Syvret		
Connétable of St. Helier		Senator L. Norman		
Connétable of St. Martin		Senator F.H. Walker		
Deputy R.C. Duhamel (S)		Senator T.A. Le Sueur		
Deputy A. Breckon (S)		Senator P.F. Routier		
Deputy G.C.L. Baudains (C)		Senator M.E. Vibert		
Deputy P.N. Troy (B)		Senator P.F.C. Ozouf		
Deputy C.J. Scott Warren (S)		Senator J.L. Perchard		
Deputy J.A. Martin (H)		Connétable of St. Ouen		
Deputy S.C. Ferguson (B)		Connétable of St. Clement		
Deputy P.V.F. Le Claire (H)		Connétable of Trinity		
Deputy S.S.P.A. Power (B)		Deputy of St. Martin		
		Deputy R.G. Le Hérisssier (S)		
		Deputy J.B. Fox (H)		
		Deputy of St. Ouen		
		Deputy of Grouville		
		Deputy G.W.J. de Faye (H)		
		Deputy J.A.N. Le Fondré (L)		
		Deputy D.W. Mezbourian (L)		
		Deputy S. Pitman (H)		
		Deputy A.J.D. Maclean (H)		
		Deputy K.C. Lewis (S)		
		Deputy of St. John		
		Deputy I.J. Gorst (C)		

The Bailiff:

Mr. Chairman, may I come back to my question to you?

3.27 The Connétable of St. Clement:

I was going to propose that the Energy from Waste facility and the funding, which is P.72 and P.73, be debated on 8th July and that also with that P.74, the Jersey Homebuy Housing, is also debated on 8th July. This is under the understanding, Sir, because of the procedure they will have to be listed under 1st July with the clear understanding that this House agrees to debate them on 8th July.

The Bailiff:

Are you going to explain why?

The Connétable of St. Clement:

The reason it is listed on 1st July is because that is the listed date and these are only continuation dates.

The Bailiff:

I understand that, but why are you proposing that it should be dealt with on 8th July rather than as it comes along?

The Connétable of St. Clement:

Because the Minister has indicated that he would like the House to have the opportunity of having the weekend before the debate takes place.

3.28 Deputy G.W.J. de Faye:

Perhaps I could clarify that because it was my suggestion, supported by the Treasury Minister. I have already made my views known on how I feel that the Assembly should pace itself I think in a sensible way. I was not happy that a very significant debate like the Energy From Waste plant was effectively at the end of the agenda. Making this slight adjustment allows Members to be able to put their EfW (Energy From Waste) papers to one side. They will then have a full weekend to study what is a relatively complex subject and may come fresh to it with certainty on the Tuesday, Sir.

3.29 The Deputy of St. John:

If it is of any assistance to the President, Home Affairs would be content to delay the P.61 with the consent of the Deputy of St. Martin, who has an amendment on it.

The Bailiff:

Draft Marriage and Civil Status (Amendment) Law, can that wait until September?

The Deputy of St. John:

Yes, Sir, we would be content with that provided the Deputy of St. Martin is.

3.30 The Deputy of St. Martin:

Well, I will say no. I believe there is a court case being delayed for the want of this proposition to come to the States. It has already been put back once. I think it is wrong to be put back a second time.

3.31 Senator P.F.C. Ozouf:

It is quite clear that we are going to have a summer of balmy long sittings and, frankly, Sir, I think it is incumbent upon us to prioritise our work in a manner which we need to deal with the important matters first. Sir, I have a proposition on 1st July which is the first item of business. We have not

yet received the Scrutiny Panel report. It is important but it is not as important as other matters on the agenda. May I propose, Sir, that we would simply decide this afternoon to move P.36, P.61, P.68, P.70, P.78 to the bottom of the list, accepting fully the arguments in favour of having 8th July pencilled in for the Energy from Waste plant and by doing so that we move up the 4 big propositions which do need to be, I would suggest to Members, resolved in early course and despatched one way or the other of P.97, P.98, P.99 and P.100 to be top of the list on 1st July.

The Bailiff:

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

3.32 Senator S. Syvret:

By way of perhaps an amendment, it is custom and practice that votes of no confidence get taken as first item given the uncertainty that hangs over the committee as it used to be, all Ministers as they are today, and it is better for all concerned, in my view, that such matters are disposed of one way or another at the earliest possible opportunity. So I would propose that P.99 be the first item of business.

Senator M.E. Vibert:

Followed by P.100, Sir, I would have thought would be fair on the Chief Minister.

The Bailiff:

Yes, so the proposition now is that P.99, P.100 will top the list, followed by the other items on the list for 1st July and that the items mentioned by Senator Ozouf should go to the bottom of that list.

3.33 Deputy I.J. Gorst:

Sorry, I understood that Senator Ozouf was moving some of those items until 8th July. I might have misunderstood that, but I would like to move my proposition, P.102, to 8th July, please.

Senator P.F.C. Ozouf:

I was not really suggesting 8th July. What I was suggesting is the order of business on the understanding that Members will be prepared to fast-track some of the items above if we are planning on having the Energy from Waste debate on 8th July, so Members will be flexible but if we have that order it will be manageable.

The Bailiff:

Can I just say from the chair that this is not the way to run a battle. **[Approbation]** I really think the Assembly has got to delegate to somebody, whether it is to the Greffier or to the Chairman of the P.P.C., the authority to deal with the order of business. **[Approbation]** This is a ridiculous way of dealing with things.

3.34 Deputy R.C. Duhamel:

I would just like to make a short comment, Sir. We did have a proposition from the Senator suggesting that 4 items would move to the top of the list. However, in repeating what had just come from his lips, you intimated that only 2 of the items would be placed at the top. The suggestion was that P.99 come first, then P.100, not followed by the other issues but followed by, presumably, P.97 and P.98 or P.98 and P.97 in that order.

The Bailiff:

I am sorry, Deputy, if I misled Members. I think that is quite right. P.99, P.100, then P.97, then P.98, then the rest listed on 1st July and the ones identified by Senator Ozouf go to the bottom of the list. In addition, the Energy From Waste facility is down for the first item of debate on 8th July. Are Members content to deal with it in that way?

3.35 Deputy S.C. Ferguson:

May I make one tiny, little addition? With the approval of the Chief Minister, there is a very, very tiny item which is the reappointment of the Auditor General. That should take us about 5 minutes. Could we tuck that in, please?

The Bailiff:

It will be dealt with on one of those days, Deputy. Is there anything else, Mr. President, you want to raise? No?

3.36 Senator P.F.C. Ozouf:

I am trying to not be unhelpful on the battleship, Sir, but there was a note circulated by the Greffe of a number of items that could be added to the continuation days on 8th July and 9th July. For example, I was asked whether the Supply of Goods and Services Law could be put forward on 8th July. As you rightly say, this is not the right place to deal with it, but perhaps P.P.C. could propose a list of further business which is lifted from the sitting of 15th July designed to make a full 3 days of business on 8th, 9th and 10th July. For example, the Supply of Goods and Services Law.

The Bailiff:

President, would you do that with the Greffier, perhaps? Yes. Very well, on that basis the meeting is closed.

ADJOURNMENT