

# STATES OF JERSEY

## OFFICIAL REPORT

THURSDAY, 10th FEBRUARY 2022

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[9:30]

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

**PUBLIC BUSINESS**

**1. Rent Safe Scheme (P.121/2021) - as amended (P.121/2021 Amd.) - resumption**

**The Bailiff:**

We resume the debate on P.121, the Rent Safe Scheme, which has been proposed as amended. Does any other Member else wish to speak on the proposition?

**Deputy K.F. Morel:**

If I may, I informed the Greffier yesterday, I would like to retract the comment I made yesterday about the photos with the target on, which caused some unseemly sights at the end of the day.

**The Bailiff:**

Thank you very much, Deputy. I am sure that is the appropriate course for you to take.

**1.1 Connétable R.A. Buchanan of St. Ouen:**

I am a landlord and my property is registered with the Rent Safe at 4 stars. Like most landlords, I understand and indeed support the need for minimum standards. I have received feedback from my tenants who have moved from other accommodation just how bad some properties are. Indeed, have occasionally seen this for myself when I have helped new tenants move to my property. Given that we have a minimum standards law in place I do not understand why some of these places are still in operation but I suspect it is because the inspection team were already stretched. My property is a lodging house on a register, and as such is required to be inspected by Growth, Housing and Environment regularly so I know what is involved in the inspection and how long it takes. Each inspection would last 2 to 3 hours minimum, checking electricity supply, cooking conditions, lighting, damp checks; in fact all the areas listed on the website are meticulously checked. Furthermore, all my leases are examined to make sure they comply with the current legal requirements. In fact, a full morning's work, and we are a small property. Then the inspector has to write the report, listing any areas that need checking, further clarification or indeed rectification if the inspector feels improvements or rectification is needed. Following that, the landlord is then required to go back and confirm all the changes needed have been made. Simply, I think, a degree of negotiation is needed at times as the inspector will have interpreted the regulations one way and you another. Normally a way forward which suits both parties is found but it takes time and manhours. The point behind this declaration is to demonstrate that the Minister for the Environment's assessment of the time and effort needed to impose requirement of the Rent Safe scheme on the whole rental market is very close to the mark. Thanks to Deputy Ward's amendment all properties that are not currently part of the Rent Safe scheme, if this proposition succeeds, will need to be inspected to determine their star rating. I am sure any new law reflects the wishes of this Assembly if we approve this proposition. Indeed even if this regime is introduced gradually, more inspection staff will be needed as the current team is probably only sufficient to cope with current inspection levels. Deputy Morel is right. This will add to the burden of Government and to what end? Yes, it will pick up the properties that need to be chased out of the market but it also involves the inspection of thousands of properties that are perfectly acceptable. There has to be a more intelligent way to do this. I am also not keen on the Rent Safe scheme being dragged into the sphere of a compulsory scheme, as this will severely detract from its current value. In its present form it is, as Members know, voluntary. Like Eat Safe, that is its real value. If you are a landlord registered with Rent Safe it makes a statement about the fact that you care about your tenants and as a result you tend to attract more discerning tenants as a result. Good tenants, and some may be surprised to hear me say this, who look after their accommodation and pay their rent on time are very valuable and, in my view, it makes good business

sense to look after them. This benefit will vanish if the scheme is compulsory and everyone will be included. In my view, consultation is also missing from this. As I know from the other work I do in Government, talking to the participants in any proposed law is normally helpful. Even if you do not take up the change that might be suggested then at the very least all parties have been asked. I have to say as a landlord I have the impression that since I have been in the Assembly the attitude is one of hostility towards us by some. The theme is that we are uncaring and simply profiteer off the backs of our tenants without a care for their welfare or well-being. Yes, there are examples of this in the market place, to be sure. But they are a minority and the rest of us would be delighted to see the back of them. This is why the current Minister for Housing and Communities' approach is so refreshing. He wants to raise standards and improve tenants' rights but at the same time wants to take landlords with him, ensuring their rights are also protected. I am with him all the way on this. I will be following his suggestion and not supporting the amended proposition which, to my mind, is a shame because both Senator Moore and Deputy Ward's intentions are entirely laudable but the proposal is, as the Minister for the Environment outlined, unworkable. If this proposition falls I very much look forward to seeing my face in the usual Facebook rogues gallery as one of the brown envelope receiving corrupt self-serving landlords again.

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

I can declare that I am not a landlord and I pay board to my mother at home. As often happens with propositions that are fatally flawed Members are asking to make ever-increasing contortions to justify their support for it. The Minister for Housing and Communities was at pains to point out that consultation on the new Residential Tenancy Law, which will include a register of landlords, will be widely consulted upon as he said both parties - all parties - will be included: landlords and tenants not just landlords, as Deputy Ward incorrectly suggested yesterday. It will be for wider public consultation and proactive public consultation. Senator Mézec is also incorrect. The Minister has indeed published a fully summary of the law drafting instructions for the new R.T.L. (Residential Tenancy Law). It appeared on the Government website on 4th February for anyone to see. Deputy Tadier asked what would happen if all landlords suddenly signed up to the Rent Safe scheme, as it stands now. The answer is we would not be able to inspect all properties in the short timeframe. We would need to implement an inspection strategy, which would likely take a few years to complete. Potentially on a first-come first-served basis. As part of this, we would get some basic information from landlords and give them a provisional rating based on this information. The difference with the proposal before us is that it is attempting to make this scheme a legal requirement. We would not have such flexibility if all landlords are legally required to have their properties accredited on Rent Safe. We would not give them provisional ratings as this goes against the argument being put forward in that we would be accrediting properties where we could not guarantee that they met the minimum standards. Further, if the Rent Safe accreditation was a legal requirement we do not see how we can justify making some landlords wait 5 to 10 years before receiving their initial inspection or indeed creating legislation which permitted 5 to 10 years before becoming enforceable. This is what would happen if we do not receive a significant increase in extra resourcing. The proposed Residential Tenancy Law will legislate for a simple easy-to-use register.

[9:45]

The data from this will allow the department and enforcement officers to be able to carry out targeted enforcement, and I think even Senator Mézec yesterday spoke about the importance of being able to target enforcement and that would lead to an efficient deployment of resources. The issue we have in enforcing the provisions is that we do not know where all the rental properties are. The register is key to this and is not Rent Safe. Making Rent Safe mandatory will add another layer of complexity and get in the way of the good work being done in relation to both minimum standards and tenancy-related matters. It does not make sense to spend significant sums recruiting huge numbers of staff to do something which would be achieved by existing staff using the proposed new register as part of

the new Residential Tenancy Law. The same Environmental Health officers that drew up the licensing proposals for the Minister for the Environment are the same officers who believe making Rent Safe mandatory will not work but a register that will be part of the new Residential Tenancy Law will work. It will provide rich data on tenants and landlords and allow officers to use existing resources to support their work in promoting minimum standards. I would just like to thank Deputy Morel for his speech yesterday, which made the point that the minimum standards legislation is already in place. It has been in place since I think about 2018. Therefore this proposition is not about bringing in the minimum standards. It is about the problem of enforcement, and I have outlined that we already have an alternative route which the department is working on. What I would also like to add with regards to that is if any tenant who is listening to this debate or has a concern that the minimum standards are not being met they can discreetly contact the Environmental Health Department, and there are ways in which they can work with that tenant in order to support them. I would just like some good from this debate to be around that; that that avenue is open for tenants who have concerns today.

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

I am not going to vote for this proposition. I am a landlord, a good landlord. I see no benefit in creating more legislation. What we should be doing is creating more affordable homes. If we did that, if we met demand, then we would get a natural rental price and stability. Landlords would then have to compete with each other to offer a better product. Rents would drop and equality would increase in order for landlords to keep properties rented out. We need to provide really affordable homes for first-time buyers for that to happen. Lack of housing is the cause of many Island problems. If we address that many issues will resolve themselves.

### **1.1.3 Deputy J.A. Martin of St. Helier:**

I will try and be brief because a lot has been said. I have been reading again overnight the proposition, the comments, the amendments and obviously I listened intently to the speeches yesterday. I would like to address a few issues. I do not sit round the Council of Ministers' table, I am not persuaded by anybody that does not bring me a really good argument and this was a really good argument in not to support this. If Members look back when Deputy Young brought the last proposition, I asked about the implications, manpower and cost and I was like that all the way through the debate. In the end I supported it. Deputy Young brought that and Deputy Young was defeated. Deputy Young says this cannot work. The Minister for Housing and Communities says this cannot work unless we throw lots and lot and lots of money at it for exactly the reason ... the wrong reasons have just been said. To inspect every property because when I re-read Deputy Ward's one line amendment basically nobody can rent out their property until they are accredited to this scheme. If I have read that wrong Senator Moore, in her summing up, will correct me. I cannot be labelled as I do not support things like this; I have supported. I really think this is just an attempt to do something but it is not the right attempt. It really does not help. We know we have things to do. We know we need to put money in other places. Deputy Maçon has just said what the Housing Ministry is doing, and it is doing. It is doing a lot. But today we could just add hundreds and thousands to the wage bill and have no idea what we are doing. To me it is always make sure you do no harm first. People absolutely have the minimum standards, I agree. Please, if you really feel your property is not good you must contact Environmental Health, you must contact the authorities. I just repeat that the Minister for the Environment has got nothing to lose or gain. He said 100 times he is not ... if this is political, which most things in this Assembly are, he is not standing again but even he cannot support; the Minister for Housing and Communities cannot support. We were given all the reasons round C.O.M. (Council of Ministers) why this is not to be supported because of this, this and this. But the main thing is the unknown and the amount of hours, what will it actually mean. It is very easy for a Back-Bencher to put something together. When they have met the officers and listened to the arguments hopefully you think sometimes they may agree. This has not happened this time. But please, I urge people, do

not think this is the answer to what others are trying to do and have tried to do in the past. I am not voting for it this time because it is the wrong scheme for, I think, what the Senator wants to achieve and the Deputy who brought the amendment.

#### **1.1.4 Deputy K.G. Pamplin of St. Saviour:**

I would just like to take this brief moment to thank Members for their support yesterday. As everybody knows, I was attending and leading our family funeral for our grandmother. Bearing that in mind, obviously I missed a great deal of yesterday's debate but I have spoken to other Members and listened back where I can do, and of course read the proposition and heard speeches this morning. Here is where I am at the moment. I come to this debate obviously as somebody who is a private renter; I have been since we returned to the Island in 2010, apart from the brief time where I was caring for my late grandmother and lived with her obviously. But ever since have been a private renter. I am currently. As somebody who most of his life has private rented it is a mixed bag of experiences. Mostly good, it has to be said. Obviously some not so good. In the last 4 years doing this job you get to support when people approach you with any situation, and I have to say on reflection of the last 4 years most of the parishioner cases and those outside of my district have been around housing issues. Most of them have been private renters, some of them public renters, but equally I have supported some private landlords as well who have had some situations where unfortunately the tenants have run away and left the flats in terrible situations and that is not good. We must reflect that there is no perfect system and obviously on both sides these things do happen. But we are a good Island and most renters are good people and my personal view is landlords in this Island are very caring and understanding and, yes, mistakes happen. If there are people who are not following the rules and guidelines then we must at all costs ensure that those people are brought to task through the schemes that we have in place currently. But, equally, we must also support vulnerable members of our community or those who are struggling to be heard to get their situations resolved as well; that is equally as important. Obviously I have been looking around other jurisdictions and what is available elsewhere. I see the United Kingdom have the housing health and safety rating systems, which are based on evaluations or helps local authorities identify and protect against potential risks and hazards to health. As others have mentioned this morning, we have a minimum standards law here in Jersey. Listening to people this morning, I think we have all agreed in some way in various and many other debates that the housing situation in Jersey, and you could use whichever word you feel is appropriate, some use crisis, some use other ways but it is a situation that we must address. Because, for me, I like to approach this as homes are not businesses; I have heard that in some speeches. I understand if you are a landlord you have to think about your responsibilities, I get that but they are homes. They are homes, they are people's homes. I think if we could do anything to send a message out there from this unique Island where our housing situation is so varied; I have lived in all sorts of rented accommodation in Jersey. I am currently living in one now, which is an old converted house and it has its issues. I have worked with my landlord, who is a lovely person. But when I look at the rent and the things I pay I know I have to make trade-offs and also, as a single parent with a limited income, like many people on this Island, we are budgeting all the time. Equally, from a tenant's point of view you want to get your money's worth, if you want to put it in a business vernacular. I think we have to find common ground. I think about debates like this is we hear ... somebody puts forward a debate, be it the Government or a Back-Bencher, however those phrases are, and I think we are 49 people who should be able to come together and work through situations to find the middle ground, to find the best way forward. The current Minister for Housing and Communities knows the situation, and I trust him because he knows what people go through. He wants to do his best and I know he is working very hard, like the previous Minister for Housing before him and to the Minister for the Environment with the situation about this particular ... that there is a need for something like this to just support everybody and try and find equality and an equal footing for everybody. I think that is where I am falling into debate. I will listen intently to what the closing speech has in it from Senator Moore before I make my final mind to weigh up. But I would

just say this as well, I know we are hearing the argument - and I do get it - about the Government would have to employ more people and that is a cost, and I get it. But I would equally think over the last few years that maybe we do not employ members of the States of Jersey in the right areas enough. If this is a good thing and it raises standards and it helps landlords and it helps tenants in equal measure, then I do not have so much of an issue with my taxpayers' money going towards something like that. Because if it is successful then eventually you would not need as many people. Those people have done good to help the Island and homes that are needed across the Island in their various situations, where we have wasted money over the years from swelling numbers of managers in some departments and money being wasted. I think the essential use of taxpayers' money to help people in homes and improve standards, be it inspections to get something done right, for me it is money well spent, and there is a need. Because as everybody knows, the work I have done over the last few years of truly understanding and trying to move forward the Island's response to its mental health services, a lot of the times at the top tier of people it is people just struggling to stay afloat in the Island and they want to come home and they want to provide for their family, living in accommodation and be happy in their home. It does not matter what part of society you come into, housing situations, for a multitude of reasons, is right at the top. I just think if we put empathy first with common sense, understanding this is a joint effort between all of us, we should be able to do some good. I think this sends the message that we just want to do good. We should be able to come together and make that happen. Those are my thoughts, I do not know if it helps or not but I thought it was important to put that out there.

**The Bailiff:**

Thank you very much, Deputy. Does any other Member wish to speak on the proposition? If no other Member wishes to speak on the proposition, then I close the debate and call upon Senator Moore to respond.

**1.1.5 Senator K.L. Moore:**

I would like to start by thanking everyone who has taken part in the debate. It has been a good debate with some excellent speeches.

[10:00]

It was particularly good to hear Deputy Pamplin there talking about what is the major driving factor here, which is to do some good. Senator Vallois was right, that we have debated various situations and similar options a number of times and she has been disappointed when those have been rejected by the Assembly. I would simply say to Senator Vallois that one should never give up and if at first you do not succeed try and try again. I was motivated to bring this proposition because I felt that the last suggestion was not the right thing. I thought in fact that it was too cumbersome on our government structure, which is why I came up with this suggestion, which Deputy Gardiner identified, is common sense to use an existing structure and scheme that is well-known, it is trusted and respected, and roll it out to a broader audience. As Deputy Pamplin said, this is a consensus-building Chamber; that is why we sit, when we are in the Chamber, in a horseshoe shape. It is our job to find compromise and to find solutions and I really welcome Members to engage in that because that is what we are here to do as representatives of the public. We know that there are many problem properties and indeed a lot of speakers have spoken of their experiences; the properties that they have viewed that they know do not yet meet the minimum standards that have been set under the law. Previous Ministers for Housing, such as former Deputy Anne Pryke, have spoken passionately and educated us on the reasons why we should have better standards of housing, the impact that poor standards and low-quality housing have on the health and well-being of the occupants. That is something that in the 21st century we should simply not accept. But this is not just about the bad, this is also about celebrating the good and communicating that we have high standards. Just as we celebrate high standards in our business community, and particularly in financial services, so too we



do vet in what is one of the only areas of growth in our economy and that is the rental market; the other sector is the public sector. However, we have had a lot of convoluted features from Government Members suggesting that this is in fact complex, and that was particularly led by the Minister for Health and Social Services, who said that he and his Ministers could not allow it as it was complicated. Both the Minister for Planning and Minister for Housing and Communities are usually known for their clear presentation and passionate speeches but they were not, on this occasion, either clear or compelling or passionate, which was rather surprising. As I think Deputy Tadier pointed out, those listening got the sense that they did protest a little too much. The facts are in fact very simple, what should be simple for the Minister for Housing and Communities, the Minister for the Environment and particularly the Minister for Health and Social Services is the need to ensure that people are living in homes that meet the minimum standards that are already enshrined in law and that we celebrate that and identify those properties so that tenants know what they are getting and that is simple focus. Much emphasis has been placed on the role of landlords and the views of one group of them, the Jersey Landlords' Association. If we think about this logically, information received from Revenue Jersey identifies that about 6,000 people claim income from rent. The J.L.A. (Jersey Landlords' Association) represents, we are told, about 200 landlords, so they are hardly representative; in my maths makes only about 3 per cent of the landlords in the Island. But one group of people who were very much absent from speeches yesterday were tenants. There was a vague assertion or a suggestion that Members were contemplating tenants by the assertion that an inspection regime is intrusive. But surely a tenant could also be reassured that the property they are living in has been inspected by a person who understands what environmental health standards are. As the proposition clearly states, this should be a risk-based approach to inspection and is a well-known scheme that is in place in other places and so that helps Environmental Health officials to identify which of the properties should be inspected first and perhaps more often than others, who could be seen much less frequently. That of course is in the Minister's gift to decide because this is simply a Back-Bencher's proposition asking the Assembly to send a message to the Minister to direct him in a way that we, as a group, feel is a sensible approach. It is down to the Minister to implement it and find the way forward. I am of course not usually known to be a supporter of increasing the size of Government, in fact quite the reverse. I would like to reassure those who suggested that that could be an issue here. That is why I was determined to bring this proposition in fact because I thought the licensing scheme, as brought by the Minister, as being something that was adding an additional layer when we already have the Rent Safe scheme, which is simple, effective and transparent. There are of course technological methods that can be used to speed up any process with inspection that might be required under this scheme. The Constable of St. Lawrence, who is always eagle-eyed and a stickler for detail, pointed out in the Minister's comments that they are based on just one person conducting those inspections. She also identified, very helpfully, that there is a large group of people who are about to enter the employment market, people who have been working to ensure our safer travel policy was conducted but now that has come to an end. We have people available, they will be very welcomed, I know, by employers across the Island who are calling out for staff at the moment. But if this Government was to consider that tackling the issue of standards in housing was of importance, then perhaps they could simply send in a small team of people to conduct this process in a quick way to show how much they really do care about rental property. That, again, would be in the gift of the Minister but there are options to him. The Deputy of St. Peter helpfully identified the simplicity of the inspection regime and I can myself vouch for that as well, although the Constable of St. Ouen had clearly a house with multiple occupation, which may take a little longer to inspect. It is my experience that, generally, smaller properties do not take 4 hours and so the suggestions in the comments paper can certainly be scrutinised a little more carefully and a regime could be developed that would take much less time and effort and, therefore, cost. To answer that question from the Constable of St. Lawrence, I do not think that this proposition will lead to an exodus of property from the market, nor do I think it will lead to revenge evictions or increased homelessness. It is not calling for an immediate introduction of this scheme, it is simply asking the Minister to go

away and put it into place in a timeframe that the Minister thinks is appropriate. What it will give, however, is reassurance that properties are meeting minimum standards, that tenants are protected and that landlords are following the law. The Minister, as I said, can set his timeframe for introduction, so the cost effectiveness is entirely in his gift, as this scheme is being brought forward by a Back-Bencher. The Minister for Social Security, I would have thought, would have understood that, as she has been a Back-Bencher herself for many years. Like Keep Safe, this transparent process creates a register, so in fact this achieves exactly the same purpose as one of the ideas that the Minister is bringing forward himself. It simply builds on what is already available. For the doubters, I say that last week the Minister signed off a Ministerial Decision bringing forward a new Residential Tenancy Law. I had been engaging with the Minister and his officials on this topic for a while but they had not shared the content of those law-drafting instructions with me until they were posted on the website at the end of last week. Why they did not wait to listen to the views of this Assembly, to listen to this debate, is a matter for the Minister himself. But what I can tell you is the report is a very high-level report and high-level law-drafting instructions. They almost have a sense of being incomplete, certainly not along the same lines of detail that I might have seen, particularly the cybersecurity law I recall being an extremely complex set of very focused law-drafting instructions. I thought that they were rather unusual and I think that is a telling thing that Members should perhaps keep in mind when they draw their own conclusion on this debate. Rest assured, Members, the law-drafters have certainly not started on their project yet to draft the new Residential Tenancy Law, so amendments could be made by the Minister if he is minded to listen to the views of the Assembly here today. Surely the best way forward is to use a simple, effective, well-regarded and understood scheme, as we know that many States Members are themselves landlords and many have declared proudly in this debate that they are accredited under the Rent Safe scheme. It is great to see that they are showing the way and leading by example. We all know that it is not an arduous process. We choose to adopt this scheme because it is the right thing to do. We are proud of it, it drives up standards, and let us celebrate that. Let us set a path for every landlord to join us. So far about 2,000 properties are already accredited and, as Deputy Tadier said, we could see a considerable number simply coming forward voluntarily, hopefully as a result of this debate, and I would urge landlords to do that, to sign up to Rent Safe. This is our last chance as an Assembly to debate this topic and I would like to leave on a good note and ensure that tenants have decent homes over their heads and that landlords are participating in a simple and effective scheme that shows that they too believe that high standards are important.

**The Bailiff:**

Thank you very much, Senator. I ask the Greffier to place a vote into the link. I open the voting and ask Members to vote. If Members have had the opportunity of casting their votes ...

**Deputy G.C. Guida of St. Lawrence:**

Sorry, Sir, I have not seen anything. I would like to record that I am voting contre.

**The Bailiff:**

If Members have had the opportunity of casting their votes ... sorry, something in the chat appears to have disappeared.

[10:15]

I thought I had noted 3 contre votes in the chat but now there appears to be 2. Very well, I am marking only 2, which is the Chief Minister and Deputy Guida. I ask the Greffier to close the voting. The proposition has been defeated.

<b>POUR: 20</b>		<b>CONTRE: 26</b>		<b>ABSTAIN: 1</b>
Senator T.A. Vallois		Senator L.J. Farnham		Deputy K.F. Morel (L)

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

**The Bailiff:**

Deputy Tadier asked in the chat whether it is possible to ask for a list of those who declared an interest. My understanding is that any declaration made in the Assembly will be Hansarded in the normal way and, therefore, a list will be available when Hansard is prepared.

**2. Draft Taxation (Enveloped Property Transactions) (Jersey) Law 202- (P.119/2021) - Acte Opérateur**

**The Bailiff:**

Before moving on to the next order of business we must revisit, I am afraid, P.119, which we have already revisited once before, that is the Enveloped Property Transactions, by reason of oversight we did not pass the Acte Opérateur, which, as it is a taxation draft, is required to be passed. Passing the Acte Opérateur will enable the legislation as enacted by this Assembly to have immediate effect. That means that the commencement date would be as adopted by the Assembly. If we do not pass the Acte Opérateur then it has to pend Royal Assent, which will cause delay and which was not by the vote of the Assembly what the Assembly intended. Accordingly, we will need, I think, to deal with that. Minister for Treasury and Resources, do you propose the Acte Opérateur? I beg your pardon, I ask the Greffier to read the citation first.

**The Deputy Greffier of the States:**

Draft Act declaring that the Taxation (Enveloped Property Transactions) (Jersey) Law 202- has immediate effect. The States make this Act under Article 12 of the Public Finances (Jersey) Law 2019.

**The Bailiff:**

Minister do you propose the Acte Opératoire?

**2.1 Deputy S.J. Pinel of St. Clement (The Minister for Treasury and Resources):**

I do, please, Sir.

**The Bailiff:**

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

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

Briefly, may I just ask the Minister when it does come into operation? My understanding was that it was in fact later.

**The Bailiff:**

The Assembly yesterday passed that it would come into effect on 4th April. If it is delayed for Royal Assent then that would be 13, 14 weeks from today, so it will be well past 4th April.

**The Connétable of St. Brelade:**

Thank you, Sir. That was the confirmation I was seeking to get, thanks.

**The Bailiff:**

If that assists, I think I can assist you with that from the Chair, unless the Minister wishes to say that there is some different understanding that she has. Does any other Member wish ...

**Deputy S.J. Pinel:**

That is absolutely correct, Sir, thank you.

**The Bailiff:**

Thank you, thank you very much, Minister. Does any other Member wish to speak on the Acte Opératoire? Then I close the debate. Do you wish to speak in response, Minister?

**2.1.2 Deputy S.J. Pinel:**

No. Just to thank you, Sir, and the Greffe for bringing this back promptly and I understand from the Deputy Greffier that in future an Acte Opératoire will be on the Order Paper so that it is not missed. But thank you very much for your help in everything.

**The Bailiff:**

Thank you very much indeed.

**Deputy S.J. Pinel:**

I move the Act and ask for the *appel*, please.

**The Bailiff:**

The *appel* is asked for and I ask the Greffier, therefore, to post a voting link into the chat. I open the voting and ask Members to vote. If Members have had the opportunity to cast their votes, I ask the Greffier to close the voting. The Acte Opératoire is passed.

<b>POUR: 43</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 1</b>
Senator S.C. Ferguson		Connétable of St. Mary		Deputy G.C.U. Guida (L)
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Clement				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy of St. Peter				
Deputy of Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy J.H. Perchard (S)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				

Deputy I. Gardiner (H)			
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### **3. Draft Connétables (Amendment No. 3) (Jersey) Law 202- (P.122/2021)**

#### **The Bailiff:**

The next item of Public Business is the Draft Connétables (Amendment No. 3) (Jersey) Law, P.122. It is brought by the Comité des Connétables and I ask the Greffier to read the citation.

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

Draft Connétables (Amendment No. 3) (Jersey) Law 202-. A law to further amend the Connétables (Jersey) Law 2008. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following law.

#### **3.1 Connétable D.W. Mezbourian of St. Lawrence (Chair, Comité des Connétables):**

This draft law addresses one of several issues raised by the Royal Court last year in the judgment of *“In the matter of the Connétable and the Procureurs du Bien Publique of the Parish of St. John [2021] JRC091”*. The Comité des Connétables has considered the judgment in detail and I am pleased to confirm that we have now addressed all of the issues raised in that judgment. Dealing first with the other issues, the Comité has considered the disqualification criteria for a Connétable and we raised this with the Privileges and Procedures Committee by letter on 13th April 2021. The disqualification provisions in the Connétables (Jersey) Law 2008 were amended in 2018, following the States decision to standardise the requirement relating to the qualification and disqualification in the States Assembly, so that all Members, Connétables, Senators and Deputies, would be subject to the same requirements. The amendments were brought by P.P.C. (Privileges and Procedures Committee) and are set out in P.112/2017. The Royal Court referred to the disqualification provisions in its judgment and at paragraphs 83 and 84 it compared the disqualification provisions for Connétables with those of Senators and Deputies and concluded they were not identical. Indeed, paragraph 82 of the judgment refers to the unhappily drafted clause which led to the court determining a particular construction. The judgment also records at paragraph 83 that: “It is open to the States, as the legislature, if they see fit to change these provisions, which may perhaps not reflect what was intended by the promoters of the 2018 amendment.” P.P.C. responded swiftly to requests and Members may recall that the amendments to the Public Elections Law, which were debated last year, also made amendments to the disqualification criteria for Deputies and Connétables; that was in P.56/2021 Draft Elections (Miscellaneous Amendments) (Jersey) Law of 202-. The Comité has also considered what a role description for the office of the Procureur du Bien Publique might look like. We consulted with Parish auditors, with Parish secretaries and of course all of the Procureurs du Bien Publique and with you, Sir, and the Attorney General. We submitted proposals through the Attorney General for consideration by the Royal Court. I understand that last week the Superior Number of the Royal Court approved the document we had produced. Turning now to the issue addressed by this draft law. At paragraph 99 the judgment referred to the current legislation and that the Connétable remains in office until his successor is sworn in, pursuant to Article 1(3) of the Connétables (Jersey) Law 2008. The Comité decided that in circumstances such as that of the former Connétable of St. John, where the court required he resign, it is not appropriate that the person should remain in office until their successor is sworn in and instead the resignation should take immediate effect. The Comité wish to bring forward these amendments itself and I discussed this with the Chair of the P.P.C. who agreed with our proposal, and I am grateful to her for that. We did consider that where a resignation results in ill health, then there was perhaps not the same necessity for the office to be vacated immediately and that the Connétable could remain in office until their successor took their oath of office. However, when considering the draft amendment the Comité decided that it should amend the law so that the resignation of a Connétable will always take immediate effect. In reaching that decision the Comité was mindful that the Connétables (Miscellaneous Provisions)

(Jersey) Law 2012 sets out the circumstances in which a Connétable's functions are exercisable by a Procureur du Bien Publique, thus ensuring the Parish continues to function, notwithstanding a Connétable's resignation having immediate effect. There have been very few occasions in living memory of a Connétable tendering their resignation. The Comité considers that when the Connétable gives written notice to the Bailiff of their wish to retire, that resignation should take effect upon the Royal Court being notified of the resignation. At that point the Royal Court would also order an election to fill the office of Connétable. The Comité, therefore, brings this amendment to the Connétables (Jersey) Law 2008 to provide that where the court requires the Connétable to resign this should take immediate effect and where a Connétable chooses to resign the effective date is when the Royal Court is notified of the resignation, so there are no financial or manpower implications for the Parishes or indeed the States arising from the adoption of this draft amendment. I am pleased to propose the principles.

**The Bailiff:**

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

[10:30]

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

There was something that was quite alarming about the whole process I thought about what happened to the former Constable of St. John. I do not comment of course on the rights and wrongs of what led to him to be asked to resign from his post but for me it raises some very thorny issues about democracy and about accountability. I think it is necessary to say at this point that I do not think that the Member in question had a dual role aided the situation; I think that added to the complexity of the situation. I remember thinking and indeed commenting how ludicrous it seemed that the Royal Court could, first of all, not just order the resignation of a democratically-elected Member of Parliament of our Assembly but that the wording itself is very strange. It spoke about not sacking somebody, not dismissing somebody but ordering somebody to resign. It is strange because when one resigns from a post it normally implies some kind of consent or at least volition or rather the word I was looking for is choice in the matter. When you resign from a job and, let us face it, whether you are a Constable or a States Member who is not a Constable, it is a job, there should be volition in that; you do it by primarily your consent, you have to consent to put yourself forward for election. If you are successfully elected you get the job and you should be able to resign from that job whenever you want to; that is one of the points that I would make. We will be discussing this later of course when it comes to Jurats and their ability to resign, which I think also poses problems. The first point is that I found it very problematic that the separate body, which should at least have parity with this Assembly but which should not be in any way superior for the Assembly, which should not be subservient to a Royal Court, that they can work in tandem, there should be checks and balances. But we know of course in Jersey that is not the case and that is just a factual statement, not a criticism of any kind or an opinion. We know that the Royal Court does take precedence. We swear an oath, all of us, to the Royal Court but there is an added complication in which the Constable is accountable to the Royal Court. It should be the case that our accountability as States Members is, first of all, to the Assembly; that if we do something that is considered wrong we should be judged by the Assembly through the usual channels, through Privileges and Procedures, through the Commission of Standards and sometimes there are sanctions for that, sometimes there are written words of advice and in extremis there may be suspensions from the Assembly for a period of time. Of course I am not sure of the current latest possibilities but I think somebody can be expelled from the Assembly. I would look to the Chair of P.P.C. or other Members to clarify that. I think that is right and that is how it works but of course the ultimate democratic safeguard is the election, so if somebody has not been behaving properly it is up to the electorate to remove them. Of course around that there are all sorts of debates that are commonplace in all democracies around subjects of recall. Should it be if someone has done something wrong which, potentially, merits them falling out of favour with the electorate,

it is a problem, you have to wait until the next election to remove that person and that is why arguments of recall come in. Is there a mechanism whereby the electorate can change their minds halfway through? A bit like an employer might if somebody had done something wrong, you would not keep an employee in office for breach of gross misconduct, you would sack them. But if it meant waiting for the next election to do that, it is problematic. I have concerns even in these amendments that are being put forward, is that somebody should be able to resign straightaway before the end of the term of their office. I have an issue here where the court is, effectively, dismissing somebody from the role. I guess of course the court presumably cannot force somebody to resign but then they would be held in contempt of court if they did not resign. Not only do we get into a complete political and democratic minefield but we also get into a philosophical and semantic minefield whereby you do not really have any choice in the matter, they are telling you you have to resign but we are not dismissing you because presumably we do not have the power to dismiss you. It is highly problematic. I think it all boils down in this case to the fact, or certainly is a consideration and an aggravating factor when these kind of problems arise, is that there is a dual role here. The Constable, arguably, did not necessarily do anything that merited him being removed from the Assembly as a States Member. If he had been a Deputy or Senator I would argue - and it certainly is worth arguing the point - that he may have been allowed to stay in his position and then he would have been accountable to the Assembly and may have found himself being sanctioned by the Assembly; he may not of course. But the issues that were contingent on his particular problem were to do with the administration of the Parish, not to do with his capability as a States Member. We find ourselves in the problem of having lost and, in particular, St. John has lost a States Member. While it was who they voted for in the knowledge that he would be in the States to represent the Parish of St. John and the people of St. John, and irrespective of what you thought of his politics, he was somebody who spoke often and he spoke clearly and he let us know what his opinions were. It seems to me that there is a big problem here, even in this amendment, which does not deal with the fundamental root of the issue, which is the dual role. We have lost, I think, by an unsatisfactory means and the people of St. John, and of course they have gained. It is a bit like you lose a son but you gain a daughter-in-law, et cetera. I know that the Parish of St. John is well represented but it is not about individuals in this Chamber, this is about the process. I think until we have a proper system which is fit for the 18th century, we are going to keep on seeing these kind of problems. I wanted to put that on record, I did not think it was appropriate at any time in the past to pontificate on these issues but I think this is a great juncture.

**The Bailiff:**

Thank you very much, Deputy. Deputy Higgins, you have a question for the Attorney General?

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

Yes, Sir. Deputy Tadier has mentioned a very interesting point and I would say a constitutional point and I would ask the Attorney General to tell us what the powers were of the Royal Court to compel the former Constable to resign, what powers it has that overrides, for example, the States.

**The Bailiff:**

Mr. Attorney, are you able to advise at this point?

**Mr. M. Jowitt, H.M. Solicitor General:**

Yes, Sir, it is the Solicitor General. The Royal Court of Jersey for hundreds of years has exercised a supervisory jurisdiction over elected Parish officials and that they did so was expressly recognised and reserved by the Assembly as recently as 2018 in Article 4(d) of the Connétables Law, which deals with or follows on from the provisions which provide when a Connétable is disqualified from election or office or they improvise it. Nothing in that Article should be taken to derogate in any way from the supervisory jurisdiction of the Royal Court in relation to the office of Connétable. That



supervisory jurisdiction exists as a matter of what we call customary law. In England it is called common law but it is a law that exists by tradition and has existed for time out of mind. It is the customary law of the Island that the Royal Court has a supervisory jurisdiction over Connétables, not the Assembly. As I think the commissioner who presided over the case last year observed, if the States Assembly wish to change that law of course it is open to them to do so by legislation. I hope that answers the question.

**Deputy M.R. Higgins:**

Sir, can I just follow up and ask the Solicitor General then whether what is before us now changes the position of the Royal Court as it superseded it or does that still remain?

**The Solicitor General:**

Forgive me, I did not hear the beginning of the Deputy's question, Sir.

**The Bailiff:**

It is whether or not the provisions of the draft law before the Assembly at the moment changes the position that you have set out, Mr. Solicitor General, namely the Royal Court's jurisdiction.

**The Solicitor General:**

No, they do not change it at all; they simply change the law as to when resignation takes effect.

**The Bailiff:**

Does any other Member wish to speak on the principles? If no other Member wishes to speak on the principles, then I close the debate and invite the Connétable of St. Lawrence to respond.

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

I thank Deputy Tadier for his comments on this proposition. One thing that he did mention, which I feel I should address, is he said he has an issue with the option for the Connétable to resign and also the fact that the Connétable may be ordered to resign by the Royal Court. Of course, what this is bringing this morning is the right of appeal to the Royal Court for a Connétable who may be ordered to resign by the court. Of course, as we have heard from the Solicitor General - and I thank him for his helpful explanation in response to the question by Deputy Higgins - this was never intended to change the supervisory function of the Royal Court. It was merely to ensure that if a Constable is ordered to resign by the Royal Court they have the right of appeal. The other part of the law is to ensure that a Constable may resign and during the term of their office and there are clear processes set out for that exercise. I would like to propose the principles, if I may.

**The Bailiff:**

Thank you very much. I will ask the Greffier to place a vote into the link in connection with the vote on the principles. I open the voting and I ask Members to vote.

**Deputy G.C. Guida:**

Sorry, I vote pour, Sir.

**The Bailiff:**

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

<b>POUR: 44</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 1</b>
Senator L.J. Farnham				Deputy M. Tadier (B)
Senator S.C. Ferguson				
Senator T.A. Vallois				

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

Senator Moore, does your panel wish to call this matter in?

**Senator K.L. Moore (Chair, Corporate Services Scrutiny Panel):**

No, thank you, Sir.

**The Bailiff:**

Thank you very much. Connétable, how do you wish to deal with the matter in Second Reading?

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

I am happy to propose the Articles, Sir, not *en bloc*. I think an explanation would be helpful, following the questions that were raised earlier by Members.

[10:45]

Article 2 of the draft law amends Article 1 of the Connétables (Jersey) Law 2008. The new paragraphs (3) to (3C) of Article 1 would provide that a Connétable may resign by giving written notice to the Bailiff. The Bailiff must notify the Attorney General of the resignation and the Attorney General must give written confirmation to the resigning Connétable that notice has been given to the Royal Court. The Attorney General must notify the Royal Court of the resignation, at which point the resignation takes effect and there will be a vacancy in the office. Article 2 also amends the 2008 law to signpost the new provision about court-ordered resignation. Turning to Article 3, that inserts a new Article 4CA in the 2008 law, which applies if the Royal Court directs a Connétable to resign. The provisions take into account the Connétable's right to appeal a judgment. That right to appeal can be exercised up to 28 days from the handing down of the judgment in the absence of an earlier resignation. Paragraph (2) provides that if the Connétable appeals against the court's decision to direct resignation, the Connétable ceases to hold office upon either the dismissal or abandonment of the appeal. Paragraph (3) provides that if the Connétable does not appeal against the decision within the appeal period, they cease to hold office on the expiry of that period. The appeal period is defined in paragraph (5). However, regardless of an appeal, if the Connétable resigns by giving notice in writing to the Bailiff, paragraph (4) provides that they instead cease to hold office in accordance with the new Article 1(3C), that is upon the Attorney General notifying the Royal Court of the resignation. Article 4 expressly provides that the new Article 4CA is not to be taken to derogate in any way from the supervisory jurisdiction of the Royal Court in relation to the office of Connétable. Article 5 will bring the amendments into force 7 days after the law is registered. I propose the law in Second Reading.

**The Bailiff:**

Is the law seconded for Second Reading? [**Seconded**] Does any Member wish to speak in Second Reading?

**3.2.1 Deputy M. Tadier:**

I have some questions and some points that maybe the Constable can answer. The first, I guess, is an observation but it could be a question, so I will ask it rhetorically, is why would a Constable have to give notice of his resignation or her resignation to the Bailiff if the Bailiff then has to tell the Attorney General, who has to then tell and inform the court? It seems a very roundabout way of doing it. I do not know if that is because the Bailiff is the Constable's boss. I always thought that the honorary system, including the Constables, came under the jurisdiction of the Attorney General. I do not know if that is still the case. I am pretty sure it is the case. I do not know why that has been worded in that way. It just does seem a rather roundabout way of doing it. It also seems to me that there is a question of jurisdiction here but about the potential delay as well. If this has been designed to stop any delay from happening, it seems to me that there could be a potential delay between all of those actions. The question would then be: how long does the Constable envisage that your average resignation and communicating to the court would take? The second question is: does the Royal

Court have to accept the resignation? I am presuming they do but if that could just be confirmed. As we know, sometimes we have scenarios whereby somebody tenders their resignation but we are told: "I do not accept the resignation." I am presuming that would not happen. The last point is to ask whether a third party can appeal the decision of the court. If a Constable resigns but a third party is not happy with that resignation, can they appeal on the Constable's behalf? Again, that would seem to make sense but just to ask what the legal position is.

**The Bailiff:**

Does any other Member wish to speak in Second Reading? If no other Member wishes to speak in Second Reading, then I call upon the Connétable of St. Lawrence to respond.

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

I thank the Deputy for his questions. My understanding is that in relation to his first question, why would a Connétable have to give notice to the Bailiff: my understanding is that the Connétable is required to notify the Royal Court and, therefore, it was agreed that the resignation process would mean that the Connétable needed to write directly to the Bailiff. The question of jurisdiction, I can provide some further information on that. The Attorney General brings the representation to the court. Potential delay, how long does an average resignation take? There are unlikely to be delays. Clearly in these days of electronic transmissions a resignation could be submitted via email, rather than through the old-fashioned perhaps way of letter. But I do not believe that there would be a long delay when a resignation had been submitted. The question of whether the Royal Court is obliged to accept a resignation, in my view that would depend on the circumstances. I cannot speak for the Royal Court of course. What I do know is that when I was in court last Friday, when I have had some Honorary Police officers being sworn, there was a representation made by the Attorney General regarding the resignations of 2 Procureurs du Bien Public for the Parish of St. Mary. At that time the court decided to not accept those resignations, though it seems to me that they would clearly be able to not accept the resignation of a Connétable if and when such a resignation is submitted. A very interesting question from Deputy Tadier regarding whether a third party may appeal against the decision of the court to accept a resignation from a serving Connétable. If I may, I would like to refer that to the Solicitor General as I am unable to answer that question. Thank you.

**The Bailiff:**

Well, Deputy Tadier asked if he can refer the question to the Solicitor General. In fact, the debate is closed but you can I think, to assist the Members, Connétable. Solicitor General, are you able to assist on the rights of a third party to appeal against a decision of the Royal Court to which they were not a party?

**The Solicitor General:**

Yes, I cannot see that such a right of appeal for a third party would exist as a matter of law. It is solely a matter for the aggrieved party, in this case, the Connétable, to pursue his or her own interests. I cannot see there being any right to any third party to do so.

**The Bailiff:**

Do you wish to say anything further, Connétable of St. Lawrence?

**The Connétable of St. Lawrence:**

No, Sir. I believe I have answered the questions that were asked by Deputy Tadier and, as such, I would like to propose the law in Second Reading please.

**The Bailiff:**

I note that Deputy Higgins now has questions he would like to ask the Solicitor General. Does that arise out of the advice just given by the Solicitor General, Deputy, or is it a separate matter?

**Deputy M.R. Higgins:**

I think, in one sense, it does refer to what the Attorney General was saying. The Attorney General told us earlier that it was a customary law of the Royal Courts supervision. Can he confirm if there is any documentation that could be referred to by Members that explains the supervisory powers of the Royal Court and also this question of whether third parties can appeal?

**The Bailiff:**

I am not going to allow that, I am afraid, Deputy. It is an entirely separate issue and the question of a third-party appeal has been answered. It is not a matter of customary law. It is a matter of the operation of the court. I do not think I can allow that because the debate has concluded and it does not arise out of the advice that was given by the Solicitor General, in my judgment. I ask the Greffier to place a voting link into the chat.

**Deputy M. Tadier:**

Can I ask for Article 2 to be taken separately please?

**The Bailiff:**

Yes, you can ask for Articles in legislation to be taken separately. The vote therefore will be do you agree with the Connétable of St. Lawrence on, firstly, Article 1, then Article 2 and then Article 3? The first vote is on Article 1 and I ask the Greffier to place a vote into the link. I open the voting and ask Members to vote. If all Members have had the opportunity of casting their votes, I ask the Greffier to close the voting. Article 1 has been adopted.

<b>POUR: 45</b>	<b>CONTRE: 0</b>	<b>ABSTAIN: 1</b>
Senator L.J. Farnham		
Senator S.C. Ferguson		
Senator T.A. Vallois		
Senator K.L. Moore		
Senator S.W. Pallett		
Senator S.Y. Mézec		
Connétable of St. Helier		
Connétable of St. Lawrence		
Connétable of St. Brelade		
Connétable of Trinity		
Connétable of St. Peter		
Connétable of St. Mary		
Connétable of St. Ouen		
Connétable of St. Martin		
Connétable of St. John		
Connétable of St. Clement		
Deputy J.A. Martin (H)		
Deputy G.P. Southern (H)		
Deputy of Grouville		
Deputy K.C. Lewis (S)		
Deputy M. Tadier (B)		
Deputy M.R. Higgins (H)		
Deputy J.M. Maçon (S)		

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

The next vote is on Article 2 which Deputy Tadier has asked to be taken separately and, in a moment, the Greffier will place a voting link into the chat. I open the voting and ask Members to vote. The vote is on Article 2. If all Members have had the opportunity of casting their votes, then I ask the Greffier to close the voting. Article 2 has been adopted.

<b>POUR: 45</b>	<b>CONTRE: 1</b>	<b>ABSTAIN: 1</b>
Senator L.J. Farnham	Deputy M. Tadier (B)	
Senator S.C. Ferguson		
Senator T.A. Vallois		
Senator K.L. Moore		
Senator S.W. Pallett		
Senator S.Y. Mézec		
Connétable of St. Helier		
Connétable of St. Lawrence		
Connétable of St. Brelade		
Connétable of Grouville		
Connétable of Trinity		
Connétable of St. Peter		
Connétable of St. Mary		
Connétable of St. Ouen		
Connétable of St. Martin		
Connétable of St. John		

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

We now come to voting on Articles 3 to 5.

[11:00]

I open the voting and ask Members to vote. If all Members have had the opportunity of casting their votes, then I ask the Greffier to close the voting. Articles 3 to 5 have been adopted.

<b>POUR: 45</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator L.J. Farnham				
Senator S.C. Ferguson				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				

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

Do you propose the law in Third Reading, Connétable?

**Connétable J.E. Le Maistre of Grouville:**

Sir, before we do that, I did vote for the first Article but my name did not appear on the list. I voted pour and my vote was accepted.



**The Bailiff:**

It was accepted but it does not appear on the list.

**The Connétable of Grouville:**

I do not know why it did not appear, Sir.

**The Bailiff:**

We will look into it, Connétable. It may be though that the vote came in after the Greffier had closed the vote down.

**The Connétable of Grouville:**

I think so. That is possible, Sir. It is not very important. I voted for the other Articles.

**The Bailiff:**

No, but your position is noted of course and does not change the outcome. We can move on, if you agree. Do you propose the matter in Third Reading, Connétable of St. Lawrence?

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

I do, but before that please, I would like to just thank all the officers involved with preparing this draft legislation. I would like to thank Members for their questions today and for the explanation and answers given by the Solicitor General to Members as to how to they form their decision and I propose the law in Third Reading.

**The Bailiff:**

Is it seconded for Third Reading? **[Seconded]** Does any Member wish to speak in Third Reading? If no Member wishes to speak in Third Reading, then I close the debate and ask the Greffier to place a vote into the link. I open the voting and ask Members to vote. If all Members have had the opportunity of casting their votes, then I ask the Greffier to close the voting. The law is adopted in Third Reading.

<b>POUR: 44</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 0</b>
Senator L.J. Farnham		Deputy M. Tadier (B)		
Senator S.C. Ferguson				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of Trinity				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Clement				
Deputy J.A. Martin (H)				

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

#### **4. Draft Proceeds of Crime (Amendment No. 5) (Jersey) Law 202- (P.123/2021)**

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

The next item is the Draft Proceeds of Crime (Amendment No. 5) (Jersey) Law 202-, P.123/2021, lodged by the Minister for External Relations and Financial Services and I ask the Greffier to read the citation.

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

Draft Proceeds of Crime (Amendment No. 5) (Jersey) Law 202-. A law to further amend the Proceeds of Crime (Jersey) Law 1999. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following law.

##### **4.1 The Connétable of St. Ouen (Assistant Minister for External Relations and Financial Services - rapporteur):**

Sir, the Minister, as I mentioned this morning, is not in the Island so it falls to me to present this and the next 2 propositions.

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

Very well. Please do then.

**The Connétable of St. Ouen:**

As Members are well aware, our Island has a long-term policy of compliance with international standards on money laundering and countering the financing of terrorism as setup by F.A.T.F. (Financial Action Task Force), the international standard setup for financial policy. It has been previously noted to the Assembly that we have a number of recent propositions lodged for debate that relate to the forthcoming MONEYVAL evaluation in 2023 and 2024. This and the following 2 proposals are such proposals. As Members who have read the propositions will note, P.123 of this proposition and P.124 and P.125 are accompanied by the same reports as they relate substantially to the same matter. It is my intention to make my substantial speech on this proposition and simply reiterate a couple of key points when the following 2 proposals are called. Obviously, if Members have questions or want explanations, I am more than happy to provide those. These draft amendments are concerned with what is known commonly as “instrumentalities of crime”. Instrumentalities are the tools which a criminal uses to commit a crime defined as property used in or intended to be used in crime. In financial crime, the tools a criminal uses tend to be financial services. The amendments are being proposed to be achieved through 3 different pieces of legislation: the Draft Proceeds of Crime (Amendment No. 5) (Jersey) Law 202-, the Draft Proceeds of Crime (Enforcement of Confiscation Orders) (Amendment) (Jersey) Regulations 202- and the Draft Court of Appeal (Amendment No. 9) (Jersey) Law 202-. If adopted by the States, consequential amendments will also be made to the relevant Rules of Court. Taken together, the draft amendments have 3 purposes: to provide for a new post-conviction order permitting the Royal Court to order the forfeiture of the instrumentalities of crime or, if they are no longer available, the value of those instrumentalities, to provide for Jersey to co-operate with other jurisdictions in the enforcement of post-conviction instrumentalities forfeiture orders and to make necessary amendments to Article 29 of the Proceeds of Crime (Jersey) Law 1999 to allow the regime to function effectively. The need for Jersey to enact legislation to provide for post-conviction instrumentalities forfeiture orders arises from the requirements of the international standards concerning the prevention of money laundering and terrorist financing set out by the Financial Action Task Force. The methodology to the F.A.T.F. recommendations states specifically that confiscation provisions should cover property that is used in or intended or allocated for use in financial crime. These amendments explicitly introduce this regime in Jersey. To provide Members with some practical examples of how this might apply, I will take a simple example. If a criminal uses a bank account with clean money and it conceals and disguises criminal money, i.e. washing your laundry, then the entire bank balance is a tool used to commit laundering. Previously, Jersey has relied on the Criminal Justice (Forfeiture Orders) (Jersey) Law 2001 which covers the provisions of the international conventions Jersey is currently party to. However, the proposed amendments adopt a more modern approach designed to bring the Island fully in line with the F.A.T.F. recommendations. We note the proposition has no direct financial and manpower implications and indeed, in respect of human rights, where we are dealing with the confiscation of property, the human rights aspect of the draft law is covered in the projet and no issues have been identified. Equally, my officials, along with the Solicitor General, briefed the Scrutiny Panel and I believe the Chairman will confirm the panel’s support for this legislation. This is an important set of amendments to be part of our criminal confiscation regime, which is critical to meeting the international standards set by F.A.T.F. It will be critically assessed in our upcoming MONEYVAL evaluation and I hope Members will support these propositions and specifically this proposition. Under the Proceeds of Crime (Jersey) Law at present, only dirty money in the account can be confiscated because it is the proceeds of crime. With this amendment, clean money could be also forfeited because it is an instrumentality, a tool, which is used to commit money laundering. To be able to do this, it plainly serves the obvious public interest of deterring money laundering. If this law is passed, it will amend the Proceeds of Crime (Jersey) Law 1999 to provide for the

instrumentality of forfeiture orders in relation to property used or intended to be used in criminal conduct. I move the principles.

**The Bailiff:**

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

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

As the Connétable has just mentioned, the Economic and International Affairs Scrutiny Panel was given a comprehensive briefing by the director of financial crime and the Solicitor General. As will be noted, the provisions are fairly technical. The panel asked a variety of questions and we were satisfied as to the reasons and the proportionality of what was proposed. The panel therefore endorses the proposition. If I may, while I am on my metaphorical feet, the Connétable referred to the fact that this proposition is one of a suite of 3. The briefing we had covered not only this item but also P.124 and P.125. To save having to repeat the same matter on hearing those matters, perhaps the Assembly would accept this again as the panel's endorsement of those 2 propositions as well.

**The Bailiff:**

Thank you very much, Deputy of St. Mary. Does any other Member wish to speak on the principles?

**4.1.2 Senator K.L. Moore:**

I would like to raise a question of the Constable at this point. He has identified how the forfeiture would be broadened in circumstances where investigations were being conducted and while, of course, I fully endorse the ability of the Financial Crime Unit to conduct investigations and maintain high standards and counter money laundering, of course sometimes people are investigated when they are innocent. It has come to my attention that there is a matter in relation to a Jersey investigation whereby the investigation can be carried out for an open-ended period of time. Whereas, in other jurisdictions, there is a time limit, particularly when the assets of the person being investigated become unavailable for their use or access. This takes that net further reducing the ability of the person being investigated to have any access to funds during this period of these open-ended investigations which of course is particularly difficult for that person which I would suggest perhaps would even be a matter of breaching their human rights. I would be grateful if the Constable could speak on this, particularly if we can all put ourselves in the shoes of this innocent person who is being investigated under the proper circumstances but for an indeterminate period of time with no access to their own finances for that period.

**The Bailiff:**

Thank you very much, Senator. Does any other Member wish to speak on the principles? If no other Members wishes to speak on the principles, I close the debate and I call upon the Connétable of St. Ouen to respond.

**4.1.3 The Connétable of St. Ouen:**

In direct answer to the Senator's question, the matter we are discussing today covers orders of the court post-conviction of somebody with money laundering offences and those orders would not be made until a court hearing has been held and the person has either been discharged, been innocent or has been convicted of the crime of money laundering.

[11:15]

Then the law would swing into action and allow us to make an instrumentality order to confiscate the proceeds of their bank account based on the evidence presented to the court. It is difficult to comment about accounts being frozen by banks when an alleged occasion of a criminal offence is occurring. There has been a lot of discussion about allowing certain transactions to take place but it is not a matter that is covered by this proposition. If the Senator has details of one of her constituents who

has an issue with this, I am happy to look into it and help her try to find a solution. Other than thanking the Scrutiny Panel and noting that we will only be speaking once, I ask for the *appel*.

**The Bailiff:**

Thank you very much, Connétable. I ask the Greffier to place a vote into the link. The vote is on the principles of P.123. I open the voting and ask Members to vote. If Members have had the opportunity of casting their votes, then I ask the Greffier to close the voting. The principles have been adopted.

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

Deputy S.M. Ahier (H)			
Deputy C.S. Alves (H)			
Deputy K.G. Pamplin (S)			
Deputy I. Gardiner (H)			

I assume, Deputy of St. Mary, in light of what you said, your panel does not wish to call the matter in.

**The Deputy of St. Mary (Chair, Economic and International Affairs):**

You are correct, Sir. We do not wish to call it in. Thank you.

**The Bailiff:**

Thank you very much indeed. How do you propose the matter in Second Reading, Connétable of St. Ouen?

**4.2 The Connétable of St. Ouen:**

I would like to, if possible, take the Article *en bloc* but I am obviously willing to answer any questions that would deal with any specific concerns about any of the draft laws individually.

**The Bailiff:**

Are the Articles seconded for Second Reading? **[Seconded]** Does any Member wish to speak in Second Reading? In no Member wishes to speak in Second Reading, then I close the debate and ask the Greffier to place a vote into the link. I open the voting and ask Members to vote. If all Members have had the opportunity of casting their votes, then I ask the Greffier to close the voting. The Articles have been adopted in Second Reading.

<b>POUR: 42</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator L.J. Farnham				
Senator S.C. Ferguson				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Trinity				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Clement				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				

Deputy M.R. Higgins (H)			
Deputy J.M. Maçon (S)			
Deputy S.J. Pinel (C)			
Deputy of St. Martin			
Deputy L.M.C. Doublet (S)			
Deputy R. Labey (H)			
Deputy S.M. Wickenden (H)			
Deputy of St. Mary			
Deputy G.J. Truscott (B)			
Deputy J.H. Young (B)			
Deputy L.B.E. Ash (C)			
Deputy K.F. Morel (L)			
Deputy G.C.U. Guida (L)			
Deputy of St. Peter			
Deputy of Trinity			
Deputy M.R. Le Hegarat (H)			
Deputy S.M. Ahier (H)			
Deputy J.H. Perchard (S)			
Deputy R.J. Ward (H)			
Deputy C.S. Alves (H)			

Do you move the law in Third Reading, Connétable?

**The Connétable of St. Ouen:**

I do, Sir.

**The Bailiff:**

Is it seconded for Third Reading? **[Seconded]** Does any Member wish to speak in Third Reading? If no Member wishes to speak in Third Reading, then I close the debate and ask the Greffier to place a vote into the link. I ask the Greffier to open the voting and ask Members to vote. If Members have had the opportunity of casting their votes, then I ask the Greffier to close the voting. The law has been adopted in Third Reading.

<b>POUR: 38</b>	<b>CONTRE: 0</b>	<b>ABSTAIN: 0</b>
Senator L.J. Farnham		
Senator J.A.N. Le Fondré		
Senator T.A. Vallois		
Senator K.L. Moore		
Senator S.W. Pallett		
Senator S.Y. Mézec		
Connétable of St. Helier		
Connétable of St. Lawrence		
Connétable of St. Brelade		

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

**5. Draft Proceeds of Crime (Enforcement of Confiscation Orders) (Amendment) (Jersey) Regulations 202- (P.124/2021)**

**The Bailiff:**

The next item of Public Business is the Draft Proceeds of Crime (Enforcement of Confiscation Orders) (Amendment) (Jersey) Regulations 202- (P.124/2021) lodged by the same Minister and I ask the Greffier to read the citation.



**The Deputy Greffier of the States:**

Draft Proceeds of Crime (Enforcement of Confiscation Orders) (Amendment) (Jersey) Regulations 202-. The States make these Regulations under Articles 29A and 38 of the Proceeds of Crime (Jersey) Law 1999.

**5.1 The Connétable of St. Ouen (Assistant Minister for External Relations and Financial Services - rapporteur):**

I am not going to repeat my substantial speech that I made for the first amendment but just to remind Members that these amendments are concerned with what is known as instrumentalities of crime, which are described as tools which criminals use to commit a crime and it is defined as “property used in or intended to be used in a crime” and, in financial crime, this is generally meant to refer to financial services. The regulations contained in this proposal, if passed, would amend the Proceeds of Crime (Enforcement of Confiscation Orders) (Amendment) (Jersey) Regulations to make them apply to instrumentality forfeiture orders in the same way as it applies to Confiscation Orders and I move the principles.

**The Bailiff:**

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

**5.1.1 Deputy J.H. Young of St. Brelade:**

I think it is a related question. Obviously, this is one of a many series of regulations to bring us into line following the MONEYVAL reviews and, obviously, they are all in line to ensure that our jurisdiction is right up with the F.A.T.F. recommendations. Could the Minister tell us where we are with this because, obviously, there are a lot of these legislations that we are moving? Have we caught up yet or are we still behind? I would like to know that to highlight the picture and help put this into context I think.

**The Bailiff:**

Does any other Member wish to speak on the principles? If no other Member wishes to speak on the principles, then I close the debate and call upon the Connétable of St. Ouen to respond.

**5.1.2 The Connétable of St. Ouen:**

I thank Deputy Young for his question. I think, in general terms, it could be said we are making good progress but we are not complacent and we understand that there is still an awful lot of work to do and a lot of ground to be covered to ensure that we do meet the requirements of the forthcoming MONEYVAL evaluation. All I can say as well is that I am sure the Assembly will understand that there will be further pieces of legislation brought to this Assembly for approval to ensure that we do comply. The work is ongoing and by no means finished. I thank the Deputy for his interest. I am happy to give him a more detailed briefing if he would like that. I maintain the principle and ask for the *appel*.

**The Bailiff:**

Thank you very much, Connétable. The *appel* is called for and I ask the Greffier to place a voting link into the chat. I open the voting and ask Members to vote. If Members have had the opportunity of casting their votes, I ask the Greffier to close the voting. The principles have been adopted.

<b>POUR: 43</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator L.J. Farnham				
Senator S.C. Ferguson				
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				

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

Deputy of St. Mary, does your panel wish to call the matter in?

**The Deputy of St. Mary (Chair, Economic and International Affairs):**

No, as mentioned before, we do not, thank you.

**The Bailiff:**

Thank you very much indeed. How do you move the matter in Second Reading, Connétable?

**5.2 The Connétable of St. Ouen:**

I would like to take the Articles *en bloc* if I possibly could, but obviously I am happy to respond to Members queries or answer any questions they may have, but I would like to propose them *en bloc*, please.

**The Bailiff:**

Are they seconded *en bloc*? **[Seconded]** Does any Member wish to speak in Second Reading? If no Member wishes to speak then I close the debate and I ask the Greffier to place a voting link into the chat. I open the voting and ask Members to vote. If all Members have had the opportunity of casting their votes, I ask the Greffier to close the voting. The regulations have been adopted in Second Reading.

<b>POUR: 43</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator L.J. Farnham				
Senator S.C. Ferguson				
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Clement				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				

Deputy K.F. Morel (L)			
Deputy G.C.U. Guida (L)			
Deputy of St. Peter			
Deputy of Trinity			
Deputy M.R. Le Hegarat (H)			

Do you propose the regulations in Third Reading, Connétable?

**The Connétable of St. Ouen:**

Yes, Sir, I do.

**The Bailiff:**

Are they seconded for Third Reading? **[Seconded]** Does any Member wish to speak in Third Reading? If no Member wishes to speak in Third Reading then I close the debate and ask the Greffier to place a voting link into the chat. I open the voting and ask Members to vote. If Members have had the opportunity of casting their votes, I ask the Greffier to close the voting. The Regulations have been adopted in Third Reading.

<b>POUR: 41</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator L.J. Farnham				
Senator S.C. Ferguson				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Clement				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy K.C. Lewis (S)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				

Deputy of St. Mary			
Deputy G.J. Truscott (B)			
Deputy J.H. Young (B)			
Deputy L.B.E. Ash (C)			
Deputy K.F. Morel (L)			
Deputy G.C.U. Guida (L)			
Deputy of St. Peter			
Deputy of Trinity			
Deputy M.R. Le Hegarat (H)			
Deputy S.M. Ahier (H)			
Deputy J.H. Perchard (S)			
Deputy R.J. Ward (H)			

[11:30]

## **6. Draft Court of Appeal (Amendment No. 9) (Jersey) Law 202- (P.125/2021)**

### **The Bailiff:**

The next item of Public Business is the Draft Court of Appeal (Amendment No. 9) (Jersey) Law P.125, lodged by the same Minister. I ask the Greffier to read the citation.

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

Draft Court of Appeal (Amendment No. 9) (Jersey) Law 202-. A law to amend further the Court of Appeal (Jersey) Law 1961. The States, subject to the sanction of Her Most Excellent Majesty in Council have adopted the following law.

### **6.1 The Connétable of St. Ouen (Assistant Minister for External Relations and Financial Services - rapporteur):**

As with the 2 previous proposals, this is connected to the 2 items that we have just approved. Once again, I am not proposing to repeat my central speech that I made at the beginning of this, but just to remind Members that this particular legislation is concerned with instrumentalities, which is the tool which criminals use to commit money-laundering crimes and is defined as property that used or intended to be used in such a crime. As I have mentioned, such tools tend to be financial services. This legislation, if passed, will amend the Court of Appeal (Jersey) Law 1961 so that it would apply to instrumentality forfeiture orders in the same way as it applies to confiscation orders. As such, I propose the principles.

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

Are the principles seconded? **[Seconded]** Does any Member wish to speak on the principles? I note the Deputy of St. Mary in the chat.

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

Yes, as mentioned on occasion of the previous proposition, the Economic and International Affairs Scrutiny Panel received a very comprehensive briefing on all 3 matters encapsulated within this change. I simply would like to take the opportunity to thank the director of financial crime and the Solicitor General for explaining to us the purpose of these provisions. I confirm, again, the panel are happy with this proposal along with the others and we, therefore, support it.

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

Does any other Member wish to speak on the principles? If no other Member wishes to speak then I call upon the Minister to reply.

**6.1.2 The Connétable of St. Ouen:**

I would like to thank the Deputy of St. Mary for his comments and indeed their hard work in helping us to get this legislation to this stage. It has been an arduous and technical process and without their assistance we probably would not have got as far as we have. I thank him and his panel for their involvement. I move the proposal and ask for the *appel*.

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

The *appel* has been called for and in a moment the Greffier will add a voting link into the chat channel of this meeting. The vote is now open and I ask Members to cast their votes. If all Members have now cast their votes, I ask the Greffier to close the voting. I can announce that the principles have been adopted.

<b>POUR: 43</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator L.J. Farnham				
Senator S.C. Ferguson				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Clement				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				

Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				

The Chairman of the Economic and International Affairs Scrutiny Panel, I take it that you are not wishing to scrutinise this matter.

**The Deputy of St. Mary (Chair, Economic and International Affairs Scrutiny Panel):**

We are not wishing to call it in, no, Ma'am, thank you.

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

How do you wish to propose the Articles then, Minister?

**6.2 The Connétable of St. Ouen:**

I would like to take them *en bloc* if the Assembly will allow me. As with the 2 previously propositions, I stand ready to answer any questions or clarify any matters that any Assembly Members wish me to.

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

Are the Articles seconded? [**Seconded**] Does anybody wish to speak on Articles 1 to 5? No Member wishes to speak on the Articles. Do you wish for the *appel*, Minister?

**The Connétable of St. Ouen:**

Yes, I would like to ask for the *appel*, please.

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

The *appel* is called for for Articles 1 to 5. In a moment the Greffier will add a vote to the voting channel. The vote is now open. I ask Members to cast their votes. If all Members have now cast their votes I ask the Greffier to close the voting. I can announce that the Articles have been adopted.

<b>POUR: 43</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator L.J. Farnham				
Senator S.C. Ferguson				
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Trinity				
Connétable of St. Mary				

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

Do you wish to propose the matter in Third Reading, Minister?

### **6.3 The Connétable of St. Ouen:**

Yes, I do. I would like to thank the Deputy of St. Mary and his panel for their assistance with this matter and also thank my officers who have worked very hard to bring this proposition to the Assembly today. I would also thank Assembly Members for their patience in working through what are 3 very technical propositions. With that, I propose it in Third Reading.

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

Is the law seconded in Third Reading? [**Seconded**] Does any Member wish to speak in Third Reading? I believe as we have had nobody really contributing then we do not really have the opportunity to have a debate. Do you wish to have an *appel*, Minister, on this?

### **The Connétable of St. Ouen:**

I am happy to do it on a standing vote, but obviously if Members wish to have the *appel* then I am happy to accede to that as well.



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

I will ask the Greffier to add a link to the voting channel. The vote is now there. I ask Members to cast their votes. If all Members have had an opportunity now to cast their votes, I will ask the Greffier to close the voting. I announce that the law has been adopted in Third Reading.

<b>POUR: 42</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator L.J. Farnham				
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Trinity				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Clement				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy J.H. Perchard (S)				

## **7. Draft Royal Court (Amendment No. 16) (Jersey) Law 202- (P.126/2021)**

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

The next item on the Order Paper is the Draft Royal Court (Amendment No. 16) (Jersey) Law 202-. The main respondent for which is the Chair of the Corporate Services Scrutiny Panel. I ask the Greffier to read the citation.

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

Draft Royal Court (Amendment No. 16) (Jersey) Law 202-. A law to amend further the Royal Court (Jersey) Law 1948. The States subject to the sanction of her Most Excellent Majesty in Council have adopted the following law.

### **Senator J.A.N. Le Fondré (The Chief Minister):**

The Assistant Minister, Deputy of St. Peter, will be acting a rapporteur for this site.

#### **7.1 Deputy R.E. Huelin of St. Peter (Assistant Chief Minister - rapporteur):**

This amendment will make changes to the Royal Court (Jersey) Law 1948 to modernise and improve the arrangements for Jurats. The requirements to become a Jurat are that an individual must be at least 40 years-old and must have been born in Jersey or resident for 5 years. As currently drafted, the Royal Court Law also specifies that a person is not disqualified by serving as a Jurat by virtue of being a woman or by not being a member of the established church, which means the Church of England. This provision was added to the law by changes made in 1951 for the avoidance of doubt, presumably to reflect the changing social fabric of the time. Half of the Jurats are now women. While I am not certain if they are all members of the Church of England, their religious backgrounds is clearly not a matter of significant issue. There is, therefore, no need to retain this provision, which does read rather oddly in the context of the current framework of human rights. The more meaningful part of this amendment would improve the arrangements for Jurats to retire. Currently, there is no way for a Jurat to leave the office until they either reach the mandatory retirement age of 72 or if they become incapable of continuing to carry out their duties. There is a concern that this inability to leave in good standing until well after retirement age might make the office of Jurat unattractive for some people, who would otherwise put themselves forward to serve in the role, particularly young people, who might balk at serving for 25 or 30 years. The amendment will therefore provide a way for Jurats to leave the role on good terms by giving 6 months' notice to the Bailiff. A Jurat would be able to make such an application when their total term of service, including the 6-month notice period, would have lasted 6 years. The Bailiff will be able to accept or refuse such applications as they see fit and will not permit a retirement if it would result in more than 2 Jurats leaving office in a year. In addition, if more Jurats wish to retire than the number permitted in one year only the longest serving may do so. This will avoid any shortfall in provision, effecting the operation of the courts. This retirement provision will be added to the law alongside the current arrangements, which can require the resignation of a Jurat due to physical or mental incapacity or due to a failure to perform their duties. The amendment will also allow the Bailiff to call upon any retired Jurat up to the age of 75 to again serve as a Jurat for specific purposes. This is not a new provision, but it simply replicates the current law. This provision might be used to cover leave of another Jurat or for a long or complex trial, for example. As Jurats will be able to retire, it is likely that there will be a larger pool of retired Jurats to draw upon if needs be. Lastly, the amendment revised the Article 9A of the law, which allows the Bailiff to appoint a Jurat of the Guernsey Royal Court to act as a Jurat in Jersey. The title of the Article is currently "Appointment of one or more Jurats by the Bailiff", which is a little misleading, as the sole purpose of the Article is to allow Guernsey Jurats to be appointed temporarily in Jersey. The amendment will therefore change the title to the more informative "Appointment of Guernsey Jurats to act as Jurats in Jersey". I am sure that Members will have seen the exchange in

the media recently between the Chair of the Corporate Services Scrutiny Panel and the Bailiff. As I understand it, the discussion centres on the method by which Jurats are elected and how that might be modified in future.

[11:45]

It is always sensible to keep testing and evaluating constitutional arrangements such as this to ensure that they are still suitable for the modern world. That discussion does not directly relate to this proposition, which is concerned primarily with retirement arrangements. I also note that the panel has considered this proposition at its meeting on 11th January, but did not consider a detailed briefing to be necessary. I propose the principles.

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

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

#### **7.1.1 Deputy M. Tadier:**

We are presented this law as if somehow it is a modernising law, but in fact there are many things in it which remain highly problematic. The rapporteur touched on the issue that it was reported in the media and that we heard the reported comments of the Bailiff, who is not chairing this at the moment, and who basically said: “There might be a debate in the future about how Jurats are appointed.” Let us reflect for a moment on what the current situation is. We know that before 1948, Jurats were also States Members and that meant they were elected by the public in a role akin to Senator, but which also gave them an automatic right to sit in the Royal Court, which was pre-existing. That ceased because it was not seen as something that was normal, so a new system had to be put in place. The current system we have, as we all know, is that Jurats have to be elected by an Electoral College which comprises of Royal Court Members, primarily Jersey Advocates and States Members. It is important to contextualise this and make these comments now. I have said for a long time that this is a highly unsatisfactory way to appoint what effectively are, among other things, lay magistrates, for States Members who should be completely separate from the Royal Court to have a say in who are the Jurats. Similarly for advocates to appoint their own judges in the court is very strange. Indeed, it is not just me who thinks that. I seem to recall that the Law Society have made comment that there should be a complete overhaul and there needs to be an appointment commission. In the same way that we do not appoint the Bailiff and we do not expect an Electoral College to appoint the Crown officers, why are we having anything to do with the appointment of Jurats? It puts in context that what we have here are very superficial and very partial amendments. I will look at them, each in turn. I am glad that the very otiose and archaic words that indeed Lord Rees(?) might have thought were quite appropriate saying that just because you are a woman or not a member of the Church of England, it does not mean that you cannot be a Jurat. I have to admit that when I was much younger I thought that the age of 72 for a Jurat was not retirement age, I thought that was the age you had to be before you could become a Jurat. I now know that is not the case. It is still very strange that there is a retirement age at all though, is it not? We are told that this should be about antidiscrimination and about modern standards. It is strange to say that somebody should cease to hold office at the age of 72 because there are a lot of very capable, active and agile, both mentally and physically, members of our society who are still fully functional above the age of 72. There is also a contradiction if Jurats can be allowed to serve above the age of 72 with the discretion of the Bailiff as to why the retirement age needs to be 72. We also have this problem, which we heard of earlier today, you can ask to retire of your Bailiff, but your retirement will not necessarily be granted. That does not seem to be either in line with human rights obligations or expectations or indeed common sense or common decency. Any job, including honorary roles like this, should be done with the consent and goodwill of the individual involved. If somebody feels, for whatever reason, that they no longer wish to serve in that position they should be able to leave that role without any block or barrier to doing so. We have these strange provisions that are not just pre-existing but are either replicated or amended in this law,

which talk about the restrictions that are imposed on what should be somebody's liberty to decline to serve in that role anymore. We are told, for example, that you have to have completed 6 years' service in order to be able to give your resignation or request for requirement and that you have to give 6 months' notice. On top of that, we are told that the Bailiff can only permit 2 Jurats in any year to retire, which seems strange, because, of course, while in any year there may be no Jurats who wish to retire, there may be a year in which there are 3. Then what is one supposed to do? One is faced with the situation of having to have a Jurat in post who no longer wants to be in post, which does not seem normally fair or indeed, I would argue, in line with what are modern norms of employment or engagement. I did write to both the Chief Minister last week, when I saw this story being reported, and the Chair of the relevant Scrutiny Panel. I have not heard back from either of them, unless I have not checked my emails properly. I am slightly disappointed with that. With this in mind, there are other areas of concern that I have; it is very problematic. At the moment, what do we have in terms of the accountability of Jurats? We have a system whereby they are elected and whether we like that or not and whether or not that is the right system that is the current system. So they hold their legitimacy through a type of democratic mandate, albeit through an Electoral College. They are appointed because they have the confidence of us States Members and of the advocates in the Royal Court who elect them. It rings very loud alarm bells when I hear the fact that the Royal Court can appoint a retired Jurat to fulfil that role, because that retired Jurat no longer has a mandate. It does not mean that they are not capable, of course. It is doubly problematic if they are passed the age of retirement because for some reason they have put the stipulation in the law which says that after 72 you cannot be a Jurat. Okay, so why is that in there in the first place? If there is something that is slightly less useful about a person who is over the age of 72 which prevents them from being a Jurat under normal circumstances, why on earth would the court want a 75 or a 76 year-old Jurat who is now retired? It is a complete mess, in my opinion. I did say in my email to the Chief Minister and to the Chair of Scrutiny that I would consider referring this back. I would ask, first of all, if I can pause at this juncture and ask you if a reference back would be in order. Of course, I am happy to give the information that I would be seeking, and the clarifications that I would be seeking for that reference back.

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

Of course, Deputy, a proposal for a reference back is perfectly in order; at any point. A Member of the States can propose without notice during a debate. I need to establish really what the ambiguity or inconsistency is that you are seeking to gain further information of, so it would be helpful if you would outline that. Is the ambiguity regarding what would happen if more than 2 Jurats would wish to retire in one year or is it the issue of recalling a retired Jurat or is it a combination of those 2 things or is it more than that?

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

It is not even just the ambiguity, it is to have more information about what consideration has been given about the fairness, the equity and how they compare with modern-day standards of employment and engagement in terms of the Human Rights Discrimination Law. I think we need to be provided with all that. This proposition is being sold to us as a modernising proposition but there are so many issues here. So I would say that, first of all, there is the issue of why we have a retirement age which is set at 72. I have not even mentioned the fact that you have to be 40 to become a Jurat because that is not being amended but that would be part of my speech as well. So I would like information about the age limits, why they have been set as they are, whether or not it is normal practice to get somebody retired who would normally require an electoral mandate to serve in this function and why somebody who no longer holds that mandate should be put in that position. Those are 2 of the prime questions that I would be looking for clarity around and which I do not think we have in this report.

### **7.2 Draft Royal Court (Amendment No. 16) (Jersey) Law 202- (P.126/2021) - reference back**

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

I think on that basis I would be willing to allow a reference back. Is the proposal for a reference back seconded? **[Seconded]** Very well then, Deputy Tadier, the floor is yours to propose a reference back.

#### **7.2.1 Deputy M. Tadier:**

I do not know if I need to say a lot more about why we need a reference back but I think that this is not just as simple as making a couple of aesthetic changes here. I think there are consequences to doing this now and I think we need real information about more of the philosophical nature of the changes that are being made and how they might impact in the future on other changes that are coming through. Earlier, the Constable of St. Lawrence quite rightly mentioned the fact that we have a strange situation in the honorary system whereby there are 2 Procureurs in St. Mary who no longer wish to be Procureurs and the Royal Court is refusing them to be able to give up that office. Now instinctively that does not sit right with me and it should not sit right with most people. You do not need to be political to find that a very strange scenario. We have a similar scenario being replicated here whereby we know that our Island has a proud tradition of honorary service and that Jurats are one example of that where they put themselves forward. If we are writing into law things which are instinctively and, I think, axiomatically problematic and wrong, such as not being allowed to retire from a job that you no longer can or wish to do because there are such restrictions on that, I think that is highly problematic. It is not the job of this Assembly to pass, I think, substandard amendments and substandard legislation; it is for us to make sure that what we are passing is fit for purpose. I do not think that what we have in front of us is fit for purpose, there are too many unanswered questions and that there are clear bits of information I think we need because we need to know what other alternatives were considered and how these points are justified by the Chief Minister's Department. I will leave those comments there.

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

Very well, just for the sake of the record, the proposition has been made, it is seconded by the Assembly. We have a seconder for this proposition, yes. **[Seconded]** On the chat, I had the Deputy of St. Mary indicating that he wanted to speak initially and Senator Moore. Deputy of St. Mary, you have indicated you wanted to speak on the reference back. Senator Moore, did you also want to speak on the reference back or was it on the main debate?

[12:00]

#### **Senator K.L. Moore:**

I did want to speak on the main debate but happy to contribute on the reference back if required.

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

In which case I will take the Deputy of St. Mary first.

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

May I just ask as well, I was going to speak in the main debate but I would like to speak on the reference back and I am in the chat as well. Thank you.

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

Yes, I was going to speak on the main debate as well. I speak in my capacity as Chair of the Legislation Advisory Panel. Such matters relating to court procedures are normally within their remit and we did have a briefing on this from the Attorney General and approved the way forward. I would wish for the Assembly to accept this in the context that it is made. The proposition was made as a result of suggestions made by the Jurats themselves. There were 2 retiring and they felt that there was a disincentive for new members and younger members to come forward, given the current

obligations on them to remain in office until the age of 72. It was for that reason and that reason only I think that this was brought. I will take on board the various comments made by Deputy Tadier and I certainly think that there is great merit in what he says about the composition of the Electoral College. In fact, on the last occasion of a vote of that college, I was speaking to a senior advocate on the way out who believed that advocates should be excluded from the Electoral College, but that is perhaps an extreme view. All I am saying is that I believe it is appropriate that the whole question of appointment of Jurats should be looked into but I would not wish that to delay this particular proposition. It is, as I say, intended to cover or to encourage younger applicants to the role of Jurat. As to the age of 72 and beyond, my understanding is that retiring Jurats at the age of 72 - and they are required to apply that age simply to be consistent with that for judges here - they effectively are on a reserve list until the age of 25. Normally they are only mainly called upon in such matters as the Licensing Assembly. So I do not think it is a particularly onerous task to allow them to be there and it is purely to cover the contingency of there being insufficient Jurats available. So all I am saying in effect is, I much appreciate what Deputy Tadier has said that it might be appropriate to have a wholesale review of the current legislation, but I would not wish that view to delay this particular proposition, which I think is designed for a particular purpose and, whatever the future might hold, must surely be advantageous to our society as a whole.

### **7.2.3 Senator K.L. Moore:**

Happy to follow the previous speaker, the Deputy of St. Mary, who eloquently set out the position of the Legislation Advisory Panel. I think the Corporate Services Scrutiny Panel would concur with the Deputy of St. Mary and his panel. We, as Deputy Tadier explained, have been in correspondence with the Bailiff on this matter and we have ultimately drawn the same conclusion as the Legislation Advisory Panel. I must apologise to Deputy Tadier, we have a letter drafted for him but due to my failings and illness this week, I have failed to have that sent to him, so I do apologise for that. It is a very brief letter and, if I may, I can just read out the last sentence which says: "The panel accept that issues do exist within the law that require more detailed attention but believe that this will be addressed within the panel's legacy report for the next Assembly." We would agree with the Deputy of St. Mary that some future work is needed in this area. It would be a very interesting piece of work for future Assembly Members to conduct and we would wholeheartedly support them considering that, whoever they may be. So I hope that assists the Deputy and, like the Deputy of St. Mary, I agree that it would be helpful to allow this proposition to go forward today.

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

I was going to raise it in the main debate but I will mention it in terms of the reference back. I think the question needs to be examined. It is mentioned in the proposition that they are planning on removing Article 2(2): "This would have the effect of removing references to the non-disqualification of women and adherents of religions other than the Church of England, or no religion." Yet, Article 2 also stipulates that Jurats have to be 40 years old and born in Jersey. Is not that discriminatory in its own self? Why is that provision being retained and taking out the one with reference to religion and women? It seems to me illogical that if you are going to revise this and you want more people to serve as Jurats, it should be opened to non-Jersey-born people and people who are less than 40 years old. It is discrimination in terms of age because there are many people, I would argue, who are brilliant who may be in their 20s who could serve as a Jurat. So I question the fact that if we are attempting to make more Jurats available to the Royal Court why these provisions are being retained and not being removed as well.

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

Like other Members, I was going to speak on the main debate; I will try and adapt it to the reference back. I agree with most of what Deputy Tadier said. I have served as a States Member now for 2 terms, separated, but I have never, ever voted in the Jurats' election nor have I ever been tempted to

nominate somebody. Obviously, that is not touched by this amendment but that is still an issue that I am very uncomfortable with, the whole election process. I think for the reference back, the point that Deputy Tadier made on this question of age, as a Member who is past the age of 75, I find that under this I would have been 3 years past it if I had been a Jurat, and that strikes me as being really strange. There are bound to be Members who want to retire or need to retire early and others that could well be happy to go on; they just do not see this 72 age at all automatically. Then of course, well, the irony is it is okay to go to 75 if you are retired, that just seems completely odd. Where does the age of 75 come from? As a States Member I could nominate somebody, which I would not dream of doing, but I would have to nominate somebody over 40 and under 72. I think this really is a bit of a mess. I can understand the argument that this is a stopgap. Obviously there is a problem there about Bailiffs; I do not know what it is. I think we should have a way of encouraging citizens who are of the right standing and the right knowledge and background or willing to give their time to do this vital role, we should need to do that. I am really pleased the whole thing is going to be looked at but in the meantime I think I am minded to vote for the reference back, purely on these age discriminations: why have these ages been chosen, what is the reason for that? Why should it be limited at 75, why should it not be whatever? I am inclined, I think, to vote for a reference back. Thank you.

#### **7.2.6 Deputy G.P. Southern of St. Helier:**

I was going to speak on the reference back, so I will speak on the reference back. It seems to me obvious that we must pay greater attention to some of the legislation that we pass in this House. Because my understanding is that employers in the Island cannot discriminate on age grounds alone and insist that one of their workers retires. That anti-discrimination law contains that element of age; you cannot discriminate on age, that is my understanding. Here we are saying: "You cannot be a Jurat until you are at least 40", age discrimination at one end and at the other end: "You must retire when you get to age 72." Again, discrimination. We cannot keep on behaving as if we have passed an anti-discrimination law and then just put it on the shelf again and say: "Well that is done but we do not have to enforce it." This is one way I think we can and we should be. I would like an argument that clearly says to me, and it has not been had yet: this is the reason why we can discriminate or this is the reason why we cannot discriminate, and we must change our rules appropriately. That is what I am looking for from the reference back; a clear picture of what we can and cannot do in terms of age rules.

#### **7.2.7 The Deputy of St. Peter:**

I was always taught to expect the unexpected but I did not expect this at all. Can we stay back to focus on what we are trying to achieve here? We are discussing retirement age and not the appointments of Jurats. I thank Senator Moore for also reminding us of this, of the response to the Corporate Services Scrutiny Panel. I do not know why Deputy Tadier has not received her letter because I have a copy of it here. She is absolutely quite clear that many things need reviewing, and reviewing properly, and believe these will be addressed in the panel's legacy report for the next Assembly. So, I see no reason why to not let that carry on as a work in progress that is clearly supported very much by the Deputy of St. Mary. The question, I understand, is where does 72 come from? As I understand it, the Jurats' age and jury age were aligned by the Criminal Procedure (Jersey) Law 2018. I would recommend or feel it makes sense for that to be included within the work of the Legislation Advisory Panel that is underway and allow fundamentally the request of the Jurats, it is their request, as I understand it, to change the retirement ages - and they are supportive of these amendments - allow that to continue so they can work forward to recruiting younger people, diverse people who are not restricted for potentially 30 or 40 years of work without being able to retire. So I urge you all to not proceed with this reference back, continue with the proposition as it is, and take all these requests forward effectively into the next Assembly and allow the work to be done absolutely properly and take into consideration the retirement age, *et cetera*.

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

There is a point of clarification; are you willing to give way?

**The Deputy of St. Peter:**

Of course; I hope I can.

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

Deputy Higgins, I believe you have a point of clarification from the current speaker?

**Deputy M.R. Higgins:**

Yes, the current speaker said that this proposition was about the retirement age of Jurats. Yes, it does involve that but it also states that women and members of different religions to the Church of England will also be allowed to be Jurats. So the proposition goes beyond just simply the retirement age, is that not correct, Deputy?

**The Deputy of St. Peter:**

That is not as I see it. When I was asked to rapporteur this and did as much preparation as I could, my jaw dropped that even it was mentioned that it had to be possibly included that women could be Jurats in 1951. I thought that was ludicrous. I would take this as a positive that the reference to whether you are a woman or not to be a Jurat or member of a certain church or not has been removed and leaving it just open that anybody who is, I think, over 40 - a debate? - born in Jersey or, importantly, lived in Jersey for 5 years can put themselves forward and offer this valuable service to the Island of Jersey.

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

There is a further point of clarification from Deputy Southern, are you willing to take ...

**Deputy G.P. Southern:**

I believe it is a point of clarification of either the rapporteur or of the Chair. Is it not the case that what is put into the legacy following the end of term of a Scrutiny Panel is not compulsory; it is up to the new panel to decide to take on that as a first item or not? Is that not the case?

[12:15]

**The Deputy of St. Peter:**

Is that a point of clarification?

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

If I can assist?

**The Deputy of St. Peter:**

May you, because that is beyond my understanding.

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

I do not really think it is a point of clarification for the Deputy of St. Peter. I would say that it is probably from the Chair, in which case I would say that you are probably correct because it is up to every new Scrutiny Panel to determine their work plan for the forthcoming 4-year term, so, yes. There is a further point of clarification from the Deputy of St. Mary.

**The Deputy of St. Mary:**

Just simply that an earlier speaker referred to this law changing the credentials to be a Jurat. It is not. The reference to deleting the earlier requirement to be a member of the Church of England or a male,



to put it bluntly, the 1951 law simply clarified that those were not requirements anymore and that very reference was deemed to be offensive to some. It is simply to delete that reference in the earlier law which we are talking about now. It does not change the qualifications at all, so I wish to clarify that.

**The Deputy of St. Peter:**

That is as I understand it. That is as I understand it, it does not change the qualifications, it just brings clarity to an antiquated piece of legislation that positively mentioned that women were allowed to be Jurats, which in today's world is obviously ludicrous; that they are to be singled out in that way. Otherwise nothing else has changed, as I understand it, but I thank the Deputy for helping me there.

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

Deputy Ward, I noticed that you have flagged up that you have a question for the Solicitor General.

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

Yes, I think it is, if I may ask. It is the 1948 law that we are looking at here and I was looking at. I should have done this earlier when we said about clarity. The law says: "A person who has attained the age of 40 years as a British subject." Now, I just want to ask the S.G. (Solicitor General) whether that is the equivalent now of a British citizen because the law was written in 1948. Are we talking about a British citizen or a British subject which could mean, I would imagine, somebody who lives in Gibraltar or any of the dependencies or any area like that, that have sworn allegiance? I think it is an important point just to make in terms of what we are looking at with this law.

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

Mr. Solicitor General, are you able to assist the Assembly with the question that Deputy Ward has raised?

**The Solicitor General:**

It may be British subject was the language of the time; British citizen is much more in vague in the present age. It means a British national, that is what I take it to mean.

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

Deputy Higgins, you have a further point of order?

**Deputy M.R. Higgins:**

I was going to raise it as a point of order but maybe the S.G. can help us. Basically, we were told by the Deputy of St. Mary that the provision that you had to be Jersey-born and a woman was not being changed on this, it had already been previously changed, and yet the proposition is stating that it is removing Article 2(2) from the law. Now, if it has been removed before, why is it necessary to put it in this one? Has it been removed, that requirement, or is it being removed in this one? I am confused and I would like clarification, please.

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

Mr. Solicitor, are you able to assist in confirming that it is really a fact that those Articles are in fact redundant?

**The Solicitor General:**

Yes, that is the reality. Article 2(2) is entirely surplus to requirements because it, first of all, in subparagraph (1) stipulates the 3 conditions to being able to be a Jurat. It then goes on to say in subparagraph (2): "For the avoidance of doubt it is hereby declared that ..." and then it sets out that you do not have to be a woman and you do not have to be an Anglican. Those were always surplus

to requirements. The provision or the requirements to be a Jurat are contained fully in subparagraph (1). Subparagraph (2) is surplusage and nothing more as a matter of law.

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

I am going to go back a few and we have Deputy Guida wishing to speak.

**7.2.8 Deputy G.C. Guida:**

A couple of things quickly. The first one is that we talked about age discrimination. It is something that we of course try to avoid as a society but it is also something that we have almost everywhere and for an extremely good reason. For a very, very weird reason we wait until you are 17 before we allow you to drive. For some very, very weird reason when you are 65 you stop being a pilot, a professional pilot. So, is that just age discrimination or is there something behind it? You can join the army at 16 but you can only join the army reserve at 17 and 9 months. You cannot join them if you are 48 and 9 months. So, those things exist and they are usually there for an extremely good reason. In terms of the Jurats, the number one quality for a Jurat is the life experience and there is no substitute for the number of years to acquire life experience. In any case, this is not discussed today and that is the thing that I have a little bit of trouble understanding. This amendment is to provide immediate relief to a problem, a single problem, and that is what it is there for. I do not understand why we should revisit it so that we can think about what a complete change of our judicial system might look like. That is not the point. This is about a single problem and to give immediate relief to this single problem, so why do we want to think more about it? Will you allow Jurats to retire when they want to or they need to or will you not? What do you need to think about or have additional information on or look whether the role of Jurats is justified or not and we should not have it at all in the Island? That is completely unrelated for this particular proposition.

**Deputy J.A. Martin:**

My ears pricked up in Deputy Tadier's speech on age discrimination and that is why I want ... I think it is a question to the Solicitor General. Reading the report on this on page 5 at the top it says: "Current position. The Royal Court (Jersey) Law 1948 ('the Law') makes arrangements for the appointment, eligibility, and retirement of Jurats." But I know we have passed the Employment Law which you cannot discriminate on age, so basically my question is: why do they not marry up and why is one law seeming to trump another law? It may have a really simple explanation but I would really like to understand it.

**The Solicitor General:**

It is a common facet of legal systems, certainly in the British jurisdictions, that members of the judiciary - and Jurats are members of the judiciary - are required to retire at certain ages and those ages are usually, certainly in England and in Jersey, around the 70 year-old mark, 72 years old in the case of Jurats. It is also recognised in British jurisdictions that for a period after that age of retirement, members of the judiciary can be called upon part time as and when needed until a slightly later age. Sometimes that is 75 years, sometimes it is 80 years. Now I do not think it is a question of whether there is a discrepancy between that and the Employment Law; the fact is that where judicial systems are concerned, the statutes that are in place recognise that the human mind has a shelf life and there comes a point at which in the public interest it is no longer appropriate that people should be sitting in a judicial capacity. I hope that is helpful.

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

Does that answer your question, Deputy Martin?

**Deputy J.A. Martin:**

Yes, thank you, to a point. But I do not want to say anything else, thank you, that was the question.

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

I think we do, as an Assembly, have a propensity to get straight down into the weeds of things when we do not need to. The explanatory note clearly, I think, sets out the explanation for this proposition. Article 1 provides it is a 1948 law. Article 2 deletes, as the Solicitor General has said, Article 2(2) of the 1948 law; Members asked questions about that. Article 3 has a new Article 9 and that specifically relates to adding a new provision allowing a Jurat to give notice of intention to retire on completion of 6 years, among other things. Article 3 also inserts a new Article 9AA into the 1948 law and that applies to retired Jurats, as the rapporteur mentioned in the presentation of the proposition. Article 4 changes a heading of Article 9A and Article 5 provides for how the draft law may be cited. That is, I think, all clearly explained in the proposition, so I am not sure what a reference back would achieve. I think we would probably all agree as an Assembly that the laws around the Jurats from everything to do with them, the whole logistics of how they are elected to how they serve and for how long they serve does need review. But rather than trying to, as we often do, delay small steps in the right direction, when you look at laws that are set in our statute and have been there for a long time and are quite difficult to change simply because we have always done it like that, quite often the best way is to make small improvement to start getting the momentum going by taking small steps. This is exactly what this proposition does and I believe it is clearly set out in the proposition and no further information should be desired by Members, given it is all there.

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

Sorry, I have a question for the S.G. just quickly, if I may? It was something Senator Farnham just said which I thought had clarified and then when I looked at Article 9 of the law, I have a question. I will try and explain it. The amendment seems to be a definitive retirement at the age of 72 whereas Article 9 of the law refers to Capacity and Self-Determination (Jersey) Law 2016 and appears to suggest that it is the age of 72 or when there is a lack of capacity through physical inability or a lack of capacity according to that law I mentioned. So are we by adopting this amendment - and this is a question to the S.G. - wiping reference to that law out of the law entirely and just saying it will be a definitive age, 72nd birthday you retire? I think that is the sort of clarity that we need around the reference back, so I wonder if the S.G. can confirm that.

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

Mr. Solicitor General, are you able to assist?

### **The Solicitor General:**

I hope so. The retirement age as it is at the moment, and as it will be if the law is amended, remains 72 years provided that a Jurat may be asked to sit further after that age up to the age of 75. Now, the Deputy is quite right, the present Article 9(1)(a) provides a caveat to the 72-year standard retirement age which is based on a loss of capacity, applying the Capacity and Self-Determination Law. I think that that has been replaced by what would become, if it is enacted, the new Article 9(5)(b) which reads: "A Jurat may be required by the court to resign if, in the opinion of the court, the Jurat is permanently unable for any reason efficiently to carry out the duties of the office." Now, that in a sense is at least as wide as the existing Article 9(1) albeit it may not in fact change it at all in essence because the present Article 9(1)(a) cites the Capacity and Self-Determination (Jersey) Law but then says "or for any other reason". Now it seems to me that in terms of considering whether a Jurat has lost capacity, if the law is amended in the way that it is proposed, one aspect would be for the court to consider the question of capacity and self-determination as it is defined in that law.

[12:30]

That would be but one consideration which the Bailiff could have regard to in deciding whether a Jurat should be required to resign before the 72-year age. So, yes, on the face of it there is a change; I think in practice the same principles would apply notwithstanding.

**Deputy R.J. Ward:**

Thank you for that, it is really useful. Does that mean the reference to the Capacity and Self-Determination Law is lost and that judgment is then left to the court to decide on that capacity as opposed to the terminology of that Capacity and Self-Determination Law?

**The Solicitor General:**

The reference to the Capacity and Self-Determination Law would be lost if the amendment is made because it no longer appears in the proposed replacement Article 9. I repeat the advice I just gave, which is that the existing Article 9 is not limited to the Capacity and Self-Determination Law, it goes on to say "or for any other reason" it is concluded that the Jurat cannot officially carry out their duties. The proposed replacement encompasses, it seems to me, the full width of the considerations that are presently in Article 9 and it would be a matter for the Bailiff to consider whatever factors were relevant in deciding whether a Jurat should continue in office, one of which would be capacity under the Capacity and Self-Determination Law. There could be other reasons which regard could be had to, as indeed there are under the existing Article 9.

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

Thank you, Solicitor General, for that very helpful advice. Does any other Member wish to speak on the reference back? If no other Member wishes to speak, then I close the debate and I call on Deputy Tadier to reply.

**7.2.10 Deputy M. Tadier:**

The very first thing I need to do, because I am not one of those who agrees with the adage: "Never explain and never apologise", I do owe Senator Moore an apology. I checked my emails and on Monday, 7th February I did receive an email from one of the Scrutiny officers and the reason I thought I had not received the letter is because I did not recognise the name, so when I had been checking my In Box it did not come up, so I apologise to Senator Moore. Indeed, it was a letter - she read out the last paragraph - she said: "The panel accept that issues do exist within the law that require more detailed attention but believe this will be addressed by the panel's legacy report for the next Assembly." What that does not explain though, of course, is why I did not get the courtesy of a reply from the Chief Minister's Department because indeed the questions I was asking, and still ask today in this reference back, could have been answered by him and his bigger department. So even though Senator Moore, who has been ill, managed to reply the next working day, that was not something the Chief Minister's Department did manage. I still wait in hope. The point here is that this is an area of Ministerial responsibility. It is being brought by the Deputy of St. Peter in his Ministerial role representing the Chief Minister's Department and the Ministerial responsibility, if you like, falls to the Chief Minister. If we look at the human rights notes in this report it says: "No human rights notes are included in this proposition as the Law Officers have confirmed that the Draft Royal Court (Amendment No. 16) (Jersey) Law 202- raises no issues of compliance with the European Convention on Human Rights." Now this simply cannot be the case because it does at least engage Article 14 rights of the European Convention. Any discrimination that exists in this law and which is being replicated in this law, which is clearly the case on 2 fronts at least in terms of age, there are restrictions of when you can become a Jurat, you have to be 40, and there is an age limit about when you have to retire, which is 72. They may be justifiable and I would like to see the rationale for those justifications. It is not simply something that can be explained away and dismissed by the Minister for Home Affairs, Deputy Guida, by saying: "Well it is perfectly normal for certain jobs to have age restrictions" because we need to know why those particular age restrictions. They are being replicated here by the Minister in proposing this. He has failed singularly to give us a justification for why there needs to be an age limit and why those particular age limits as well. It would be interesting, would it not, if the Members in this Assembly who are under the age of 40 were not allowed to take part in this debate because clearly they do not have the mental capacity. Anyone

over the age of 72 ... I think at least one of those people in the Assembly, one of those Members has spoken. He sounded very cogent to me and I could understand what he was saying, even though presumably under the law that is being proposed, the discriminatory law that is being proposed by the Deputy of St. Peter, he would not be entertained were he applying for the position of Jurat. It is highly problematic. Similarly, on the issue of retirement, we are being told this solves the issues of retirement. Well, no, it does not; it maintains and compounds the issues that are faced. Because while it is possible theoretically for the Bailiff to want to dismiss Jurats, and it may well be that he would need to dismiss a certain number of Jurats, at least theoretically, which could exceed 2 or 3, if a Jurat wants to retire, that Jurat is not allowed to retire unless he or she complies with all of these restrictions that have been put into the law. Even if their retirement request is to be respected - and it should not even be a question of that, in my opinion - if 2 others have retired in the last year, it could be 11 months ago: “Unlucky, mate, you are not allowed to retire, you have to stay in the job.” But, of course, if you do not do anything for a year, then you can be dismissed from the role. The whole thing is a complete mess and the Assistant Minister here responsible for that has failed to give us any answers. I think he has treated the request for that information with contempt, if I am honest. So, I do ask Members who share my concerns about age discrimination, we have these there for a reason, we have not been given any information about the thought processes that have gone into these Articles that clearly have been engaged. It does not mean that of course we cannot discriminate on the grounds of age, it is not an absolute human right, but it is one that needs to be tested and that needs to be justified. There has been no justification given for that and I do maintain the request for a reference back.

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

Do you wish to have the *appel*, Deputy?

**Deputy M. Tadier:**

Indeed.

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

The *appel* has been called for. In a moment, the Greffier will place a voting link in the chat. The link is now there and I encourage Members to cast their votes.

**Deputy J.M. Maçon:**

Could we have a bit more time to cast our votes? The system has decided to reset itself.

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

Yes, absolutely, we will take our time. If all Members have had an opportunity to now cast their vote, I ask the Greffier to close the voting. I can announce that the proposition has been defeated.

<b>POUR: 15</b>		<b>CONTRE: 27</b>		<b>ABSTAIN: 0</b>
Senator K.L. Moore		Senator L.J. Farnham		
Senator S.Y. Mézec		Senator T.A. Vallois		
Connétable of St. Peter		Senator S.W. Pallett		
Deputy G.P. Southern (H)		Connétable of St. Helier		
Deputy of Grouville		Connétable of St. Lawrence		
Deputy M. Tadier (B)		Connétable of St. Brelade		
Deputy M.R. Higgins (H)		Connétable of Grouville		
Deputy L.M.C. Doublet (S)		Connétable of Trinity		
Deputy J.H. Young (B)		Connétable of St. Ouen		
Deputy K.F. Morel (L)		Connétable of St. Martin		

Deputy of St. John		Connétable of St. John		
Deputy R.J. Ward (H)		Connétable of St. Clement		
Deputy C.S. Alves (H)		Deputy J.A. Martin (H)		
Deputy K.G. Pamplin (S)		Deputy K.C. Lewis (S)		
Deputy I. Gardiner (H)		Deputy J.M. Maçon (S)		
		Deputy S.J. Pinel (C)		
		Deputy of St. Martin		
		Deputy of St. Ouen		
		Deputy S.M. Wickenden (H)		
		Deputy of St. Mary		
		Deputy G.J. Truscott (B)		
		Deputy L.B.E. Ash (C)		
		Deputy G.C.U. Guida (L)		
		Deputy of St. Peter		
		Deputy of Trinity		
		Deputy S.M. Ahier (H)		
		Deputy J.H. Perchard (S)		

Do you wish to hear those who voted contre and pour?

**The Assistant Greffier of the States:**

Those Members voting contre: the Connétable of Grouville, the Deputy of St. Peter, Senator Pallett, Deputy Lewis, Deputy Pinel, the Connétable of St. Helier, Deputy Truscott, Senator Farnham, the Connétable of Trinity, Senator Vallois, Deputy Martin, Connétable of St. Ouen, the Connétable of St. Lawrence, Deputy Guida, the Deputy of St. Martin, the Connétable of St. Brelade, Deputy Ash, Deputy Ahier, the Connétable of St. Martin, the Deputy of St. Mary, the Connétable of St. Clement, the Connétable of St. John, the Deputy of St. Ouen, Deputy Wickenden, Deputy Perchard, the Deputy of Trinity and Deputy Maçon. Those Members voting pour: Deputy Ward, Senator Mézec, Deputy Alves, Deputy Doublet, Deputy Higgins, Deputy Tadier, Deputy Young, Deputy Southern, Deputy Pamplin, Senator Moore, Deputy Morel, the Deputy of St. John, Deputy of Grouville, the Connétable of St. Peter and Deputy Gardiner.

**7.3 Draft Royal Court (Amendment No. 16) (Jersey) Law 202- (P.126/2021) - resumption**

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

Deputy Tadier, do you wish to continue your speech?

**7.3.1 Deputy M. Tadier:**

Very briefly. I thank those Members who did consider the points raised sufficient for a reference back but what I would say is that this does not bode very well to get 15 Members voting to refer this back to the Minister for more information on something which is being presented as just a very routine modernising couple of amendments for the way Jurats are administered. That should be a big alarm bell for the rapporteur and I hope that he takes that alarm bell back with him. I would comment on the point made by the Deputy of St. Mary in his particular role where he talked about an extreme view being expressed by one advocate who said to him: “I do not think advocates should be voting for Jurats.” Well, I would disagree and regret with that word “extreme”. It is not an extreme view to hold at all. It might be an outlying view for a Jersey advocate to voice that opinion but we know that there was a report, as I said, produced, I think it was by the Law Society, certainly

a legal body, which urged States Members to review and to change the way in which Jurats were appointed but I say that simply as an addition. I remind Members that if we support this proposition today as it is worded, we are perpetuating unjustified - because it has not been justified by the Chief Minister's Department, he has not done his homework on this - age discrimination, not just against the young but also against the elderly. The way this has been sold to us is to try and encourage more younger people to stand for election as Jurats. I am not sure how that works because we are keeping the discrimination there at both ends and it is only likely to put more and more people off this institution which is ostensibly seeking to attract a wider pool of people. I would simply say that if it is indeed the case that we - I use the "we" generally - want to attract more Jurats of a cross-spectrum in our society, then we need to consider whether or not it is appropriate to give people time off from their current jobs to serve as Jurats in a way that you might do with those who are called upon to be jurors. I just leave that there but in closing, my remarks just re-emphasise that it is not the job of this Assembly to pass faulty and non-human rights compliant, certainly in the spirit of human rights, it is our ...

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

Deputy, I am afraid I am afraid I am going to have to stop you there because you spoke for 12 minutes before we moved to the reference back, so that is your 15 minutes, I am afraid.

**Deputy M. Tadier:**

I was finished.

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

With an eye on the time, as it is 12.45 p.m. ...

**LUNCHEON ADJOURNMENT PROPOSED**

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

The adjournment has been proposed. Is that seconded? **[Seconded]** Then the Assembly stands adjourned until 2.15 p.m.

[12:45]

**LUNCHEON ADJOURNMENT**

[14:15]

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

We resume the debate on the Draft Royal Court (Amendment No. 16) (Jersey) Law 202-. On my list I had the Deputy of St. Mary to speak next.

**7.3.2 The Deputy of St. Mary:**

Yes, my application to speak was before the call for a reference back and what I said subsequently more or less covers it. The only point I wish to say, or to repeat, is that the proposition now in force is due to meet a particular situation. At the moment, Jurats are unable to retire before they are 72 and it was simply to incentivise the position and that it was felt by the retiring Jurats it would be helpful if that restriction was removed. I have noted all the comments made by Deputy Tadier and others as to the need for a more wholesale review, and I personally accept that. I also accept that I did not mean to say that it was an extreme view that advocates should not participate. I make the further point, if I may, that if the justification for advocates being involved in the process is that their frequency in court gives them the right credentials to determine who is best to be a Jurat, then it should be taken into account the fact that a large number of advocates never appear in court, so that hopefully will be something to be taken into account. But to return to my basic position, this proposition is made at the request of retiring advocates to meet a particular situation and whatever

the future holds as to a more wholesale change to the situation, I see no reason why this proposition should not be carried forward now and I shall be voting in favour of it.

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

Senator Moore, I also had you on the list but that may have been before the reference back. Can I just clarify, do you wish to make a speech now as well?

**Senator K.L. Moore:**

Much as the Deputy of St. Mary, I think that during the reference back speeches we touched upon all of the relevant points and there would be no need to really reiterate those points at this point. Thank you.

**7.3.3 Deputy M.R. Higgins:**

Just to say, I was disappointed that the proposition was not referred back and I find the fact that we are passing laws that are discriminatory unacceptable; therefore, just to say I shall be voting against this proposition.

**7.3.4 Deputy G.P. Southern:**

Yes, just briefly to agree with the Deputy of St. Helier who has just spoken. I, too, am very dissatisfied that what we appear to be doing, without any analysis or any justification or any sharing of what is permitted, we are passing discriminatory law and it seems to me completely wrong. So I am going to consider whether I vote against the entire package. I am considering my position.

**7.3.5 Deputy J.H. Young:**

Yes, just similar to other Members who have just spoken, I do not think I have to go into it in detail. I do not think I can endorse the discriminatory nature of this age discrimination within this, so I am not able to support it.

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

Does any other Member wish to speak on the principles? If no other Member wishes to speak then I call upon the Deputy of St. Peter to reply.

**7.3.6 The Deputy of St. Peter:**

That was exciting. Members have raised a number of issues outside the immediate scope of this and, as I said, it is essential that we keep the constitutional arrangements under review, as in the speeches from the Deputy of St. Mary and Senator Moore. Obviously I am glad to hear the panel will be recommending to its successors, and I accept what Deputy Southern says that the next Council of Ministers are not bound by the previous one, but for wider consideration the process should be undertaken. I think from the tone of the Assembly that is the will of today's Assembly. This amendment only deals with a limited set of changes to the legislations and of the changes I do not think the Members objected to them on their own terms. All this does is aim to introduce a more flexible system for retirement, and as we have heard again from the Constable of St. Mary, it is at the will of the Jurats. They have brought that to us at their request in order to help them - I do not know how to put it better - provide a more flexible, diverse and better service to the courts of Jersey, so I do not understand why we are not accepting this and moving on. The only real point has been the ages of 40 and 72. The Solicitor General explained the rationale for both very, very clearly. My understanding is the minimum age is intended to ensure that the judge of fact has sufficient life experience to make a reasoned determination of a criminal case, and the maximum age reflects that the role of a Jurat can be a complex and stressful one which requires significant mental effort. Neither minimum nor maximum ages are unique to the role of Jurat; many jobs have such limitations, as the Minister for Home Affairs has indicated, and I believe we have restrictions with the Honorary Police over here as well. I would just like to remind Members that neither maximum age nor the minimum



age for Jurats are the subject of this proposition. The discussion between the employment law and then human rights implications again I believe are beyond the brief of this. The comments are noted and have to be referred to the Solicitor General and hopefully taken up in the next Assembly when this is reviewed. With that may I propose the principals and ask for the *appel*.

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

Deputy Young has a point of clarification. Are you willing to give way, Deputy of St. Peter?

**Deputy J.H. Young:**

The Deputy in his closing speech said that ... well the explanation given by the Solicitor General was that the age of 75 was set as the maximum age because that required very considerable - I cannot remember the exact words he said - mental effort. Does that mean his remarks saying that anybody in excess of that age is incapable of mental effort? Is that the explanation that Members are asked to approve?

**The Deputy of St. Peter:**

I can hear where the Deputy is coming from. Wow, I am going to have to use my best English here. I think the reason is, is that the cases that they are asked to sit - is the reason I have been given - can be very, very, very long. I think that is the consideration that they are taking into consideration. Having said that, it is not for me to determine it and I suggest it is taken forward into the next Assembly and is reviewed.

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

The *appel* has been called for. The Greffier will add a vote into the chat channel in a moment. The vote is now open and I ask Members to cast their votes. If all Members have now had an opportunity to cast their votes I ask the Greffier to close the voting. I can announce that the principles have been adopted.

<b>POUR: 35</b>		<b>CONTRE: 10</b>		<b>ABSTAIN: 1</b>
Senator I.J. Gorst		Senator S.Y. Mézec		Senator K.L. Moore
Senator L.J. Farnham		Deputy G.P. Southern (H)		
Senator J.A.N. Le Fondré		Deputy M. Tadier (B)		
Senator T.A. Vallois		Deputy M.R. Higgins (H)		
Senator S.W. Pallett		Deputy L.M.C. Doublet (S)		
Connétable of St. Helier		Deputy J.H. Young (B)		
Connétable of St. Lawrence		Deputy of St. John		
Connétable of St. Brelade		Deputy R.J. Ward (H)		
Connétable of Grouville		Deputy C.S. Alves (H)		
Connétable of Trinity		Deputy I. Gardiner (H)		
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Clement				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				

Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of Trinity				
Deputy S.M. Ahier (H)				
Deputy J.H. Perchard (S)				
Deputy K.G. Pamplin (S)				

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

Does the Corporate Services Scrutiny Panel wish to scrutinise this matter, Senator Moore?

**Senator K.L. Moore (Chair, Corporate Services Scrutiny Panel):**

As mentioned, we will be placing this on our legacy report for a future panel to attend to.

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

Thank you. How do you wish to propose the Articles, Deputy?

**7.4 The Deputy of St. Peter:**

I think we have discussed this at length but if anybody wishes to ask any questions I will obviously endeavour to deal with them, but otherwise I propose we take it *en bloc*.

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

Are Articles 1 to 5 seconded? **[Seconded]** Does any Member wish to speak on the Articles?

**7.4.1 Deputy J.H. Young:**

I think it is my right to ask for Article 3 to be taken separately please. That is the one with the age discrimination in it, however, I have no objection to Guernsey Jurats coming in and I have no objection to remove this clause about the Church of England and women - sensible things - so I do not want to vote against those.

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

Yes, it is absolutely within your gift to ask for the Articles to be taken separately. Does any other Member wish to speak on any of the Articles?

**7.4.2 Deputy M. Tadier:**

I think it is worth talking on some of the Articles, in particular Deputy Young just mentioned that he does not have a problem with Guernsey Jurats being called upon in Jersey, and I know where that is coming from emotionally because of course Deputy Young, more than anyone else, is a pan-Channel Islander. I think it is important to say that we should be working more closely with all of the other

Channel Islands, in particular Guernsey, and it is not something that we have cracked. But there is a constitutional issue here because while it is common for the court to ask for commissioners to come in on occasion from other parts of the British Isles and from the U.K. (United Kingdom), you could argue then what is wrong with doing that with Jurats. It does bring into question again why we have an Electoral College system, which the Guernsey Jurats are not liable to.

[14:30]

We are effectively having Jurats who are elected by another jurisdiction being called upon to serve in our jurisdiction. We would not do that with States Members, we would not say: “The Constable of St. John cannot be here, maybe they have got a long-term reason for not being in the Assembly, let us just get one of the States Members in Guernsey to come and fill in for him or her.” It would be ludicrous because that person would not have any mandate, any legitimacy to serve in our Assembly. It would be fine if we had a different system whereby Jurats were appointed, whether they be Crown appointees or directly rather than be elected, or whether they were appointed by an appointments commission or panel because that would make sense. It does not make sense to have the 2 systems co-existing so, again, I cannot support allowing Guernsey Jurats to come and serve in Jersey; not because I have a problem with Guernsey Jurats or their capability, but simply because it is incompatible with the current system that we have got. It is ironic, of course, that the thing I do have a problem with is the current Electoral College in the way that Jurats are elected rather than appointed, but because of that - in order to follow the workings through like a good mathematician - I might have to, therefore, come to the conclusion that we should not be passing things that are incompatible with that system we have got. I would very much like to know what the thoughts are of the Deputy of St. Peter in that particular regard to understand whether he thinks there is indeed a tension between the Electoral College system and the fact that Guernsey Jurats are not elected under the Jersey Electoral College system, and if it is not a problem could he explain why it is not a problem for him. With this in mind, I would also be asking for all of the Articles to be taken separately.

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

Sorry, Deputy, just to clarify, you are wanting each Article to be taken as an individual vote?

**Deputy M. Tadier:**

Yes, please.

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

Does any other Member wish to speak on the Articles? If no other Member wishes to speak I close the debate on the Articles and call upon the Deputy of St. Peter to reply.

**7.4.3 The Deputy of St. Peter:**

The request from Deputy Young has been surpassed and obviously we will respect Deputy Tadier’s request to take each Article separately. I am being drawn into something that is, in my opinion, beyond the brief of this proposition and that is to the workings of the Electoral College. I have to stand to say the reason we have this very rarely used provision - I am talking about the Jurats from Guernsey now, very rarely used, I have not got the numbers to hand but it is very rarely used. When I asked about it and what it meant the words that came up were things like “only use in an emergency” a mass loss of Jersey Jurats or, more importantly, some of the Jurats are conflicted or perceived to be conflicted in dealing with a particular case. I see this as merely resilience to our courts, to ensure that in these exceptional circumstances we have an opportunity to call on skilled people from elsewhere to supplement and ensure our courts continue to work. It is a way that has been sought out, it appears to work, it is very rarely used, but I do not believe really it is part of this amendment. So with that may I propose the principles and ask for them to be taken 1, 2, 3, 4 and 5.

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

Yes, so the first vote will be on Article 1. In a moment the Greffier will place a voting link in the chat. The link is now in the chat. If Members wish to cast their votes the vote is in the chat. If all Members have had an opportunity to cast their votes I ask the Greffier to close the voting on Article 1. Article 1 has been adopted.

<b>POUR: 44</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst		Deputy G.P. Southern (H)		
Senator L.J. Farnham				
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of Trinity				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Clement				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of Trinity				
Deputy of St. John				

Deputy S.M. Ahier (H)			
Deputy J.H. Perchard (S)			
Deputy R.J. Ward (H)			
Deputy C.S. Alves (H)			
Deputy K.G. Pamplin (S)			
Deputy I. Gardiner (H)			

**The Assistant Greffier of the States:**

The Member voting contre: Deputy Southern.

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

If you will allow us some time to reset the system and then in a moment the Greffier will place a vote in the chat for Article 2. The vote for Article 2 is in the chat and I invite Members to cast their votes. If all Members have had an opportunity to cast their votes I ask the Greffier to close the voting. Article 2 has been adopted.

<b>POUR: 42</b>		<b>CONTRE: 2</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst		Deputy G.P. Southern (H)		
Senator L.J. Farnham		Deputy M. Tadier (B)		
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of Trinity				
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Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Clement				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				

Deputy R. Labey (H)			
Deputy of St. Mary			
Deputy G.J. Truscott (B)			
Deputy J.H. Young (B)			
Deputy L.B.E. Ash (C)			
Deputy K.F. Morel (L)			
Deputy G.C.U. Guida (L)			
Deputy of St. Peter			
Deputy of St. John			
Deputy S.M. Ahier (H)			
Deputy J.H. Perchard (S)			
Deputy R.J. Ward (H)			
Deputy C.S. Alves (H)			
Deputy K.G. Pamplin (S)			
Deputy I. Gardiner (H)			

In a moment the Greffier will place a further vote in the chat for Article 3. The vote is now in the chat and I invite Members to cast their votes. If all Members have had an opportunity to cast their votes I ask the Greffier to close the voting. I can announce that Article 3 has been adopted.

<b>POUR: 32</b>	<b>CONTRE: 11</b>	<b>ABSTAIN: 0</b>
Senator I.J. Gorst	Senator S.Y. Mézec	
Senator L.J. Farnham	Connétable of St. Martin	
Senator J.A.N. Le Fondré	Deputy G.P. Southern (H)	
Senator T.A. Vallois	Deputy M. Tadier (B)	
Senator K.L. Moore	Deputy L.M.C. Doublet (S)	
Senator S.W. Pallett	Deputy J.H. Young (B)	
Connétable of St. Helier	Deputy L.B.E. Ash (C)	
Connétable of St. Lawrence	Deputy of St. John	
Connétable of St. Brelade	Deputy R.J. Ward (H)	
Connétable of Grouville	Deputy C.S. Alves (H)	
Connétable of Trinity	Deputy I. Gardiner (H)	
Connétable of St. Mary		
Connétable of St. Ouen		
Connétable of St. John		
Connétable of St. Clement		
Deputy J.A. Martin (H)		
Deputy of Grouville		
Deputy K.C. Lewis (S)		
Deputy J.M. Maçon (S)		
Deputy S.J. Pinel (C)		
Deputy of St. Martin		
Deputy of St. Ouen		
Deputy R. Labey (H)		

Deputy S.M. Wickenden (H)			
Deputy G.J. Truscott (B)			
Deputy K.F. Morel (L)			
Deputy G.C.U. Guida (L)			
Deputy of St. Peter			
Deputy of Trinity			
Deputy S.M. Ahier (H)			
Deputy J.H. Perchard (S)			
Deputy K.G. Pamplin (S)			

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

In a moment the Greffier will reset the system and place a vote for Article 4 in the chat. The vote is now in the chat and I invite Members to cast their votes. If all Members have had an opportunity to cast their votes I will ask the Greffier to please close the voting. I can announce that Article 4 has been adopted.

<b>POUR: 40</b>		<b>CONTRE: 5</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst		Deputy G.P. Southern (H)		
Senator L.J. Farnham		Deputy M. Tadier (B)		
Senator J.A.N. Le Fondré		Deputy M.R. Higgins (H)		
Senator T.A. Vallois		Deputy of St. John		
Senator K.L. Moore		Deputy C.S. Alves (H)		
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of Trinity				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Clement				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				

Deputy of St. Mary			
Deputy G.J. Truscott (B)			
Deputy J.H. Young (B)			
Deputy L.B.E. Ash (C)			
Deputy K.F. Morel (L)			
Deputy G.C.U. Guida (L)			
Deputy of St. Peter			
Deputy of Trinity			
Deputy S.M. Ahier (H)			
Deputy J.H. Perchard (S)			
Deputy R.J. Ward (H)			
Deputy K.G. Pamplin (S)			
Deputy I. Gardiner (H)			

If the final vote, Greffier, for Article 5 could be placed in the chat please. The vote is now open and I ask Members to cast their votes. If all Members have had an opportunity to cast their votes I ask the Greffier to close the voting. I can announce that Article 5 has been adopted.

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



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

Do you wish to take the matter in Third Reading, Deputy?

[14:45]

### **7.5 The Deputy of St. Peter:**

Before I do so may I please thank the officers, everybody who spoke; some very valuable contributions. We have listened to the Jurats and hopefully they will be happy with this if obviously the Third Reading is successful. I would just like to make one comment to Deputy Tadier. He implied I took his challenges with disdain; I certainly did not. I know he is very passionate about this subject. All I was trying to do was to stay on tract and keep focused on the amendment at hand and not digress from that, however, I hope he does not feel that I dismissed his passion; I certainly had no intent to do so.

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

Does any Member wish to speak in Third Reading?

#### **7.5.1 Deputy M. Tadier:**

Without splitting hairs, it is not that I thought the rapporteur was treating me with disdain; I meant contempt in the sense that he has still not fully addressed the underlying points. There are key areas that we have passed as an Assembly today in the law which are entirely salient to the proposition because they are in the amendments that have been passed. So of course as this is a Third Reading it is incumbent on all Members to think about the entirety now of what is in front of us, and if there are still areas which Members have concern over - bearing in mind it will be for a future Assembly to consider any future changes - I think now is the time to put the concerns on record by the way we vote accordingly for or against. If Members think that the discrimination that goes into this law is all fine then so be it. I would say that the age discrimination has no place and that in fact if you want to guarantee that the candidates who are ultimately elected or appointed as Jurats are fulfilling of certain criteria then it is important to just have those criteria in the job description so that the Electoral

College can consider them. There may of course in the future be a very capable 38 year-old or 25 year-old or 80 year-old who is quite capable of doing the job of Jurat and fulfilling the multiple roles that they have, and they should not be excluded from doing it simply by a prescriptive and discriminatory law. So I hope that those arguments will not fall on deaf ears, even if the changes are not forthcoming in this particular iteration of the amendments. Just to make sure that the Deputy of St. Peter knows; we have not in any way fallen out over this. This is just normal bread and butter for us in the Assembly and next time I cross him on my dog walk I will still say hello to him.

#### **7.5.2 Deputy M. Higgins:**

I just want to say first of all to explain that I missed one of the votes on the Articles because I had to race off for a comfort break, but I would have voted against and I just want people to know that. I am going to be consistent. What I want to say here is that I think it is wrong that the States is passing legislation that is discriminatory; that is number one. Number 2, again just raising an issue that Deputy Tadier mentioned as well, bringing in Jurats from Guernsey. Jurats are not legally trained people; all they are, are lay members of the court. They are there to determine on the basis of the facts. It is the Bailiff or the other judges who sit with them who are the legally qualified people who give advice. But they are judging the evidence. Why can we not have Jersey people who could be brought on rather than having to import people from Guernsey who, other than the fact they may have sat in another case, have no particular qualifications they are going to bring to the issue. So to be consistent I shall be voting against this proposition.

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

I think this is a good time for me to thank all the Jurats who give so much time to the role we have been discussing over the past few hours. A lot of Members would agree with me that it is a tremendous job, I think it is an attractive job for those with interests, we have specialisms within the benches of Jurats and I for one am most grateful for all they do free of charge.

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

I need to put on the record that I think, having listened to Deputy Tadier, he is right. I do not think that we should be passing a law with such discriminatory provisions in it. But having said that I absolutely agree with the Connétable of St. Brelade; I have the highest respect for people who have served, and serve many years, and given huge amounts of time. My concern is this is a law we are asked to pass that includes discriminatory provisions which are contradictory to the way we are modernising society with social reform throughout. Of course when this is approved this will go to the Privy Council and so we will be advertising in that vital British jurisdiction that this is what we do. Frankly, to be honest, I think it was a mistake to do a sticking plaster amendment; it would have been better to try and bring the priorities for all and bring forward a change in arrangements which would deal with the issues that we have spoken of. But I think this issue now of the age discrimination, frankly I cannot see any of the reasons given stand up. They are arbitrary and I just want to put that on record. But in no way is there any disrespect for any of our Jurats, absolutely incredible commitment that they have given. I have to be honest, I would not be allowed anyway, but at my age I could not do that. I think it is above and beyond. But, nonetheless, I think we do need to change for the future and if my putting a vote against it helps speed up that work then there would have been a point in my taking the position today.

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

Thank you, Deputy. Does any other Member wish to speak? If no other Member wishes to speak then I close the debate in Third Reading and call upon the Deputy of St. Peter to reply.

#### **7.5.5 The Deputy of St. Peter:**

I think it is important that the messages put on record by Deputy Young and Deputy Higgins are acknowledged and taken forward. I would just like to say I look forward to seeing Deputy Tadier on

a Sunday morning when we often bump into each other, and I look forward to seeing his dog again. It is a charming little creature. But, most importantly, I would like to echo what the Constable of St. Brelade said. Our Jurats do a wonderful, wonderful service for this Island and anything I feel we could have done today to help that is a day's work well done. May I call for the *appel*?

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

The *appel* has been called for. In a moment the Greffier will place a voting link in the chat for this meeting. The vote is now open and I invite Members to cast their votes. If all Members have now had an opportunity to cast their votes I ask the Greffier to close the voting. Senator, I note in the chat that you have misvoted but obviously we cannot change that vote. I can announce that the law has been adopted.

<b>POUR: 38</b>		<b>CONTRE: 6</b>		<b>ABSTAIN: 1</b>
Senator I.J. Gorst		Deputy G.P. Southern (H)		Connétable of St. Martin
Senator L.J. Farnham		Deputy M. Tadier (B)		
Senator J.A.N. Le Fondré		Deputy M.R. Higgins (H)		
Senator T.A. Vallois		Deputy L.M.C. Doublet (S)		
Senator S.W. Pallett		Deputy J.H. Young (B)		
Senator S.Y. Mézec		Deputy of St. John		
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. John				
Connétable of St. Clement				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of Trinity				
Deputy S.M. Ahier (H)				

Deputy J.H. Perchard (S)			
Deputy R.J. Ward (H)			
Deputy C.S. Alves (H)			
Deputy K.G. Pamplin (S)			
Deputy I. Gardiner (H)			

## 8. Tenancy Notice Period (P.2/2022)

### The Bailiff:

The next item is the proposition for Tenancy Notice Period, P.2, lodged by Senator Mézec and I ask the Greffier to read the proposition.

### The Assistant Greffier of the States:

The States are asked to decide whether they are of opinion to request the Minister for Housing and Communities to make an Order under Article 6(3)(e) of the Residential Tenancy (Jersey) Law 2011 to introduce increased minimum notice periods for periodic tenancies where the tenant has lived in their home for a long time.

### The Bailiff:

Senator, there is an amendment lodged by the Minister for Housing and Communities; are you accepting that amendment?

### Senator S.Y. Mézec:

I am not, sir, no.

### The Bailiff:

You are not. Very well, then I call upon you to make the proposition.

### 8.1 Senator S.Y. Mézec:

Thank you, Sir, and welcome back. With this proposition I am asking Members to request that the Minister for Housing and Communities uses powers he has to enhance security of tenure for the potentially thousands of Islanders living in their homes on periodic tenancies to provide them with extra notice if they are required to have their lives upheaved by being told to leave their homes that they have lived in for so long. As an appendix to this proposition the example of how this is done in the Republic of Ireland is included, which gives an idea of what sort of thing we could be looking at here. It is basically just an extra few months' notice for those tenants who would otherwise suffer the greatest inconvenience by virtue of the fact that they have become most settled in those homes that they have lived in for years. Just to assist Members in understanding what a periodic tenancy is; a periodic tenancy is a tenancy which does not have a specified end date but which can be unilaterally ended at any time, without any reason, just by the landlord giving 3 months' notice or the tenant giving one month's notice. That is different to a fixed-term tenancy, which is a tenancy that does have a specified end date, which is the only point in time in which it can be ended. It is the case in Jersey that people can live in their homes for years and years, potentially even decades, as renters and still only be given 3 months to leave even if they have not done anything wrong whatsoever, and there is no appeal. That can mean turning someone's life upside down. This can be people who have been very happily settled in their homes, have put a lot of effort into making the property they live in feel like a home, they may have children in the local school, they may have caring responsibilities managed on the base of their location; their whole lives developed around the location in which they live in which can be of such fundamental importance to them.

[15:00]

That lack of security is a really big deal for lots of people in their lives. The fact that they can simply be issued 3 months' notice at any point and that is it, they have to go, irrespective of what the alternatives are or how difficult that may be. I make the point that almost everybody in this Chamber lives in a home they own and the voice of those who live with this insecurity in that form of tenancy arrangement is completely missing. In comparison to other nearby jurisdictions, tenants in Jersey do not have very good rights to enable them to live comfortable lives. There are jurisdictions very close to us where there are much stronger rights in place for tenants when they are renting a home to be able to live there, to build their lives around that without being told they have to go without a good reason. Of course the legislation in those other jurisdictions outlines what those good reasons are so that they can be reasonable. Because we are in a worse situation I welcome the comments that have been made by the Minister for Housing and Communities recently about him signing off law drafting instructions for reforming the Residential Tenancy Law. That is good news and he has mentioned it a few times, including in the previous debate on the Rent Safe scheme. But we have not really heard much detail of what is proposed; what he has signed off to be looked at by the law drafters. I was castigated in the previous debate by the Assistant Minister for Housing and Communities who pointed out that the Ministerial Decision is on the Government's website, and so it is and I have got it up on my computer in front of me. It talks about some good high-level things but it does not provide any detail really on what will be included in that law, so I guess I am giving notice to the Minister for Housing and Communities that when he speaks to his amendment I would like to hear him give greater clarity on what exactly it is he is asking to be done to improve security of tenure for those people. To say: "We want greater security of tenure" is good, but what? Specifically what? Is he talking about European style open-ended tenancies, for example? I am interested to know if that is what he has told the law drafters to look at. Is he proposing some of the other measures that were included in the Housing Policy Development Board? Let us hear it, and if he has got a good case to make there then I am all ears for it. But it is not fair to ask Members to reject a proposition which is clear and tangible in what it is seeking to do, in deference instead to an unclear and intangible proposal for the future, especially when it is so far down the line and we are talking instead in this proposition about doing something imminently. The Minister for Housing and Communities' amendment and report are very disappointing and they make a number of points which are invalid, in my view. I will address those points when we come to the debate on the amendment but the one that I did want to deal with in my opening proposition speech is to say the very first comment in them does stick in the teeth quite a bit, calling this proposition "knee jerk" because it is not. I make in the report to this proposition a passing reference to the situation at Spencer Close because, and only because, it serves as a useful case study, and perhaps it was a mistake for me to have mentioned it but it is not the reason that security of tenure is on the agenda. Moves to enhance security of tenure have been on my agenda since the very start of this electoral term and it is a subject which a considerable amount of time and deep consultation has gone into, and that should be obvious to anyone who has been paying attention. Some examples of that: I successfully bid for funding in the Government Plan which the current Minister has inherited to undertake a project to overhaul the Residential Tenancy Law. Members can go back to those previous Government Plans to see that very clearly in the charts there, so this is something which has been on the cards for a couple of years now. It is not something that has merely just been raised at the start of 2022. I also spent a considerable amount of time serving on the Housing Policy Development Board, which I was on with several other States Members and Ministers from all sorts of political persuasions, including several Members who have gone on to form another political party. So perhaps retrospectively we can call it a cross-party policy development board. We considered the matter very deeply and made clear recommendations on security of tenure. That was a big project; lots of money went into it, lots of consultation went into it, so this issue of security of tenure is not knee jerk. Following the Housing Policy Development Board's report I then brought those recommendations to the States Assembly to be debated, where they were rejected, and so what I am doing here now is coming back again to try to salvage something which at least takes us in the direction that all of the work done in this term

says we ought to be travelling in. It is to provide some action in the short term while we keep our fingers crossed that some other good things are heading our way too further down the line. I am proposing this because it could be a quick win. The Minister has said that the new Residential Tenancy Law will not be available until the end of the year. Beyond that it could take further months to go through the Assembly, to be scrutinised, and if it is like the previous Residential Tenancy Law which was passed in 2011 but did not come into force until 2013 to give time to people out there involved in tenancies to understand it and get used to it, then we could be looking at a situation where nothing is done to enhance security of tenure until 2024, maybe even 2025. That is why this proposition is here, because having been set back several times in the work to make real progress on enhancing security of tenure - for some political reasons and other reasons as well - we can use the law as it currently exists in the meantime to provide extra support to tenants out there who have been living in their homes for a very long time and who would suffer the greatest inconvenience at being required to leave their homes at what is relatively short notice. Three months is short notice if you have lived in your homes for years and years. It might not be if you are somebody who is still settling down in life and does frequently move between properties and flexibility is of advantage to you. But if you are someone who is trying to raise a family it is not. If you are someone who is trying to raise a family and get told you just have 3 months to totally overhaul your life, perhaps move somewhere that is much more unaffordable for you or where you are not able to find somewhere that is nearby a school to do an easy school run for your children and so have to do a much more difficult one, if you are not around those who you rely on for support for caring and such other things, it is a really big deal. So passing an order which sought to do what is already the case in other jurisdictions - and the Republic of Ireland being the very key one here - which simply says if you have lived in your home for a number of years your notice period gradually goes up. We are not talking drastically going up. We are not talking about saying to landlords: "You cannot empty your homes for years if you have a longstanding tenant." But to say that 3 months is a bit of an ask for some people and maybe closer to 6 months or 7 months, even for those who have really lived there for a substantial amount of time, provides them with a bit of cushion which could go a long way for them, given the difficulties there are right now for many people who are trying to find new homes, and for those who in recent months have suffered by being given the bare minimum notice that is required. This proposition does not in any way seek to undermine the work that is due to go on to enhance the Residential Tenancy Law. It is a good project; one that I wholeheartedly support and one which I was happy to do at least a little bit to help lay the foundations for so that it could go ahead. But it is to acknowledge that that will take a long time to bed in, to be approved, and then for people to get used to its provisions and then become commonplace out there in the rental market in Jersey. But to say in the meantime, recognising how difficult things can be for some people and recognising the stress and difficulty it can cause for a short period of notice to be given to people who have lived in their homes for potentially decades, we can do one little thing to make things a bit easier for those people and we can do it relatively soon. We can do it before this term of office is out. The Minister does have good examples that he can refer to, to implement relatively quickly, so let us give a green light to that and let us do at least one small thing to enhance security of tenure now while the greater work goes on as well. On the basis that this seeks to make a positive difference for those people now and does not detract from other work going on, I would ask Members to support this proposition unamended. We will obviously come to the debate on the amendment momentarily and I will seek to make the case early on in that debate for why the amendment should not be accepted. So I make that proposition.

**The Bailiff:**

Is the proposition seconded? [**Seconded**] Deputy Young, you have asked for a question for the Solicitor General; may I suggest it might be more appropriate after the amendment has at least been proposed and, therefore, the Solicitor General can advise in the light of everything before the Assembly.

**Deputy J.H. Young:**

Yes, sorry, I put it in the wrong place. I should have waited for the amendment.

## **8.2 Tenancy Notice Period (P.2/2022): amendment (P.2/2022 Amd.)**

### **The Bailiff:**

There is an amendment lodged by the Minister for Housing and Communities and I ask the Greffier to read the amendment.

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

For the words “to make an Order under Article 6(3)(e)” substitute the words “as part of his current modernisation review” and for the reviews “to introduce increased minimum notice periods for periodic tenancies” substitute the words “to bring forward proposals to improve security of tenure protection”.

#### **8.2.1 Deputy R. Labey of St. Helier (The Minister for Housing and Communities):**

I agree with an awful lot of what the Senator was saying in his speech of course. Apologies about the knee-jerk remark. I say to the Senator I thought this came out as a direct response to a recent incident and I certainly did not mean to be derogatory, so I hope he accepts that apology. This boils down to 2 very clear things in my opinion and that is why I have put in the amendment. I notice that the Senator in the press called it a wrecking amendment; I disagree. I think in fact the potential for wrecking lies with the main proposition. I do not believe that the proposition will improve the rights of longstanding tenants and it runs the very real risk of making things worse for them. It is not democratic. I do not believe that Ministers should act in an autocratic manner and use order-making powers to change policy without proper consultation. My amendment addresses these points. I have already taken action to update the Residential Tenancy Law. On completion of law drafting a full, meaningful consultation will be launched. The next States Assembly will then be able to take an informed and democratic decision as to the details of the new law. We will ensure that changes to the law provide for a fair rental market and do not create loopholes and unintended consequences. The fundamental problem with the Senator’s proposition is that it only makes one change to one type of tenancy. It only impacts on periodic tenancies, that is tenancies that do not have a fixed end date. For that type of tenancy the proposition would create a longer notice period for longstanding tenants. But under the current law there is nothing to stop the landlord changing a periodic tenancy into a fixed-term tenancy. This would give the tenant less security of tenure, make it less likely that a tenant can stay in the same home for many years, and the current law only applies to tenancies that started after 2013 so for some long-term tenants the Senator’s proposition is irrelevant anyway. I understand the Senator’s motivation but this proposal does not stand up to external scrutiny.

[15:15]

Last week I signed a Ministerial Decision to initiate law drafting on the new Residential Tenancy Law, as we have spoken about already in this session. The new draft law will be widely circulated for discussion and consultation with landlords and tenant groups and other interested parties to make sure that it provides a good legal foundation for a fair rental market. The new draft law will include new provisions for notice periods but that will need to be backed up by other protection for tenants to avoid the loopholes such as those that I have been describing and that are in the Senator’s current proposition. That work I have already commissioned is looking at local and international examples of best practice, including the Irish example, to ensure that we produce a modern and comprehensive legal framework that will create a fair rental market. The new R.T.L. (Residential Tenancy Law) seeks to widen the scope of the existing law to include a greater range of properties and tenants, increasing tenants’ rights and creating a more level playing field for landlords. Amending the types of tenancies which are available and enhancing provisions around the length of notice periods for different types of tenancies will allow flexibility in tenancies to remain, but also strengthen tenants’ rights, particularly where they have lived in a property for a long period. I aim to expand on and

clarify provisions relating to investigation and enforcement of the law and the situations where the court can act. Included within the proposal are suggestions to expand the list of definitions and interpretations for terms such as lodger, boarder, peaceful enjoyment of property, uninhabitable properties, sublets and similar. Roles and responsibilities of all parties to an agreement and charges made at the time of signing tenancies will be clarified and guidance offered. There are about 25 new Articles or redrafted Articles in the new Residential Tenancy Law; it is a big piece of work. I have tried to explain in the report that what the new R.T.L. aims to achieve and also the scope of it. Now we have to do the detailed law drafting and I think it would be wrong to publish the L.D.I.s (law drafting instructions) now because this is still policy in development and it needs that time. The best experience I have of intimately working on law drafting was with the electoral reform changes, and that was months. We used to meet every week and sometimes more than once a week when we needed to, met the law drafter who was absolutely brilliant, and she would always have a massive series of questions for us each week which we would go through. It was painstaking. The law developed; we hit hitches and you have to work them out. It is a big piece of detailed work and I want to complete it so that the whole picture, when it is published, is available to all parties to take a look at rather than set the hares running with one piece of policy that is released without being fully thought through. So to sum up, I understand the Senator's motivation for this proposition but I cannot support it as originally drafted. The proposition runs the very real risk of reducing rights for tenants rather than improving them. I have already started a major programme to completely revamp the legal protection for tenants and would ask Members to support my amendment to allow this work to continue without delay or distraction. I am not bringing this amendment to be difficult or obstructive. The Senator and I are on the same page 98 per cent of the time, but I have very real, very genuine concerns of the unintended consequences of this proposition being approved unamended, and I think it would be a failure in my duty if I were not to make that plain and clear to the Assembly.

#### **The Bailiff:**

Thank you very much. Is the amendment seconded? [**Seconded**]

#### **8.2.2 Senator S.Y. Mézec:**

If I may say to the Minister, what he has just given is a speech that, though I disagree with its conclusions, would have been a perfectly acceptable speech in opposition to my proposition. It is not a great speech in support of an amendment to the proposition though. The Minister was right, I have described this as a wrecking amendment and I stand by those words. I do not use those words to be emotive about it. I describe it as such for technical reasons, Sir, and it is something you and I have discussed before and may well discuss again at some point in the future, which is the reason that I am disappointed with this amendment is that it attempts to do what other recent Government amendments to Back-Bench propositions have sought to do, which is to turn it into a proposition which has no effect. So rather than having a fair fight and face a debate down on my proposition, the attempt is to amend it so that it does nothing. I think what gives it away is the wording in the third paragraph of the report to his amendment, where he says: "I ask Members to support my amendment, which acknowledges the significant work which is already underway." That is the key word there, "acknowledge". We are being asked to acknowledge the work which is already underway. Well, why does this Assembly need to have a debate to acknowledge something? If a Minister is using powers that they lawfully have to pursue actions, to pursue policies, this Assembly knows that they are doing it and no Member chooses to contest it, then it is superfluous for it to come to this Assembly for that approval, to ask us essentially to micro-manage that approval because the Minister is perfectly free to continue with that work without a formal acknowledgement from this Assembly. I certainly had no intention of lodging anything to disrupt that project, not least because I helped lay the foundations for it; it is a good project. So what this amendment does is that it deprives this Assembly of the ability at all to debate what I am asking. I am asking the States to have a debate on whether the Minister should use the Residential Tenancy Law as it currently stands to do a specific



thing. This amendment, if it is accepted, means the States does not even get on to debate that very question and instead it will be debating whether we are okay with something happening that is already happening anyway. I have to say, I think that that debate is a waste of our time. If we vote in favour of this amendment and then in favour of the amended proposition, nothing changes. If the proposition is defeated or it is accepted unamended, nothing changes. The work, as is being done now, carries on; the Minister is free to carry on as he is. So I really say to Ministers, please stop doing this. It is not on. If you do not like a proposition, face it down and defeat it using the merits of your argument. Do not put in wrecking amendments to deprive the Assembly of the opportunity to have its say and to deny the right of Back-Benchers to have their proposition heard. If I bring a proposition and it is defeated on the floor of this Assembly, then it is a fair fight. I will be disappointed, no doubt, and I will be thinking about what I do next, but at least it will have been a fair fight. But if this amendment is accepted, we do not even get to have the debate on it and that is not fair. I think Ministers should not do that. The speech that the Minister gave at the start would have been a perfectly acceptable speech in opposition to my proposition, so I disapprove of this tactic. The issue of the ongoing work on the Residential Tenancy Law is a separate matter to whether we use the current Residential Tenancy Law to achieve some change in the short term. One is a long-term issue; one is a short-term issue. They do not detract from one another and should have been seen separately. That I think is good enough reason alone for rejecting the amendment and getting on with a yes/no debate on whether we should enhance security of tenure now. That is the debate we ought to be having. But on to the actual points made by the Minister, most of which I think can be countered. He has argued that the unamended proposition would cause unintended consequences which would, on balance, be negative for tenants. I disagree and I believe the examples he has provided in his report are fanciful. First, he suggests that when a landlord has had a good tenant for years and years, paying their rent, causing no trouble, that for the sake of theoretically an extra few months' notice if the landlord wants to get rid of the person, who has very kindly been giving them a big portion of their pay packet every month, that that will be such a terrible inconvenience to them that they will just empty the property and get rid of that tenant to pre-empt having to do this, which would lead to them having an empty property that is not making them any money. It would risk them getting a new tenant who may not be as good as the previous tenants because you would presume that the reason the tenant has lasted so long is because the tenant and landlord get on well with one another and are quite happy with that relationship. So it is taking one heck of a risk, is it not, to say that somebody who you would hope you would have had a good relationship with, if circumstances change and you do want to require them to leave the property - and there are lots of good reasons why you might want to do that, you know, you might want to move into that property yourself to live in, for example - that because you are being asked to be a bit more reasonable to them that you would pre-emptively get rid of them? I suspect most landlords are not like that. I suspect that most would say: "Fair is fair. If I have had a contractual relationship with you for so many years, which we both uphold and both have been happy with, but it is going to cause you a lot more inconvenience than me to end this contractual relationship, do I have to be a little bit more generous to you in order that you can set up your life somewhere else a bit easier?" I think most landlords would be okay with that. It will only be the really worst ones who might choose to have a callous approach there. I think it would really be cutting your nose off to spite your face and it does not really make much sense because the landlord has a lot more to lose than they do to gain in that situation. He says that it may encourage landlords to move away from periodic tenancies to fixed-term tenancies, which he says provide tenants with less security. Well, in some ways yes, in some ways no. There are advantages and disadvantages to periodic tenancies versus fixed-term tenancies, but there are benefits to fixed-terms tenancies that periodic tenancies do not have. The main benefit of them is that there is only one defined point in time where it is a possibility that a tenancy could end, as opposed to a periodic tenancy, where it can end literally anytime and can serve as a dark cloud hanging over the tenant as they try to live their lives. At least with a fixed-term tenancy you know what is what. You know you cannot be kicked out, you cannot have it sprung up on you as a surprise. It just means as you approach that point in

time where the fixed-term tenancy is due to end, you will have to have a conversation at that point. You will have to have a conversation with your landlord to determine whether you then go into another fixed-term tenancy, at which point you then get the benefit of a protracted period of time where you cannot be asked to leave that property. But also that provides you quite a nice opportunity to just have a conversation with your landlord and talk about your plans with one another. It may be the case that you are in a periodic tenancy and your landlord approaches you and says: "I would like to have a fixed-term tenancy with you. I would like you to sign up to a year's tenancy." You might already be planning to leave in 6 months and so that gives you a nice opportunity to say to your landlord: "Well, I was thinking of going anyway in about 6 months, so how about we arrange it around that?" and the landlord may say: "Oh good, I am pleased for the certainty there, that is helpful. Let us do that" or the landlord may say: "I am only intending to hold on to this property for another year and a half so how about we do a year and a half tenancy then?" and then at least the tenant can sign up and can continue paying their rent, but knows well in advance that situation is going to change at some point for them in the future. It is a good opportunity to just talk about other things that might need to be taken into consideration for the property if there is maintenance or that sort of thing because it is possible to have a periodic tenancy where you do not even communicate with your landlord for years, as long as you are paying the rent.

[15:30]

I certainly know people who have very little communication with their landlord, apart from the standing order that pays the rent every month. So it is a good thing to have conversations, even if they are just to talk about what your plans are and to be upfront with one another. So there are advantages to fixed-term tenancies, the biggest one being you do not have a dark cloud hanging over you all the time that you could lose your home at short notice for no reason. With a fixed-term tenancy, it is only that defined moment in time, a defined moment which can be negotiated and can be understood and can be extended if you want to do that; the tenancy can be ended. As long as you are both obeying the rules, as long as you are both abiding by the contract, it cannot be ended earlier. So I do not accept that this proposition will inevitably have unintended consequences which will make the situation worse for tenants. Most landlords will be perfectly reasonable about this and it will probably reflect the behaviour they have already undertaken. Three months' notice is your minimum notice, but there is nothing stopping landlords from voluntarily offering greater notice. If you have a longstanding tenant you have got a good relationship with, you should be open and upfront with them simply just to be kind to them. I do not accept that it is automatically the case that fixed-term tenancies offer tenants less protection. There are ways that they can provide greater certainty to tenants, which some of them may find valuable. There is a slight double standard in applying that argument to this proposition because the Minister has said that he intends this year to re-establish the Rent Control Tribunal. That is something which I support in principle and I have myself brought a proposition to this Assembly to get the Rent Control Tribunal re-established, but what I did differently to the Minister is that I tied it to other measures as well. Pursuing that measure in isolation risks some tenants being subjected to revenge evictions if they try to use the services of that tribunal because they will only be required 3 months' notice to leave if they are in a periodic tenancy, so if they decide to make a fuss they can be kicked out and there is nothing they can do about it. So they will either suffer or they probably just will not complain and will not avail themselves of this service. So if you are going to say that this is out of place because it does not come alongside other measures, that applies for his proposal for the Rent Control Tribunal as well, which I would warn him I think is going to be a failure, at least in its early days, if it does not come alongside measures to enhance security of tenure. He ought to do those at the same time and adopting this would increase the chances of the Rent Control Tribunal being more successful in its earlier days because tenants will feel more empowered to stand up for themselves if they are facing unreasonable behaviour. He mentioned that this would not apply to very old tenancies because of the Residential Tenancy Law only coming into force in 2013. The point does have to be made that if you are in a tenancy for over 9 years, it does

have to be registered in the Royal Court. You have pay stamp duty on it. The Residential Tenancy Law is a few months off being 9 years old, so those numbers of tenancies that have not been captured by this, they must be an extremely small amount and in the very near future they are going to be zero because it has been 9 years since the Residential Tenancy Law came forward. The Minister spoke about the law drafting instructions he has signed off, and I recognise the phrases he was using in his speech because it sounded like they had been copied and pasted from the instructions themselves, but what is publicly available on that is not very detailed. What we know about those instructions are still only his ambitions, his aims to achieve greater security of tenure. That is an ambition, it is not a statement of how you will do it. I did say in my first speech, I did ask him has he issued instructions to talk about open-ended tenancies, for example - European-style open-ended tenancies is what I said - and he did not answer that. He says it is policy in development. Okay, but I do not think it is fair to say to us: "Reject this clear and tangible proposition and just trust us that we have got the policy in development" without telling us what it is. That is not fair. You do have to be clearer than that for us to have absolute confidence that what you are doing is the right thing because it may turn out that the high-level ambitions set out in that report we all like and we all sign up to. It may be the case that the fine detail we do not like, and at this point we do not know whether we do not like it because we have not seen it and the Minister has not elaborated on it yet. So in summary, I ask Members to reject this amendment for the very simple reason that it is superfluous. It turns this from something clear into a debate on nothing, into a debate on acknowledging the fact that some work is already going on. This Assembly does not need to spend our time doing that because that work is going on, nobody objects to it, nobody contests it: "Happy with it. Carry on, Minister, no problem." The Assembly does not need to give its approval through an amended proposition like that. We accept it or reject it. It changes nothing on the ground and that is not a good use of this Assembly's time, whereas a debate on the unamended proposition is at least a debate about something clear. If the result of that debate is: "Thanks, but no thanks. We do not like this" then fair enough, that will be the Assembly's verdict, but it might be the case that the Assembly has listened to the arguments put forward by myself and the Minister for Housing and Communities and has decided, on balance, while the ongoing work occurs, that a measure in isolation, as proposed in the unamended proposition, would do at least something good in the short term. They may want the option to say: "Small step forward in the short term and we will look forward to that bigger step forward in the long term" but by accepting this amendment we do not even get the choice, and that is not on. I think there maybe ought to be a look at Standing Orders about these sorts of amendments that deprive the Assembly of an opportunity to debate something fairly like that. The arguments he has made in opposition to what this proposition seeks to do is something we can come back to in the debate on the main proposition if the amendment is rejected. I think I have just made the case that it is not necessarily quite as he says it. There are 2 sides to this and I do not think there is a serious risk about undermining security of tenure for tenants on periodic tenancies for the sake of just a few months' extra help for them to find a new home, that most landlords I am sure would be pretty happy to give those tenants that, given what a good relationship they have had and what a good financial favour they have done to them by paying their rent on time for so long. I ask Members to reject this amendment so we can have a proper debate on what my original proposition has asked us to do, kindly say to the Government: "Perhaps try different tactics in future when it comes to these sorts of amendments so we can make best use of the time in this Assembly" and let us instead have a proper debate on whether we take short-term measures to improve security of tenure for tenants rather than simply give a green light to work that is happening already and that none of us have got a problem with. So I would ask Members to oppose the amendment on that basis.

**Deputy J.H. Young:**

I wonder if I might ask my question now ...

**The Bailiff:**

Yes, to the Solicitor General.

**Deputy J.H. Young:**

... of the Solicitor General. It is about periodic tenancies. I wanted to ask the Solicitor General. I see that according to the Article in the substantive law that a periodic tenancy can happen or be created when a fixed-term tenancy expires and the person remains in occupation. I suppose where that leads to, can there be any differentiation of whether that situation occurs if somebody just carries on and does not give up possession at the end of the fixed period or whether the landlord just does not get around to agreeing anything? I think that is important because if there is to be an order, as is proposed, I would like to know whether an order describing a period of occupation can be varied according to the circumstances whereby the periodic tenancy came about. I am sorry, it is a complex question and the Solicitor General may want to think about it, but I think this question about unintended effects and periodic tenancies is quite important.

**The Bailiff:**

Thank you very much, Deputy. Mr. Solicitor General, do you have any observations or are you able to help the Assembly at this time?

**The Solicitor General:**

Yes. If the question is the initial one about what happens when a fixed-term tenancy ends and how do you assess when that is, it seems to me the answer is this: if a fixed-term tenancy comes to an end and the tenant remains in occupation and the landlord does not seek to evict, then by default a periodic tenancy arises, and it arises from the point at which the fixed term ends. So that is the first answer. If it ends by agreement and by consent between both parties, it lapses or morphs into a periodic tenancy, then it can do that as well. Again, it would become a periodic tenancy from the point at which the fixed-term tenancy expired. So if the question is how would one know in order to set or assess when a scale of notice period should commence, it does not seem to be a necessarily difficult task. One would wish to see what the fixed-term tenancy expiry date was, and given that that agreement would have been in writing under the law, it ought to be evidentially a fairly reasonably straightforward process to determine when the periodic tenancy began.

**Deputy J.H. Young:**

Thank you very much indeed.

**8.2.3 Deputy R.J. Ward:**

Just briefly, I wanted to just talk about the amendment as a comparison and then mention something. I looked up the Ministerial Order signed on the Residential Tenancy Law. In order to put it in context, I need to talk about the original proposition so I can make the juxtaposition between the 2, if that is okay. I know we should be talking about the amendment.

**The Bailiff:**

Yes. Obviously your main thrust will be whether the amendment should be adopted or not.

**Deputy R.J. Ward:**

Of course, yes.

**The Bailiff:**

But if you have to refer to the main proposition to justify that, that is perfectly reasonable.

**Deputy R.J. Ward:**

Perhaps I will make it easier by starting with the amendment. The amendment says “to bring forward proposals to improve security of tenure protection.” The original proposition has a very specific role,

to increase minimum notice periods for periodic tenancies where the tenant has lived for a long time, so there is a very specific difference in the 2. The reason I mention that difference is within the Ministerial Order that is published, there is a paragraph from the summary of the review findings that says: “Existing provisions around the types of tenancy which can be used and notice periods for differing tenancies means that levels of protection for tenants and landlords can vary, leaving some tenants vulnerable to so-called revenge evictions and similar. There is currently no additional protection where tenants have remained in a property for a long period of time and tenancy agreements can be strongly weighed in favour of one party.” Those are, I suppose I could say, the words of the Minister from the summary report from the Ministerial Order. Now, that is a very specific identification of an issue around the protection for tenants who have been there for a long time and notice periods. The amendment, as worded, simply says “bring forward proposals to improve security of tenure.” I am surprised that the Minister cannot just accept the original proposal, which addresses specifically increased minimum notice periods for periodic tenancies where the tenant has lived there for a long time because that is specifically mentioned in the summary of the report. What I think the original proposition is doing is addressing something that is in his own report, whereas what I think his amendment is doing - and I do not understand why that was brought forward, I have to say - is to just bring forward proposals. It is clear from that report what the proposals will be. They will be around length of tenancies and the length of time that people have been in those properties.

[15:45]

I do sometimes feel I sit here and I am trying to make a case, which I am sure you are used to, but I am trying to put these 2 things together. There is a logic to this from the original proposition that I think is lost with the amendment. Even at this last late moment, with that in mind, I would say to the Minister perhaps he needs to consider just forgetting his amendment and looking at the original proposition because it addresses something specific in the summary that he has published and signed himself. I think that is quite an important point to be made, notwithstanding the limited data on rented accommodation. Well, we talked about that earlier and we are still not going to have that. It also says: “The enforcement of the existing law is further limited, given the range of investigatory, enforcement and court-related provisions currently included.” Those are the other issues. If his amendment was dealing with those issues, I would be sat here saying: “Great, get on with those issues” but there is a whole paragraph there in the original proposition that has not been addressed by the amendment. This might sound a technical argument or perhaps a slightly pedantic argument, but I think it is a very important one. By watering down the proposition it does not do what your own report is saying needs to be done, and I think that is mistaken. That is a mistake and I think we can rectify that mistake by removing the amendment, going to the original proposition and looking at the summary of your report that you have produced yourself and saying: “Well, it is clear this is what we have to do.” Let us not waste any more time and let us try to make those improvements. That is all I wanted to say on it really, but I think it is an important link between those 2 things.

#### **8.2.4 Deputy M. Tadier:**

I had to look carefully at the actual amendment because normally when an amendment is put in and you see the yellow highlighter pen, it usually is the case that the unamended proposal can still remain intact if you just remove the yellow highlighter pen. What has happened here is that if you do that on the amended proposition, if you remove the yellow highlighter, the proposal as amended would read: “To request the Minister for Housing and Communities [highlight] as part of this current modernisation review [un-highlight] of the Residential Tenancy (Jersey) Law 2011” and then another highlight: “to bring forward proposals to improve security of tenure protection” end highlight. It might sound strange, what I am saying, but while it has been possible from a word point of view to put that amendment in, it has broken up the clause that would have been there because in fact the remaining words “of the Residential Tenancy (Jersey) Law 2011” were in a particular context and in

the original proposition it requested the Minister for Housing and Communities to make an order under Article 6(3)(e) of the Residential Tenancy Law. The important part of that is to make the order under Article 6 of the law and the residential tenancy part is just obviously the context for the law in which that comes, so this is quite an unusual amendment in the sense that it is not direct. I can see why it has aggrieved Senator Mézec because I think it goes further than would normally be permitted under Standing Orders for most amendments in the sense that it seems to negate the actual ... certainly the spirit, if not the actual technical nature of the proposition. I think Senator Mézec would agree with me on that. I know it is not his amendment, but the Minister might want to consider that. But the second point is that it has been worded in quite a clumsy way so it is - if nothing else - tautological, the last part of the amendment, in the sense that there is necessary repetition. "To bring forward proposals to improve security of tenure" would have been sufficient, but it says: "To improve security of tenure protection." I do not want to read too much into this but it seems to me that once again the Ministers, as the Council of Ministers are wont to do, are looking for excuses here to reject a perfectly reasonable, perfectly logical proposition, which falls in line with what the Minister for Housing and Communities would want to do. Now, I have a feeling - I am not sure - that the Minister for Housing and Communities might feel that he is coming under fire from all sections of the Jersey community and from different sections of the Assembly, where he previously thought he might have friends and allies; I am sure he has still got the former. But really he is making a rod for his own back if he cannot work with the former Minister for Housing and Communities, who has done so much of the preparatory work with the good staff and officers of his own department and we should be heading in the same direction here. The first way forward I am afraid is the most simple, it is the obvious way to do it. We cannot keep having the arguments that are put forward, which we have heard again today, that this is something for the next Assembly to consider. I am afraid that just does not work. We expect, and the Island I think expects, to have a Government which can make changes now. None of us knows whether we will be in the next Assembly, apart from of course those who know for sure they are not standing, and we are here today to make changes that we can and to ask the Minister to make changes that are within his power to make sensible improvements for tenants in our Island, also that give clarity to both tenants and landlords. What is being asked for when you compare it, because we can compare the unamended version with the amended version to see which is best, and if it is the case that the unamended version is better than the amended version, then we have a logical and a political duty to go with the former. That is what I think is the case. I think it is quite simple to request the Minister for Housing and Communities to make an order under Article 6(3) of the Residential Tenancy Law to introduce increased minimum notice periods for periodic tenancies where the tenant has lived in their home for a long time. The Minister can make that decision without the amendment and he will still be able to direct the policy in whatever way he wants and word the Article as he wants to to use that power. I ask him to get on and do it and to start working with the former Minister for Housing and Communities and not seeming to have to fight him on every turn.

### **8.2.5 Senator K.L. Moore:**

The words "inclusive Government" were just ringing through my head as I listened to both speeches of the Reform Party members. They have all spoken very well and stated their case very clearly, but if I could perhaps elaborate on particularly the timing points that Deputy Tadier was just making there. It seems to me that this is just another Government attempt to kick the can down the road and cause delay and also avoid engaging with the concept of inclusive Government and failing to respect the wishes of Members of the Assembly at large to represent their constituents and bring forward suggestions to improve the lives of the people of Jersey through this debating Chamber. So essentially this is a short- term versus long term question. What I would suggest is rejecting the amendment for the reasons Deputy Tadier has laid out, but also if we think back to the debate of earlier today, much was made of the fact that the Minister for Housing and Communities has recently lodged his law drafting instructions for a new Residential Tenancy Law. Of course he has done that just before both this and the earlier debate on the Rent Safe scheme. Why did he do that, knowing

that these 2 debates were coming and why has he made this amendment knowing or suggesting that the changes would be in his proposed new Residential Tenancy Law in any event? So my advice to Members would be to reject the amendment because the intention of the amendment should be in the Minister's new law drafting instructions in any event, and if Members feel that they would like to achieve something in the short term for tenants, then they should of course be supporting the substantive proposition brought by Senator Mézec which, as he has already made out very clearly, gives the Minister order-making powers to make a difference in the short term before the new law is brought, and of course that is going to be some time down the road.

**The Bailiff:**

Thank you very much, Senator. Does any other Member wish to speak on the amendment? If no other Member wishes to speak on the amendment then I close the debate and call upon the Minister to respond.

**8.2.6 Deputy R. Labey:**

I am really very surprised at the way this debate has proceeded in terms of the time we have been spending talking about procedure. I am sorry the Senator - last speaker - is unhappy with the amendment. I thought that was a polite and reasonable thing to do. Here I am, back in the Assembly, effectively on oath. To my knowledge, there is zero link between the Senator's proposition, P.121, and the Senator's proposition, P.2. There is zero link between those 2 propositions and the new Residential Tenancy Law and the arrangements for the L.D.I.s. I cannot be clearer than that. Deputy Ward lost me. I am very happy, Deputy Tadier, to work with Senator Mézec anytime, but he ... okay, he does not like the amendment, but he has brought a proposition asking me to do something I am already doing, but I want to do it in the right way. We are talking about procedure. I think we are on the brink of potential disaster for some people. The Senator's speech was full of "might": "This might happen; that might happen. I suspect this; I suspect that." He used the phrase: "The landlord may say" a number of times, 2 or 3 or more. We do not know what is going to happen if I have to make this order, but I suspect we do know that tenants' rights under the current law are very, very weak. They are vulnerable. We also know the vast majority of our landlords are excellent, very good landlords, and we want them to continue being so, but even some of them are absolutely fed up with this Government and ready to chuck the towel in if they get any more monkey business from us. I am afraid this is not right because we are not ... we are bringing something in without consulting them. I am telling the landlords we are going to increase tenants' rights. That is a fact. But we are also going to balance with making things better in the new Residential Tenancy Law, making things better for landlords too. We are going to look at the rights and responsibilities of both parties. I am convinced that this document, the Residential Tenancy Law, when we publish it, it is going to surprise a lot of people and it is going to be welcomed by people. I think it is going to be very reasonable. There are going to be new things in there and we are working our hardest to ensure that that happens. I am absolutely convinced that we are on the right road with the fantastic team that I have got working on it. What can I say? Really, it boils down to this: the Assembly having to judge the risk here.

[16:00]

Senator Mézec may be right and all the landlords will behave absolutely brilliantly, they will understand, we will slam this in, no consultation and it will all be fine, or my suspicions that this is going to cause trouble for people and will come to pass. I just think it is not a risk worth taking when we are going to do this probably this time next year or sooner, if we can. We are going to do this and try to get tenants who have been there a long time to stay. We are going to do this, but we are going to do it properly and we are not going to poke the bear and get the reaction you get when you do for that because who is going to suffer? Vulnerable tenants. I think I have made my point. I do not think I can continue. I can pick up on some technical issues, but I maintain the amendment and I ask for the *appel*.

**The Bailiff:**

The *appel* is called for and I ask the Greffier to put a voting link into the chat. I open the voting and ask Members to vote. The vote is on the amendment lodged by the Minister for Housing and Communities. If Members have had the opportunity of casting their votes ...

**Male Speaker:**

Could I cast a vote pour? I cannot join.

**The Bailiff:**

Yes. If Members have had the opportunity ...

**Deputy J.M. Maçon:**

Can we have a bit more time, please?

**The Bailiff:**

Yes. If there is some difficulty we will give it another minute or so.

**Deputy J.M. Maçon:**

All good. Thank you, Sir.

**The Bailiff:**

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

<b>POUR: 34</b>		<b>CONTRE: 11</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst		Senator T.A. Vallois		
Senator L.J. Farnham		Senator K.L. Moore		
Senator J.A.N. Le Fondré		Senator S.Y. Mézec		
Senator S.W. Pallett		Deputy G.P. Southern (H)		
Connétable of St. Helier		Deputy M. Tadier (B)		
Connétable of St. Lawrence		Deputy M.R. Higgins (H)		
Connétable of St. Brelade		Deputy L.M.C. Doublet (S)		
Connétable of Grouville		Deputy of St. John		
Connétable of Trinity		Deputy J.H. Perchard (S)		
Connétable of St. Peter		Deputy R.J. Ward (H)		
Connétable of St. Mary		Deputy C.S. Alves (H)		
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Clement				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy R. Labey (H)				



Deputy S.M. Wickenden (H)			
Deputy of St. Mary			
Deputy G.J. Truscott (B)			
Deputy J.H. Young (B)			
Deputy L.B.E. Ash (C)			
Deputy K.F. Morel (L)			
Deputy G.C.U. Guida (L)			
Deputy of St. Peter			
Deputy S.M. Ahier (H)			
Deputy K.G. Pamplin (S)			
Deputy I. Gardiner (H)			

### 8.3 Tenancy Notice Period (P.2/2022) - as amended

#### The Bailiff:

The debate on the proposition as amended is now open. Does any Member wish to speak on the proposition? If no Member wishes to speak on the proposition as amended ... if I close any debate, it goes straight to the vote. Very well. If no other Member or no Member wishes to speak, then I close the debate and ask the Greffier to put a vote into the link. I open the voting and ask Members to vote. If Members have had the opportunity of casting their votes then I close the voting. The proposition as amended has been adopted.

<b>POUR: 40</b>		<b>CONTRE: 6</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst		Senator T.A. Vallois		
Senator L.J. Farnham		Connétable of St. Mary		
Senator J.A.N. Le Fondré		Connétable of St. Clement		
Senator K.L. Moore		Deputy M.R. Higgins (H)		
Senator S.W. Pallett		Deputy G.C.U. Guida (L)		
Senator S.Y. Mézec		Deputy of Trinity		
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				

Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy of St. Peter				
Deputy of St. John				
Deputy S.M. Ahier (H)				
Deputy J.H. Perchard (S)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

**Deputy M. Tadier:**

Sorry, I did have a point of order. It might be slightly late and I do not know if I missed it, but did any Member declare an interest or any Member who is a landlord with a periodic tenancy, it is necessary for them?

**The Bailiff:**

I am sorry, it is far too late, I think. The vote is taken, the matter is now closed and we have to move on to the next item.

**9. Amendment to Standing Orders - miscellaneous amendments (P.3/2022)**

**The Bailiff:**

Very well, we now come on to the final item of Public Business, which is Amendment to Standing Orders - miscellaneous amendments, P.3, lodged by the Privileges and Procedures Committee and I ask the Greffier to read the proposition.

**The Greffier of the States:**

The States are asked to decide whether they are of opinion to make the following amendments to the Standing Orders of the States of Jersey, with immediate effect.

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

These amendments to Standing Orders address a number of minor inconsistencies that have been identified by the P.P.C. following a review by the States Greffe. I note the comments from the Corporate Services Scrutiny Panel on these amendments and I welcome the panel’s general support and thank it for its work. I will run through the amendments in the order that they are set out in the proposition, but I am happy to take a vote on each one if Members would prefer. The first amendment is in relation to lodging amendments during the election period. In adopting the proposition, States of Jersey elections: pre-election procedures for States meetings and the lodging of propositions, P.88/2018, the Assembly agreed that propositions should not be lodged during the election period as

defined in Standing Orders. Effectively this will mean propositions cannot be lodged from early March 2022 unless it is the Bailiff's opinion that the proposition related to a matter of such urgency and public importance that its lodging should not be delayed. P.88/2018 explicitly stated that amendments should be excluded from this prohibition on lodging. However, this was inadvertently missed when the resulting amendment to Standing Order 19A was debated and approved. Without the amendment proposed today, it would not be possible to lodge amendments after the deadline to propositions listed for debate during the meetings of March and April 2022, this year, unless it is could be shown that they related to matters of public importance. This would not reflect the Assembly's will in adopting P.88/2018 and therefore P.P.C. has proposed this amendment. The second is in relation to propositions that effectively seek a vote of no confidence. Standing Order 22 sets out additional requirements for a proposition seeking a vote of no confidence in a person or body of persons. The proposition needs to be signed by 3 other elected Members and the report must set out why the proposer believes a proposition should be adopted. In December 2020 the Assembly debated Draft Amendment (No. 49) of the Standing Orders of the States of Jersey, P.143/2020, which sought to ensure that Chairs of Scrutiny Panels cannot belong to the same political party as any Minister scrutinised by their Scrutiny Panel. As the proposition, if adopted, would have taken immediate effect, we highlighted in our comments that there was no need for the proposition to meet the requirements of Standing Order 22, even though its adoption would have seen an existing Chair removed from that position. We highlighted that we would consider whether an amendment to Standing Orders should be lodged to deal with this procedural loophole. Therefore we are proposing an amendment to Standing Order 22 to ensure that it would apply not only to propositions explicitly seeking a vote of no confidence, but also to propositions where the effect of their adoption would be tantamount to a vote of no confidence. The third is in relation to an outdated reference to subordinate legislation. Standing Order 37 sets out the process for the presentation of documents to the States. Paragraph 6 of this Standing Order specifies that it does not apply to Ministerial Orders, as the process whereby they are tabled before the Assembly is different. At present, reference is made in paragraph 6 to the Subordinate Legislation (Jersey) Law 1960. However, that law was annulled with the adoption of Legislation (Jersey) Law 2021 and the reference in the Standing Order therefore needs to be updated. The fourth is in relation of parental responsibilities. The Assembly has already agreed that parental responsibilities should be included as a reason for Members' absence at roll call. When the amendment to Standing Orders was agreed to incorporate this principle, there was no consequential amendment to paragraph 4 to ensure clarity that a Member absent for that reason would not be marked *en défaut*, therefore we are proposing this amendment to ensure consistency within Standing Order 53. The fifth relates to propositions which may be taken in the proposer's absence. The provisions of Standing Order 7(1A) allow for an amendment to be proposed in the absence of the proposer, for example, through illness, but Standing Order 68(5) allows for a substantive proposition to be moved by another Member if the proposer is to be absent and has given sufficient notice and is not marked *en défaut*. Given the interpretive provisions of Standing Orders, Standing Order 68(5) in fact applies automatically to amendments as well as substantive propositions, therefore we propose to delete Standing Order 70(1A), which is superfluous, as it effectively duplicates the provision of Standing Order 68(5). The sixth relates to the Chair of the Planning Committee. Standing Orders 90 to 96 govern the arrangements of voting in the Assembly, including for appointments of the principal officers, as defined in Standing Order 89(AA). For instance, they allow for the electronic voting system to be used during the appointment of Members to those principal officers, depending on the number of candidates. As the Chair of the Planning Committee is currently excluded from the list of principal officers, however, an appointment to that position is not covered by the provisions of Standing Orders 90 to 96 in the same way and it could therefore be argued that the electronic voting system could not be used for that appointment in the same way. This amendment would rectify that. The seventh relates to votes of censure against bodies. It became apparent recently that there was no explicit provision in Standing Orders for the Chair of a body subject to a vote of censure to speak a second time before the debate concludes. When Senator Mézec

lodged a vote of censure against the Council of Ministers, the Bailiff ruled that the Chief Minister had that right to speak a second time to ensure consistency with the provisions of censure relating to an individual and with the provisions for votes of no confidence. The amendment addresses this issue and ensures the right of the Chair to speak for a second time is enshrined in Standing Orders. The eighth and final amendment relates to substantive speeches during nominations for appointment. It has recently become more common for Members, when nominating or seconding other Members for appointment to a position, may be inclined to make a speech in support of their proposed candidate. This was not the previous convention, when no speeches were made, but there is no explicit provision within Standing Orders. This can make it problematic for the Presiding Officer to manage a situation in extremes where a lengthy speech is made during nomination. Therefore we propose this amendment to clarify that nomination or seconding should not be made the pretext for a speech. I move the proposition.

**The Bailiff:**

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

[16:15]

**9.1.1 Deputy M. Tadier:**

It is an observation on the rule about not lodging amendments during the election period. It is just to say that of course I understand that motivation and the rationale for Members not lodging fresh business just in an election period. It is presumably on the one hand to prevent electioneering and, secondly, so that it can be dealt with in this term of the Assembly. I presume it is mostly the latter. Maybe the Chair can clarify that, but of course if it is the former as well, there is a mechanism whereby a Member can lodge propositions and amendments before the cut-off period and without taking them for debate, so it is entirely possible to lodge something now, but decide that you do not want it to be debated until the new Assembly, and of course if you are there to take it, all the better for you, and it can be used to publicise right up until the election. So I was wondering if the Chair had any thoughts on that. I do not know if it is directly relevant to that first amendment - maybe it is - just to know what her thoughts are on that and whether we should give consideration to propositions which have not been debated for whatever reason. It could be that they are timed out, that they should fall away if they have not been debated before the cut-off period of the last sitting.

**The Bailiff:**

Thank you very much, Deputy. Does any other Member wish to speak on the proposition? If no other Member wishes to speak on the proposition then I close the debate and call upon the Chair of P.P.C. to respond.

**9.1.2 Deputy C.S. Alves:**

I thank Deputy Tadier for his contribution there. It is to limit electioneering that there is a cut-off point for lodging. However, propositions will not hang over. Anything which is for debate that has not been concluded by the end of the current Assembly will have to be withdrawn. That provision is already there. It is under Standing Order 34(4). I hope that addresses his concerns. I see that nobody has stated that they want a vote on each individual thing, so we can take it all together, please.

**The Bailiff:**

Yes, as no one has asked for it to be taken separately, it is within the decision of the Chair of P.P.C. to determine how this is taken. Accordingly, the vote will be for the entirety of the proposition, all of the paragraphs, and I ask the Greffier to place a link into the chat. I open the voting and ask Members to vote. If Members have had the opportunity of casting their votes, I ask the Greffier to close the voting. The proposition has been adopted.

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

That concludes Public Business and I invite the chair of Planning Committee to propose the arrangements for Public Business for future meetings.

## **ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS**

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

There has been an update to the arrangement for Public Business for future meetings. The following has been lodged since the publication of the Consolidated Order Paper and both have been listed for the 29th March 2022. That is the Rate Appeal Board: Appointment of Members, P.16/2022, and the Amendment to Standing Orders - Inclusion of Island Identity statement, P.17/2022. It has also been noted in the Consolidated Paper that I would like to reduce the lodging period for Standing Orders for P.15, Draft Public Elections (Donations to Political Parties - Threshold Amount) (Jersey) Regulations 202-, which the P.P.C. lodged on 4th February. I would like to seek the Assembly's agreement to it being listed for debate on 1st March. I would like to just take this opportunity to apologise to the Assembly for the late lodging of this, but it was out of our control, as the threshold levels had to be determined by the Jersey Election Authority, which only came into being on 1st February and met for the first time on 2nd February. At present, no threshold exists and therefore parties are not required to declare any donations they received. As the regulated period for election expenses is to be submitted and commences on 22nd February, it is really quite important and imperative that limit is set as soon as possible.

#### **The Bailiff:**

Are you asking, Chair, for the Assembly's agreement at this point to take this proposition on 1st March or indeed during that sitting or are you simply giving notice that you will make the application at the sitting?

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

I would like to do that now, to give Members sufficient notice.

#### **The Bailiff:**

Very well. Did you wish to speak further or have you concluded?

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

No, that is it.

#### **The Bailiff:**

Is that proposition seconded, to take P.15 at the next sitting? **[Seconded]** Very well. The Connétable of St. Ouen, I see you wanted to speak, but that was before, I think. Is that on this particular proposition, taking P.15 early?

#### **The Connétable of St. Ouen:**

No, it is not.

### **10.1 The Connétable of Grouville:**

Yes, I would like to ask a question. If we bring in limits later on, after March, and political parties have received donations before then, what happens?

#### **The Bailiff:**

It may be that the Chair is able to assist you with that information. Personally I have not read the statute, other than to approve it, so I have not seen the detail. Does any other Member wish to speak on this proposition to bring P.15 early to allow it to be debated on the 1st March sitting? If no other Member wishes to speak, Chair of P.P.C., would you like to respond?

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

At the moment, as it stands, all election expenses start as of 22nd February of this year, so parties would have to declare any expenses from 22nd February this year. I hope that clarifies things for the Constable.

#### **The Bailiff:**

Does that assist you at all, Connétable?

#### **The Connétable of Grouville:**

It does not completely answer the question because people will not know what those limits will be before the date that it is set, so in theory, if the start of expenses is 22nd February but no limits have been set until well into March, there could be a problem I see, but I do not know the answer.

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

Yes, I see. So obviously the limits are in the proposition for the parties. This does apply to independents so if it is not passed then it would ... well, it would default to the independent limit.

#### **The Bailiff:**

I think probably given it is only: "Are we dealing with it on the next occasion?" that is probably as far as reasonably we can go. I am going to take this on a standing vote, unless anyone wishes the *appel* or anything of that nature. All those in favour of taking this early ... I will assume that anyone who indicates that they are against it will now say so in the chat because if everyone simply puts in that they are in favour ... I will assume that those in the chat are in favour unless a large number indicate a contrary view. No, in which case that is taken on a standing vote. That will be dealt with on the next occasion. Now, Connétable of St. Ouen, you wished to speak on the arrangements for future business, I think.

### **10.2 The Connétable of St. Ouen:**

I do, please. Could I pray the indulgence of the Assembly and ask that P.12 and P.10 be taken as the first item of business at the next sitting, please? This relates to the debate on the new canons for the Church of England and it is to give the Dean the opportunity to be present on that day, which if it moved on to other days, there is a very good chance that he would not be able to be there, which would be unfortunate, I think.

#### **The Bailiff:**

Is that proposition seconded? [**Seconded**] Does anyone wish to speak on that proposition? If no Member wishes to speak on the proposition then I will take that as a standing vote as well, that P.10 and P.12 will be dealt with as the first 2 items of business on 1st March. If anyone wishes to indicate ... anyone in favour please stand or ... very well, thank you. Anyone against, if they would indicate a contrary intention in the chat, please. No contrary intention in the chat and accordingly that is passed on a standing vote.

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

Just to ask the leave of the Assembly, I have advised the Greffe that I wish to withdraw my amendments 53, 54, 55 and 56 of P.36.

#### **The Bailiff:**

Sorry, I have got to look through and find these. Yes, so 53 ... your 4 amendments there you are withdrawing, Connétable?

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

Fifty-three, 54, 55 and 56.

**The Bailiff:**

Yes. In fact, I think it is a matter of courtesy to notify that to the Assembly, but you do not require leave to withdraw them and they are taken as withdrawn then. Do you propose the arrangements for future business as the Assembly has now got it under consideration, Chair of P.P.C.?

**Deputy C.S. Alves:**

Yes, please. I think Deputy Young would like to speak.

**10.3 Deputy J.H. Young:**

Yes. Just as a courtesy, obviously we are going on the Order Paper, which lists up to the amendment on the Island Plan for 14th March and up to number 79. The latest, I think we are at 86 now, and I hate to add to the volume of business, but it is my intention to pull together some consolidating amendments, which I need to do as a Minister, so I think just to note that that list will become rather larger. Of course amendments under the rules we passed, Members do have the opportunity to amend their own amendments. I just think that should be noted.

**The Bailiff:**

So when you indicate you are going to put in a consolidated amendment, does that mean that will make it clear whether or not you will be accepting the amendment or ...

**Deputy J.H. Young:**

Yes. A number of consolidated amendments that will follow on from the commitments that I gave in my response to the inspector's report to indicate to Members which ones of the amendments were likely to be supported and those which were not and those which needed amendment, so those consolidated amendments are well advanced and can be expected to be there shortly. I am sure that will help the debate. Thank you.

**The Bailiff:**

Thank you very much for notifying Members of that. Connétable of St. Ouen, you have something to add?

**The Connétable of St. Ouen:**

Yes, I am sorry to come back. I just want to clarify something and I may have got this wrong. I am not particularly clear at the moment whether the Order in Council and the adoption of the new canons needs to come before the draft ecclesiastical legislation, given that the Assembly very kindly agreed to let me take both those items at the start of business. Could I clarify with P.P.C. which ones I need to take first to make sure we get it in the right order?

**The Bailiff:**

I am sure the Assembly will be entirely content to ensure you get them in the right order from a procedural point of view, Connétable. Once again, Chair of P.P.C., you propose the order for business as has now been articulated by Members?

**10.4 Deputy C.S. Alves:**

Yes, please. I propose the Public Business, thank you.

**The Bailiff:**

Is that seconded? **[Seconded]** Does any Member wish to oppose? Very well, that concludes the matter for the Assembly and we stand adjourned until Tuesday, 1st March.

**ADJOURNMENT**

[16:29]



